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Ifa Sektion Berlin

# Trends in international taxation

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# 1 Double Tax Treaties – method to prevent double taxation

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- Aim at **preventing double taxation**  
Extremely important for **business environment**
- **Most important issue** is the method utilized to avoid double taxation:
  - **Credit method** (taxes paid abroad are credited on taxes levied at home)
  - **Exemption method** (income generated abroad is not taxable at home)
- Exemption method leads to **Capital Import Neutrality**, thus creating a **level playing field** for foreign versus domestic investors
- Credit method leads to **Capital Export Neutrality**, thus **discriminating** foreign versus domestic investors

# 1 Double Tax Treaties – Trend in Germany

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- Since a few years the trend of German Finance Ministry is clearly to extend the credit method.
- Very surprising, because the CDU/CSU and FDP have agreed in the Coalition treaty to stick to the exemption method
- Furthermore the fiscal advantages of implementing the credit method seem rather marginal – whereas the competitive disadvantage for a single company can be tremendous
- BR-Drs 861/10 page 9, regarding the act transposing the DTT with VAE into German law: *„Aufgrund der uneingeschränkten Anwendung der Anrechnungsmethode zugunsten Deutschlands ist tendenziell mit geringen Steuermehreinnahmen zu rechnen.“*

# 1 Double Tax Treaties – Trend in UK

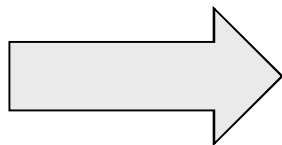
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- Opposed to the German trend, UK has just passed a bill (Finance Bill 2011) which gives – in Clause 48 Schedule 13 – an optional exemption from corporation tax for profits arising from foreign permanent establishments of a UK company.
- Reason behind this measure (from HM Treasury document: “Foreign branch taxation: a discussion document”):
- *“... to enhance the UK's competitiveness and to achieve greater consistency of tax treatment between foreign branches and subsidiaries of UK companies ...”*

## 1 Double Tax Treaties – ECJ in “Haribo/Salinen” (C-436/08 and C-437/08)

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- Both cases concern taxation of foreign-source portfolio dividends received by Austrian companies. Whereas the Austrian legislation applied the exemption method for domestic portfolio dividends (received by a resident company) it applied in certain cases the credit method for foreign-source dividends.
- The ECJ confirmed that a Member State was, in principle, free to choose between the exemption and credit methods for relieving economic double taxation.
- The ECJ then dealt with the impact of taxable foreign dividends received by loss-making Austrian companies. Relying on its earlier case law, the ECJ held that it was contrary to the free movement of capital for domestic dividends to be exempted, without this impacting on loss-carry forward, but for certain foreign dividends to be taxable and subject to a credit, without also providing for the credit to be carried forward to compensate for the reduction of tax losses.



This should, in Germany, lead to a change of § 34 Abs. 1 Satz 5 EStG: the per year limitation is contrary to EU law

## 2 Trends towards increased transparency – Country by country reporting

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- EU Commission has launched – until last January – a Public Consultation on Country by country reporting. What kind of information shall be disclosed?
  - intra-group transactions
  - Turnover
  - pre-tax profit
  - tax expenses on a country-by-country basis
  
- Businesses paying an appropriate amount of tax is an objective that we very much support.
  
- But the sort of financial information which might be specified in EU legislation would either have to be extremely voluminous and costly to prepare or would turn out to be rather inadequate to assess an appropriate tax level.
  
- Tax authorities in each country where businesses operate are primarily responsible for monitoring the adequacy of tax and in general they are able to obtain enough information and in a way that does not raise issues of commercial confidentiality.

## 2 Trends towards increased transparency – OECD Paper and “eBilanz”

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- OECD has published a Report “Tackling aggressive tax planning through improved transparency and disclosure” proposing the following measures:
  - Mandatory early disclosures (“§ 138a Abgabenordnung”)
  - Additional reporting (e.g. advance notice on capital losses)
  - Questionnaires (certain taxpayers, targeted risks)
  - Co-operative compliance (e.g. in NL, UK, IRL, USA)
  - Rulings (single issues no comprehensive program)
  - Penalty linked disclosure (incentive to disclose ... by reducing penalty which would apply otherwise, IRL, NZ)
  
- The idea of introducing an electronic tax filing tool („eBilanz“) has also much to do with getting tax information faster than previously

## 2 Trends towards increased transparency – Example U.S.

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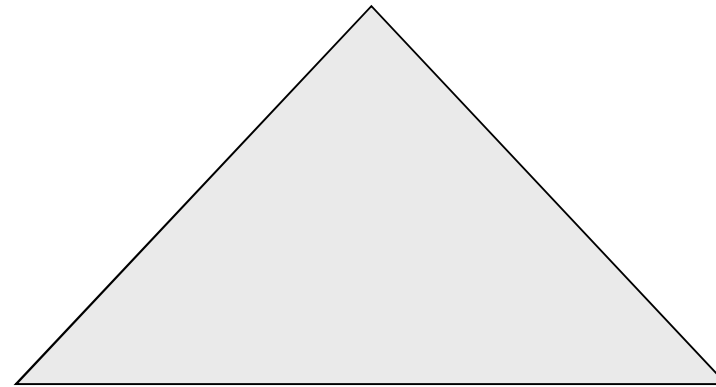
- Textron case (8/13/2009): IRS can request tax accrual working papers
- Announcement 2010-9:
  - Request for disclosing taxpayers uncertain tax positions re federal income tax liability in a new schedule (UTP) to be attached to the Form 1120
  - and indicated to restrain from requesting accrual working papers and other risk assessment related materials
- IRS recurs to FIN 48 under which taxpayers are required to identify and quantify uncertain tax positions for accounting purposes.
- But IRS approach differs from FIN 48
  - Maximum amount has to be disclosed
  - Concise description of each position requested including
    - Rationale for position and reason for uncertainty
    - Respective Code section (s)
    - Taxable years impacted
- Schedule UTP first to apply for taxable years ending after 12/31/2010 and will be restricted to „new“ uncertain tax positions

### 3 Good corporate citizenship – The expectation triangle

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Shareholders: expect value maximization

- Tax planning
- Optimized set up
- Certainty



Fiscal Authorities: expect share in income

- Transparency
- No artificial or aggressive transactions
- Certainty

Public: expects fair contribution to public financing

- Corporate Tax: smallest contribution
- Total Tax: Wage Tax, WHT on Dividends, Social Contributions
- Local economic stimulus – indirect impact

### 3 Good corporate citizenship

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Risks of not behaving as good corporate citizen vary between industry groups:

- Infrastructure company: High, customers are public bodies
- Finance: Normally remote, but high in the light of the financial crisis and public bail outs
- Other industries: has to match overall marketing strategy

Importance varies between countries:

- Reaction to „inappropriate“ tax planning can be drastic (e.g. Russia)
- Public Awareness very different (e.g. lists of aggressive companies in print medias)

OECD MNE-Guidelines:

- „Enterprises should comply with both the letter and spirit of the tax laws“
- NCP (National Contact Point) ist expected to respond to enquiries from other NCPs, NGOs and the public
- What does this mean?

## 4 Enhanced relationship projects

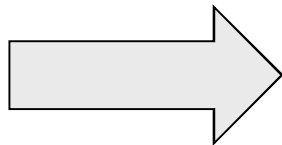
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- OECD enhanced relationship project

collaborative, trust-based relationship can develop between revenue bodies and large corporate taxpayers who abide by the law and go beyond statutory obligations to work together co-operatively.

- “Real-time” tax audit (Germany)

- Non enforceable agreement between pilot companies and fiscal authorities
- Materiel transactions have to be disclosed
- Tax audit will provide certainty about tax treatment of transactions in time
- Additional ressources needed on both sides



### **Advantages & Disadvantages**

# 4 Enhanced relationship projects

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013				
<b>current status</b>																	
period		Orange				Yellow											
audit						Orange				Yellow							
<b>target</b>																	
		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013				
period		Orange			Yellow			Yellow			Green						
audit			Orange			Yellow			Yellow			Green					
<b>transition</b>																	
		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013				
period		Orange				Yellow				Yellow			Green				
audit						Orange					Yellow			Green			
									Yellow								

## 4 Enhanced relationship projects

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### Ireland

In September 2005, the Irish Revenue's Large Cases Division (LCD) introduced a new approach to managing tax compliance - The Co-operative Approach to Tax Compliance (Co-operative Compliance). By end November 2007 over 80 large corporate taxpayers had agreed to engage with Revenue on this basis. In short, this new approach to managing tax compliance seeks to:

- promote a collaborative, mutually beneficial approach to compliance;
- facilitate more efficient use of business and Revenue resources;
- reduce tax uncertainty; and
- recognise trust and openness.

Co-operative Compliance envisages a new form of relationship between the Irish Revenue and large business, one where both parties work together to achieve the highest possible level of compliance across the taxes and duties. This is achieved through:

- the large business sharing knowledge of the business, business events and emerging tax risks in real time with the LCD case manager;
- the Revenue case manager working with the large business to focus on the important issues and, where possible, resolving those issues; and
- selective Revenue checks and audits to reassure the case manager that the business is complying with its obligations.

## 4 Enhanced relationship projects

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### U.S. – Compliance Assurance Program (CAP)

Roles for the successful completion of a CAP case are agreed upon through a Memorandum of Understanding (MOU) signed by the Taxpayer and the IRS. The MOU is not a legally enforceable document.

Taxpayers involved: 2005 - 17 taxpayers, 2006 - 34 taxpayers, 2007 - 73 taxpayers

The criteria for tax year 2005 included:

- Industry leaders who have demonstrated interest in improving tax administration.
- Post-Filing Audit History – taxpayer is currently under post-filing audit and working toward currency on open years.
- Taxpayer and IRS have a good working relations due to cooperation and transparency of information. The taxpayer has participated in other IRS initiatives.
- The Taxpayer has no known tax shelter issues or the taxpayer is working collaboratively to resolve those known and/or identified.
- Taxpayer's financial statements not been restated due to improper accounting practices.
- The taxpayer has minimal compliance risk, thus facilitating process changes.
- The taxpayer is not involved in major litigation which may impede the ability to develop collaborative relationships and process changes.
- IRS resources need to be available to meet demand
- Industry Diversity

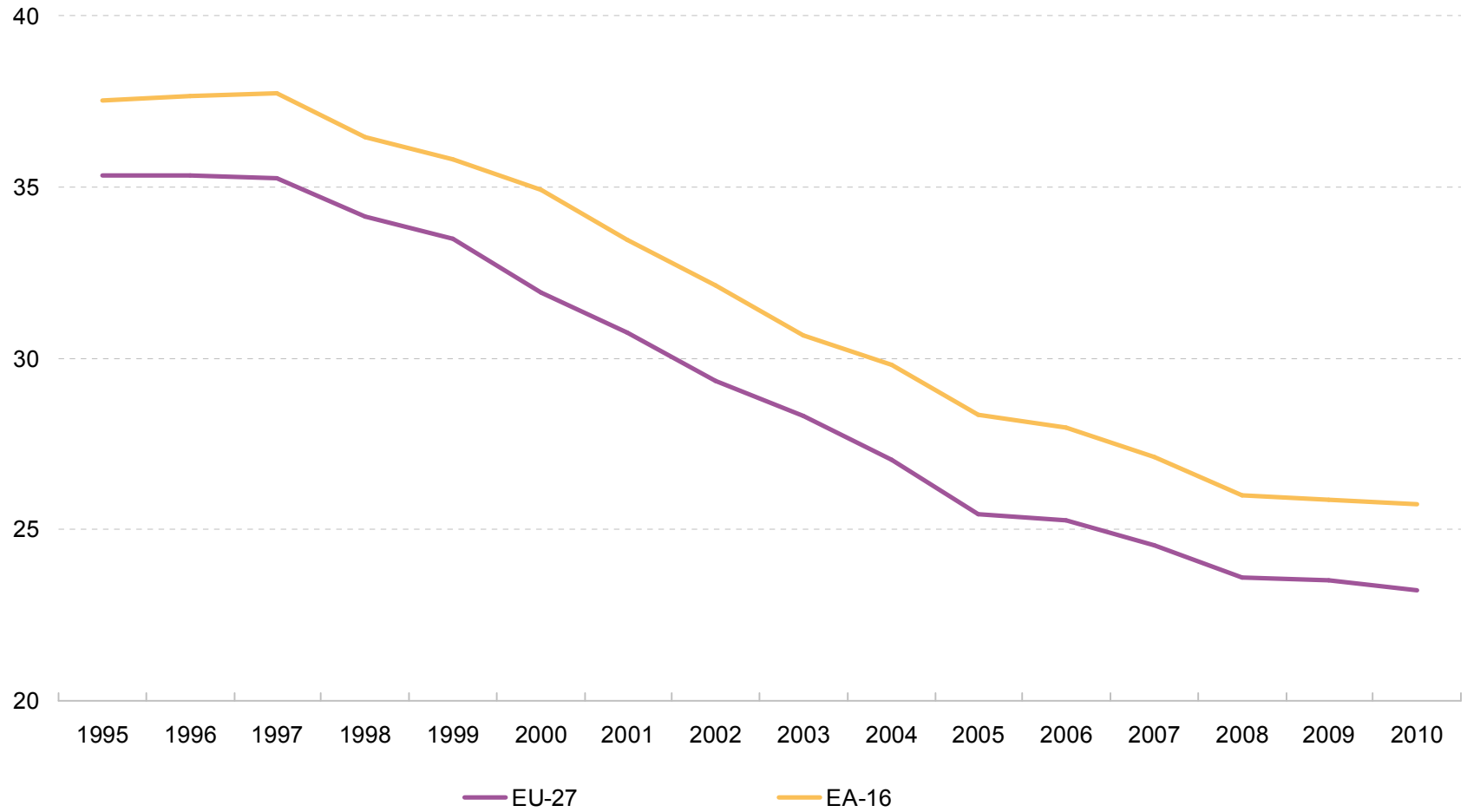
# 5 Trends in the EU – Corporate Income Tax\*

Corporate Income Taxation		
Base or special regimes	Statutory rate	Timing (revenue effect)
▲▲▲▲▲▲▲▲	▲▲	◀
▼▼▼▼▼▼▼▼▼▼ ▼▼▼▼	▼▼▼▼▼▼▼▼▼▼	▶▶▶▶▶▶▶▶▶▶

\*EU-COM

- This table shows the number of measures adopted during the crisis and their impact (widening or narrowing of the base, changes in the rate, timing of tax payment)
- Most measures in corporate taxation involved tax relief
- Changes in the **rate** have been overwhelmingly cuts
- Most of the time the reforms have **narrowed** the CIT base although the opposite took place too
- Many measures **eased** the terms for paying taxes

# 5 Trends in the EU – Corporate Income Tax



\*EU-COM



# 5 Trends in the EU – VAT



\*EU-COM

# 5 Trends in the EU – Excise duties

Excise duties*		
Base or special regimes	Rates	Timing (revenue effect)
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▼	▼▼▼▼	

- Excise duties have been **widely used** to raise revenue
- Clear prevalence of **rate** increases over cuts
- Limited use of **base** measures – mostly to widen base
- No business liquidity measures

\*EU-COM

*e.g. UK: Alcohol, Tobacco, Gambling, Fuel, Vehicle duties, climate change levy, landfill tax (Finance Bill 2011)*

HBL, 3.3.2011, Seite 1

# Industrie fürchtet neue Rohstoffsteuer

Die Regierung fordert von der Wirtschaft einen effizienteren Umgang mit Metallen oder Mineralien - und erwägt eine neue Abgabe. Die Industrieverbände sind alarmiert.

**Klaus Stratmann**  
Berlin

Der Entwurf des „Deutschen Ressourceneffizienzprogramms“ liest sich zunächst harmlos. Auf 47 Seiten hat das Bundesumweltministerium zusammengetragen, wie man



Länder folgen und Investitionen in Maßnahmen zur Steigerung der Ressourceneffizienz fördern, statt neue Steuern und Abgaben einzuführen.

Anreize für einen sparsamen Umgang gibt auch die Preisentwicklung der Rohstoffe. Angesichts der wachsenden

## 6 Résumé

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1. Double Tax Treaties – choice of methods to prevent double taxation is moving towards exemption method (but not in Germany)
2. Tax world is changing towards increased transparency and closer cooperation between taxpayers and authorities
3. The public awareness for tax planning and tax related litigations is constantly on the rise
4. Depending on the home jurisdiction and industry group it is prohibitive to engage in aggressive planning schemes
5. The trend towards lower CIT Rates seems to be stopped. The trend towards „new“ taxes (Bank levies) and higher excise duties is gaining pace

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**Thank you!**

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**“Filing a tax return takes a philosopher. It is too difficult for a mathematician.”**

**Albert Einstein**