

TAXREP 12/02

RESPONSE TO THE EUROPEAN COMMISSION PAPER 'TAX POLICY IN THE EUROPEAN UNION – PRIORITIES FOR THE YEARS AHEAD' (COM) (2001) 260 FINAL, PUBLISHED ON 23 MAY 2001.

Text of a memorandum submitted in February 2002 by the Tax Faculty to the European Commission in response to a Communication from the Commission published on 23 May 2001

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INTRODUCTION

- 1 The Tax Faculty of the ICAEW has set out below its comments in relation to the above Communication. Where appropriate, we have also commented on the Commission Staff working paper 'Company Taxation in the Internal Market' (COM) (2001) 582 final of 23 October 2001.
- 2 Generally, the Tax Faculty welcomes the pragmatic approach adopted in the Commission paper. However, there are a number of specific areas in relation to which we wish to comment. Our comments below are in relation to direct tax issues and we plan to submit further comments in relation to Value Added Tax and income tax issues shortly.

QUALIFIED MAJORITY VOTING

- 3 Reference is made at page 10 of the Communication to the Commission's view 'that a move to qualified majority voting *at least for certain tax issues* is indispensable...'
- 4 The Faculty would welcome clarification of the areas in which the Commission consider this is necessary and why such a move is regarded as indispensable. Ahead of such clarification, the Faculty notes and understands the reasons for the position of the UK Government, namely that a move to qualified majority voting on tax matters is not currently in the overall best interests of the UK.

HARMONISATION

- 5 The Faculty welcomes the Commission's acknowledgement that (at page 9) 'it is clear that there is no need for an across the board harmonisation of Member States' tax systems'.

TAXES ON PERSONAL INCOME

- 6 The Communication states (page 9) 'as far as taxes on personal income are concerned, the view is that such taxes may be left to Member States even when the European Union achieves a higher level of integration than at present'.
- 7 Again, the Tax Faculty welcomes this statement.

INFRINGEMENT PROCEEDINGS

- 8 Within the framework noted above, the Faculty endorses the Commission's intention (at page 23) 'to adopt a more pro-active strategy generally in the field of tax infringements and be more ready to initiate action where it believes that Community law is being broken. It will also ensure the correct application of judgements of the ECJ'.

- 9 The Tax Faculty welcomes both the above statements. The Faculty has participated, jointly with other UK representative bodies including the Chartered Institute of Taxation, the Association of Certified Accountants (ACCA) and the Institute of Chartered Accountants in Scotland (ICAS), in an initiative identifying major areas of UK direct tax law, focusing on company taxation, where the existing provisions arguably infringe one or more of the fundamental freedoms in the Treaty of Amsterdam. This paper has been discussed with the UK Inland Revenue's EU policy adviser.
- 10 The Faculty understands that the Commission has initiated a series of bilateral meetings with Member States, to review their current legislation for remaining inconsistencies with the Treaty of Amsterdam, EU directives and regulations and existing ECJ case law. The Faculty endorses this initiative.
- 11 In relation to ECJ decisions, it is disappointing that Member States other than the Member State in question almost uniformly choose to ignore the court's decision. The Faculty accordingly supports the Commission's intention to 'ensure the correct application of judgements of the ECJ' throughout the EU Member States, as otherwise the EU treaty and ECJ court decisions are devalued.
- 12 Moreover, in at least one case (*Modelo Continente SGPS SA v Fazenda Pública, C 19/99*), a case in which Portuguese notarial fees which were computed by reference to issued share capital were held to be in breach of the Capital Duty Directive, it has come to our attention that the Member State in question (Portugal) has been exceedingly dilatory in implementing the court's decision. We would urge the Commission's enforcement section to proactively police compliance with ECJ decisions.

ARBITRATION CONVENTION

- 13 We note from Com (2001) 582 that Member States have still not ratified the extension of the arbitration convention to apply from 1st January 2000 to 31st December 2004. This is extremely disappointing, and we would endorse the Commission's objective of strongly encouraging Member States to conclude their ratification procedures as soon as possible. We trust that this can be made a priority for the remainder of the Spanish presidency.

CODE OF CONDUCT

- 14 We are less persuaded of the merits of the code of conduct review, which could be seen as a block on freedom of establishment generally and which potentially reduces choice and competition. We think that the EU should look to support effective transfer pricing provisions and where necessary, controlled foreign companies regimes, as opposed to seeking to abolish tax incentive regimes.
- 15 We also think that work in this area should be conducted in co-operation with the OCED and that any measures brought forward are supported by OECD countries rather than just EU Member States. We note in this regard that the OECD has (the OECD's Project on Harmful Tax Practices: the 2001 Progress Report – 14th November 2001) dropped ring-fencing and the requirement for substantial activities as tests in addition to exchange of

information and transparency, for whether an offshore centre is deemed to be 'uncooperative'.

EUROPEAN COMPANIES STATUTE

- 16 We welcome the adoption of the European Company Statute, which will allow access to a uniform company law regime across Europe, from 2004.

10TH COMPANY LAW DIRECTIVE

- 17 In this regard, we would urge the Commission to prioritise the adoption of the 10th Company Law Directive, allowing cross border legal mergers of national companies, as the complementary company law provision to the European Company Statute. We would very much wish to see this, like the arbitration convention, as a key objective of the Spanish presidency.

COMPANY TAXATION

- 18 We note at the outset the impetus towards approximation of company taxation systems provided both by the advent of the Euro and by the mandatory adoption of international accounting standards (IAS) for EU listed companies from 2005.
- 19 Nonetheless, we are not attracted by the home country taxation system, which appears to us to be an unhappy half way house between the current 15 national company tax systems and an EU wide tax consolidation with a common tax base and ultimately common tax rates.
- 20 We would favour an approach similar to that in the pension arena (where eleven Member States follow the EET system) viz. approximation, whereby Member States with broadly similar company tax regimes move over time towards a common position.

DOUBLE TAX TREATIES

- 21 Consistent with our view on qualified majority voting, we do not favour the negotiation at EU level on a multilateral basis of double tax conventions with non EU countries.

MERGERS AND PARENT/SUBSIDIARY DIRECTIVES

- 22 We welcome the proposal to extend the scope of these to cover all entities subject to corporation tax and to expressly include the new European Company.

CONCLUSION

- 23 We trust the above comments are of use. We would be happy to meet with you to discuss the above, should this be helpful.

FJH
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