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FEASIBILITY STUDY ON A STANDARDISED “RELIEF AT SOURCE” SYSTEM IMPLEMENTING THE PRINCIPLES OF THE FISCO RECOMMENDATION	

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PwC EU Services
Europees Economisch Samenwerkingsverband/Groupement Européen d’Intérêt Economique/
European Economic Interest Grouping
Maatschappelijke zetel/Siège social/Registered office: Woluwe Garden, Woluwedal 18,
B-1932 Sint-Stevens-Woluwe
T: +32 (0)2 710 4211, F: +32 (0)2 710 4299, www.pwc.com
BTW/TVA BE 0872.793.825 / RPR Brussel - RPM Bruxelles / INGBE16 3101 8056 4374 - BIC BBRUBEBB

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The Feasibility Study The feasibility study on a standardised relief at source system, implementing the principles of the European Commission's Recommendation on Withholding Tax Relief Procedures of 19 October 2009 (C(2009)7924) (the “FISCO Recommendation”), is part of the work that the Commission’s Directorate General for Taxation and Customs Union decided to carry out to follow up on the adoption of the Recommendation.

The study is in the same field as the work on Treaty Relief and Compliance Enhancement (TRACE) carried out by the Organization for Economic Cooperation and Development (OECD), which led to the release of an Implementation Package.

Work started on the feasibility study in October 2011 and was conducted in two main phases which led to the delivery of a final report in December 2012 and an addendum in June 2013.

Evolving Framework Since work started, the international administrative cooperation framework has evolved tremendously. The economic and financial crisis has increased the awareness of countries around the world of the need to combat tax fraud and evasion, inter alia by increased administrative cooperation. The US Foreign Account Tax Compliance Act (FATCA), which would have raised several legal and compliance issues if it had been applied directly to EU financial institutions, is now the subject of bilateral agreements between the US and EU Member States based on automatic exchange of information. This has given a strong additional impetus to automatic exchange as the new international standard of cooperation between tax administrations. Finally, after several years of work, the OECD finalised its TRACE Implementation Package, which was released on February 2013.

The reader should bear this evolving context in mind when reading the various findings and conclusions highlighted in the study.

First Phase: Final Report. The final report examines the feasibility as well as the costs and benefits of a relief at source system coupled with information reporting/exchange between financial institutions and tax administrations. The main issue explored in the report is "how" to ensure the provision of investors' information from an authorised intermediary to both the source Member State and the residence Member State (i.e. routing of the information). In conducting the analysis, the report compares two possible approaches which are referred to as the “*AIC Model*” and the “*SC Model*”.

Both Models are analysed having regard to their twofold purpose:

- **Granting Withholding Tax Relief** in the source Member State (including enabling that Member State to check the residence status of the investors with the relevant residence Member States, if need be); and
- **Ensuring Tax Compliance** in the residence Member States.

In a nutshell, these two models can be described as follows:

- **SC Model:** the authorised intermediary (a financial institution) closest to the beneficial owner reports investor-specific information directly to the source Member State, which then provides this information automatically to the residence Member States. It is the result of the OECD work, in particular the ICG report and the (at the time still) draft Implementation Package.
- **AIC Model:** the authorised intermediary closest to the beneficial owner would report investor-specific information to the Member State where it is established, which would then pass the information, automatically, to both source and residence Member States. The AIC Model was initially inspired by the FISCO Recommendation and the EU Savings Directive (Council Directive 2003/48/EC) routing system for information reporting/exchange. This Model was developed based on the same governing principles as the SC Model, unless the adoption of different communication channels for information reporting/exchange plus the fact that it would be applied in an EU context were considered as justifying or requiring certain further variations.

These two Models are examined and compared from several different perspectives. The comparison encompasses: (i) an analysis in terms of interaction with the EU and the international administrative cooperation framework; (ii) an analysis from a legal perspective (i.e. legal tools available in the EU to implement the proposed system and data protection issues); (iii) an analysis of effectiveness and tax compliance; (iv) an analysis of tax fraud (including an assessment of the risks of tax fraud and the identification/evaluation of mitigation measures to tackle identified risks);(v) an analysis of the IT issues linked to implementation of the proposed system; and (vi) a cost/benefit analysis for all stakeholders involved. The study also comprises a high-level implementation plan.

Second Phase: Addendum. Upon delivery of the final report, the Commission’s Directorate General for Taxation and Customs Union requested PwC to assess whether the developments concerning FATCA had an impact on the conclusions of the feasibility study, in particular given the potential effects of the *Most-Favoured Nation* (MFN) clause included in Article 19 of the Directive on Administrative Cooperation (Council Directive 2011/16/EU). EU Member States may be legally obliged by the MFN clause to offer to other Member States the same level of cooperation offered to the US under FATCA agreements. Therefore, FATCA agreements between the US and the Member States could result in a general increase in the amount of information that Member States have to make available to each other for residence-country tax-compliance purposes. This could in turn have an impact on the relief at source system as foreseen in the implementation package, considering that the second objective of the relief-at-source system (ensuring compliance in the residence country) could be met by other means (and irrespective of the application of a double tax treaty).

The addendum therefore supplements the final report with a series of chapters essentially focusing on residence-country reporting. The addendum: i) examines the application of the MFN clause; ii) assesses the possibility of simplifying the relief-at-source system, as envisaged in the study, with respect to both residence-country reporting and source-country reporting; iii) reassesses the advantages linked to the use of a routing of information passing through the Member State where the reporting financial institution is established; and, finally, iv) examines possible alignment of the reporting provided for under the relief-at-source system, under FATCA (in application of the most-favoured-nation clause) and under the Savings Directive (and amending proposal).

Further Recent Developments. Since the delivery of the addendum (3 June 2013) there have been several additional developments worthwhile to mention:

- **Commission’s Negotiating Mandate.** On 14 May 2013, the Council gave a mandate to the Commission to negotiate amendments to the EU's agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino on the taxation of savings income (2). The decision represents an important step in the EU's efforts to clamp down on tax evasion and tax fraud. The aim is to ensure that the five countries continue to apply measures that are equivalent to the EU's directive on the taxation of savings income, which is currently being updated.
- **Amendment of the Directive on Administrative Cooperation.** On 12 June 2013, the Commission proposed to amend the Directive on Administrative Cooperation to further expand the scope of automatic information exchange to other categories of income and capital (i.e. dividends, capital gains, all other financial income and account balances) (3).
- **OECD Report to the G8 Summit.** On 18 June 2013, the OECD has presented a report to the G8 leaders on a global system of automatic exchange of tax information aiming at creating a “*fairer and more transparent global tax system*” (4). The new OECD Report, “A Step Change in Tax Transparency”, prepared at the request of the G8 for the Lough Erne Summit, outlines four concrete steps needed to put in place a global, secure and cost effective model of automatic exchange of information.

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2 See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/137115.pdf for the full press release.

3 See: http://europa.eu/rapid/press-release_IP-13-530_en.htm?locale=en for the full press release;
See also: http://europa.eu/rapid/press-release_SPEECH-13-543_en.htm.

4 See: <http://www.oecd.org/newsroom/oecd-reports-to-g8-on-global-system-of-automatic-exchange-of-tax-information.htm>;
See also: <http://www.whitehouse.gov/the-press-office/2013/06/18/g-8-leaders-communique> for the G8 Communiqué.