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EUROPAUDVALGET

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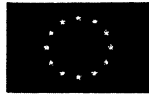
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Til underretning for Folketingets Europaudvalg vedlægges i forbindelse med
Det Europæiske Råd i København den 12.-13. december 2002 formandska-
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P. H. D. M.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 December 2002

15487/02

LIMITE

FISC 313

PRESIDENCY NOTE

To : ECOFIN
on : 11 December 2002
Subject : Tax Package
- Draft Council Conclusions

1. The Council commits itself to formally adopt the Tax Package before the European Council in March 2003.

With regard to the Directive on the Taxation of Savings

2. The Council sticks to the Feira European Council conclusions that the exchange of information, on as wide a basis as possible, is to be the ultimate objective of the European Union in line with international developments.

3. The Council agrees that the EU should enter into an **agreement with the Swiss Confederation** based on the following package:

Agreement between the European Community and the Swiss Confederation

- *Retention*: Switzerland will, under strict conditions of non-discrimination, apply the same rates of retention as Belgium, Luxembourg and Austria - 20% during the first 3 years of the transitional period and 35% from 2007 onwards.
- *Revenue sharing*: Switzerland will share the revenue of the retention tax and will accept the 75/25 division applied within the Community and may even be prepared to reduce the percentage of 25 depending on the "overall balance of the agreement". However the revenue sharing provisions will only apply to the new retention tax and not the existing withholding tax.
- *Voluntary disclosure of information*
- *Review clause* stating that "The Contracting Parties shall consult with each other at least every three years or at the request of either Contracting Party with a view to examining and – if deemed necessary by the Contracting Parties – improving the functioning of the Agreement. In any event the Contracting Parties shall consult each other two years prior to the end of the transitional period provided for in the Directive to examine if changes to the Agreement are necessary taking into account international developments."

Commitment on bilateral agreements between European Union Member States and the Swiss Confederation

- Switzerland commits itself to accept bilateral agreements with the Member States based on the following elements:
 - Switzerland commits itself not to apply to Member States its reserve on Article 26 of the OECD Model Tax Convention on Income and on Capital (in the version of April 2000), i.e. to the extent that the Swiss tax authorities have access to bank information in the normal course of the administration for domestic purposes, they will exchange it with Member States' tax administrations, and
 - Exchange of information in cases of tax fraud or similar misbehaviour on the part of taxpayers, as described in the attached annex to these conclusions, provided that

- Dividends paid by subsidiary companies to parent companies having a minimum holding of 25 per cent of the capital of such subsidiary shall not be, in case one company is located in a Member State and the other company is located in Switzerland, subject to taxation in the source state under this Agreement. Likewise, interest and royalty payments made between associated companies or their permanent establishments, provided such companies are affiliated by a direct minimum holding of 25 per cent or are both held by a third company which has directly a minimum holding of 25 per cent both in the capital of the first company, and in the capital of the second company, shall not be subject to taxation in the source state under this Agreement in cases where one company or permanent establishment is located in a Member State and the other company or permanent establishment is located in Switzerland.

4. The Council asks the Commission – in extension of its Council conclusions of 4 June 2002 – to continue negotiations, in close conjunction with the Presidency of the Council, with Switzerland and the other third countries, and to press for the exchange of information as the EU's ultimate objective.

5. The Council agrees that – in extension to its conclusions of 13 December 2001 – the **directive on the taxation of Savings based on exchange of information as the ultimate objective**, will enter into force on 1 January 2004 and contain provisions ensuring that:

- *12 Member States* will implement automatic exchange of information from 1 January 2004
- *Austria, Belgium and Luxembourg* will from 1 January 2004 operate a (transitional) withholding tax with revenue sharing and will
 - implement exchange of information *upon request as defined in the OECD agreement¹*, as soon as conditions permit, and in any case no later than 1 January 2011, 7 years after the entry into force of the directive.

¹ The OECD Agreement on Exchange of Information on Tax Matters as developed by the OECD global forum working group on effective exchange of information (DAFFE/CFA(2002)24/final).

- implement *automatic* exchange of information, if and when the EU enters into an agreement with Switzerland on exchange of information *upon request as defined in the OECD agreement*¹ From that moment, these Member States will cease to apply a withholding tax with revenue sharing.
- set the withholding tax at 20 % during the first three years of the transitional period and 35% from 1 January 2007 onwards.

The Council assesses that sufficient reassurances have been obtained with regard to the application of the same measures in all relevant dependent or associated territories (the Channel Islands, Isle of Man, and the dependent or associated territories in the Caribbean) and asks the Member States concerned to ensure that all relevant dependent or associated territories will apply those measures.

With regard to the Code of Conduct:

6. The Council takes note of the progress achieved by the Code of Conduct Group (Business Taxation) as set out in the report (14812/02 FISC 299).

7. Notes that these descriptions now form an agreed basis for the evaluation of rollback.

Asks that the proposed revised or replacement measures be considered against the established criteria of the Code of Conduct.

8. Agrees that, if any proposal for a revised or replacement measure is considered by the Code of Conduct Group to be inadequate to achieve rollback of all the harmful features of the measure listed in Annex C of SN4901/99, then the evaluation should be reported by the Code of Conduct Group to the ECOFIN Council.

9. Will, in these circumstances, seek assurances from the Member States concerned that appropriate additional changes will be made.

¹ The OECD Agreement on Exchange of Information on Tax Matters as developed by the OECD global forum working group on effective exchange of information (DAFFE/CFA(2002)24/final).

10. The Council takes note that extensions beyond the end of 2005 of benefits of the following measures have been requested:

- Belgium: Co-ordination Centres, extension to 31 December 2010,
- Ireland: Foreign Income, extension to 31 December 2010,
- Luxembourg: 1929 Holding Companies, extension to 31 December 2009,
- Netherlands: International Financing, extension to 31 December 2010,
- Portugal: Madeira's Free Economic Zone, extension to 31 December 2011.

The Council will reach agreement on the assessment of the implementation of measures and the results reached on the rollback of the harmful measures and decide on the possible extension of benefits from some of these measures when formally adopting the Tax Package.

With regard to the Directive on Interest and Royalties:

11. The Council confirms the agreement on all pending issues at its meeting on 26 and 27 November 2000 and the revised version of the proposal (8697/01 FISC 82) reflecting the conclusions of this meeting.

12. At the final adoption of the Tax Package the Council will agree that the length of the transitional period for Spain shall be extended to 31 December 2009.

The tax package as a whole

With regard to the Tax Package as a whole, the Council will, on the basis of these conclusions, at the ECOFIN Council in January 2003:

- formally adopt the Directive on taxation of savings;
- conclude the Agreements with the third countries named to in the Feira conclusions;
- adopt the Directive on interest and royalty payments made between associated companies of different Member States.

Switzerland is ready to grant exchange of information on request for all criminal or civil cases of tax fraud or similar misbehaviour on the part of taxpayers. " Similar misbehaviour " includes only offences with the same level of wrongfulness as it is the case for tax fraud under Swiss legislation¹. Switzerland is prepared to enter into bilateral negotiations with the Member States to define individually categories of cases falling under " similar misbehaviour " in accordance with the procedure of taxation applied by those countries.

The general concept of tax fraud or similar misbehaviour on the part of taxpayers could be laid down in an arrangement between Switzerland and the EU separate from a treaty on the taxation of savings and on a reciprocal basis. In case such an agreement could be reached, the Swiss tax authorities would be in a position to grant comprehensive Administrative Assistance including banking information directly to Tax Authorities in the Member States.

¹ The following examples may illustrate such situations:

- A tax payer is building up a scheme of lies in order to have an income which is below the amount which would oblige him to file a tax return
- A tax payer gives qualified wrong information to a third person who based on these information is issuing a document who allows the tax payer to take the position that he is in a non taxable situation with respect to a specific transaction
- During or after an investigation a tax payer gets the opportunity to disclose all his offences he has committed in the past in exchange of a substantial reduction of fines and/or other penalties. He enters to such an arrangement but does not really disclose all the facts.