

Table of Content

<i>Table of Content</i>	v
<i>Preface</i>	ix
Chapter 1: Introduction	1
Chapter 2: What is considered harmful tax competition within the EU?	3
2.1. Introduction	3
2.2. Causes of tax competition	3
2.2.1. Developments in the world economy	3
2.2.2. Developments in the single European market	6
2.3. Forms of tax competition	8
2.4. Consequences of tax competition	10
2.4.1. General	10
2.4.2. Consequences of tax competition in the EU	11
2.4.3. Conclusion	19
2.5. Harmful tax competition	20
2.5.1. General	20
2.5.2. Code of Conduct	20
2.5.3. Some remarks on the definition of harmful tax competition in the Code of Conduct	27
2.5.4. Conclusion	33
2.6. Overall conclusion with regard to the definition of harmful tax competition in the EU	33
Chapter 3: What is the position of harmful tax competition in EU law?	35
3.1. Introduction	35
3.2. Harmonization of direct taxes: European tax policy	35
3.2.1. Unification, harmonisation and coordination of tax legislation	38
3.2.2. Developments in direct taxes	39
3.2.3. Conclusion	46
3.3. The procedural aspects of the Code of Conduct	47
3.4. Means available based on the EC Treaty to counteract harmful tax competition	51
3.4.1. Prohibitions of discrimination and restriction	53

TABLE OF CONTENT

3.4.1.1.	Free movement provisions	55
3.4.1.2.	Access to Treaty protection	58
3.4.1.3	Is there discrimination in the sense of the fundamental freedoms?	59
3.4.2.	Community loyalty	62
3.4.3.	Market distortions	63
3.4.4.	Harmonisation	66
3.4.5.	State aid	66
3.4.6.	Conclusion	78
3.5.	Comparison between the Code of Conduct and State Aid	78
3.5.1.	Does a harmful tax measure according to the Code constitute fiscal State Aid?	80
3.5.1.1.	No or low effective taxation versus favouring	80
3.5.1.2.	No or low effective taxation versus the use state resources	81
3.5.1.3.	Non-residents versus the selectivity	81
3.5.1.4.	Non-residents versus affecting competition and intra-Community trade	81
3.5.1.5.	Internationally accepted principles versus favouring	82
3.5.1.6.	Ring fencing versus the selectivity	82
3.5.1.7.	The other criteria of the Code of Conduct versus State Aid	82
3.5.1.9.	Conclusion	83
3.5.2.	Can an unharmful tax measure constitute fiscal State Aid?	83
3.5.2.1.	Comparison of the criteria	83
3.5.2.2.	Influence on the location versus competition and intra-Community trade	84
3.5.2.3	The economic effects in light of the taxation throughout Europe	84
3.5.2.4.	Economic development of particular regions	85
3.5.2.5.	Conclusion	85
3.5.3.	Overall conclusion on the comparison between the Code and State Aid	85
3.6.	Overall conclusion with regard to tax competition in Community law	86
Chapter 4: Possible countermeasures to combat harmful tax competition		91
4.1.	Introduction	91
4.2.	Measures to combat harmful tax competition	91
4.3.	Measures at a national level	92
4.3.1.	Joining in the competition	92
4.3.2.	Defensive measures	92
4.4.	Measures at a bilateral level	95
4.5.	Different categories of measurements	101
4.5.1.	The denial of tax benefits	101
4.5.2.	Mutual assistance and exchange of information	102
4.5.3.	Reporting- and transfer pricing rules	103

TABLE OF CONTENT

4.6. Overall conclusion on possible countermeasures to combat harmful tax competition	103
Chapter 5: The relationship between countermeasures and EU Law	105
5.1. Unilateral countermeasures and the fundamental freedoms of the EC Treaty	106
5.1.1. Does the tax payer have access to the EC Treaty?	106
5.1.2. Is there a discrimination or a restriction?	107
5.1.3. General framework for countermeasures with regard to the justifications	108
5.1.3.1. Introduction justification under Treaty law	108
5.1.3.2. Introduction justification on the grounds of 'rule of reason'	111
5.1.3.3. Safir, ECJ, 28 April 1998, C-118/9	112
5.1.3.4. Eurowings, ECJ, 26 October 1999, C-294/97	113
5.1.3.5. Danner, ECJ, 3 October 2002, C-136/00	114
5.1.3.6. Lankhorst-Hohorst GmbH, ECJ, 12 December 2002, C-324/00	114
5.1.3.7. Summary with regard to unilateral countermeasures and justifications	116
5.1.3.8. A special treatment for the Code of Conduct List?	116
5.1.4. Conclusions	117
5.2. Bilateral countermeasures and the fundamental freedoms	118
5.2.1. Bilateral tax treaties and the fundamental freedoms	118
5.2.2. Most favoured nation doctrine and its possible effects	120
5.2.3. Relationship between tax treaties and national legislation	121
5.2.4. Conclusions	122
5.3. Countermeasures and EC Directives	123
5.3.1. Countermeasures and the Parent Subsidiary Directive	123
5.3.2. Countermeasures and the Interest Royalty Directive	125
5.3.3. Conclusions	128
5.4. Overall conclusion on the relationship between countermeasures and EU Law	129
Chapter 6: Conclusions	131
6.1. Introduction	131
6.2. Chapter 2: What is considered harmful tax competition within the EU?	131
6.3. Chapter 3: What is the position of harmful tax competition in EU law?	132
6.4. Chapter 4: Possible measures to combat harmful tax competition	135
6.5. Chapter 5: The relationship between countermeasures and EU Law	135
6.6. Overall conclusion	137
Bibliography	141

TABLE OF CONTENT

Abbreviations	147
Appendices	149
Appendix (i): Conclusions of the Council (ecofin) of 1 December 1997:	151
Appendix (ii): List of potentially harmful preferential tax measures included in the Code of Conduct Report of 29 November 1999:	158