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HARMFUL TAX COMPETITION: THE EU AND OECD RESPONSES COMPARED

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1. Introduction

An earlier article in this Journal[2] discussed the issue of tax competition and considered the possible actions that might be taken within the European Union (EU) and the Organisation for Economic Cooperation and Development (OECD) to counter the perceived harmful effects of such competition. In the approximately twelve months since that article was written there have been several important developments:

- on November 5th, 1997, the Commission adopted a number of formal proposals to deal with two particular aspects of the tax competition problem, in particular proposing the adoption of a Directive on taxation of interest payments and of a "Code of Conduct" on business taxation; [3]

- also in November, the Commission endorsed a draft report prepared by the Directorate-General for Competition (DG IV) calling for the establishment of guidelines, by mid-1998, for the application of state-aid related rules to direct company taxation measures;

- the Commission's proposals of November 5th were endorsed by the

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2 Vol.2, No.2 (1997), pp.63-98.

3 Doc. COM (97) 564 final.

ECOFIN Council on December 1 and the proposed Code of Conduct was published;[4]

- on May 20, 1998, the Commission presented to the Council a new proposal for a Directive to ensure minimum effective taxation of savings income within the European Union (EU);[5]

- in June, a special "Code of Conduct Group" started its work and it was announced that the first concrete results, in the form of proposals on specific cases, are expected in time for the December 1998 ECOFIN Council meeting;

- meanwhile, the OECD's Committee on Fiscal Affairs, which had initiated a study of the tax competition problem around the end of 1996, presented its report to the ministers of the member countries on April 27, 1998;[6]

- the new initiatives of the EU and the OECD were endorsed by the G7 finance ministers at their meeting in London on May 9, 1998.

This present article provides a brief review of these developments, contrasts the different approaches taken by the EU and the OECD, and attempts to suggest where the various initiatives may lead.

2. The Tax Competition Problem

The perceived problems that result from tax competition were discussed in some detail in the earlier article referred to above. They need not be repeated here. It should suffice to recall that there are really two quite distinct issues:

- the taxation (or non-taxation) of international portfolio investment income, especially of individuals; and

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4 OJ 1998, C. 2.

5 Doc. COM (98) 295 final.

6 Communique, "Harmful tax competition: an emerging global issue", OECD Council Meeting at Ministerial Level, Paris, 27th-28th April 1998.

- the taxation of foreign direct investment income of companies.

(a) Portfolio Investment Income

According to usual international tax practice, passive investment income of non-residents may be taxed in the country of source: where a tax treaty exists between the source and residence countries, the source-country tax is limited to a withholding tax, usually of 15 percent in the case of dividends and 10 percent in the case of interest and royalties. In theory, such income should be taxed in the country of the payee's residence, with a credit for any tax withheld by the source country. In practice, the existence of such income is frequently not reported in the residence country and tax is evaded.

This is certainly not a new problem. Tax havens - "sunny places for shady people" - have been a feature of the tax geography for at least half a century. There, funds can be invested and earn income that is free of tax: usually, their existence is concealed by bank secrecy laws. But many countries that are not normally regarded as tax havens also exempt from tax at least some types of investment income (especially portfolio interest) paid to non-residents and their efforts to ensure that the authorities of the residence country are informed of such payments are not always very successful - or strenuous. With the liberalisation of capital markets, the removal of exchange controls, and the process of "globalisation" generally, this form of tax evasion has become much simpler to effect and poses a far greater threat to national treasuries than ever before.

(b) Foreign Direct Investment

The other aspect of the problem concerns the increasing competition among countries to attract foreign direct investment (FDI), and the growing tendency to attempt to do so by offering substantial tax incentives to potential investors. Again, this is not a new problem, but it is one that has greatly increased with globalisation. The growth in FDI over the past two decades has been dramatic. Countries are increasingly convinced of the benefits of attracting FDI and compete with each other to do so. At the same time, the removal of obstacles to FDI has increased the importance of tax considerations as a determinant of location decisions. There is now a fear of a serious erosion of tax bases and of a "race to the bottom" as countries vie with each other to cut taxes on business income in order to attract new investment.

3. The EU Response

(a) Portfolio Interest - the Proposed Directive

The Commission's response to the portfolio investment problem takes the form of a proposal for a Directive on the taxation of income from savings, transmitted to the Council on May 20th, 1998. The main thrust of this proposal had been approved at the ECOFIN Council meeting on December 1, 1997. The proposed Directive adopts what has been termed a "co-existence" model, which seems to be a polite way of acknowledging that the member states are divided as between two fundamentally different approaches to the problem and of allowing them to choose whichever of the approaches they prefer.

According to the proposal, member states will be required, in the case of payments of interest on savings accounts and on all debt instruments made to persons (but not to institutions) resident in another member state, either

- to impose a withholding tax on such payments at a minimum rate of 20 percent; or
- to institute a system of information exchange so that such payments are reported to the tax authorities of the payee's country of residence.

It is this latter option that distinguishes the proposal from that made in 1989, [7] which proposed only a uniform withholding tax and was quickly scrapped in the face of strong opposition from a number of member states. Currently, most member states impose withholding tax on some or all interest payments made to their own residents (exceptions being Denmark, Luxembourg and the Netherlands), but most do not tax similar payments made to non-residents (exceptions being Greece, Portugal and, in certain cases, Italy and the United Kingdom). A natural consequence is that some individuals will prefer to invest abroad rather than at home, thereby avoiding the withholding tax and, if their home tax authorities can be kept unaware, any additional home-country tax. For example, it has been estimated that the German treasury loses about $15 billion a year in taxes because of cash hidden away in foreign bank accounts - principally in Luxembourg. Some member states, especially France and Germany, consider that a Community-wide system of withholding is the only answer to the problem; others, such as the Netherlands, feel that an effective reporting system is preferable; some, perhaps, do not perceive there to be a "problem" at all, or have no real wish to solve it if there is one. Given the

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7 Proposal of February 12th, 1989: Doc. COM (89) 60 final.

need for unanimity in order to secure adoption of the Directive, the prospects of success are in some doubt.

(b) Direct Investment - the Code of Conduct

The idea of a "code of conduct" on business taxation seems to have surfaced early in 1997, at about the same time as the "High-level Group of Experts" (established to consider the issues raised in the "Monti Memorandum" of April 1996) commenced its deliberations. The basis of such a code was outlined in the Commission's communication of October 1st, 1997, [8] and the text of the code was adopted at the ECOFIN Council meeting of December 1 of the same year. [9]

The Code of Conduct is not a legally binding and enforceable agreement but, rather, a set of principles agreed upon by the member states. As the Preamble to the Resolution emphasizes, the code "is a political commitment and does not affect the member states' rights and obligations or the respective spheres of competence of the member states and the Community resulting from the Treaty." The principal goals of the code are to impose a freeze on the introduction of new business tax incentives in the member states and to eliminate existing "harmful" measures as soon as possible, and not later than January 1st, 2003. The code does not determine which particular tax regimes are to be considered "harmful", but establishes five criteria for determining whether or not a particular tax regime falls within its scope. The task of applying those criteria to existing national tax measures is left to a new group of experts, which was constituted in June 1998.

The code applies only to business taxation and concerns those measures which affect, or may affect, in a significant way the location of business activity within the Community. Tax measures covered include both laws or regulations and administrative practices.

In general terms, a tax regime will be regarded as potentially harmful if it leads to effective taxation that is significantly lower than the taxation that normally applies in the member state concerned. The following criteria are then to be taken into account in assessing the harmful character of a particular tax regime:

- Are the benefits exclusively granted to non-residents or with respect to transactions concluded with non-residents?

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8 "Towards tax coordination in the European Union, A package to tackle harmful tax competition"; Doc. COM (97) 495 final.

9 Supra, n.3.

- Are the benefits "ring-fenced" [10] from the domestic economy so that they have no impact on the national tax base?

- Are the benefits granted in a situation in which no real economic activity or substantial economic presence exists in the state granting tax benefits?

- Are the rules that determine the taxable profit of an entity performing services for a multinational group of companies different from the internationally accepted general principles, especially those adopted by the OECD? or

- Do the fiscal measures lack transparency, including situations whereby statutory rules are practically applied in a non-transparent way?

Some well-known European tax regimes quickly spring to mind as potential targets for the code: the Irish international financial services centre regime,[11] the Belgian coordination centre regime, the holding company regimes of Luxembourg, the Netherlands and Spain, are all obvious examples. Also at risk are the special tax havens that exist within the EU, or in associated territories, but which are not subject to its rules or which have enjoyed special privileges -- for example, the Canary Isles, Gibraltar, Guernsey, Jersey, and Madeira. The member states have agreed to enforce the code in their associate or dependent territories and have also agreed to try to persuade non-EU countries to join in an international effort to prevent tax evasion.

(c) Direct Investment - Application of the State Aid Provisions

One reason for resorting to a non-enforceable code to tackle the investment incentives problem was almost certainly the perceived difficulty of securing unanimity among the member states for any measure to harmonise direct taxation. What is puzzling, however, is that the EC Treaty already contains provisions -- in Articles 92 and 93 -- that appear to prohibit or restrict most of the practices that are

10 The expression "ring-fenced" (which is also used in the OECD report, *infra*) is used in the sense that the preferred activity is insulated in some way from the domestic economy of the host country. Typical examples are where the tax advantages are given only to non-residents or to foreign-invested enterprises, or where the privileged enterprise is not allowed to operate (or in practice does not operate) in the domestic market.

11 In fact, the code may have little impact on the Dublin financial centre. The Irish government already has a standstill agreement with the Commission so that from the year 2000, no new company may avail itself of the special tax privileges, which are to be eliminated by the year 2005.

likely to be identified as "harmful" according to the criteria adopted in the code.[12] This is partly acknowledged in the code itself, paragraph (J) of which provides:

> "The Council notes that some of the tax measures covered by this code may fall within the scope of the provisions on state aid in Articles 92 to 94 of the Treaty. Without prejudice to Community law and the objectives of the Treaty, the Council notes that the Commission undertakes to publish guidelines on the application of the state aid rules to measures relating to direct business taxation by mid- 1998 [13] ....and commits itself to the strict application of the aid rules concerned, taking into account, inter alia, the negative effects of aid that are brought to light in the application of this code. The Council also notes that the Commission intends to examine or re-examine existing tax arrangements and proposed new legislation by member states case by case, thus ensuring that the rules and objectives of the Treaty are applied consistently and equally to all."

Paragraph (G) of the code further provides that, insofar as tax measures are used to support the economic development of particular regions, an assessment is to be made of whether the measures are in proportion to, and targeted at, the aims sought. That is to say, tax incentives must be compatible with Community regional policy.

Potentially, any tax measure that provides a special advantage to a particular economic activity, or to investment in a particular location, falls within the scope of the existing state aid provisions and is prohibited unless it can be justified on one of the stipulated grounds. One might expect, therefore, that measures identified as "harmful" by the code's group of experts would be first reviewed by the Commission to determine their compatibility with the state aid rules before the question arises of any voluntary "rollback" under the code.

4. The OECD Response

As the proposed Directive on interest payments and the Code of Conduct both recognise, action within the EU alone cannot provide a full solution to the tax competition problem and cooperation with other countries and international bodies

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12 For further analysis, see (1997) 2 *EC Tax Journal*, at pp. 89-92.

13 It has since been announced that the Commission will propose new guidelines in September, 1998, for discussion and submission to the Finance Ministers' meeting in December: "European Commission to propose guidelines on providing state aid through tax system", *Tax Notes International* (98 TNI 135-3), July 15th, 1998.

is essential. The initiatives taken within the OECD (a majority of whose members are also members of the EU) can thus be seen as complementary to those actions taken by the EU.

The idea that the OECD should do something about harmful tax competition seems to have been first mooted in the context of the proposed Multilateral Agreement on Investment (MAI). However, it soon became apparent that if the MAI were to attempt to deal with tax matters, except to the most limited extent, there was little possibility of agreement being reached within the prescribed time frame. (As we now know, agreement was not possible even without having to deal with tax issues.) Consequently, a decision was taken to look separately at the tax issue. In May 1996, the ministers of the member countries called on the OECD secretariat to develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases and to report back in 1998. In response, the OECD's Committee on Fiscal Affairs launched its study of the problem and presented its report to the ministers on April 27th, 1998.[14]

The report proposes the establishment of a "Forum" on harmful tax practices to monitor the application of the recommendations and guidelines set out in the report, to undertake an ongoing evaluation of existing and proposed preferential tax regimes, to assess the effectiveness of counter-measures, and to draw up a list of "tax haven" countries. The Forum (which is due to commence meeting in October 1998) will also engage in a dialogue with non-member countries.

The report has two principal objectives:

- as among themselves, member states should refrain from adopting measures that constitute harmful tax practices and should eliminate those existing measures that offend; and

- as regards their relations with non-members, greater cooperation and concerted action is required in order to counter the harmful tax practices of other countries.

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14 *Supra*, n. 5. For comments, see Fernandez, "OECD goes on the offensive against harmful tax practices", *Tax Notes International* (98 TNI 83-3), April 30th, 1998: Iekel, "OECD plans new moves to curb tax havens", *Tax Notes International* (98 TNI 105-4), June 2, 1998. In this part, the writer has also drawn on an unpublished paper, "Tax Competition", by Dr. Steven Clark (of the OECD Secretariat), presented at an OECD workshop in Istanbul on June 11th, 1998.

(a) Elimination of Harmful Tax Practices within Member Countries

The report's "guidelines" require member countries:

- to refrain from adopting new measures, or extending the scope of, or strengthening existing measures (in the form either of legislative provisions or administrative practices) that constitute "harmful tax practices", as defined in the report;

- to review their existing measures for the purpose of identifying harmful tax practices and to report such measures to the Forum; and

- to remove those measures identified by the Forum as harmful tax practices by mid-2003.

Firms enjoying the benefit of listed measures at the end of 2000 will be allowed to retain those benefits for a further five years. (The timetable coincides largely with that prescribed in the EU code.)

This raises the question of what constitute "harmful tax practices". Three types of tax regime are identified in the report:

- the conventional "tax haven", which imposes no tax, or only nominal tax, on income;

- otherwise "normal" tax regimes which impose little or no tax on certain favoured activities; and

- countries with a "competitive" tax system, which have relatively low effective tax rates.

The report emphasises that there is no intention to attack the third type of situation, or to suggest some general minimum rate of tax below which a country would be considered to be engaging in "harmful" tax practices. The focus of the report, therefore, is on the first two situations -- tax havens and preferential regimes.

The starting point for identifying a tax haven is to ask whether the jurisdiction imposes no or only nominal taxes and offers itself, or is perceived to offer itself, as a place to be used by non-residents in order to escape tax in their country of residence. Other factors which can confirm the existence of a tax haven are practices which prevent the effective exchange of relevant information with other governments, lack of transparency, and the absence of a requirement that there be any substantial activity within the jurisdiction: those factors suggest that a jurisdiction may be attempting to attract investment or transactions that are purely tax driven.

A harmful preferential tax regime, by contrast, is one that may have a relatively "normal" tax system but imposes a low or zero effective tax rate on particular types of income: the report considers such a regime to be harmful where the regime is "ring-fenced", the operation of the regime is non-transparent, or the jurisdiction operating the regime does not effectively exchange information with other countries. Chapter Two of the report elaborates on these key characteristics and also identifies a series of other factors and considerations which can be useful in identifying harmful tax practices. In the evaluation process, a harmful preferential tax regime will be characterised by a combination of a low or zero effective tax rate and one or more of those other factors. The report focuses especially on the taxation (or non-taxation) of geographically mobile activities, such as financial and other service activities.

According to the criteria it seems that none of the OECD member countries qualify as tax havens, though some of their associated or dependent territories clearly do so. However, there are a number of members that operate what may be considered to be preferential tax regimes.[15]

The report's "recommendations" relate principally to measures to be taken to counter tax havens and the harmful tax regimes of other countries. Nevertheless, a few of those recommendations also relate to member countries' own tax systems. In particular, it is recommended that:

- advance rulings should be transparent and published;
- transfer pricing rules should be fully and properly applied;
- tax authorities should be given greater access to banking information; and
- member countries that have dependencies that are tax havens should ensure that those links are not used in a way that increase or promote harmful tax competition.

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15 That view is supported by the report itself. The "guidelines" on action to be taken with respect to members' own tax systems speak only of preferential regimes: the "recommendations" , which mainly relate to external action, refer also to tax havens.

(b) Countering Tax Havens and Preferential Tax Regimes of other Countries

The report evidences a concern at the growing use of tax havens and special tax regimes, both by individuals, as a means of evading tax on passive investment income, and by multinational enterprises, as a means of reducing tax on business profits.[16] Some such regimes may be found to exist within member countries, and if so should be eliminated: the majority are not members, and countering their harmful effects calls for concerted action. To that end, the report makes a number of recommendations:

- member countries should ensure that income derived from those other countries should not enjoy exemption from taxation in the "home" country;[17]
- all member countries should adopt effective controlled-foreign-company (CFC) and foreign-investment-fund (FIF) rules, or equivalents;
- foreign information reporting rules should be strengthened;
- greater use should be made of exchange of information;
- member countries should coordinate their enforcement regimes[18] and provide assistance to each other in the recovery of tax claims;
- countries should consider including limitation-on-benefits provisions or anti-abuse rules in their treaties;
- the status of domestic anti-abuse rules should be clarified where there is an applicable tax treaty; and
- countries should consider terminating their tax treaties with tax haven countries and should not enter into treaties with such countries in future.

In addition, the recommendations regarding transfer pricing and banking information,

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16 It is estimated, for example, that foreign investment by G7 countries in a number of jurisdictions in the Caribbean and in the South Pacific island states, which are generally considered to be low-tax jurisdictions, increased more than five-fold over the period 1985-1994, to more than US$200 billion.

17 In particular, the "participation exemption" should not apply to income from such countries.

18 For example, greater use should be made of joint audits.

mentioned in the preceding section, are clearly relevant to external as well as internal situations.

(c) A Dissenting Note

A successful battle against harmful tax competition probably requires vigourous concerted action by all of the OECD member countries. However, two members, Luxembourg and Switzerland, which themselves have a reputation for having rather specialised preferential tax regimes, were unable to agree with the report (principally because of the position taken on bank secrecy and exchange of information) and announced that they would not consider themselves bound by the recommendations.

5. The G7 Endorsement

The OECD (May 1996) decision to examine the tax competition issue was endorsed by the G7 Heads of State at their 1996 Lyon summit meeting. Their response to the April 1998 report has been similarly positive, according to a recent UK Treasury release.[19] The new G7 initiative, however, appears to be principally concerned with combating the role played by tax havens and preferential tax regimes in money laundering and international criminal activities. Thus, although it generally supports greater exchange of information and the OECD's attack on bank secrecy it seems to have little relevance to good clean tax evasion, let alone to tax competition to attract legitimate investment.

6. Some Comparisons and Conclusions

(a) Scope of the Proposed Measures

There are some significant differences in the approaches of the two organisations to both aspects of the tax competition issue. Both bodies are concerned about tax evasion and the competition to attract portfolio investment. The response of the EU, in the form of the proposed Directive on the taxation of interest, is concrete but very limited in scope. Fears that the Directive will simply cause tax evaders to move their investments out of the EU and into non-member countries are probably justified. Consequently the OECD recommendations, which are far more extensive in scope, can be viewed as an essential complement to the Directive.

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19 See *Tax Notes International* (98 TNI 118-27), June 19th, 1998.

With respect to tax competition to attract direct investment, the OECD report is primarily directed against tax preferences given to financial activities and other "group" services: [20] given the definition of "harmful tax practice", the guidelines and recommendations would seem to have little application to tax competition to attract manufacturing investment, except in the situation where incentives are given only to foreign-invested enterprises. The EU code similarly appear to have little application to incentives for substantial manufacturing activities: by contrast, the existing state aid rules may clearly be used to counter unreasonable measures to attract such investment.

(b) Countering Harmful Tax Practices of Third Countries

As already noted, the majority of the OECD recommendations relate to measures to be taken to counter the harmful tax practices of non-member countries, whereas the EU package is virtually silent on that subject (except with respect to associated or dependent territories of the member states). To the extent that they are directed against third-country havens and preferential regimes, the OECD recommendations are probably not too controversial. After all, they mainly consist of measures that member countries are advised to take in order to protect their own tax bases and to try to ensure that their own residents are less able to evade their taxes. Members should need little prompting to introduce more effective CFC and FIF rules, transfer pricing practices, restrictions on treaty benefits, or cooperation with the authorities of other member countries: nor is it essential that such measures be taken collectively.[21] Only the recommendations on exchange of information and bank secrecy are likely to incur strong opposition and that is because they relate also to the elimination of harmful practices within the member countries themselves.

(c) Eliminating Harmful Tax Practices of Member Countries

This is where the main controversy arises. Member countries - of both organisations - are inclined, (1) to deny that their own tax practices are in any way harmful, and (2) to be reluctant to eliminate their questionable practices unless all other members do likewise *and* unless adequate measures can be taken to counter the practices of non-members. Both of these factors underlie the dissent of Luxembourg and Switzerland from the OECD guidelines as well as the lack of enthusiasm for the EU package on the part of some other member states.

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20 That, at any rate, is the view taken by Luxembourg and Switzerland.

21 Countries would probably be reluctant to act alone in introducing such measures for fear of placing their own multinationals at a competitive disadvantage. However, it should suffice if a significant number of the main capital-exporting countries do so.

This concluding section of the paper examines some of the measures that need to be, and ought reasonably be expected to be taken by the members of both organisations to eliminate their own harmful practices.

(i) direct investment measures

One provision on which both the EU code and the OECD report are agreed is that "ring-fencing" should be eliminated. There should be no "reverse discrimination", in law or in practice,[22] in favour of non-residents or foreign-invested firms. Discrimination of this type is in any case relatively rare in member countries.[23] More problematic is the granting of tax advantages to "offshore" activities. To exempt income earned from business carried on abroad is an internationally accepted practice:[24] that, however, is not the same thing as granting tax privileges to enterprises that *only* carry on business abroad, even though the dividing line may not always be too clear. This is an issue that seems to require further study.

Apart from the "ring-fencing" issue, neither the code nor the report show much concern about tax competition to attract investment - such as manufacturing - that involves a substantial level of activity in the host country, even though that competition is quite fierce in many parts of the world. However, such competition seems very much within the scope of the EU state aid rules. In the view of this writer, tax competition of this type is most fierce, and potentially most harmful, within regions rather than between regions. In other words, potential investors in the EU, as a region, will shop around for the best incentive package and unless concerted action is taken there is likely to be a steady erosion of the business tax base within the countries of the Union.[25] But by eliminating or restricting tax incentives for "substantial" investment the EU countries would probably stand to lose very little investment to non-members.

The real problem area, as identified in both organisations, is the geographically

22 Both the code and the guidelines make it clear that administrative practices, and especially advance ruling systems, need to be examined closely in this respect.

23 Within the EU such discrimination is probably contrary to art.6/EC.

24 Though the OECD recommendations would restrict exemption to those cases where the foreign-source income has been subject to normal taxation.

25 For a similar trend among some of the prospective new members, see Easson, "Tax competition heats up in central Europe", (1998) 52 *Bulletin for International Fiscal Documentation* 192.

mobile service sector, as typified by multinational group coordination and finance centres. Several of the EU member states offer attractive tax incentives to establish such centres. Elimination of those incentives, by itself, would simply be likely to drive most of the "centre" activity offshore. For that reason the EU and OECD need to coordinate their actions, perhaps requiring that their members tax "centre" activities at their standard corporate income tax rate. Even so, there will still be many countries around the world that offer incentives to locate centre activities there. The most effective response would consequently seem to be to prohibit (or restrict) the deduction of payments made by MNE group companies to offshore centres that benefit from special preferential tax regimes.[26]

(ii) portfolio investment measures

Combating tax avoidance and evasion in respect of international portfolio investment income presents more intractable problems. The proposed (EU) Directive attempts to deal with only one aspect of the problem and, even then, has already encountered a number of objections.[27] It is complained that the Directive would:

- impose a heavy compliance burden on banks and other financial institutions;
- severely damage European capital markets and lead to a flight of capital from the EU to other countries; and
- be ineffective to prevent the type of tax evasion at which it is aimed.

In particular, even a withholding tax of 20 percent would probably be too low to prevent evasion, since many individuals would still prefer to pay that tax rather than be taxed at home at rates of 40 percent or more. The alternative - a reporting system - is a better response to the problem but will be difficult to make effective. How would it prevent evasion, for example, by investment through a personal holding company located in a non-member state? And even if the proposed system were to be effective within the EU, what would there be to prevent EU residents from investing in non-member countries which do not impose withholding tax and do not provide information?

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26 Such action would probably have to be taken collectively, since most countries would be reluctant to put their own MNEs at a competitive disadvantage.

27 See, for example, "International bodies turn up the heat on tax evasion", *Private Banker International,* July 1998, p.1: "Capital set to take flight", *The European*, May 25th, 1998, p.6.

The OECD guidelines and recommendations apply to a much wider range of investment income than merely bank and bond interest. Unlike the EU's "coexistence model", which allows a choice between withholding and reporting, the OECD proposals are based firmly upon the need for disclosure and the elimination of bank secrecy. That, for Luxembourg and Switzerland, makes the proposals unacceptable.[28] Nevertheless, by approving the report the other 27 members have perhaps indicated that they might just be willing to go ahead and adopt the recommended anti-haven measures regardless.

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28 Luxembourg's objection on the ground that the OECD proposals do not allow for the withholding option seems somewhat disingenuous, since it has not in the past appeared to be a strong supporter of that alternative.