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Subject: EUROPEAN UNION COMMON POSITION  
Chapter 16: Taxation

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**EUROPEAN UNION COMMON POSITION**  
**(Revision of CONF-HR 13/09)**

**Chapter 16: Taxation**

This position of the European Union is based on its general position for the Accession Conference with Croatia (CONF-HR 2/05), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-HR 5/05), in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements - even partial agreements - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;

as well as to the requirements set out in points 13, 16 and 26 of the Negotiating Framework.

The EU underlines the importance for Croatia of compliance with the Stabilisation and Association Agreement as well as the Accession Partnership, which constitute basic elements of the pre-accession strategy.

The EU encourages Croatia to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general develop already before accession, policies and instruments as close as possible to those of the EU. In particular, the EU encourages Croatia to ensure that all the measures necessary to implement the security aspects of the EU Customs Code are put in place by the time of accession.

The EU notes that Croatia, in its position CONF-HR 8/08, as amended by its additional position CONF-HR 8/10, accepts the *acquis* under chapter 16 as in force on 1 March 2010, and declares that it will be ready to implement it by the date of its accession to the European Union, with the exception of some transitional measures and derogations.

As an overall response to Croatia's requests for transitional periods, the EU recalls its general negotiating position that transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for the application of the *acquis*. They must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to significant distortion of competition.

### **Indirect Taxation**

The EU takes note of the adoption in 2009 of a new VAT Act, which has brought forward significant alignment with the EU *acquis*. The EU takes note of Croatia's commitment to adopt additional amendments to the VAT Act by the end of 2010, and to complete alignment in the area of VAT at latest upon accession.

The EU also notes Croatia's commitment to align the provisions of the Value Added Tax Act with the provisions of Directive 2006/112/EC with regard to cinema tickets, with entry into force upon accession, during the fourth quarter of 2010.

The EU takes note that Croatia modified its request for a transitional period, for six years from the date of accession, to exempt from VAT with the right to input tax deduction for transactions involving building land. The EU notes that Croatia requests a transitional period until 31 December 2014 to exempt from VAT the supply of building land, with or without buildings built on it, as referred to in point (9) of Annex X, Part B of Directive 2006/112/EC. In consequence, the right of deduction of input tax on goods and services used as inputs in the course of construction of buildings on the building land, will remain unchanged during the transitional period and the current system of full right of input tax deduction applied in Croatia for all the supplies related to the construction of buildings on building land is maintained.

The EU considers that this request is acceptable and that to this effect Directive 2006/112/EC shall be amended as in point (a) of the Annex of this document.

The EU takes note that Croatia has modified its request for derogation to apply a lower VAT exemption and registration threshold for taxpayers from the equivalent of € 12,000 in national currency to € 35,000. The EU considers that this request is acceptable and that to this effect Article 287 of Directive 2006/112/EC shall be amended as in point (b) of the Annex. The EU recalls the principles that exemptions do not dispense from general obligations in particular in the case of taxpayers involved in inter-Union trade. The EU also recalls that traders with a turnover lower than the above threshold are to be registered with the tax authorities for other tax purposes, must be considered as taxable persons and be allowed to opt for the normal VAT scheme, should they wish so, in accordance with Article 290 of Directive 2006/112. Finally, the EU underlines that Croatia must take the necessary steps to ensure that any exemption has not adverse effects on the European Union's own resources accruing from VAT, the basis of assessment for which must be reconstituted in accordance with Regulation (EEC, Euratom) No 1553/89.

As regards the request to continue exempting international transport of passengers from VAT, with the right to input tax deduction, as referred to in point (10) of Annex X, Part B to the Directive 2006/112, the EU considers that the request is acceptable. The EU notes however that this derogation only applies until it is either abolished in accordance with Article 393 of Directive 2006/112 pursuant to which the Council shall, on the basis of a report from the Commission, review the situation with regard to these derogations or so long as the same exemption is applied by any of the current Member States, whichever date comes first. The EU notes the commitment of Croatia to take the necessary steps to ensure that the exemption has no adverse effects on the European Union's own resources accruing from VAT, the basis of assessment for which must be reconstituted in accordance with Regulation (EEC, Euratom) No 1553/89.

The EU considers that, to this effect, Directive 2006/112/EC shall be amended as in point (a) of the Annex of this document.

The EU welcomes Croatia's withdrawal of all other requests for transitional periods and derogations in the field of VAT. It takes note of Croatia's commitment to amend its legislation accordingly during the last quarter of 2010, with entry into force at latest upon accession.

With regard to excise duties, the EU notes the introduction of the single excise rate for cigarettes, as from 1 June 2009, which abolished all differences in tax burden among different groups of cigarettes and has brought full compliance of the system with the obligations under the Stabilisation and Association Agreement.

Furthermore, the EU takes note of the adoption of the Excise Duty Act, which has brought forward significant alignment with the EU *acquis*. In particular, it notes that the Act introduced the duty-suspension regime for domestic movements as from 1 January 2010 and for intra-Union ones as from the date of accession.

The EU notes that the Act has also introduced the excise duty for alcoholic beverages produced by households for own consumption, in line with the EU requirements.

The EU takes note that Croatia has withdrawn its initial request of a transitional period for six years from the date of accession, to reach the minimum excise duty of € 64 per 1,000 items of cigarettes and a minimum 57 percent excise duty of the retail selling price for the most popular price category of cigarettes.

Following the adoption of Directive 2010/12/EU (amending Directive 92/79/EEC), Croatia now requests a transitional period until 31 December 2017 to reach an overall excise duty on cigarettes of at least 60% of the weighted average retail selling price of cigarettes released for consumption and the minimum requirement of € 90 per 1,000 cigarettes.

The EU takes note that Croatia commits itself to increase gradually the excise duties in order to reach the mentioned requirements and ensure that as from 1 January 2014 the excise duty shall not be less than € 77 per 1,000 cigarettes irrespective of the weighted average retail selling price.

The EU considers that this request is acceptable and that to this effect Directive 92/79/EEC, as amended by Directive 2010/12/EU, shall be modified as in point (d) of the Annex of this document.

The EU welcomes Croatia's withdrawal of the other requests for transitional periods in the field of minimum levels of taxation on electricity and natural gas. It takes note of Croatia's commitment to amend its legislation accordingly at latest upon accession.

### **Direct taxation**

The EU notes the adoption in December 2008 of the Act on Amendments to the Profit Tax Act, which was aimed at transposing the provisions of EU Directives 90/434/EEC (now codified by Directive 2009/133/EC of 19 October 2009), 90/435/EEC and 2003/49/EC, with entry into force as from the date of Croatia's accession to the EU. The EU takes note of Croatia's commitment to take all the appropriate steps that are still needed in order to fully align its legislation with Directives 2009/133/EC, 2003/49/EC and 90/435/EEC by the end of 2010.

The EU takes note of Croatia's commitment to implement the Code of Conduct for Business Taxation. The EU notes that Croatia has confirmed that it is prepared to only introduce new tax measures which are in conformity with these principles, including possible measures to eliminate any tax provisions which may be contrary to these principles. The EU will closely monitor Croatia's implementation measures as regards full alignment with the principles of the Code, including possible measures to eliminate any tax provisions which may be contrary to these principles.

The EU takes note of Croatia's commitment to accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (1990/436/EEC).

The EU notes that the adoption of the above-described legislative provisions in the fields of VAT, excise duties and direct taxation fulfils the requirements of the first closing benchmark set out in the EU common position (CONF-HR 13/09).

The EU invites Croatia to keep it regularly informed on the developments and steps undertaken with a view to fully aligning its tax legislation to the EU *acquis*.

### **Administrative co-operation and mutual assistance**

The EU takes note of the progress made by Croatia in strengthening its capacity to effectively implement and enforce the *acquis* in this chapter.

The EU also notes the introduction of the general framework in the area of administrative co-operation among EU Member States by means of the adoption of the new General Tax Act which was aimed at transposing the provisions of Directives 77/799/EEC and 2008/55/EC, with entry into force as from the date of accession.

The EU also notes that, by means of the same act, Croatia has aimed to transposing Directive 2003/48/EC on taxation of savings income in the form of interest payments. In this respect, the EU notes Croatia's commitment to amend its legislation with a view to better reflecting the mechanism of the "paying agent upon receipt" (Article 4(2) of Directive 2003/48/EC) by the end of 2010. The EU also takes note of Croatia's commitment to issue, within the same time-frame, administrative guidelines aimed at providing the necessary explanations to the economic operators established in Croatia so as to ensure that they will be able to comply with their obligations under Directive 2003/48/EC from the first day of the accession. The EU further notes Croatia's commitment to conclude and ratify, by the date of the accession, Savings-tax-related agreements with ten dependent or associated territories of the Netherlands and the United Kingdom, providing for the same measures as those of the Directive 2003/48/EC.

The EU takes note of the establishment of the Central Liaison Office (CLO) in the Tax Administration, as a Division of the Department of International Co-operation and European Integration, and of the adoption of the relevant internal rules of procedure. The EU invites Croatia to continue its preparations in this area in order to ensure CLO's full readiness as from the date of accession.

The EU also notes the establishment of the Excise Liaison Office (ELO) within the Customs Administration. The EU invites Croatia to continue its preparations in this area in order to ensure ELO's full readiness as from the date of accession.

The EU notes that the adoption of the above-described measures fulfils the requirements of the second closing benchmark set out in the EU common position (CONF-HR 13/09).

The EU encourages Croatia to continue strengthening its administrative capacity, in order to ensure that it will be able to fully implement the EU *acquis* in this chapter and to cooperate with and assist the other Member States, as from the day of accession.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken with a view to fully complying with the obligations deriving from Directive 2003/48/EC and to further strengthen its administrative capacity.



## **Operational capacity and computerisation**

The EU takes note of the adoption and the regular updating of the IT Development Strategy by the Tax Administration in 2007, including the Interoperability Implementation Strategy (IIS) covering EU-related systems.

The EU takes note of the successful completion of the projects related to interconnectivity preparations for the VAT Exchange Information System (VIES), phase 1, and of the first phase of the Excise Movement and Control System (EMCS). The EU also takes note of the substantial progress made in the IT development of the above systems.

The EU notes that Croatia has established the Common Communication System and Common System Interface (CCN/CSI) at the Customs Administration and that the Tax Administration will be allowed to use it for the exchange of mandatory information by means of a formal Service Level Agreement with the Customs Administrations. The EU notes that both the Tax and Customs Administrations have shown good capacity to make consistent progress in its IT interconnectivity projects.

The EU notes that the progress made so far meets the requirements set in the third closing benchmark set out in the EU common position (CONF-HR 13/09).

The EU encourages Croatia to continue its preparations in this area, in order to ensure that all relevant systems are in place and able to exchange information with the EU and other Member States as from the day of accession.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further development of the accession-mandatory IT systems in the taxation area.

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In view of all the above considerations, the EU notes that, at this stage, this chapter does not require further negotiations.

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Croatia's administrative capacity to implement an effective taxation policy. A final assessment of the conformity of Croatia's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Croatia to regularly provide detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the EU will, if necessary, return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 March 2010 and the conclusion of the negotiations.

## ANNEX

### AMENDMENTS NECESSARY FOR THE IMPLEMENTATION OF THE EUCP

32006 L 0112: Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1):

(a) The following Article is inserted after Article 390b:

*'Article 390c*

Croatia may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the following transactions:

- (a) the supply of building land, with or without buildings built on it, as referred to in point (j) of Article 135 and in point (9) of Annex X, Part B, non-renewable, until 31 December 2014;
- (b) the international transport of passengers, as referred to in point (10) of Annex X, Part B, for as long as the same exemption is applied in any of the Member States which were members of the Union on [the day before Croatia's accession].'

(b) In Article 287, the following point is added:

'(19) Croatia: EUR 35 000.'

(c) The Title of Annex X is replaced by the following:

**'LIST OF TRANSACTIONS COVERED BY THE DEROGATIONS REFERRED TO IN ARTICLES 370 AND 371 AND ARTICLES 375 TO 390c'.**

31992 L 0079: Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes (OJ L 316, 31.10.1992, p. 8):

In paragraph 2 of Article 2, a fourth subparagraph is added:

'Croatia shall be allowed a transitional period until 31 December 2017 in order to reach the requirements laid down in the first and second subparagraphs. However, as from 1 January 2014 the excise duty shall not be less than EUR 77 per 1 000 cigarettes irrespective of the weighted average retail selling price.'

32008 L 0118: Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9/12 from 14.1.2009)

Article 46, paragraph 3, is replaced by the following:

'3. Without prejudice to Article 32, Member States not referred to in the third and fourth subparagraphs of Article 2(2) of Directive 92/79/EEC may, as regards cigarettes which may be brought into their territory without further payment of excise duties, apply from 1 January 2014 a quantitative limit of not less than 300 items with respect to cigarettes brought in from a Member State which applies, in accordance with the third and fourth subparagraphs of Article 2(2) of that Directive, lower excise duties than those resulting from the provisions of the first subparagraph of Article 2(2) thereof.

Member States referred to in the third and fourth subparagraphs of Article 2(2) of Directive 92/79/EEC which levy an excise duty of at least EUR 77 per 1 000 cigarettes irrespective of the weighted average retail selling price, may, from 1 January 2014, apply a quantitative limit of not less than 300 items as regards cigarettes brought into their territory without further payment of excise duties from a Member State which applies a lower excise duty in accordance with the third subparagraph of Article 2(2) of that Directive.

Member States which apply a quantitative limit in accordance with the first and the second subparagraphs of this paragraph shall inform the Commission thereof. They may carry out the necessary checks provided that these checks do not affect the proper functioning of the internal market.'

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