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Special Committee Taxe
Tax Rulings and Other Measures Similar in Nature or Effect
The Chair

D(2015)46202

D 203181 07.10.2015

Mr Freddy Drexler
Jurisconsult
Legal Service
WIE 07U014

Dear Jurisconsult,

Subject: Legal opinion on the Commission's duty to review fiscal state aid and its obligation to ensure the application of EU tax law such as 2011/16/EU and Directive 77/799/EEC as well as in Member States duty to comply with EU state aid law and their obligation to apply EU Tax law

On 5 October 2015, the TAXE Coordinators decided to seek a legal opinion from the Legal Service on the Commission's duty to review fiscal state aid and its obligation to ensure the application of EU tax law such as 2011/16/EU and Directive 77/799/EEC as well as in Member States duty to comply with EU state aid law and their obligation to apply EU Tax law.

The question falls within the scope of the TAXE mandate approved by the EP Plenary on 12 February 2015, namely

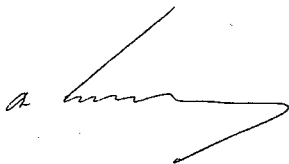
- a) to analyse and examine practice in the application of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) regarding tax rulings and other measures similar in nature or effect issued by Member States since 1 January 1991;
- b) to analyse and assess the Commission's practice of keeping under constant review, pursuant to Article 108 TFEU, all systems of aid existing in Member States, proposing to the Member States appropriate measures required by the progressive development or by the functioning of the internal market, checking whether aid granted by a State or through State resources is compatible with the internal market and not misused, deciding that the State concerned is to abolish or alter such aid within a certain period of time, and referring the matter to the Court of Justice of the European Union if the State concerned does not comply, which has allegedly resulted in a high number of tax rulings incompatible with EU state aid rules;

- c) to analyse and examine compliance by Member States since 1 January 1991 with obligations set out in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union(1) , regarding the obligation to cooperate and provide all necessary documents;
- d) to analyse and examine compliance with the obligations set out in Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums(2) and Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC(3) , regarding communication by Member States to other Member States since 1 January 1991, by spontaneous exchange, of information on tax rulings;
- e) to analyse and assess the Commission's practice as regards the proper application of Directives 77/799/EEC and 2011/16/EU regarding communication by Member States to other Member States, by spontaneous exchange, of information on tax rulings;
- f) to analyse and assess compliance by the Member States with the principle of sincere cooperation enshrined in Article 4(3) of the Treaty on European Union, such as fulfilment of the obligations to facilitate the achievement of the Union's tasks and to refrain from any measure which could jeopardise the attainment of the Union's objectives, given the alleged large scale of aggressive tax planning facilitated by Member States, and the likely significant consequences this has had on public finances of and in the EU;

I would be grateful if the above mentioned legal opinion could be delivered as soon as possible but not later than **31 October 2015**.

The TAXE Committee secretariat is available to provide further information which your services might wish to have. TAXE secretariat contact person is Mr Risto Nieminen, 34968.

Yours sincerely,



Alain Lamassoure