



Commission européenne
Fiscalité et union douanière

Tax Havens and the EU Code of Conduct

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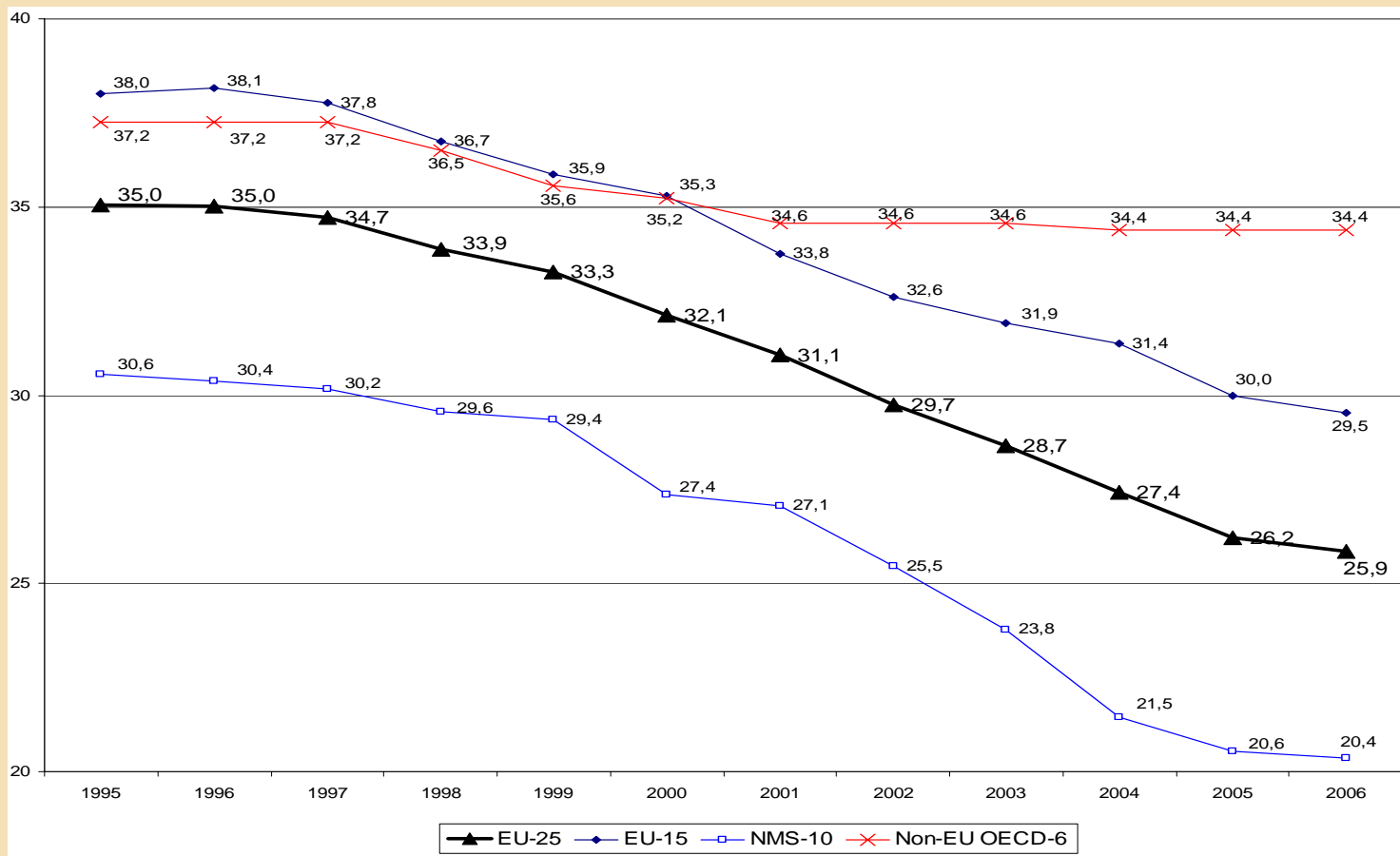


Why is tax competition an issue for the EU?

- **Limits to tax competition : effects on the correct allocation of resources and correct allocation of revenues;**
- **Impact on tax revenues: putting at risk the “European social model”**
- **Impact on the structure of tax systems: shift of the tax burden towards less mobile bases such as labour (unemployment)**
- **Equity concerns**

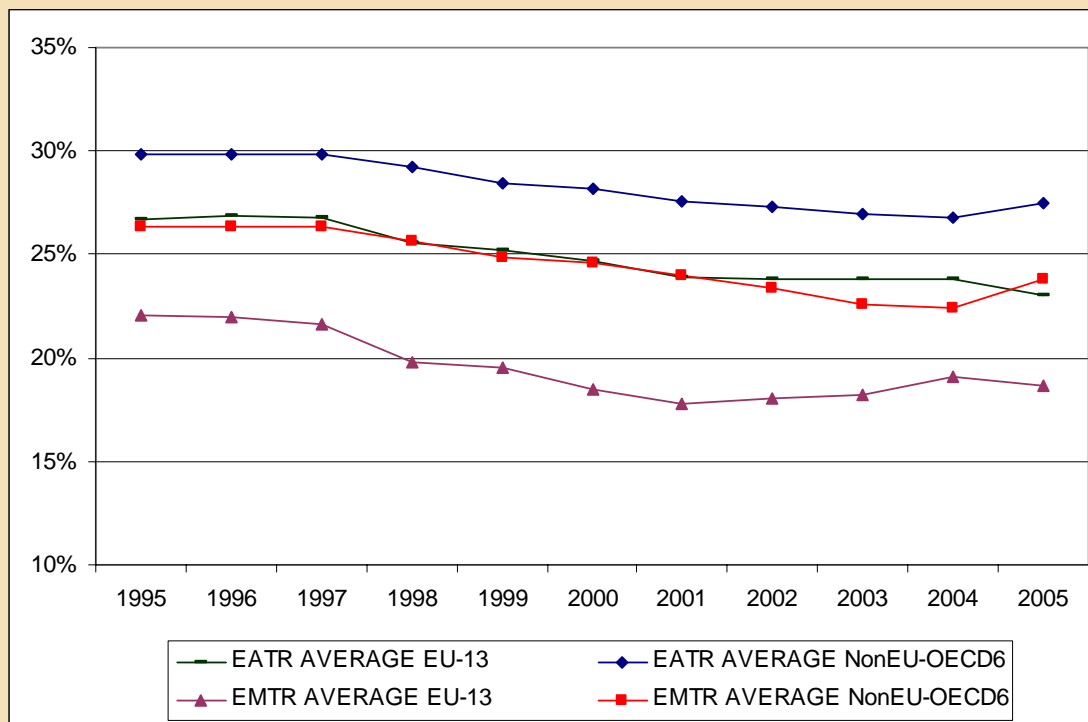


Evolution of average statutory corporate tax rates in the EU-25, EU-15, NMS-10 and non-EU OECD-6 (unweighted averages, 1995-2006)





Evolution of the effective average (EATR) and marginal (EMTR) corporate tax rates in the EU-13 and non-EU OECD-6 (unweighted averages, 1995-2005)



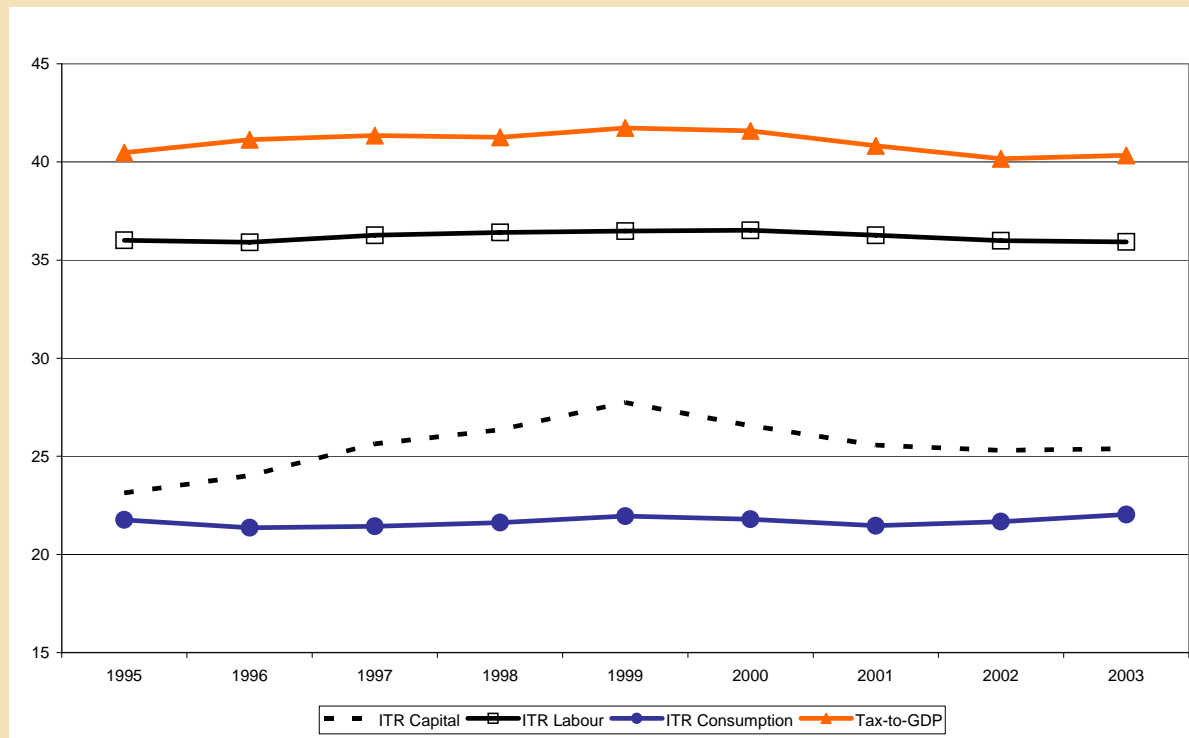


Evolution of the corporate income tax revenues as % of GDP in the EU-15 and the NMS-10 (unweighted averages)





Evolution of implicit tax rates (ITR) on labour, capital and consumption in the EU-25





Interpreting the results

- Continued and sharp reduction of corporate statutory tax rates is mainly a "European" reality, source of specific political concern;
- Evidence that governments are competing more for profits or "taxing rights" than for physical investment;
- Relative stability of the corporate income tax may be explained by a series of factors: business cycle, higher profitability, "incorporatisation", and some base-broadening reforms.



Policy conclusions

- Concentrate the action on profit shifting/harmful tax measures;
- Common Corporate Consolidated Tax Base (CCCTB) can be a medium term solution to address the profit shifting problem within participating countries;
- No harmonization of tax rates but...
- The development in tax competition through general tax rates should be carefully monitored.



Tax package: code of conduct

- **THE CODE OF CONDUCT FOR BUSINESS TAXATION:**
 - **A POLITICAL COMMITMENT NOT TO ENTER INTO HARMFUL TAX COMPETITION**
 - **COVERS MEMBER STATES AND DEPENDENT OR ASSOCIATED TERRITORIES**
 - **COMMITMENT TO PROMOTE THE ADOPTION OF THE PRINCIPLES IN THIRD COUNTRIES**



How are defined harmful tax measures in the Code of conduct?

- The Code of Conduct for business taxation applies to
 - all kind of measures that affect or may affect the location of business activity;
 - provide for a lower level of taxation than generally applicable.
- Criteria of the Code:
 - advantages only to non-residents or in relation to transactions with non-residents
 - ring-fenced: do not affect the national tax base
 - no real economic activity or substantial economic presence
 - profit determinations not in line with internationally accepted principles (OECD)
 - lack of transparency or discretionary power



Link to State aid control

- Based on Art. 87 of the EC Treaty: any aid which distorts or threatens to distort competition shall, in so far as it affects trade between MS, be incompatible with the common market
- Four cumulative criteria have to be met:
 1. Recipients must have an advantage (reduction in base, amount of tax etc.)
 2. Advantage must be granted through state resources
 3. Measure must affect competition and trade
 4. Measure must be specific or selective
- Code of Conduct notes Commission's intention to apply rules strictly and to examine or re-examine existing tax arrangements and proposed new legislation, taking into account the insights from the application of the Code



ACHIEVEMENTS OF THE CODE

- **ON EU-15:**
 - **REVIEWED 271 MEASURES**
 - **66 HARMFUL MEASURES IN THE PROCESS OF BEING ROLLED BACK**
- **ENLARGEMENT – 10 NEW MEMBER STATES**
 - **REVIEWED 50 MEASURES**
 - **30 HARMFUL MEASURES AND 28 ROLLED BACK**
- **PERMANENT STANDSTILL OF NEW POTENTIALLY HARMFUL PROVISIONS.**
- **THE CODE IS NOT AGAINST GENERAL TAX COMPETITION (see recent rates reductions in the EU)**



Strategy to prevent financial and corporate malpractice (1)

- **Strategy for co-ordinated action** in the financial services, company law, accounting, tax supervision and enforcement areas to reduce the risk of financial and corporate malpractice.
 - Reinforces 4 lines of defence involving both private (auditors, banks) and public (supervisors, enforcement authorities) actors.
 - Main instruments are: improved transparency of financial and tax systems



Strategy to prevent financial and corporate malpractice (2)

In the tax area, two main orientations: to improve EU internal standards, and to promote them externally:

- Improve internal EU standards: more transparency and information exchange in the company tax area so that tax systems are better able to deal with complex corporate structures.
 - Possible improvements to the Mutual Assistance Directive (77/799/EEC), developing common definitions of tax fraud and avoidance, exchanges of experience and best practice between tax administrations, the use of new technology to improve information exchange...
- Outside the EU: to ensure coherent EU policies concerning offshore financial centres, to encourage these jurisdictions also to move towards transparency and effective exchange of information. and removal of harmful tax measures (Code of conduct for business taxation).
 - Possible instruments : insert relevant commitments in Trade access, economic partnership and others agreements with the Community, economic, development and technical assistance programmes



Promoting best tax practices outside the EU

- Commission to have a pro-active attitude in future agreements by encouraging all partners to implement the OECD model agreement for exchange of information on request in the tax area and to commit to and respect the principles of the EU Code of Conduct.
- Results so far:
 - explicit reference to the Code of conduct for business taxation in 6 actions plans in “neighbouring countries” (Israel, Jordan, Morocco, Moldavia, Tunisia, Ukraine).
 - explicit reference being introduced in a number of agreements in negotiation in the trade, development and partnership areas: ACP (Caribbean, Pacific), ASEAN etc...
- In that sense the promotion of ‘good governance’ by the EU in the tax area is a direct complement to the work under the OECD HTP forum especially with regard to tax havens.