



**COUNCIL OF
THE EUROPEAN UNION**



Council Resolution on coordinating exit taxation

***2911th ECONOMIC and FINANCIAL AFFAIRS
Brussels, 2 December 2008***

The Council adopted the following resolution:

"THE COUNCIL OF THE EUROPEAN UNION,

ACKNOWLEDGING the significant contribution made by the Working Party on Tax Questions to preparing this Resolution,

NOTING the two communications of 19 December 2006 from the Commission to the Council, the European Parliament and the European Economic and Social Committee on coordinating direct tax systems in the internal market and on exit taxation,

RECALLING that, because various tax jurisdictions coexist within the EU, the transfer of an economic activity which is subject to the tax system of a single tax jurisdiction is not treated in the same way as the transfer of an economic activity which is subject to the legislation of two or more tax jurisdictions,

RECOGNISING, therefore, the appropriateness of coordination aimed at avoiding, with due regard for the principle of subsidiarity, the double taxation which could result from the transfer of economic activities which are subject to two or more jurisdictions,

P R E S S

EMPHASISING that any solution put forward to achieve these objectives must be pragmatic, based as far as possible on existing instruments, including the bilateral double taxation conventions, restrict the administrative burden on taxpayers and authorities, and safeguard the legitimate financial interests of the Member States,

EMPHASISING, furthermore, that the guiding principles are a political commitment, whose implementation is left to the decision of the Member States, and therefore affect neither the rights and obligations of the Member States nor the respective competencies of the Member States and of the Community under the Treaty,

INVITES the Member States to adopt the following guiding principles:

A. "Transfer of economic activities" means any operation whereby a taxpayer subject to corporation tax or a natural person engaged in a business:

- 1) ceases to be subject to corporate or personal income tax in a Member State (the exit State) while at the same time becoming subject to corporate or personal income tax in another Member State (the host State); or
- 2) transfers a combination of assets and liabilities from a head office or a permanent establishment in the exit State to a permanent establishment or a head office in the host State.

B. When, in connection with a transfer of economic activities, the exit State reserves the option to exercise its taxing rights on the reserves made (profits realised but not yet taken into account for tax purposes) and to take back, in full or in part, the provisions made (expenditure not yet incurred but already taken into account for tax purposes), the host State may provide for the creation of reserves or provisions of identical or different amounts, in accordance with the rules governing the tax base in that State, and allow deduction from taxable results for the year in which they were established.

C. When, in connection with a transfer of economic activities, the exit State reserves the option to exercise its taxing rights on the unrealised gains corresponding to the assets held by the taxpayer, calculated as the difference between the market value of these assets on the transfer date and their book value, the host State takes the market value on the transfer date when calculating the subsequent added value in the event of disposal.

D. In case of disagreement between the host State and the exit State regarding the market value of the assets on the transfer date, the two States settle their dispute using the appropriate procedure.

E. The host State can require the taxpayer engaged in a transfer of economic activities to provide evidence that the exit State has exercised or will exercise its rights under the conditions set out above, as well as evidence of the market value applied by the exit State.

F. 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."
