MEETING WITH MR WALTER DEFFAA, DIRECTOR GENERAL DG TAXUD
25 SEPTEMBER 2009

TAXATION

A. Key Messages:

- Double taxation and high tax compliance costs are key obstacles to the internal market and hamper its role as an engine for future growth.
- In the area of corporate taxation, better coordination of anti-abuse measures, extension of existing EU directives and improvement of the arbitration convention would give relief to companies with foreign subsidiaries. This would also attract more foreign investment.
- VAT-related compliance costs and risks have strongly increased. To the point that EU companies prefer exporting goods to third countries than trading within the EU.
- A permanent VAT Forum with business, tax administrations and the Commission could be a channel of dialogue to improve EU VAT legislation and the national implementation thereof.
- The cost-efficiency of an EU-wide carbon tax must be assessed compared to alternative instruments, e.g. regulation, financial incentives or voluntary agreements. We invite the Commission to be fully transparent on all studies undertaken for this purpose.
- The Commission should assess the need for new policies given actions taken at EU level and by individual Member States to reduce emissions from non-ETS sectors

B. Background

BUSINESSEUROPE has good contacts with officials from DG TAXUD. They are regularly invited to working group meetings of our tax working groups (tax policy, VAT, green tax). BUSINESSEUROPE tax group members have also been actively involved in DG TAXUD's activities through giving presentations at selected Fiscalis meeting, participating in meetings on the design of a common corporate tax base and in the European Joint Transfer Pricing Forum.

Corporate Taxation

In the absence of a formal proposal for a common consolidated corporate tax base (CCCTB), BUSINESSEUROPE invites the Commission to proceed with its work in three areas:

- Come forward with proposals to extend **existing corporate tax directives**, e.g. Interest and Royalty Directive: BUSINESSEUROPE wants to include both direct and indirect holdings within the definition of "associated company". Furthermore, BUSINESSEUROPE asks for the threshold for holding requirement of 25 % to be lowered to 10 %, similar to the revised Parent Subsidiary Directive.
- Enhance **coordination initiatives**, in particular in the area of anti-abuse measures: BUSINESSEUROPE agrees with the Commission's aim to set a standard for anti-abuse legislation in the Member States whereby only wholly artificial arrangements are targeted also in relation with third countries.

- Improve the functioning of the **arbitration convention** to eliminate double taxation in relation with transfer pricing: For instance, it would be essential to find a common understanding of what constitutes a “serious penalty” which would deny the access to the arbitration convention in the case of a disputed transfer pricing ruling. In some EU countries, late filing of reporting documents constitutes already a “serious penalty”.

VAT

A 2007 business survey by BUSINESSEUROPE describes a catalogue of VAT-related obstacles to the well-functioning of the internal market. Companies suffer from the complexity of the EU’s VAT framework and the strong divergence in the transposition of EU law into national law. We have many companies reporting that **exporting outside the EU is becoming easie**r **than trading within the EU due to VAT issues.**

VAT counts for over 70% of the administrative burdens measured under the better regulation agenda. The **facilitation of electronic invoicing** could reduce the yearly costs of making business by €18 billion but faces opposition by a few Member States in the Council.

The **2010 revision of the VAT Strategy** is a great opportunity for the Commission to put emphasis on burden reductions through streamlining reporting obligations. Implementing better risk management approaches and tax partnerships with honest businesses would also allow being tougher on fraud risk groups. Business is ready to pro-actively support the fight against fraud which leads to massive distortions to competition in the internal market.

A burning issue for companies is the **delay in the implementation of the VAT Package**. By 1 January 2010, the rules on the place of taxation for the intra-Community supplies of goods and services will change. At the same time, the reimbursement of VAT incurred in another country should be facilitated. But delays and divergent interpretation of EU rules give rise to fears of a huge rise in penalties for formal mistakes and delays in the reimbursement of foreign VAT.

The set up of a “**VAT Forum”** for structured dialogue between companies, tax authorities and the Commission would facilitate the national transposition and handling of difficult dossiers.

Environmental/Energy Taxation

Currently, energy consumption for heating and combustion must be taxed above minimum levels prescribed in the Energy Tax Directive. Following the green paper, the Commission has prepared a **draft proposal to revise the EU rules for taxation of energy** through (1) basing minimum rates on the energy content of the energy used and (2) introduce additional minimum rates for the carbon emissions of the energy used.

The publication of this draft legislation has been postponed several times. The Commission is currently consulting stakeholders. A first meeting took place in July, a second is planned for end-September. Furthermore TAXUD plans a 400 people conference on 30 November.

Recent discussions in the green tax group and an exchange with the energy working group indicate that BUSINESSEUROPE’s members prefer the Commission to **first evaluate the impact of already existing national measures to reduce emissions from non-ETS sectors** before advancing a European framework for carbon taxation. There is wide agreement however, that the full burden of emission reductions should not fall on the ETS sectors alone.

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What does BUSINESSEUROPE aim for?

- Implement the internal market for taxation:
    - remove double taxation;
    - streamline reporting obligations;
    - guidelines and timelines for national transposition of EU tax law
- Avoid an overall increase of the tax burden
- Cost efficiency in reaching climate targets and in particular no overlap between potential carbon tax and ETS

CUSTOMS

C. Key Messages:

- BUSINESSEUROPE supports the stated objectives of the Modernized Community Customs Code which must deliver clear facilitations for business. Business understands the need for some security provisions, but those must be neither excessive nor lead to any hampering of smooth trade flows.
- The Authorised Economic Operator concept has to be implemented consistently in all EU member states in order to become an attractive tool for European companies.
- BUSINESSEUROPE calls upon the Commission not to change the existing "First sale for export" rule; as this would lead to increased costs for companies.
- BUSINESSEUROPE supports the Commission in its opposition to the US 100% container scanning initiative as this is very costly and will not lead to the envisaged security objectives.

D. Background

BUSINESSEUROPE has good contacts with officials from DG TAXUD who are regularly attending our Customs working group meetings. BUSINESSEUROPE also actively participates in different working groups at Commission level (in particular the Trade Contact Group).

Modernised Community Customs Code:

Authorised Economic Operator
"First sale for export rule"

- Following the entry into force on 24 June 2008 of the Modernized Community Customs Code (MCCC), the Commission is actively working on its implementing provisions (MCCC-IP). In principle, BUSINESSEUROPE supports the stated objectives of the MCCC which aim at rationalization of the legal framework and fewer procedures, greater standardization of customs rules, simplification of customs procedures, computerization of all declarations and data exchange, interoperability of national customs computer systems, and the introduction of instruments like „self-assessment‟ for economic operators. This includes also the need for having certain security provisions, but theses must guarantee a proper balance between security and freedom of export trade. BUSINESSEUROPE is currently in the preparation of a detailed position paper in the draft MCCC-IP.
- The MCCC will only be applicable as soon as its implementing rules are agreed upon. The current tentative timetable foresees finalization of the draft MCCC-IP by mid-2009,

committee vote beginning of 2010 and adoption by the Commission mid-2010. The new MCCC and MCCC-IP shall be applied at the latest on 24 June 2013.

Authorised Economic Operator

- BUSINESSEUROPE endorses the objectives of the Authorized Economic Operator (AEO) programme, which should make it possible to distinguish between operators which can offer guarantees as to their conduct of international trade operations, and other operators. BUSINESSEUROPE also supports the objective of mutual recognition between the European AEO and the American C-TPAT (Customs Trade Partnership against Terrorism). It seems normal that AEO businesses should enjoy a number of facilities, notably in the areas of security and customs simplification. However, major problems relate to different implementation in different EU member states which make the AEO status less attractive for companies.

"First sale for export rule"

- The EU is currently reviewing the method of valuation of imported merchandise for customs purposes. Existing rules in Europe and third countries (e.g. US) allow for the customs valuation to be based on the transaction value of prior sale in a chain of sales and transactions. This is due to a non-binding recommendation from the World Customs Organisation.
- If importers currently using the first sale rule (FSR) are obliged to use the last sale in a chain of sales, then this will increase the customs value of their imports and hence, the amount of duties and other charges that are calculated on the basis of the customs value of the goods. This will inevitably also increase the price EU consumers pay for these products.
- Concerning royalties, existing rules provide that any payment for royalties due by the purchaser to a third party (licensor) different from the seller does not need to be added to the value of goods for customs valuation when the condition of sale requirement is not met. A change from the "First sale"-rule might lead to a potential expansion of the royalties and licence fees paid that they must be included in the customs value of related goods imported into the EU. This would in the end lead to higher duties to be paid.

US initiative of 100% container scanning

- US Homeland Security Secretary Janet Napolitano told lawmakers on 25 February 2009 that it would not be possible to meet the 2012 deadline for radiological and nuclear screening of all cargo coming into the United States.
- BUSINESSEUROPE opposes the initiative, as it is neither efficient nor effective and ignores the risk-based approach. It would involve high costs (up to $500 per container) and take about 10 minutes to scan 1 container. With a total amount of approximately 11 million containers/year imported to the US per year, the new provision would be strongly hampering the trade flow between the EU and the US. It should be noted in particular that the US is very isolated on this issue, 99% of the members of the World Customs Organisation are against 100% scanning.
- The US Chamber is also opposing 100% scanning, BUSINESSEUROPE is closely cooperating with them on this issue and recently organised a very well attended joint seminar in Brussels where high-level representatives from the Commission, World Customs Organisation and US government participated. This issue will also be brought forward during the upcoming BUSINESSEUROPE delegation to Washington, as it is also discussed in the framework of the Transatlantic Economic Council.

What does BUSINESSEUROPE aim for?

- The revised Modernised Community Customs Code must be applicable for companies and bring real facilitations for companies.
- Action is necessary in particular at member states level in order to achieve a consistent implementation of the AEO concept in all 27 EU member states.
- BUSINESSEUROPE is against a change away from the "First sale for export" rules. This view is largely supported but companies from numerous different sectors as well as from the businesses in the EU's trading partners (e.g. US).
- BUSINESSEUROPE opposes the introduction of 100% scanning

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