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Organisation de Coopération et de Développement Economiques
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COUNCIL

Council

RECOMMENDATION ON COUNTERACTING HARMFUL TAX COMPETITION

(adopted by the Council at its 923rd Session on 9 April 1998 [C/M(98)9/PROV])

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THE COUNCIL,*

Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Recommendation of the Council dated 23 October 1997 concerning the Model Tax Convention on Income and Capital [C(97)195/FINAL];

Having regard to the Revised Recommendation of the Council dated 24 July 1997 on the Determination of Transfer Pricing between Associated Enterprises [C(97)144/FINAL];

Having regard to the Ministerial Communiqué issued on the 22 May 1996 which calls upon the Organisation to “develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions, and the consequences for national tax bases, and report back in 1998”;

Having regard to the Report entitled “Harmful Tax Competition: An Emerging Global Issue” adopted by the Committee on Fiscal Affairs on 20 January 1998 [DAFFE/CFA(97)29/REV4/CORR1] (hereinafter referred to as “the Report”);

Recognising the OECD’s role in promoting an open, multilateral trading system and the need to promote the “level playing field” which is essential to the continued expansion of global economic growth;

Recognising that the process of globalisation and the development of new technologies has brought about prosperity for many citizens around the world, but also raises challenges for governments to minimise tax induced distortions in investment and financing decisions and to maintain their tax base in this new global environment;

Considering that if governments do not intensify their co-operation, a part of the tax burden will shift from income on mobile activities to taxes on labour, consumption and non mobile activities and that such a shift would make tax systems less equitable and may have a negative impact on employment;

On the proposal of the Committee on Fiscal Affairs:

I. RECOMMENDS that Member countries implement the recommendations, including the Guidelines for dealing with Harmful Preferential Tax Regimes, which are set out in an Appendix to this Recommendation, of which it forms an integral part.

II. INSTRUCTS the Committee on Fiscal Affairs:

1. to establish a Forum on Harmful Tax Practices;
2. to implement the relevant measures identified in the attached Appendix;

* Luxembourg and Switzerland abstained in Council on the approval of the Report and the adoption of the Recommendation.

3. to report periodically to the Council on the results of its work in these matters together with any relevant proposals for further improvements in the co-operation to counter harmful tax practices;
4. to develop its dialogue with non-member countries, consistently with the policy of the Organisation, with the aim of assisting these countries to become familiar with the analysis and conclusions of the Report and, where appropriate, to encourage them to associate themselves with the recommendations set out in the Report.

APPENDIX

RECOMMENDATIONS AND GUIDELINES FOR DEALING WITH HARMFUL TAX PRACTICES

I. RECOMMENDATIONS CONCERNING DOMESTIC LEGISLATION AND PRACTICES

1. *Recommendation concerning Controlled Foreign Corporations (CFC) or equivalent rules:* that countries that do not have such rules consider adopting them and that countries that have such rules ensure that they apply in a fashion consistent with the desirability of curbing harmful tax practices.
2. *Recommendation concerning foreign investment fund or equivalent rules:* that countries that do not have such rules consider adopting them and that countries that have such rules consider applying them to income and entities covered by practices considered to constitute harmful tax competition.
3. *Recommendation concerning restrictions on participation exemption and other systems of exempting foreign income in the context of harmful tax competition:* that countries that apply the exemption method to eliminate double taxation of foreign source income consider adopting rules that would ensure that foreign income that has benefited from tax practices deemed as constituting harmful tax competition do not qualify for the application of the exemption method.
4. *Recommendation concerning foreign information reporting rules:* that countries that do not have rules concerning reporting of international transactions and foreign operations of resident taxpayers consider adopting such rules and that countries exchange information obtained under these rules.
5. *Recommendation concerning rulings:* that countries, where administrative decisions concerning the particular position of a taxpayer may be obtained in advance of planned transactions, make public the conditions for granting, denying or revoking such decisions.
6. *Recommendation concerning transfer pricing rules:* that countries follow the principles set out in the OECD's 1995 Report on the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and thereby refrain from applying or not applying their transfer pricing rules in a way that would constitute harmful tax competition.
7. *Recommendation concerning access to banking information for tax purposes:* in the context of counteracting harmful tax competition, countries should review their laws, regulations and practices that govern access to banking information with a view to removing impediments to the access to such information by tax authorities.

II. RECOMMENDATIONS CONCERNING TAX TREATIES

8. *Recommendation concerning greater and more efficient use of exchanges of information:* that countries should undertake programs to intensify exchange of relevant information concerning transactions in tax havens and preferential tax regimes constituting harmful tax competition.
9. *Recommendation concerning the entitlement to treaty benefits:* that countries consider including in their tax conventions provisions aimed at restricting the entitlement to treaty benefits for entities and income covered by measures constituting harmful tax practices and consider how the existing provisions of their tax conventions can be applied for the same purpose; that the Model Tax Convention be modified to include such provisions or clarifications as are needed in that respect.
10. *Recommendation concerning the clarification of the status of domestic anti-abuse rules and doctrines in tax treaties:* that the Commentary on the Model Tax Convention be clarified to remove any uncertainty or ambiguity regarding the compatibility of domestic anti-abuse measures with the Model Tax Convention.
11. *Recommendation concerning a list of specific exclusion provisions found in treaties:* that the Committee prepare and maintain a list of provisions used by countries to exclude from the benefits of tax conventions certain specific entities or types of income and that the list be used by Member countries as a reference point when negotiating tax conventions and as a basis for discussions in the Forum.
12. *Recommendation concerning tax treaties with tax havens:* that countries consider terminating their tax conventions with tax havens and consider not entering into tax treaties with such countries in the future.
13. *Recommendation concerning co-ordinated enforcement regimes (joint audits, co-ordinated training programmes, etc.):* that countries consider undertaking co-ordinated enforcement programs (such as simultaneous examinations, specific exchange of information projects or joint training activities) in relation to income or taxpayers benefiting from practices constituting harmful tax competition.
14. *Recommendation concerning assistance in recovery of tax claims:* that countries be encouraged to review the current rules applying to the enforcement of tax claims of other countries and that the Committee pursue its work in this area with a view to drafting provisions that could be included in tax conventions for that purpose.

III. RECOMMENDATIONS TO INTENSIFY INTERNATIONAL CO-OPERATION IN RESPONSE TO HARMFUL TAX COMPETITION

15. *Recommendation for Guidelines and a Forum on Harmful Tax Practices:* that the Member countries endorse the Guidelines on harmful preferential tax regimes set out in the following Box and establish a Forum to implement the Guidelines and other recommendations in the Report.

**RECOMMENDATION 15 GUIDELINES
FOR DEALING WITH HARMFUL PREFERENTIAL TAX REGIMES
IN MEMBER COUNTRIES**

While recognising the positive aspects of the new global environment in which tax systems operate, Member countries have concluded that they need to act collectively and individually to curb harmful tax competition and to counter the spread of harmful preferential tax regimes directed at financial and service activities. Harmful preferential tax regimes can distort trade and investment patterns, and are a threat both to domestic tax systems and to the overall structure of international taxation. These regimes undermine the fairness of the tax systems, cause undesired shifts of part of the tax burden from income to consumption, shift part of the tax burden from capital to labour and thereby may have a negative impact on employment. Since it is generally considered that it is difficult for individual countries to combat effectively the spread of harmful preferential tax regimes, a co-ordinated approach, including a dialogue with non-member countries, is required to achieve the "level playing field" which is so essential to the continued expansion of global economic growth. International co-operation must be intensified to avoid an aggressive competitive bidding by countries for geographically mobile activities.

The Guidelines are:

1. To refrain from adopting new measures, or extending the scope of, or strengthening existing measures, in the form of legislative provisions or administrative practices related to taxation, that constitute harmful tax practices as defined in Section III of Chapter 2 of the Report.
2. To review their existing measures for the purpose of identifying those measures, in the form of legislative provisions or administrative practices related to taxation, that constitute harmful tax practices as defined in Section III of Chapter 2 of the Report. These measures will be reported to the Forum on Harmful Tax Practices and will be included in a list within two years from the date on which these Guidelines are approved by the OECD Council.
3. To remove, before the end of five years starting from the date on which the Guidelines are approved by the OECD Council, the harmful features of their preferential tax regimes identified in the list referred to in paragraph 2. However, in respect of taxpayers who are benefiting from such regimes on 31 December 2000, the benefits that they derive will be removed at the latest on the 31 December 2005. This will ensure that such particular tax benefits have been entirely removed after that date. The list referred to in paragraph 2 will be reviewed annually to delete those regimes that no longer constitute harmful preferential tax regimes.
4. Each Member country which believes that an existing measure not already included in the list referred to in paragraph 2, or a proposed or new measure of itself or of another country, constitutes a measure, in the form of legislative provision or administrative practice related to taxation, that might constitute a harmful tax practice in light of the factors identified in Section III of Chapter 2 of the Report, may request that the measure be examined by the Member countries, through the Forum on Harmful Tax Practices, for purposes of the application of paragraph 1 or for inclusion in the list referred to in paragraph 2. The Forum may issue a non-binding opinion on that question.
5. To co-ordinate, through the Forum, their national and treaty responses to harmful tax practices adopted by other countries.
6. To use the Forum to encourage actively non-member countries to associate themselves with these Guidelines.

16. *Recommendation to produce a list of tax havens:* that the Forum be mandated to establish, within one year of the first meeting of the Forum, a list of tax havens on the basis of the factors identified in section II of Chapter 2 of the Report.
17. *Recommendation concerning links with tax havens:* that countries that have particular political, economic or other links with tax havens ensure that these links do not contribute to harmful tax competition and, in particular, that countries that have dependencies that are tax havens ensure that the links that they have with these tax havens are not used in a way that increase or promote harmful tax competition.
18. *Recommendation to develop and actively promote Principles of Good Tax Administration:* that the Committee be responsible for developing and actively promoting a set of principles that should guide tax administrations in the enforcement of the Recommendations included in the Report.
19. *Recommendation on associating non-member countries with the Recommendation:* That the new Forum engage in a dialogue with non-member countries using, where appropriate, the fora offered by other international tax organisations, with the aim of promoting the recommendations set out in this Appendix, including the Guidelines.