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Recommendation for a

**COUNCIL DECISION**

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

## **EXPLANATORY MEMORANDUM**

Article 3(4) of the 2011 Act of Accession of Croatia to the European Union provides that Croatia accedes to the conventions and protocols listed in Annex I to the Act of Accession and that those conventions and protocols shall enter into force in relation to Croatia on the date determined by the Council. According to Article 3(5) of the Act of Accession the Council, acting unanimously on a recommendation by the Commission and after consulting the European Parliament, shall decide to make all adjustments required by reason of the accession of Croatia to these conventions and protocols and to publish the adapted texts in the Official Journal of the European Union.

The list of conventions and protocols in Annex I to the Act of Accession includes Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (Arbitration Convention), the Convention of 21 December 1995 on the accession of Austria, Finland and Sweden to the Arbitration Convention, the Protocol of 25 May 1999 amending the Arbitration Convention and the Convention of 8 December 2004 on the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the Arbitration Convention. The Arbitration Convention was amended by the Protocol of 25 May 1999 and the Conventions of 21 December 1995 and of 8 December 2004.

Bulgaria and Romania acceded to the Arbitration Convention by virtue of the Act of Accession of 2005. Decision 2008/492/EC of 23 June 2008 made the adjustments required by reason of the accession of Bulgaria and Romania to the Arbitration Convention and determined the date of its entry into force, as amended, with relation to Bulgaria and Romania.

This Commission Recommendation for a Council Decision is intended to make the adjustments required by reason of the accession of Croatia to the Arbitration Convention and to determine the date of its entry into force, as amended, with relation to Croatia, in accordance with Articles 3(4) and 3(5) of the Act of Accession of 2011.

Recommendation for a

## COUNCIL DECISION

### **concerning the accession of Croatia to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Act of Accession of Croatia, and in particular Articles 3(4) and 3(5) thereof,

Having regard to the recommendation from the European Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Whereas:

- (1) Convention 90/436/EEC<sup>3</sup> (hereafter referred to as "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<sup>4</sup> signed on 25 May 1999, by a Convention signed on 21 December 1995<sup>5</sup>, a Convention signed on 8 December 2004<sup>6</sup>, as well as by Decision 2008/492/EC of 23 June 2008<sup>7</sup>.
- (3) Article 3(4) of the Act of Accession of 2011<sup>8</sup> provides that Croatia accedes to the conventions and protocols concluded between the Member States listed in Annex I to the Act of Accession. They are to enter into force in relation to Croatia on the date determined by the Council.

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<sup>1</sup> OJ L [...], [...], p. [...].

<sup>2</sup> OJ L [...], [...], p. [...].

<sup>3</sup> Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ L 225, 20.8.1990, p. 10).

<sup>4</sup> Protocol amending the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ C 202, 16.7.1999, p. 1).

<sup>5</sup> Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ C 26, 31.1.1996, p. 1).

<sup>6</sup> Convention on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprise (OJ C 160, 30.6.2005, p. 1).

<sup>7</sup> 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 (OJ L 174, 3.7.2008, p. 1).

<sup>8</sup> Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ L 112, 24.4.2012, p. 21).

- (4) In accordance with Article 3(5) of the Act of Accession of 2011 the Council is to make all adjustments required by reason of the accession to those conventions and protocols and to publish the adapted texts in the Official Journal of the European Union,

HAS ADOPTED THIS DECISION:

*Article 1*

The Arbitration Convention is amended as follows:

- (1) In Article 2(2), points (i) to (xxvii) are replaced by the following:

‘(i) in Belgium:

- (a) impôt des personnes physiques/personenbelasting
- (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, in so far as this tax is based on trading profits

(vi) in Estonia:

- (a) tulumaks

(vii) in Ireland:

- (a) Cáin Ioncaim
- (b) Cáin Chorporáide

(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 Croatia:
- (a) porez na dohodak
  - (b) porez na dobit
- (xii) in Italy:
- (a) imposta sul reddito delle persone fisiche
  - (b) imposta sul reddito delle società
  - (c) imposta regionale sulle attività produttive
- (xiii) in Cyprus:
- (a) Φόρος Εισοδήματος
  - (b) Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας
- (xiv) in Latvia:
- (a) uzņēmumu ienākuma nodoklis
  - (b) iedzīvotāju ienākuma nodoklis
- (xv) in Lithuania:
- (a) Gyventojų pajamų mokestis
  - (b) Pelno mokestis
- (xvi) in Luxembourg:
- (a) impôt sur le revenu des personnes physiques
  - (b) impôt sur le revenu des collectivités
  - (c) impôt commercial, in so far as this tax is based on trading profits
- (xvii) in Hungary:
- (a) személyi jövedelemadó
  - (b) társasági adó
  - (c) osztalékadó
- (xviii) in Malta:
- (a) taxxa fuq l-income

- (xix) in the Netherlands:
- (a) inkomstenbelasting
  - (b) vennootschapsbelasting
- (xx) in Austria:
- (a) Einkommensteuer
  - (b) Körperschaftsteuer
- (xxi) in Poland:
- (a) podatek dochodowy od osób fizycznych
  - (b) podatek dochodowy od osób prawnych
- (xxii) 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
- (xxiii) in Romania:
- (a) impozitul pe venit
  - (b) impozitul pe profit
  - (c) impozitul pe veniturile obținute din România de rezidenți
- (xxiv) in Slovenia:
- (a) dohodnina
  - (b) davek od dobička pravnih oseb
- (xxv) in Slovakia:
- (a) daň z príjmov právnických osôb
  - (b) daň z príjmov fyzických osôb
- (xxvi) 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
- (xxvii) in Sweden:
- (a) statlig inkomstskatt
  - (b) kupongskatt
  - (c) kommunal inkomstskatt
- (xxviii) in the United Kingdom:

- (a) Income Tax
- (b) Corporation Tax.’

(2) In Article 3(1), the list is replaced by the following:

- in Belgium:
  - De Minister van Financiën or an authorised representative,
  - Le Ministre des Finances or an authorised representative,
- in Bulgaria:
  - Министъра на финансите или негов упълномощен представител,
- in the Czech Republic:
  - Ministr financí or an authorised representative,
- in Denmark:
  - Skatteministeren or an authorised representative,
- in Germany:
  - Der Bundesminister der Finanzen or an authorised representative,
- in Estonia:
  - Rahandusminister or an authorised representative
- in Ireland:
  - The Revenue Commissioners or an authorised representative,
- in Greece:
  - Ο Υπουργός των Οικονομικών or an authorised representative,
- in Spain:
  - El Ministro de Economía y Hacienda or an authorised representative,
- in France:
  - Le Ministre chargé du budget or an authorised representative,
- in Croatia:
  - Ministar financija or an authorised representative,
- in Italy:
  - Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative,
- in Cyprus:
  - Ο Υπουργός Οικονομικών or an authorised representative,
- in Latvia:
  - Valsts ieņēmumu dienests,
- in Lithuania:
  - Finansu ministras or an authorised representative,

- in Luxembourg:  
Le Ministre des Finances or an authorised representative,
- in Hungary:  
a pénzügyminiszter or an authorised representative,
- in Malta:  
il-Ministru responsabbli għall-finanzi or an authorised representative,
- in the Netherlands:  
De Minister van Financiën or an authorised representative,
- in Austria:  
Der Bundesminister für Finanzen or an authorised representative,
- in Poland:  
Minister Finansów or an authorised representative,
- in Portugal:  
O Ministro das Finanças or an authorised representative,
- in Romania:  
Preşedintele Agenţiei Naţionale de Administrare Fiscală sau un reprezentant autorizat,
- in Slovenia:  
Ministrstvo za finance or an authorised representative,
- in Slovakia:  
Minister financií or an authorised representative,
- in Finland:  
Valtiovarainministeriö or an authorized representative,  
Finansministeriet or an authorized representative,
- in Sweden:  
Finansministern or an authorized representative,
- in the United Kingdom:  
The Commissioners of Inland Revenue or an authorised representative.’

#### *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 and Decision 2008/492/EC drawn up in the Croatian language<sup>9</sup> shall be authentic under the same conditions as the other language versions of these texts.

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<sup>9</sup> The Croatian texts of the Conventions and Protocol and of Decision 2008/492/EC shall be published in a special edition of the Official Journal at a later date.

*Article 3*

The Arbitration Convention, as amended by the Protocol of 25 May 1999, the Conventions of 21 December 1995 and of 8 December 2004, Decision 2008/492/EC, as well as this Decision, enters into force on **XXX**[date] between Croatia and each of the other Member States of the European Union.

*Article 4*

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council  
The President*