



Fédération des Experts
Comptables Européens

Press Release

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European Competitiveness Harmed by Inconsistent Taxation Treatments

European Federation of Accountants launch proposals to remove
barriers to the Internal Market and calls on the European
Commission to issue a new Recommendation

Brussels, 31 January 2005: Following a comprehensive analysis of the rules on loss compensation in EU member states' tax systems, the European Federation of Accountants has identified substantial differences in the treatment of domestic and foreign losses amongst member states.

"The issue is particularly relevant for European business – the range of different domestic provisions on loss compensation for tax purposes is detrimental to the efficient functioning of the Internal Market and is an obstacle to cross border activity in the broader sense as it imposes a substantial compliance burden on businesses which operate internationally," said David Devlin, President of FEE, speaking today at the launch of the ***FEE Position Paper On Take Over of Losses in the EU***.

The ability to set off losses against profits ('take-over of losses') for assessing the tax liability of a domestic group of companies is a basic feature of any company tax system. However, as shown by the FEE paper, the rules on loss compensation differ substantially at domestic and at international level. In many cases while offset of domestic losses is possible, the offset of foreign losses is restricted or impossible. As a consequence, foreign investment is treated less favourably than domestic investment.

"It is a barrier to the principle of free establishment as it implies a bias in favour of domestic investment owing to the fact that loss compensation is available domestically but not always in cross border situations," warned FEE Vice-President and Chairman of the FEE Direct Taxation Working Party, Stefano Marchese.

Ahead of the European Court of Justice ruling on the 'Marks and Spencer case' (*see note 2 below for more details*), the European accountancy profession is making a series of recommendations aimed at reducing the barriers to the internal market and which support the Lisbon objectives of making the EU economy more competitive.

FEE is:

- calling for an increase in the time period allowed for carry back of losses. FEE is in favour of carry back of losses as it provides an incentive to businesses and it is in accordance with the principle of tax equity (fairness). FEE recommends that carry back of losses is allowed for the same time period as the tax authorities have the right to examine and re-open tax assessments; and
- calling on the European Commission to address the lack of provisions at European level on tax treatment of foreign losses by launching a Recommendation providing coordination and guidelines on this subject. The international tax consolidation

model adopted at EU level should be based on the experience of those member states (Austria, Denmark and Italy) that currently allow a deduction of losses incurred by foreign subsidiaries according to the international tax consolidation method.

“FEE is calling on the European Commission to issue a Recommendation addressing the tax treatment of foreign losses. In addition the Recommendation should provide guidance to member states on how to dismantle related taxation barriers and how to draft legislation that is consistent with both the rulings of the European Court of Justice and the Lisbon objectives,” added FEE Vice-President Stefano Marchese.

-ENDS-

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Notes for Editors:

1. The publication ***FEE Position Paper On Take Over of Losses in the EU*** can be downloaded free-of-charge from the FEE website (<http://www.fee.be>) or copies may be ordered from Sylvie Romancide (Fax: + 32 2 231 11 12, Email: Sylvie_Romancide@fee.be).
2. Marks and Spencer case (Case C-446/03): The European Court of Justice (ECJ) has been playing an increasingly significant role in the field of taxation over the last few years. Many ECJ cases have implications on cross border compensation of losses for tax purposes. Amongst them, the Marks and Spencer case requires particular attention. In this case it has been argued that the UK provisions on group relief are against the Treaties as they prevent a parent company which is resident for tax purposes in UK from setting off losses incurred in other member states by subsidiary companies which are resident for tax purposes in those states, while on the other hand they allow offset of domestic losses.
3. The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe. FEE's membership consists of 44 professional institutes of accountants from 32 countries. FEE member bodies are present in all 25 member states of the European Union and three member countries of EFTA. FEE member bodies represent more than 500,000 accountants in Europe.