UNICE
THE VOICE OF BUSINESS IN EUROPE

10 April 2002

**UNICE'S REACTION TO THE
EUROPEAN COMMISSION COMMUNICATION AND REPORT ON COMPANY TAXATION IN THE INTERNAL MARKET: "TOWARDS AN INTERNAL MARKET WITHOUT TAX OBSTACLES", COM (2001) 582 FINAL**

Summary

UNICE congratulates the Commission on its communication and report on company taxation in the Internal Market, and welcomes its clarity and focus in seeking solutions to the remaining tax obstacles to the efficient working of the market. Removing such obstacles will have a significant positive impact on the competitiveness of European companies, which in turn should help stimulate growth and employment.

Although the overall business environment within the EU has improved following the creation of the Single Market and the establishment of Economic and Monetary Union, strengthening the competitiveness of European industry remains a key priority. At the Lisbon summit in March 2000, Member States set themselves a clear objective for the next decade: "*to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion*". UNICE calls on Member States to now implement the measures which they identified as essential for achieving this goal. Economic integration, business restructuring and intensified international competition require the removal of tax obstacles to enhance EU growth prospects and the welfare of European citizens.

- UNICE believes it is essential to improve the efficiency of the Single Market in the short-term. The Commission's report highlights several obstacles to cross-border investments, such as: the existence of 15 tax administrations in one market; transfer pricing; cross-border loss compensation; cross-border business integration. These tax obstacles to conducting business within the Single Market create significant handicaps for industry and should be removed.

- It is important to note that there is no desire, nor as the Commission concludes, any need, to harmonise tax rates within the EU. Leaving it to the Member States to determine the level of rates would be in accordance with the principle of subsidiarity and would also maintain an element of healthy tax competition and policy flexibility.

- UNICE also urges immediate action to address the tax rules necessary to give practical effect to the new "European Company".

- UNICE welcomes the examination of and debate on longer-term goals for corporate taxation within the EU, such as the concept of optional consolidated base taxation[1].

UNICE's response to this communication follows on from its memorandum on company taxation of 3 April 2000.

UNICE underlines its support for the Commission's work, and would welcome any opportunity to assist the Council and Commission in taking this work forward.

[1] IBEC, the Irish Business and Employers' Confederation, is opposed to the proposal to develop a common consolidated tax base for corporate taxes in the EU and would urge the Commission rather to concentrate its energies on moving ahead with targeted measures to make these tax systems more effective. A consolidated tax base is a disproportionate response to the obstacles identified in the Commission study. Despite assurances to the contrary, the members of IBEC are convinced that the existence of a consolidated EU-wide tax base would inevitably lead, through political pressure, to full harmonisation of taxes and higher taxes generally on European business.

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UNICE welcomes the publication of the communication and report by the European Commission on Company Taxation in the Internal Market. We hope that this communication and the accompanying report will stimulate a debate at EU level and in Member States on the future of company taxation in the EU, and on much needed early action.

Although the overall business environment within the EU has improved following the creation of the Single Market and the establishment of Economic and Monetary Union, strengthening the competitiveness of European industry remains a key priority. Economic integration, business restructuring and intensified international competition resulting from globalisation require the removal of tax obstacles to enhance growth prospects and the welfare of European citizens. Structural reforms are urgently needed to meet the ambitions as stated by the European Council of Lisbon (March 2000): "*to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion"*.

UNICE's overall position on company taxation is set out in its Memorandum on cross-border company taxation obstacles in the Single Market, of 3 April 2000. UNICE's views are guided by the need to reduce total tax burdens on business, preserving sound tax competition conditions and allowing reform of corporate tax structures adapted to the Single Market. The proposed measures to achieve these objectives do not require either full harmonisation of company taxation systems or tax rates in the EU. In this respect it should be borne in mind that taxation is not the only factor determining investment decisions. Other factors include the business environment, regulatory environment, availability of skilled labour, social security systems.

UNICE welcomes the Commission's conclusion "that the level of taxation, and in this context the tax rate, is a matter for Member States to decide and specific community action on tax rates is not recommended" in accordance with the principle of subsidiarity. It also maintains an element of healthy tax competition which is desirable with a view to improving European competitiveness, and helps to restrain the tendency of governments to shift the burden of taxation onto companies.

Furthermore, the report highlights several obstacles to cross-border investments. These tax obstacles to conducting business within the Single Market create significant handicaps for industry and should be removed.

The report highlights a number of obstacles, amongst which the most important are:

- **One market, 15 tax administrations.** Although companies active in the EU increasingly approach the EU as a Single Market, for tax purposes the Single Market still consists of 15 different pieces. Companies are obliged to allocate profits to each jurisdiction on an arm's length basis by means of separate accounting. The complexity of this arrangement is a major burden to business and in particular to SMEs, which may not have sufficient resources to deal with it.

- **Transfer Pricing.** As businesses view the EU as one market, management, production and intra-company services are increasingly centralised. Fiscal authorities find it difficult in practice to cope under current transfer pricing rules with the resulting cross-border flows of goods, services and intellectual property and this problem will increase as business complexity increases and as the EU enlarges. The result has been an increased risk of double taxation of business activities within the EU, which is simply not acceptable in the context of a supposed Single European Market. Sadly the response of Member States in many cases has been to increase the burden of transfer pricing documentation requirements on business in order to defend their own position rather than to look for better ways of dispute resolution. That the EU-15 have all been able to implement the 1995 OECD Transfer Pricing Guidelines in different ways demonstrates the impossible and intolerable compliance burden for businesses in Europe.

- **Cross-border loss compensation.** Business activities are hampered by their inability to set off losses against profits. Within a Single Market losses and profits across regions and countries should be consolidated.

- **Cross-border business integration.** The management structure of European businesses is progressively becoming aligned to the EU-scale. However tax (and legal) structures of these businesses remain fragmented over the various Member States' jurisdictions at high cost. The reorganisation of these structures to the most efficient management and production structures is prohibited by high one-off tax costs. As a consequence the EU economy is less efficient, with a consequent negative effect on welfare in Europe.

The communication outlines a two-track strategy for tackling tax obstacles in the Internal Market:

- Targeted solutions addressing the most urgent problems in the short and mid-term.

- A more comprehensive longer-term solution for an optional consolidated tax base for a company's EU-wide activities, which addresses the underlying causes of the obstacles.

Short-term targeted solutions

UNICE strongly supports the shorter-term targeted solutions. Given the political sensitivity of fiscal issues, UNICE particularly welcomes the pragmatic approach by the Commission, which seeks both to improve dialogue between the European institutions and business and to identify solutions that can be implemented in the shorter-term. These solutions will greatly improve the efficiency of EU businesses and thereby the efficiency of the Single European Market.

The key areas in which progress could be made in the short-term are:

- **Transfer pricing.** Improvements to the existing Arbitration Convention, to make it more accessible, could do much to improve dispute resolution, working within a pre-existing EU framework. In addition the transfer pricing rules on branches and permanent establishments should be reviewed to ensure that all costs find an effective deduction somewhere in an organisation and a common approach to the implementation of the OECD Transfer Pricing Guidelines should be addressed by the proposed EU joint Forum on Transfer Pricing. European business is keen to participate in this.

- **Cross border loss offset.** A regime for the international offset of losses already exists in Denmark and could prove a useful model for other Member States.

- **Cross border reorganisations.** The Mergers Directive could be expanded to enable cross border business reorganisations to be carried out tax free, by eliminating any transfer taxes and deferring any capital gains arising until an eventual disposal outside the EU.

Apart from the above listed obstacles, the Commission also draws attention to the need for more guidance on the implications of European Court of Justice decisions as well as for more coordination in the area of tax conventions.

We believe that the short-term solutions would be of great value to European businesses and would urge the Commission and Member States to pursue their adoption at the earliest possible date.

Comprehensive longer-term solutions

UNICE welcomes the Commission's examination of the longer-term goals for corporate taxation within the EU, including the concept of consolidated base taxation which would entail a comprehensive system of taxation for EU companies.[2] It is clear that it will take time to bring these ideas to fruition, and a lot of work still has to be done in this area. However, it is essential for a proper debate that the major features of such a system are made clear from the outset so that misperceptions of the key issues can be avoided.

UNICE would like to underline that any comprehensive solution should be optional, such that those companies which wish to remain subject to the tax regime of one or more individual Member States can do so.

The European Company Statute

In addition to the two-track approach proposed by the Commission UNICE firmly believes that there is an urgent need for a tax system for the new European Company Statute, which is to be introduced in 2004. UNICE has said on a number of occasions that a European Company Statute without an accompanying tax regime is unlikely to attract much interest from the business community. The European Company would require the implementation of the short-term measures described earlier, including changes to the mergers directive and improvement of transfer pricing rules covering branches. It could also provide an excellent pilot study for the operation of a consolidated EU tax base as it is itself an optional corporate structure.

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[2] IBEC, the Irish Business and Employers' Confederation, is opposed to the proposal to develop a common consolidated tax base for corporate taxes in the EU and would urge the Commission rather to concentrate its energies on moving ahead with targeted measures to make these tax systems more effective. A consolidated tax base is a disproportionate response to the obstacles identified in the Commission study. Despite assurances to the contrary, the members of IBEC are convinced that the existence of a consolidated EU-wide tax base would inevitably lead, through political pressure, to full harmonisation of taxes and higher taxes generally on European business.

UNICE would of course be more than willing to assist the Commission in the development of its proposals to this end, and we urge Member States to take immediate action to address the fiscal steps necessary to make the European Company Statement viable in practice.

Conclusion

In summary we congratulate the Commission on the production of such a forward- looking communication and a comprehensive report on Company Taxation in the Internal Market. We particularly welcome its clarity and focus in seeking solutions to the remaining tax obstacles to the efficient working of the market. Removing such obstacles will have a significant positive impact on the competitiveness of European companies, which in turn should help stimulate growth and employment.

- UNICE fully supports the Commission's conclusion that it is vital to improve the efficiency of the Single Market in the short-term, by implementing the targeted measures it has identified as soon as possible.

- UNICE urges both the Commission and the Member States to find an early solution to the taxation of companies under the European Company Statute.

- UNICE believes that it is important to examine longer-term issues such as an optional comprehensive solution for corporate taxation within the EU.

- UNICE underlines its support for the Commission's work, and would welcome any opportunity to assist the Commission and the Council in taking this work forward.

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