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## **THE CODE OF CONDUCT GROUP (Business Taxation) THE EXCHANGE OF INFORMATION AND REVIEW PROCESS**

### **INTRODUCTION**

1. The Code of Conduct for business taxation, which was agreed by Ministers on 1 December 1997, covers both tax laws (or regulations) and administrative practices. The Council subsequently confirmed the establishment of the Code of Conduct Group (Business Taxation) on 9 March 1998 to assess the tax measures which may fall within the scope of the Code and has noted the political importance of its work.
2. In accordance with the principles of transparency and openness, Member States have agreed to inform each other of existing and proposed tax measures which may fall within the scope of the Code. The Council has requested Member States to provide this information to the Commission so that it may co-ordinate its exchange between the Member States.
3. The Code of Conduct Group has the responsibility for overseeing the provision of information on potentially harmful tax measures and for selecting and reviewing those measures which are to be assessed. It is also obliged to report regularly on the measures assessed to the Council.
4. At the ad-hoc group meeting on 30 January and at Coreper on 26 February the Commission was invited to prepare a paper for the first meeting of the Code of Conduct Group to assist its work on the exchange of information and the review process. Decisions on the nature, timing and volume of information to be exchanged are inevitably linked to the work programme of the Group and it will, of course, be for the Group, under its appointed chair, to determine its own programme of work and relevant procedures.
5. The aim of this paper, therefore, is to set out a number of options concerning the basic framework for, and the process of, exchanging information. Accordingly, a series of questions on a few key issues are posed below, the answers to which might assist the Group in determining how to take forward its work in a systematic and methodical way.

### **THE EXCHANGE OF INFORMATION PROCESS**

*The first step – to produce an initial list of measures which may fall under the scope of the Code?*

6. The Code covers all business tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question. As a first step, and before undertaking the more detailed analytical work required to put the Group's Members in a position to discuss and comment on the tax measures to be assessed, it could be useful if the Commission were to co-ordinate the

production of an initial list of measures which may fall under the scope of the Code. Such a list would provide an overview of measures which may provide for a significantly lower level of taxation than generally applies in each State and which the Group might wish to consider. It would be without prejudice to the Group's subsequent evaluation, taking account of all the relevant criteria in the Code, of whether such measures are harmful or not.

7. Such a list might facilitate the development of a work programme by acting as a check list from which measures could be selected for assessment by the Group and for monitoring what progress has been made in assessing potentially harmful tax measures. It would also contribute to a balanced application of the Code to comparable situations. Would representatives think it worthwhile for the Commission to co-ordinate the compilation of an initial list of the measures which might fall within the scope of the code?
8. Some basic information would be required to enable the list to be drawn up and to indicate why such measures might fall under the scope of the Code. For example, each Member State could be asked to provide, very quickly [before the end of June], the following information on the tax measures within their jurisdiction which provide for a significantly lower level of effective taxation than those which generally apply in that State;
  - The commonly used name of such measures,
  - A brief summary of the relevant legislation, regulations and/or administrative practices, and
  - A comparison with the normal tax regime and effective tax rate in the Member State (for example, by reference to the headline rate of corporate taxes or normal tax base).

The Commission could then draw up a list of all the measures so reported and circulate it to the Group Members who could subsequently request that other measures be added to it.

*The next step – a work programme for the review process?*

9. On the basis of the list, the Group could begin its work by reviewing and assessing potentially harmful tax measures one by one. Equally it could attempt to review each and every measure as part of a total review but this would inevitably result in very slow progress. Bearing in mind the need for a balanced approach to comparable situations, it might, however, be more effective to review, in parallel, a more limited number of similar schemes. In this way, the evaluation process might cover a significant level of activity across a number of countries without singling out particular Member States or individual tax measures.
10. The crucial issue is how the Group would categorise the differing schemes. One could perhaps group together the following;
  - Intra-group services (e.g. co-ordination and services centres; holding regimes),
  - Financial and insurance services,

- Other sector specific regimes (e.g. maritime transport; shipbuilding; aviation; film industry),
- Regional incentives, and
- Other activities

(Are there any other suggestions?)

11. A sequential approach to assessment might then be undertaken, whereby the Group could choose to assess a series of measures in parallel, under one sector heading. This might help to avoid overloading the work programme. If such an approach were to be adopted, would Members of the Group be in a position, perhaps at the next meeting of the Group [before the August holidays], to suggest which sector(s) they feel it appropriate to examine first?

*Reports on dependent and associated territories?*

12. Member States might also be invited to submit reports to the Group, before the end of the year, on the application of the principles of the Code to their dependent territories and areas for which they have special responsibilities or taxation prerogatives.

## **CONCLUSION**

13. Answers to the questions posed above and agreement on the exchange of information process at the first's Group meeting on 8 May would enable the Group to set a timetable for its work and for that work to begin without delay. The Commission could write to all Members of the Group after the meeting to confirm what information is to be provided and by when.
14. For its part, the Commission could envisage a timetable which would enable the group to report to the ECOFIN Council meeting on 1 December 1998 and would be committed to playing its part in achieving, by then, the following;
  - the production of a list of existing and proposed measures which might fall within the scope of the Code,
  - the agreement of a work programme to assess potentially harmful tax regimes,
  - the co-ordination of information on the first group of schemes to be assessed, and
  - a report on the first group of measures.