



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels,
TAXUD E3/BZ

Your Excellency,

The Commission welcomes the recent adoption by the ECOFIN Council of a Resolution on coordinating exit taxation and is particularly obliged to the then French presidency for its efforts in bringing this initiative forward. The Council Resolution marks the first concrete result of the initiative on direct tax coordination which the Commission launched in December 2006. This Resolution which is primarily aimed at the avoidance of double taxation in respect of transfers of (business) assets from one Member State to another is an important step forward in removing tax obstacles to the proper functioning of the Internal Market. It represents a welcome example and precedent for other ongoing and future coordination initiatives.

The resolution however remains largely silent on an important aspect of the tax treatment of such transfers of (business) assets. This aspect concerns the timing of the collection of any taxes on capital gains or recapture of depreciation, which in the Commission's opinion, as expressed in its 2006 Communication, may not take place any earlier than would have been the case if the transferred assets had remained within the territory of the exit State. As you may know, this aspect is the subject of a number of ongoing infringement procedures concerning exit tax provisions in respect of individual and corporate taxpayers. The Commission would therefore urge Member States to take this aspect into account in implementing the Council Resolution.

In this respect, it may be noted that according to point F of the Resolution the provisions laid down at Community level in relation to mutual assistance provide the framework for the host state to assist the exit state, in particular for the purposes of determining the disposal date. The Commission is willing to offer its support to those Member States which may have expressed concerns about granting deferral in order to improve the practical operation of these provisions.

I should like to take this opportunity to reiterate the Commission's position as regards the interaction between the various ongoing coordination initiatives and the Commission's infringement action. From the outset, it has been made clear that participation in the coordination exercise does not discharge the Member States or the Commission from their respective obligations under the EC Treaty. Member States must ensure that their direct tax legislation respects primary and secondary Community law and the Commission must exercise its role as guardian of the Treaties. Coordination does, however, offer Member States the possibility to meet their obligations in a way which may allow them to better attain their policy goals and protect their tax bases.

As long as existing infringements of Community law have not been terminated, whether by way of coordination or otherwise, the Commission must continue its infringement action. This action can be suspended on account of coordination discussion between Member States only where those discussions have led to concrete solutions capable of eliminating the existing infringements and subject to observance of a credible and ambitious timetable for implementing such solutions. In this respect, I remain hopeful that the work currently being undertaken in relation to cross-border donations to foreign charities and on the application of anti-abuse measures will produce such concrete results shortly.

To conclude, I should like to express the Commission's continued and wholehearted support for the coordination initiative and the various ongoing discussions in specific areas. The Commission for its part is willing to assist Member States in developing the principles for coordinated solutions in these and other areas and in improving the practical arrangements for administrative co-operation.

Yours faithfully,

Robert Verrue