



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels, **13. 07. 2016**
Taxud R2/SV – ARES(2016)3827184

Mr Fabio De Masi
European Parliament
WIB 03M031
rue Wiertz 60
BE – 1047 BRUSSELS

(by e-mail and registered mail)

Dear Mr De Masi,

Subject: Your application for access to documents – Ref GestDem No 2016/1851

I refer to your e-mails, registered on 29 September 2015, in which you make a request for access to documents under Regulation 1049/2001¹ encompassing any informal notes, from Commission representatives attending meetings of the Code of Conduct group on business taxation since 9 March 1998 as well as any room document prepared by the Commission in the context of the work of the Code of Conduct group since 1998.

On 29 October 2015, you received a reply from my predecessor providing you with a certain number of documents and inviting you to submit a more focused request in accordance with the provisions of Article 6 of Regulation 1049/2001.

On 18 November 2015, you lodged a confirmatory application with a request reduced in its scope to the following 3 points:

- 1- a copy of the summary database produced by the European Commission on the basis of the work of the Code of Conduct Group and other fora covering corporate taxation which contains a list and/or assessment of all potentially harmful tax practices in European Union Member States.
- 2- the European Commission's minutes of Code of Conduct Group meetings between 01/01/2010 and 15/11/2015,

¹ OJ L 145 of 31.05.2001, p. 43

3- all room documents prepared by the European Commission for Code of Conduct Group meetings dealing with patent boxes as well as the use, application and exchange between administrations of tax rulings and/or advance pricing agreements.

On 16/12/2015, my services proposed a solution on the above-mentioned three points offering that for documents under indents 1 and 2, the reply will be provided between 15 and 30 working days from the date of your agreement to the proposed solution. Regarding documents under indent 3, it was proposed to provide the reply between 15 and 30 working days from the date of departure of the first reply. You agreed with this proposal on 19 December 2015.

On 19 January, my services informed you about the consultation process engaged with the Member States and about its impact on the originally foreseen deadline and were hopeful to meet the deadline of 9 February 2016. You received a reply addressing items 1 and 2 above on 11 April and 20 May 2016.

You were also informed, on 23 May 2016 that, for the sake of clarity, point 3 of your request would be dealt with under reference Gestdem 2016/1851.

The present reply covers point 3 of your request.

Your request has been handled in accordance with Regulation 1049/2001 and the following documents have been identified:

- 1- exchange of information and review process in 1998,
- 2- follow-up to the study of administrative practices – final evaluation in 1999,
- 3- draft note on transfer pricing of 16 February 2001,
- 4- information on transfer pricing in the Netherlands,
- 5 - information on transfer pricing in Austria,
- 6- information on transfer pricing in Greece,
- 7- documents on other measures,
- 8- informal capital ruling,
- 9- extension of benefits – information from Member States,
- 10- coordination centres – Belgium,
- 11- note on transfer pricing,
- 12- cost plus ruling – Netherlands,
- 13- co-ordination centres - Belgium
- 14- room document #5 of 7 May 2007 on Spain – Intangible assets regime;
- 15- room document #2 of 19 September 2007 on The Netherlands – group interest box;
16. room document #3 of 19 September 2007 on The Netherlands – Patent box,
- 17- room document #.. dated 7 May 2008 on Luxembourg – Intellectual property regime,
- 18- room document #.. dated 7 May 2007 on Spain – Intangible assets regime,
- 19- room document #4 dated 7 May 2008 on Luxembourg – Intellectual property regime,
- 20- room document #6 dated 7 May 2007 on Belgium – patents regime,
- 21- room document #1 dated 9 September 2008 on Belgium – patents regime,
- 22- room document #4 dated 9 September 2008 on Luxembourg – Intellectual property regime,
- 23- room document #5 dated 9 September 2008 on Spain – Intangible assets regime,
- 24- room document # 6 of 15May 2009 on transparency and exchange of information in the area of transfer pricing,
- 25- room document # 7 of 15May 2009 on administrative practices,

- 26- room document # 4 on 23 September 2009 on transparency and exchange of information in the area of transfer pricing,
- 27- Annex: conclusion and recommendations of the sub-group,
- 28- room document 1 of 18/11/2009 on administrative practices (replies from Member States),
29. Annex 1 to document 16 on replies from the Member States to the questionnaire on administrative practices,
- 30- Annex 2 to document 16 on changes and comments from Germany and Sweden on their 1999 Simmons and Simmons country report,
- 31- room document # 2 of 1 of 4 March 2010 on administrative practices,
- 32- room document #2 of 4 March 2010 on replies from the Member States to the questionnaire on administrative practices,
- 33- room document # 6 of 20 May 2010 on administrative practices (conclusions),
- 34- room document # 6 of 20 May 2010 on replies from the Member States to the questionnaire on administrative practices,
- 35- room document # 6 of 20 May 2010 on changes and comments from Germany and Sweden on their 1999 Simmons and Simmons country report,
- 36- room document #7 of 17 April 2012 on monitoring implementation of administrative practices,
- 37- room document # 2 of 4 June 2012 on work package 2011- anti-abuse,
- 38- room document 1 of 10 September 2012 on preparation of guidance notes,
- 39- room document 2 of 10 September 2012 on monitoring guidance on inbound profits,
- 40- room document 4 of 10 September 2012 on work package 2011 on administrative practices,
- 41- room document #6 of 4 June 2012 on administrative practices,
- 42- ADMINISTRATIVE PRACTICES: CROSS BORDER RULINGS & TRANSPARENCY AND EXCHANGE OF INFORMATION IN THE AREA OF TRANSFER PRICING” 30 January 2013,
- 43- ADMINISTRATIVE PRACTICES: CROSS BORDER RULINGS & TRANSPARENCY AND EXCHANGE OF INFORMATION IN THE AREA OF TRANSFER PRICING” 20 March 2013,
- 44- ADMINISTRATIVE PRACTICES: CROSS BORDER RULINGS & TRANSPARENCY AND EXCHANGE OF INFORMATION IN THE AREA OF TRANSFER PRICING - MEMBER STATES' RESPONSES” 29 May 2013,
- 45- ADMINISTRATIVE PRACTICES: CROSS BORDER RULINGS & TRANSPARENCY AND EXCHANGE OF INFORMATION IN THE AREA OF TRANSFER PRICING - DRAFT NOTE TO COMMITTEE FOR ADMINISTRATIVE CO-OPERATION ON TAXATION” 29 May 2013
- 46- Cyprus – Intellectual Property Regime - Agreed Description” 22 October 2013,
- 47- Belgium - Patent Income Deduction – 2013 Amendment – Small Companies - Agreed Description” 22 October 2013,
- 48- UK Patent Box” 22 October 2013,
- 49- UK – PATENT BOX” 22 October 2013,
- 50- CY – INTELLECTUAL PROPERTY REGIME” 20 November 2013,
- 51- BE – AMENDMENT TO PATENT INCOME DEDUCTION REGIME” 20 November 2013,
- 52- CACT 36 of 13 November 2013,
- 53- Standstill: patent boxes” 27 January 2014,
- 54- CY – INTELLECTUAL PROPERTY REGIME” 27 January 2014,
- 55- Administrative practices – Model instruction” 27 January 2014,
- 56- MODEL INSTRUCTION FOR THE SPONTANEOUS EXCHANGE OF CROSS-BORDER RULINGS AND UNILATERAL ADVANCE TRANSFER PRICING AGREEMENTS - MEETING N° 7 OF 28-29 NOVEMBER 2013” 27 January 2014,
- 57- COUNCIL DIRECTIVE 2011/16/EU - STATISTICS: GUIDELINES AND TABLES APPLICABLE AS OF 1.1.2014” 27 January 2014,
- 58- CACT 038 - Statistics” 27 January 2014,

- 59- “Standstill – Patent Boxes - Review of EU Regimes” 18 March 2014,
- 60- “Standstill – Patent Boxes - Tax incentives for research and development” 18 March 2014,
- 61- “MEMBER STATES' COMMENTS ON PATENT BOXES” 18 March 2014,
- 62- “Standstill – patent boxes - Revised OECD proposals on substantial activities” 18 March 2014,
- 63- “Code of Conduct – Standstill - Interpretation of criterion 3 in the context of patent boxes” 18 March 2014,
- 64- JOINT DECLARATION [or MEMORANDUM OF UNDERSTANDING / JOINT STATEMENT]” 3 June 2014,
- 65- “Standstill – Croatia” 3 June 2014,
- 66- “Standstill – patent boxes - Revised OECD proposals on substantial activities” 3 June 2014,
- 67- “BE Comments on the Second Supplemental Note on Substantial Activities in the Context of Intangible Regimes” 3 June 2014,
- 68- “STANDSTILL - PATENT BOX REGIMES - DRAFT DESCRIPTIONS AND WAY FORWARD” 3 June 2014,
- 69 “DESCRIPTION OF KEY FEATURES OF THE INTANGIBLE REGIMES UNDER REVIEW” [“Confidential” origin OECD] 3 June 2014,
- 70- “Agreed Description of Patent Box Regime - Cyprus” 3 June 2014,
- 71- “Patent Box – summary table - Belgium” 3 June 2014,
- 72- “ES/BASQUE COUNTRY – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE ASSETS” 16 September 2014,
- 73- “ES/NAVARRRE – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE ASSETS” 16 September 2014,
- 74-“CY – INTELLECTUAL PROPERTY REGIME” 16 September 2014,
- 75- “ES – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE ASSETS” 16 September 2014,
76. “MT –EXEMPTION ON ROYALTIES DERIVED FROM PATENTS” 16 September 2014,
- 77- “NL – INNOVATION BOX REGIME” 16 September 2014,
- 78- “FR – REDUCED RATE FOR LONG TERM CAPITAL GAINS AND PROFITS FROM THE LICENSING OF IP RIGHTS” 16 September 2014,
- 79- “PT – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE PROPERTY” 16 September 2014,
- 80- “BE –PATENT INCOME DEDUCTION REGIME” 16 September 2014,
- 81- “LU – INTELLECTUAL PROPERTY REGIME” 16 September 2014,
- 82- “HU – IP REGIME FOR ROYALTIES AND CAPITAL GAINS” 16 September 2014,
- 83- “UK – PATENT BOX” 16 September 2014,
- 84- “Agreed Description of Patent Box Regime - Cyprus” 16 September 2014,
- 85- “Patent Box – summary table - Belgium” 16 September 2014,
- 86- “Code of Conduct – Standstill - Interpretation of criterion 3 in the context of patent boxes” 16 September 2014,
- 87- “Standstill – patent boxes - OECD progress report on substantial activities” 22 October 2014,
- 88- “ES/BASQUE COUNTRY – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE ASSETS” 22 October 2014,
- 89- “ES/NAVARRRE – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE ASSETS” 22 October 2014,
- 90- “ES –PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE ASSETS” 22 October 2014,
- 91- “FR – REDUCED RATE FOR LONG TERM CAPITAL GAINS AND PROFITS FROM THE LICENSING OF IP RIGHTS” 22 October 2014,
- 92- “BE –PATENT INCOME DEDUCTION REGIME” 22 October 2014,

- 93- "NL – INNOVATION BOX REGIME" 22 October 2014,
- 94- "LU – INTELLECTUAL PROPERTY REGIME" 22 October 2014,
- 95- "HU – IP REGIME FOR ROYALTIES AND CAPITAL GAINS" 22 October 2014,
- 96- "CY – INTELLECTUAL PROPERTY REGIME" 22 October 2014,
- 97- "MT – EXEMPTION ON ROYALTIES DERIVED FROM PATENTS" 22 October 2014,
- 98- "UK – PATENT BOX" 22 October 2014,
- 99- "PT – PARTIAL EXEMPTION OF INCOME FROM CERTAIN INTANGIBLE PROPERTY",
- 100- "Standstill – patent boxes - Application of criterion 4" 22 October 2014,
- 101- "Code of Conduct – Standstill - Interpretation of criterion 3 in the context of patent boxes" 22 October 2014,
- 102- "Standstill – patent boxes - Member States' comments on room document 15" 22 October 2014,
- 103- "Comments of the Luxembourg delegation on the modified Nexus methods" 22 October 2014,
- 104- "Agreed Description of Patent Box Regime - Cyprus" 22 October 2014,
- 105- "Patent Box – summary table-Belgium" 22 October 2014,
- 106- room document 4 of 7 April 2015- 2011 Work Programme – Administrative Practices,
- 107- room document 5 of 2 June 2015 on replies from Member States on a questionnaire on administrative practices,
- 108- Room document 5 Rev1 of 2 June 2015 on replies from Member States on a questionnaire on administrative practices,
- 109- room document # 2 - Draft work programme - Code of Conduct Group (Business Taxation) - 17 September 2015,
- 110- room document # 1 - CoC Draft work programme - Code of Conduct Group (Business Taxation) - 18 November 2015,
- 111- room document ## - Draft work programme - Code of Conduct Group (Business Taxation) - 21 October 2015,
- 112- room document May 2015/April 2016 - Future of the Code of Conduct Group Draft Work Programme,
- 113- room document # 2 - CoC Future of the CoC - Code of Conduct Group (Business Taxation) - 23 July 2015,
- 114- room document # 3 - CoC Patent boxes - Code of Conduct Group (Business Taxation) - 21 October 2015,
- 115- room document #7 on Italy – Patent box – 2 June 2015,
- 116 – annex to document 115 – Italy – Patent box.

I have the pleasure to inform you that documents 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 37, 39, 40, 41, 42, 43, 44, 45, 49, 50, 51, 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 have been made fully or partly public under Regulation 1049/2001 and can be retrieved via the following link:

http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm

In addition, full access can also be granted to documents 1 to 13 and to document 106.

You may reuse the documents or parts thereof, free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or

message of the document. Please note that the Commission does not assume liability stemming from the reuse.

Moreover, documents 32, 34, 35, 36, 38, 46, 47, 48, 55, 56, 67, 69, 70, 71, 84, 85, 103, 104, 105, 109, 110, 111, 112, 113, 114, 115 and 116 cannot be disclosed and partial access can only be granted to documents 107 and 108.

Some documents contain Member States' positions relating to rulings and unilateral advance pricing agreements which is an open issue still under discussion in the Code of Conduct Group.

Some other documents contain information about patent boxes: some of the arguments concerning patent boxes that were brought forward before the agreement on the Nexus approach in November 2014 are connected to the currently on-going discussion on patent boxes. The current discussion on new Member States patent boxes and the interpretation of the Nexus approach is still pending and if negotiation positions, arguments and the views of delegations that are relevant for that current discussion were to be revealed this would risk seriously limiting progress on this file.

On the basis of the above considerations, it is not possible to disclose fully or partly those documents on the basis of the fourth indent of Article 4, paragraph 1 (a) of Regulation 1049/2001 which states that: "*The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards [...] the financial, monetary or economic policy of the Community or a Member State*", as well as on the basis of Article 4, paragraph 3, first sub-paragraph of Regulation 1049/2001 which states that: "*Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure*".

Those above issues are still under discussion within the Code of Conduct Group. The documents at stake refer to positions expressed by representatives of Member States who act in their professional capacity with the legitimate expectation that their position would not be made public. Under these circumstances, the representatives' freedom to express their views would be curtailed if they would have to take into account that their opinion would be disclosed to the public upon request once discussions on a subject matter are finalised. Disclosure of positions taken by delegations would breach the trust between representatives of Member States and the Commission for forthcoming discussions and that would seriously undermine the decision-making process protected by Article 4(3).

Before the final texts have been finalised with the Code of Conduct Group, any publication of intermediate steps, positions and opinions will negatively affect the chances for a successful completion. Therefore, disclosure of the document at the present stage will seriously undermine the ongoing decision-making process. Moreover, such disclosure would undermine the effectiveness of the activities of the Code of Conduct Group and the measures it develops, thus having a negative impact on the fiscal revenue of the Member States.


Please note further that there is no overriding public interest in disclosure of the documents which would outweigh the need to protect the decision-making process of the Commission.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



Stephen Quest

Annexes: as stated above