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5. 03. 2012

Ms Margrethe Vestager  
Minister for Economics  
and the Interior  
Slotsholmsgade 10-12  
DK-1216 København K

Dear Minister,

*Dear Margrethe,*

As you are aware, the Federal Republic of Germany and the United Kingdom recently signed agreements with the Swiss Confederation on cooperation in the areas of taxation and financial markets.

While Member States are free to enter into international agreements, be they bilateral or multilateral, such agreements must not include any aspects which overlap with areas in which common action by the European Union has been taken or is envisaged. In this particular case the agreements cover taxation of savings income received by German and UK residents from Swiss payers and provide for mechanisms aimed at securing taxation of such income in accordance with the laws of the State of residence of the beneficial owner. Mechanisms with the same objective are already contained in Directive 2003/48/EC (the Savings Directive) and the Agreement between the European Union and the Swiss Confederation providing for measures equivalent to those in the Savings Directive.

The Commission's services have been involved in very constructive discussions with the German and the UK authorities in order to ensure the compatibility of their agreements with EU-law and I am confident that a satisfactory outcome will be found.

Against this background, I would like to update you on the legal limitations surrounding the conclusion of such agreements and to emphasise the importance of progress in the area of improving the EU's savings taxation mechanisms.

The EU has legislation in force that provides for automatic exchange of information on cross-border savings income as well as a transitional regime based on a withholding tax. In addition there are EU level agreements with a number of third countries including Switzerland. To build on the existing structures covering the treatment of savings income the Commission tabled a proposal in 2008, currently under negotiation within the Council and the European Parliament, to amend the Savings Directive, notably by extending its definition of interest payment and by introducing enhanced mechanisms for identifying beneficial owners. It has sought a mandate to negotiate equivalent measures with Switzerland for the benefit of all 27 EU member states.

In this context Member States should refrain from negotiating, initialling, signing or ratifying agreements with Switzerland, or any other third state, insofar as any aspects regulated at EU level might be touched upon. In practical terms, this means:

- Concerning direct taxes and the future, any bilateral agreement should include a carve-out of areas already covered by existing EU instruments and areas included in proposals for their modification. In broad terms, Member State are free to agree upon tax measures regarding all other forms of income and capital.
- Concerning the past, any regularisation of unpaid taxes by formula may not concern VAT.
- If such an agreement provides for a broader cooperation, extending to areas outside tax, the principles on exclusive external competence of the EU apply in the same manner as described above, insofar as such areas are already governed or likely to be governed by EU harmonisation. This may also concern banking and investment services.

I would also like to underline the importance of progressing on the amending proposal that I have referred to above. In these difficult times I believe that it is important that we demonstrate the commitment of the EU and its Member states to improve tax collection and the respect of Member States' tax laws. The strengthened and proportionate provisions contained in the amending proposal provide a sound basis for a real improvement of the existing mechanisms and should be complemented by parallel agreements on equivalent measures with partner jurisdictions. Given the interest of all Member states in ensuring full respect of their tax laws I feel it is more than ever necessary to give a high priority in the Council to mandating the Commission to open negotiations with our partners including Switzerland and I look forward to significant advances in this area in the near future.

Yours sincerely,



Algirda Šemeta

CC: Ministers of Economic and Financial Affairs Council (ECOFIN)