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FISCAL MEASURES AIMED AT ENCOURAGING COOPERATION BETWEEN UNDERTAKINGS OF DIFFERENT MEMBER STATES

Communication from the Commission to the Council

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~~FISCAL MEASURES AIMED AT ENCOURAGING COOPERATION
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Communication from the Commission to the Council

1. On 17 January 1984, Vice-president TUGENDHAT sent to the Council a communication (1) which stressed the need to establish without delay the tax conditions for increased cooperation between undertakings across intra-Community frontiers and, to that end, to adopt, the following three proposals for directives :
 - the common tax arrangements applicable to mergers, divisions and contribution of assets occurring between companies of different Member States ;
 - the common tax arrangements applicable to parent companies and subsidiaries of different Member States ;
 - the elimination of double taxation in the case of adjustment of profits between associated enterprises (arbitration procedure).

At its meeting on 12 March 1984, the Council agreed that priority should be given to the examination of these proposals and requested the Permanent Representatives Committee to report to it before 31 May 1984.

2. The active examination by COREPER has enabled agreement to be reached on all the main provisions of the three texts with the exception of four points, which were submitted for a decision to the Council at its meeting on 4 June 1984 (2). These points concern :

(1) Doc. SEC(84)77

(2) Doc. 7444/84 FISC 53 of 26 May 1984.

- 1) the problem raised, in the framework of the "Mergers" directive, by the system of joint management applied in Germany ;
- 2) the inclusion, in the scope of the same directive, of exchanges of shares ;
- 3) the authorization for Germany to continue to levy a withholding tax on dividends distributed to parent companies in other Member States ;
- 4) the jurisdiction of the Court of Justice if the arbitration procedure for the elimination of double taxation is enacted by means of a convention between Member States, on the basis of Article 220 of the EEC Treaty.

The compromise arrangement(1) proposed by the French presidency at the Council session on 4 June 1984 was in general well accepted by the delegations, but lack of agreement on point 3 above (withholding tax) prevented its formal adoption, the Netherlands and Germany having very differing views on the subject.

3. The Council has on several occasions asked the Commission to look for a way to overcome this disagreement, particularly by means of bilateral contacts with the two delegations mainly concerned.

These talks failed to produce agreement. In these circumstances, it is considered that the time has now come for the Council to face up to its responsibilities and to achieve the objective it set itself on 12 March 1984. The remaining matter in issue could be settled by balanced concessions to be made by two sides. The following provisions seem to meet the situation :

- 1) the German withholding tax not to exceed 10% ;
- 2) the Member States which at present apply a withholding tax on dividends paid out to Germany would reduce it in proportion to

(1) Doc. 7676/84-FISC 57 of 4 June 1984.

the reduction of the withholding tax levied on dividends paid out to them by Germany ; the rate would not however exceed 5%.

It is also proposed to provide in the directive a clause dealing with the situation which would result from a reduction of the present difference between the two corporation tax rates applied by Germany.

Lastly it is proposed to specify the conditions on which the derogation provided for Greece will be applied.

The new text of article 5 of the directive as it results from these various modifications, and the statements for the Council minutes concerning this article are set out in annex I and annex II respectively

All the other elements of the presidency compromise mentioned in doc. 7676/84 - FISC 57 would remain the same.

4. The compromise now proposed should allow the Council to take action, more than sixteen years after the presentation of the first two taxation proposals of the Commission on cross-border cooperation between undertakings, upon measures recognized as an essential element in the establishment of the internal market. Not only is this solution balanced but it is also easy to put into operation and it does not impose on any Member State significant budgetary sacrifices. Its speedy adoption by the Council would be a good expression of political determination to make progress in the completion of the internal market.

Article 5

1. Profits which a subsidiary distributes to its parent company shall, at least where the latter holds a minimum share of 25% in the capital of the subsidiary, be exempted from withholding tax.
2. Notwithstanding paragraph 1, the Republic of Greece may, for so long as it does not impose any corporation tax on distributed profits, levy a withholding tax on dividend payments to parent companies situated in other Member States. However, the rate of this withholding tax must not exceed the rate provided in the double taxation conventions.
3. Notwithstanding paragraph 1, the Federal Republic of Germany may, for as long as it charges corporation tax on distributed profits at a rate at least 20 points lower than the rate applicable to non-distributed profits, impose a compensatory withholding tax at a rate not exceeding 10% on the profits distributed by the subsidiary companies of that State.

If the difference between the two corporation tax rates is reduced, to less than the figure of 20, referred to in the preceding subparagraph this withholding tax will be lowered in the same proportion.
4. Member States which, at the date of application of this Directive, apply a withholding tax to dividends paid out to parent companies situated in the Federal Republic of Germany may maintain such tax. They shall, however, reduce the rate of this tax in proportion to the reduction granted in their favour by the Federal Republic of Germany so as to comply with the above provisions. The rate may not however exceed 5%.
5. The Commission shall present to the Council periodically and for the first time before the end of the fifth year following the date of application of this Directive, a report on the application of the provisions of paragraphs 3 and 4 accompanied, if necessary, by a proposal for a modification of these provisions.

Statements for the Council minutes

Re Article 5

"The Federal Republic of Germany undertakes to extend to the other Member States any reduction in the rate of withholding tax which it grants to third countries".

"The Council asks Member States to supply the following information to the Commission so as to enable it to draw up the report referred to in paragraph 5 :

- the amount of dividends distributed by German subsidiaries of parent companies belonging to other Member States;
- the percentage of these dividends redistributed by parent companies to recipients other than parent companies, established on a proportional basis".