



**COUNCIL OF
THE EUROPEAN UNION**

Brussels 22 January 2003

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FISC 8

OUTCOME OF PROCEEDINGS

Of : the ECOFIN Council
Date : 21 January 2003
Subject : Tax Package
- Taxation of savings
- Code of conduct on business taxation
- Interest/Royalties

At its meeting on 21st January 2003, the Council

- agreed to the conclusions as set out in the Annex to the present document,
- took note of the following statement from the Austrian delegation:

"Austria states that the implementation of an automatic exchange of information requires and the implementation of a withholding tax of 35% might require the modification of the Austrian Constitution. Therefore the agreement of Austria to the relevant provisions in the present conclusions is subject to an approval by the Austrian Parliament."

COUNCIL CONCLUSIONS ON THE TAX PACKAGE

1. The Council reaches political agreement as follows and 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.

The Council recalls the conclusions of the Feira European Council that sufficient reassurances should be obtained from certain third countries on the application of “equivalent measures” to those provided for in the draft directive. Based on the Commission’s report, as submitted to the ECOFIN of 3 December, the Council considers that this condition is effectively satisfied in the case of the United States of America and that it would be satisfied in the cases of Switzerland, Liechtenstein, Monaco, Andorra and San Marino if these countries offered to enter into agreements as outlined below.

3. The Council agrees that the EC should, on the basis of unanimity, enter into an **agreement with Switzerland** based on the following package:

- *Retention and Withholding*: Switzerland will apply the same rates of retention and withholding as Belgium, Luxembourg and Austria - 15% during the first three years of the transitional period starting on 1 January 2004, 20% as from 1 January 2007 and 35% as of 1 January 2010. The scope of the agreement shall also include, inter alia, the definition of the paying agent, definition of interest, including interest paid on fiduciary deposits and by Swiss investment funds. In cases where a taxpayer declares his interest income obtained from a Swiss paying agent to the tax authorities in his Member State of residence, that interest income should be subject to taxation there at the same rates as those applied to interest earned domestically. The 35% withholding rate will remain also after Switzerland has adopted exchange of information on the OECD standard.

- *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 technical functioning of the Agreement. In any event when Belgium, Luxembourg and Austria change from withholding tax to automatic exchange of information, in accordance with the Directive, the Contracting Parties shall consult each other in order to examine if changes to the agreement are necessary taking into account international developments.

Switzerland grants exchange of information on request for all criminal or civil cases of fraud or similar misbehaviour on the part of taxpayers. This part of the agreement may be implemented through bilateral agreements between Member States and Switzerland.

4. The Council agrees that the European Community should enter into similar agreements with Liechtenstein, Monaco, Andorra and San Marino.

5. 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 and to report back to the Council before 2007.

The Council invites the Commission to enter into discussions during the transitional period as provided for in the Directive with other important financial centres with a view to providing the adoption by those jurisdictions of measures equivalent to those to be applied within the EU.

6. 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 contain provisions ensuring that:

- *12 Member States* will implement automatic exchange of information from 1 January 2004, the date of implementation of the directive, and of the agreements with third countries as well as with the dependent or associated territories.
- *Austria, Belgium and Luxembourg* will from the date of implementation of the directive and of the agreements with third countries as well as with the associated or dependent territories operate a (transitional) withholding tax, with 75/25 revenue sharing and will
- implement *automatic* exchange of information,
 - = if and when the EC enters into an agreement by unanimity in the Council with Switzerland, Liechtenstein, San Marino, Monaco and Andorra to exchange of information *upon request as defined in the OECD agreement¹*, applying simultaneously the withholding tax rate defined for the corresponding period, for the purposes of the directive ; and,

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).

- = if and when the Council agrees by unanimity that the USA are committed to exchange of information *upon request as defined in the OECD agreement¹* for the purposes of the directive.

By the end of the first full fiscal year following the entry into force of that agreement, Austria, Belgium and Luxembourg will cease to apply a withholding tax with revenue sharing,

- set the withholding tax at 15% during the first three years of the transitional period starting on 1 January 2004, 20% as from 1 January 2007 and 35% as of 1 January 2010.

The Council assesses that sufficient reassurances have been obtained with regard to the application of the same measures applying the same procedures as the 12 Member States or as Austria, Belgium and Luxembourg, 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 from the date of implementation of the Directive.

With regard to the Code of Conduct:

7. 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).

8. Notes that the descriptions in Annex 1 to this report now form an agreed basis for the evaluation of rollback.

Asks the Group to consider the proposed revised or replacement measures against the established criteria of the Code of Conduct and report back to Council in March 2003.

9. Agrees that, the Council, in March 2003, assesses all the measures of Member States and of dependent or associated territories listed in Annex C of SN 4901/99 and if any proposal for a revised or replacement measure is considered by the Council to be inadequate to achieve rollback of all the harmful features of a measure, then the Council will seek commitments from the Member States and the dependent or associated territories concerned that additional changes will be implemented as of 1 January 2004.

10. The Council agrees that, at the final adoption of the tax package and in the context of an agreement on the assessment of the results reached on the rollback of the harmful measures, extensions beyond the end of 2005 of benefits of the following measures are granted:

- 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 2010,
- Netherlands: International Financing, extension to 31 December 2010,
- Portugal: Madeira's Free Economic Zone, extension to 31 December 2011.

At that stage, the Council will also consider the one further request which is being processed.

11. Asks the Group to monitor standstill and the implementation of rollback and report to Council before the end of the year.

With regard to the Directive on Interest and Royalties:

12. 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.

13. 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.
