



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 November 2012

16488/12

LIMITE

FISC 173

REPORT

from:	Code of Conduct Group (Business Taxation)
to:	Council
Subject:	Code of Conduct (Business Taxation) - Report to the Council

INTRODUCTION

1. On 1 December 1997, the Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted a Resolution on a Code of Conduct for business taxation. This Resolution provides for the establishment of a Group within the framework of the Council to assess tax measures that may fall within the Code. In its report to the Feira European Council on 19 and 20 June 2000, the ECOFIN Council agreed that work should be pursued with a view to reaching agreement on the tax package as a whole, according to a parallel timetable for the key parts of the tax package (taxation of savings, Code of Conduct (business taxation) and interest and royalties).

2. On 9 March 1998, the Council confirmed the establishment of the Code of Conduct Group. The Group reports regularly on the measures assessed and these reports are forwarded to the Council for deliberation.
3. This report from the Code Group encompasses the work of the Code Group in 2012 under the Cyprus Presidency.
4. In accordance with the Procedural Aspects of the Group (16410/08 FISC 174), the Group should maintain to aim at a (broad) consensus to reflect the positions of the Member States in the Group in its reports to ECOFIN, to avoid losing the effectiveness of the Group, while respecting the principle of unanimity as laid down in the Council conclusions of 9 March 1998 concerning the establishment of the Code Group. In the case broad consensus cannot be reached, the Group's reports can express the various views mentioned.

PROGRESS OF WORK

5. The Code of Conduct Group met on 10 September, 17 October and 8 November 2012 under the Cyprus Presidency.
6. At the meeting of 10 September 2012 the Group confirmed a programme of work under the Cyprus Presidency, agreeing to take forward work in the following areas:
 - (a) continue its work on rollback;
 - (b) continue existing work on standstill;
 - (c) continue work on the various aspects of the Group's Work Package 2011.

APPOINTMENT OF VICE CHAIRS

7. Mr Georg Poufos (Director of Inland Revenue, Ministry of Finance of Cyprus) and Mr. Eamonn O’Dea (Director of the Corporate and International Tax Division in the Irish Revenue Commissioners) were confirmed as respectively the first and the second Vice-Chairs for the period up to the end of the Cyprus Presidency.

ROLLBACK

8. UK: Guernsey – Zero-Ten Corporate Tax Regime

The Group discussed the rollback of the harmful aspects of the Guernsey's Zero-Ten Corporate Tax Regime on the basis of “The Income Tax (Zero 10) (Deemed Distributions) (Repeal) (Guernsey) Ordinance, 2012” and agreed that the measures taken by Guernsey were adequate to achieve the rollback.

STANDSTILL

9. Member States have made commitments not to introduce new tax measures that would be harmful within the meaning of the Code. The Group's work programme for the Cyprus Presidency identified the following measures where further discussion under standstill was required:
 - *UK: Gibraltar – Income Tax Act 2010.*

10. UK: Gibraltar –The Income Tax Act 2010 was discussed at the Group's meetings on 10 September, 17 October and 8 November 2012. On the basis of the agreed description of selected elements of the Income Tax Act 2010 covering those aspects seen as relevant for the application of the Code criteria approved by the Group at its meeting in February 2012, and of additional information supplied by UK subsequently, the Commission Services provided the Group with a draft assessment of the regime. The Group discussed this draft assessment and agreed that the Gibraltar regime is harmful under the criteria of the Code. The UK: Gibraltar has informed the Group about work already begun to ensure compliance with the principles of the Code.

WORK PACKAGE

11. The Group continued its work on the Work Package 2011 under the Cyprus Presidency.

Anti-Abuse – Mismatches

12. The Group continued its work on Mismatches, agreeing that further work on mismatches should concentrate as a first step on hybrid entities and hybrid PE's. Following Member States oral and written comments on draft guidance prepared by Commission Services, it was agreed to have detailed technical discussions in the Subgroup (Anti-abuse issues related to inbound and outbound profit transfers and mismatches between tax systems), starting under the Irish Presidency.

Monitoring the implementation of agreed guidance on Inbound Profit Transfers

13. The Group continued its monitoring exercise regarding the implementation of the previously agreed guidance on inbound profit transfers (doc. 16766/10 FISC 139, par. 16). Further discussion on this topic under the Irish presidency is required. The Group also agreed to start monitoring asymmetric provisions for capital gains and losses in Member States' tax provisions under the Irish Presidency.

Preparation of guidance or application notes

14. The Group continued its work on the preparation of guidance notes for regimes offering beneficial treatment to interest, royalties, intermediate companies and special economic zones. Whilst noticing that past assessments should not be affected, the Commission provided the Group with a proposal for general guidance or application notes for future use, based on characteristics and elements which indicate that a tax measure may be harmful when fully considered against the criteria in the Code. The Group will continue its work under the Irish Presidency.

Administrative Practices

15. The Group was informed on progress made by CACT in developing a Model Instruction to improve the spontaneous exchange of information on advance interpretations of legal provisions in cross border situations ("rulings") (doc. 16766/10 FISC 139). With regard to the exchange of information in the area of transfer pricing the Group was informed that Commission has sought technical advice from members of the Joint Transfer Pricing Forum in relation to the exchange of information concerning unilateral advance pricing agreements and the Group will continue to follow developments.

Links to third countries

16. As asked by the Council (ECOFIN) on 22 June 2012 (10905/12 FISC 78), the Commission intensified discussions with Switzerland with the aim of reaching agreement to apply the principles and all the criteria of the Code. At the meetings held on 10 September, 17 October and 8 November 2012, the Group was informed of the continuing dialogue with Switzerland. . Some progress has been made on reaching a common understanding in relation to some Swiss regimes. However, the Group considers it important that all its concerns are taken into account. The Group expects to see further concrete progress by the end of the Irish Presidency and calls on the Commission to report at every Code of Conduct meeting until then, bearing in mind that the Group still retains the possibility to follow alternative approaches including unilateral assessment of the regimes.
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