II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 23 June 2008

concerning the accession of Bulgaria and Romania to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

(2008/492/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 2005 Act of Accession, and in particular Article 3(4) thereof,

Having regard to the recommendation from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Convention 90/436/EEC of 23 July 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises [1] (the Arbitration Convention) was signed at Brussels on 23 July 1990 and entered into force on 1 January 1995.

(2) The Arbitration Convention was amended by a Protocol [2] signed on 25 May 1999 and which entered into force on 1 November 2004, the Convention of 21 December 1995 [3] signed on 21 December 1995, and the Convention of 8 December 2004 [4] signed on 8 December 2004.

(3) Article 3(3) of the 2005 Act of Accession provides that Bulgaria and Romania accede to the conventions and protocols concluded between the Member States listed in Annex I to the 2005 Act of Accession. That Annex, as supplemented by Council Decision 2008/493/EC of 23 June 2008 [5] amending Annex I to the Act of Accession of Bulgaria and Romania, includes the Arbitration Convention, the Protocol signed on 25 May 1999, the Convention of 21 December 1995 and the Convention of 8 December 2004. They are to enter into force in relation to Bulgaria and Romania on the date determined by the Council.

(4) In accordance with Article 3(4) of the 2005 Act of Accession the Council is to make all adjustments required by reason of accession to those Conventions and Protocol,

HAS DECIDED AS FOLLOWS:

Article 1

The Arbitration Convention is hereby amended as follows:

(1) In Article 2(2), points (a) to (y) shall be replaced by the following:

‘(i) in Belgium:

(a) impôt des personnes physiques/personenbelasting

[1] OJ L 225, 20.8.1990, p. 10.
[2] OJ C 202, 16.7.1999, p. 1.
[3] OJ C 26, 31.1.1996, p. 1.
[4] OJ C 160, 30.6.2005, p. 1.

[5] See page 6 of this Official Journal.

(b) impôt des sociétés/vennootschapsbelasting

(c) impôt des personnes morales/rechtspersonenbelasting

(d) impôt des non-résidents/belasting der niet-verblijfhouders

(e) taxe communale et la taxe d'agglomération additionnelles à l'impôt des personnes physiques/aanvullende gemeentebelasting en agglomeratiebelasting op de personenbelasting

(ii) in Bulgaria:

(a) данък върху доходите на физическите лица

(b) корпоративен данък

(iii) in the Czech Republic:

(a) daň z příjmů fyzických osob

(b) daň z příjmů právnických osob

(iv) in Denmark:

(a) indkomstskat til staten

(b) den kommunale indkomstskat

(c) den amtskommunale indkomstskat

(v) in Germany:

(a) Einkommensteuer

(b) Koerperschaftsteuer

(c) Gewerbesteuer, insofar as this tax is based on trading profits

(vi) in Estonia:

(a) tulumaks

(vii) in Ireland:

(a) Cáin Ioncaim

(b) Cáin Chorparáide

(viii) in Greece:

(a) φόρος εισοδήματος φυσικών προσώπων

(b) φόρος εισοδήματος νομικών προσώπων

(c) εισφορά υπέρ των επιχειρήσεων ύδρευσης και αποχέτευσης

(ix) in Spain:

(a) Impuesto sobre la Renta de las Personas Físicas

(b) Impuesto sobre Sociedades

(c) Impuesto sobre la Renta de no Residentes

(x) in France:

(a) impôt sur le revenu

(b) impôt sur les sociétés

(xi) in Italy:

(a) imposta sul reddito delle persone fisiche

(b) imposta sul reddito delle società

(c) imposta regionale sulle attività produttive

(xii) in Cyprus:

(a) Φόρος Εισοδήματος

(b) Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας

(xiii) in Latvia:

(a) uzņēmumu ienākuma nodoklis

(b) iedzīvotāju ienākuma nodoklis

(xiv) in Lithuania:

(a) Gyventojų pajamų mokestis

(b) Pelno mokestis

(xv) in Luxembourg:

(a) impôt sur le revenu des personnes physiques

(b) impôt sur le revenu des collectivités

(c) impôt commercial, insofar as this tax is based on trading profits

(xvi) in Hungary:

(a) személyi jövedelemadó

(b) társasági adó

(c) osztalékadó

(xvii) in Malta:

(a) taxxa fuq l-income

(xviii) in the Netherlands:

(a) inkomstenbelasting

(b) vennootschapsbelasting

(xix) in Austria:

(a) Einkommensteuer

(b) Körperschaftsteuer

(xx) in Poland:

(a) podatek dochodowy od osób fizycznych

(b) podatek dochodowy od osób prawnych

(xxi) in Portugal:

(a) imposto sobre o rendimento das pessoas singulares

(b) imposto sobre o rendimento das pessoas colectivas

(c) derrama para os municípios sobre o imposto sobre o rendimento das pessoas colectivas

(xxii) in Romania:

(a) impozitul pe venit

(b) impozitul pe profit

(c) impozitul pe veniturile obținute din România de nerezidenți

(xxiii) in Slovenia:

(a) dohodnina

(b) davek od dobička pravnih oseb

(xxiv) in Slovakia:

(a) daň z príjmov právnických osôb

(b) daň z príjmov fyzických osôb

(xxv) in Finland:

(a) valtion tuloverot/de statliga inkomstskatterna

(b) yhteisöjen tulovero/inkomstskatten för samfund

(c) kunnallisvero/kommunalskatten

(d) kirkollisvero/kyrkoskatten

(e) korkotulon lähdevero/källskatten å ränteinkomst

(f) rajoitetusti verovelvollisen lähdevero/källskatten för begränsat skattskyldig

(xxvi) in Sweden:

(a) statlig inkomstskatt

(b) kupongskatt

(c) kommunal inkomstskatt

(xxvii) in the United Kingdom:

(a) Income Tax

(b) Corporation Tax.'

(2) The following indent shall be added to Article 3(1):

'— in Bulgaria:

Министъра на финансите или негов упълномощен представител,

— in Romania:

Președintele Agenției Naționale de Administrare Fiscală sau un reprezentant autorizat.'

Article 2

The texts of the Arbitration Convention and the Protocol of 25 May 1999, together with the Conventions of 21 December 1995 and of 8 December 2004, drawn up in the Bulgarian and Romanian languages [1] shall be authentic under the same conditions as the other language versions of these Conventions and Protocol.

Article 3

The Arbitration Convention and the Protocol of 25 May 1999, together with the Conventions of 21 December 1995 and of 8 December 2004, shall enter into force in relation to Bulgaria and Romania on 1 July 2008.

Article 4

This Decision shall take effect on 1 July 2008.

Done at Luxembourg, 23 June 2008.

For the Council
The President
I. JARC

[1] The Bulgarian and Romanian texts of the Conventions and Protocol shall be published in a special edition of the Official Journal at a later date.

UNILATERAL DECLARATIONS CONCERNING THE CONVENTION OF 23 JULY 1990 ON THE ELIMINATION OF DOUBLE TAXATION IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

Unilateral Declarations on Article 7 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises:

Italy, Lithuania and Malta declare that they will apply Article 7(3).

Unilateral Declarations on Article 8 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises:

Declaration by Bulgaria

The term 'serious penalties' means penalties of every kind, imposed for actions constituting administrative or tax infringements, including infringements of procedural law concerning tax assessment and tax collection, as well as for crimes against the tax system. 'Serious penalties' imposed on the enterprise are also deemed to exist when penalties are imposed for offences committed against the tax system on an individual from that enterprise whose actions have influenced the amount of tax liabilities of the enterprise or the collection therewith.

Declaration by Romania

The term 'serious penalty' includes the commission of any criminal act provided by the tax evasion law or the accountancy law or the company law or the tax legislation. It also includes administrative penalties in regard to:

— refusal to submit the tax statements (declarations) or the informative statements at the request of the tax bodies,

— refusal to supply documents and records requested by the tax inspection authorities,

— failing to submit the periodical financial documents and the accounting reports or, submitting such documents or reports which include incorrect data,

— actions included in the tax record, according to the legislation in force.

Declaration by Slovakia

The term 'serious penalty' means a penalty imposed according to the Criminal Code for criminal offences committed with respect to the infringement of the pertinent tax laws, Tax Administration Act or Act on Accounting.

Declaration by Spain

'Serious penalties' shall include administrative penalties for serious and very serious tax infringements, as well as sentences for offences affecting public finances.