



TAXATION OF THE EUROPEAN COMPANY

New publication from the European Federation of Accountants notes major obstacles to the success of the Societas Europaea or European Company, makings key recommendations, particularly on the dividends issue

Brussels, 12 December 2003: As from October 2004 companies will have the opportunity to operate cross border in the EU under a common legal regime. The Societas Europaea, (known as SE, or European Company), provides the possibility to create and manage companies with a pan-European dimension, free from the disparities and limited territorial application of national company law. However, in its new publication, the European Federation of Accountants is warning that the internal market benefits inherent to the Societas Europaea (SE) risk being undermined because the taxation treatment of the SE has not been addressed.

FEE, the representative organization of the European accountancy profession in Europe, notes in its position paper that, as it stands, an SE would be subject to the domestic tax law of each member state in which it is present, because of the lack of tax provisions in the SE Statute.

The '**FEE Position Paper on Tax Treatment of the European Company (Societas Europaea)**', which is being launched today, addresses key taxation issues with respect to the formation and ongoing operation of SEs. The most troublesome area identified by FEE survey is the dividend issue, which does not appear to have yet been sufficiently highlighted elsewhere. In FEE's view it constitutes perhaps the major ongoing obstacle to the successful growth of European wide SE's.

Commenting on the launch of the discussion paper, David Devlin, President of FEE said:

"The findings of FEE survey show significant taxation obstacles exist to the Societas Europaea (SE). Individual and corporate shareholders may face additional tax liabilities on dividends received from a SE, and potentially there may be a taxation of unrealised capital gains on exchange of assets and shares when the SE is being created. These issues will seriously restrict the use of the SE's by existing and future shareholders."

He added that:

"The intended strengthening of the internal market by the Societas Europaea risks being diluted by the lack of clarity regarding tax provisions. In making practical recommendations to overcome these problems, the European accountancy profession is underlining its commitment European Internal Market."

FEE, which has 41 member bodies of professional accountants from 29 countries, representing more than 500,000 accountants in Europe, recommends:

- that capital gains arising on a share exchange with a SE both by individual and corporate shareholders should be exempted from any capital gain taxes and from income or transfer taxes;
- that dividends received by domestic individual and corporate shareholders in a foreign SE should not suffer any tax additional to that paid on dividends received from a domestic company;
- that dividend withholding taxes should be reduced to 0% on all dividends paid by a SE to EU resident shareholders;
- that consideration should be given to the development of a common tax base system for SEs, possibly offering in appropriate areas by way of incentive a kinder tax regime than that currently operating in most member states; and
- that interest expense incurred by a SE and correctly allocated to a Permanent Establishment on the basis of funds loaned by the SE to its Permanent Establishment should be tax deductible in all countries under domestic law.

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For more information contact:

Derek McGlynn

Head of Communications

Tel: + 32 2 285 40 85

Fax: + 32 2 231 11 12

Email: derek_mcglynn@fee.be

Notes for Editors:

1. The **FEE Position Paper on Tax Treatment of the European Company (Societas Europaea)** was prepared by the FEE Direct Taxation Working Party. It can be downloaded free-of-charge from the FEE website (<http://www.fee.be>) or ordered from Sylvie Romancide (Fax: + 32 2 231 11 12, Email: Sylvie_Romancide@fee.be).
2. For more information regarding the Statute for a European Company (Societas Europaea) see Council Regulation No 2157/ 2001 of 8 October 2001.
3. The **Fédération des Experts Comptables Européens** (FEE) is the representative organisation for the accountancy profession in Europe. It groups together 41 professional bodies from 29 countries. FEE member bodies are present in all fifteen member states of the European Union, nine European Union candidate countries and three member countries of EFTA. Between them, these bodies have a combined membership of 500.000 individuals, of whom approximately 94% are from EU countries.