100781/EU XXIV.GP
Eingelangt am 06/12/12

Brussels, 6.12.2012
SWD(2012) 403 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
{SWD(2012) 404 final}

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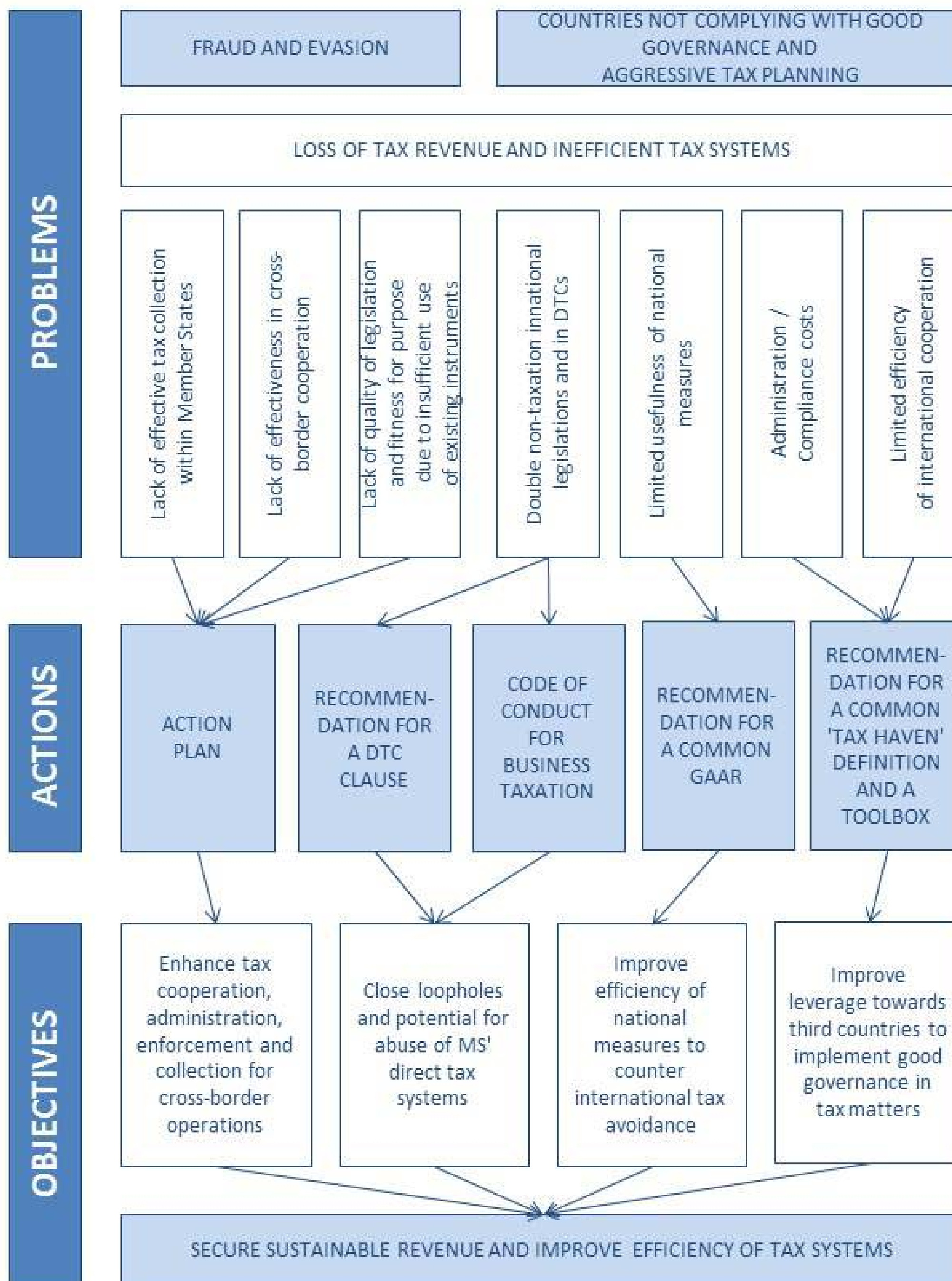

1. INTRODUCTION

The common purpose of national tax systems of EU Member states (MS) is to be effective and fair, i.e. to provide the revenues necessary to public finances and to share the burden amongst taxpayers in a fair way according to the democratic choices

of each State. However, EU MS tax systems are vulnerable to revenue loss in a complex international environment where national tax systems struggle to cope with the challenges of the modern internationalised world.

EU MS budgets are currently under heavy pressure, as underlined in the Annual Growth Survey 2012[1] and there is a need for a concentration of tax policy priorities on the potential of Member States for making their respective tax structures more growth-friendly as well as improving the design and functioning of individual taxes.

In particular, the VAT gap, which is the amount of VAT not collected due to fraud, legitimate avoidance, errors, bankruptcies etc. and therefore represents an upper boundary for evasion related VAT revenue losses, represented 12-14 % of the theoretical VAT liability in the EU-25 between 2000 and 2006[2]. A study[3] revealed that while some Member States had a theoretical VAT gap below 5% (Denmark, Spain, Ireland, Luxembourg, the Netherlands, Portugal and Sweden), for others the theoretical VAT gap was above 20% (Greece, Hungary, Italy, Lithuania, Latvia and Slovakia). The total theoretical VAT gap for the EU-25 excluding Cyprus was above €100 billion in 2006. Assuming that a 12% VAT gap prevails, that would amount to a revenue loss of about 0.9% of GDP or EUR 114 bn in 2012.

Furthermore, EU Member States lose both individual and corporate income tax revenue, from the shifting of profits and income into other jurisdictions. The revenue losses which can arise from both illegal tax evasion and legal tax avoidance are difficult to estimate. According to some estimates concerning only the United States the revenue cost of profit shifting towards "tax havens" by US multinationals could be up to $60 billion (b), while individual tax evasion could cost up to $50 b yearly[4]. Estimates of this kind are not available for the EU, but on the basis of the similar amount of FDI stocks in "tax havens" in both USA and the EU the tax revenue losses can be estimated to be of similar magnitude (see annex 6).

The Commission has promoted a policy for tackling tax fraud and tax evasion which has been mainly based on transparency, exchange of information and fair tax competition. Since 2004, when the so called "Parmalat" Communication on preventing and combating corporate and financial Malpractice within and beyond the EU[5] was adopted, the EU policy has been further developed, in particular in the Communications on co-ordinated strategy to improve the fight against fiscal fraud (2006)[6], and more recently on "Promoting Good Governance in Tax Matters" (2009)[7] and on "Tax and Development" (2010)[8]. Nevertheless progress has been uneven and the basic problems arising from a lack of common vision and coordination remain.

[1] COM (2011) 815 final
[2] Reckon LLP, 2009, Study to quantify and analyse the VAT gap in the EU-25 member states. Available at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_cooperation/combating_tax_fraud/reckon_report_sep2009.pdf
[3] Idem.
[4] J. G. Gravelle (2009): Tax Havens: Tax Avoidance and Evasion. CSR Report for congress.
[5] COM(2004) 611 final
[6] COM(2006) 254 final
[7] COM (2009) 201 final
[8] COM (2010) 163 final

In this context on 2 March 2012, the European Council called on the Council and the Commission to develop concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries and to report by June 2012. The Commission's response took the form of a Communication[9] adopted on 27th June 2012. The Commission also announced that it would come forward later this year with an action plan on these suggestions and a complementary initiative on jurisdictions not complying with minimum standards of good governance in tax matters, in particular tax havens, as well as aggressive tax planning.

The action plan is designed to mobilise the different actors by identifying areas where they need to act both in relation to existing law and initiatives as well as new areas of potential activity. Its purpose is to give a focus and prioritisation to common and individually supportive work in this area in response to the European Council's call for action.

The impact assessment also focuses on the particular issues posed by jurisdictions not complying with minimum standards of good governance in tax matters, as well as aggressive tax planning (with a particular emphasis on company taxation). Although the distinction between illegal evasion and legal avoidance (or planning) is well known the subdivision of avoidance into 'aggressive' or 'unacceptable' and perfectly acceptable 'planning' is a source of on-going disputes between governments and taxpayers.

Other institutions and organisations are also paying close attention to the issue of tax avoidance and tax evasion in relation to tax havens: the European Economic and Social Committee adopted in May 2012 an opinion on *Tax and financial havens: a threat to the EU's internal market*[10], the Council of Europe adopted in April 2012 a report on *Promoting an appropriate policy on tax havens*[11] and the G20 has actively promoted and monitored the work of the OECD Global Forum on transparency and information exchange since 2008 (see the latest report of June 2012 to the G20 in Los Cabos[12]).

The purpose of this impact assessment is to assist the Commission in identifying policy orientations and priorities to be promoted and developed at EU level. Given the policy orientation nature of the initiatives this impact assessment analyses in a manner commensurate with each of the problems at stake the actions that could be considered to address the problems. In the event of further decisions on legislative action, this impact assessment would be supplemented by individual focused impact assessments.

[9] COM (2012) 351 final
[10] INT/587 – CESE 1289/2012, http://www.eesc.europa.eu/?i=portal.en.int-opinions.19620
[11] http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18151&Language=EN
[12] http://www.oecd.org/ctp/exchangeofinformation/G20_Progress_Report_June_2012.pdf

Terms used in this document can be found in a comprehensive glossary in annex 14 (also see COM(2012)351 unless otherwise stated)

Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced.

Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities.

Tax havens, also sometimes referred to as **'non-cooperative jurisdictions'** (NCJ) are commonly understood to be jurisdictions which are able to finance their public services with no or nominal income taxes and offer themselves as places to be used by non-residents to escape taxation in their country of residence. The OECD has identified three typical 'confirming' features of a tax haven: (i) lack of effective exchange of information, (ii) lack of transparency, and (iii) no requirement for substantial activities. In addition they often offer preferential tax treatment to non-residents in order to attract investment from other countries. Tax havens therefore compete unfairly and make it difficult for 'non' tax havens to collect a fair amount of taxation from their residents.

Tax avoidance is a term that is difficult to define but which is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow (OECD Glossary of Tax Terms).

2. PROCEDURAL ISSUES AND CONSULTATIONS OF INTERESTED PARTIES

2.1. Organisation and timing

2.1.1. Impact Assessment Steering Group

The Commission Work Programme for 2012 includes the adoption of a Communication on good governance in relation to tax havens and aggressive tax planning.

The Impact Assessment Steering Group was set up by DG Taxation and Customs Union (DG TAXUD) of the Commission met three times, in January, July and September 2012.

2.1.2. Impact Assessment Board (IAB) meeting

A draft of this impact assessment (IA) was submitted to the Impact Assessment Board and discussed at its meeting of 17th October 2012. In its opinion dated 19 October 2012, the Board suggested some improvements of the draft IA report.

In its overall assessment, the Board recommended that the IA report should strengthen the problem definition by better focussing on the concrete problems the initiative aims to address. The report should describe those problems in a non-

technical language and, where possible, provide concrete examples. Second, the report should better describe the content of the options, streamline their presentation, for instance by merging all 'no EU action' options, and provide greater clarity on the discarded options. Third, the report should better assess impacts on the administrative burden, SMEs and competitiveness. It should include quantitative elements, for instance regarding the number of national anti-abuse measures and its expected evolution. Finally, the report should provide greater detail on stakeholders' different views, in particular Member States' support to the envisaged measures.

In order to take into account the recommendations of the Board a number of changes have been made to the IA report. The problem description has been significantly streamlined, the objectives have been better linked to the corresponding problems, a glossary of technical terms has been added, the analysis has been expanded to wider market actors, several concrete examples have been added, the baseline scenario has been consolidated amongst objectives, the impact analysis on SME has been strengthened, and more details have been provided on stakeholders' views.

2.2. Consultation and expertise sought

The Commission has been consulting widely and has received input from various sources on this impact assessment work. However, the assessment has suffered from a lack of quantitative data in the whole process.

2.2.1. Public consultation on double non-taxation

Double non-taxation in the sense discussed here occurs as a result of the exploitation of loopholes and mismatches between the tax systems of different jurisdictions. This exploitation can undermine EU MS's budgets and, ultimately impact on other taxpayers.

On 29 February 2012, the Commission launched a three month public consultation[13] to gather contributions on factual examples and possible ways to tackle double non-taxation cases. The purpose of this public consultation was to establish evidence concerning double non-taxation within the EU and in relation with third countries. Members of the public were encouraged to provide factual examples of cases of double non-taxation on cross-border activities that they had encountered or had knowledge of.

There were in total 25 replies from different stakeholders, including 15 from business community, 4 from non-governmental organisations, and 4 from academics and other tax professionals. Several contributions were also sent from non-EU stakeholders (i.e. USA). Although half of the replies came from contributors resident in two Member States (United Kingdom and Belgium), most of these were from international organisations. So a reasonable range of national views was received. Given the limited number of total replies this fact did not have further impact on the current analysis.

[13] Consultation and Summary report is provided as annexes 4 and 5

The non-governmental organisations that contributed to the consultation welcomed it and provided some input, while underlining the practical difficulties to provide factual examples of double non-taxation.

On the other hand, the business community expressed some concerns on the scope of the consultation. In the general comments provided by the business community the following points are worth highlighting:

– Several found it important to make a clear distinction between actual double non-taxation (e.g. due to mismatches of hybrid entities and hybrid instruments) and other related concepts raising similar concerns (such as harmful tax competition and low taxation). Others called for a definition of "double non-taxation".

– Most of the organisations stressed that direct taxation falls within the competence of the Member States' sovereignty. Several therefore found that any measures against double non-taxation should be handled at the Member State level, while others found some coordination appropriate (e.g. to avoid mismatches).

– Many of the organisations felt that the issue of double non-taxation should not be addressed separately from that of double taxation. The two phenomena are seen as two sides of the same coin.

– Some organisations stressed that measures against double non-taxation could have an adverse impact on European economic competitiveness.

– Several organisations also called for coordination with other initiatives on EU and international level that address aspects of double (non-) taxation e.g. the EU Code of Conduct Group and the OECD report on Hybrid Mismatches.

2.2.2. *Data collection study from Price-Waterhouse-Coopers (PWC) on tax measures in 14 Member States in relation to non-cooperative jurisdictions and aggressive tax planning*

Given the difficulties of direct measurement of the effects of fraud, evasion and aggressive tax planning PWC were asked to collect data and analyse relevant information available in the public domain on existing and proposed tax measures of 14 EU Member States (Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxemburg, Malta, Spain, Sweden, the Netherlands, the United Kingdom) in relation to non-cooperative jurisdictions and aggressive tax planning. The sample was selected on a judgement basis to provide a cost effective method of collecting a representative sample of EU wide information.

The purpose of the study was to obtain factual information on the measures taken and envisaged by EU MS in relation to non-cooperative tax jurisdictions and aggressive tax planning, with a possible estimate of the cost and benefits of such measures.

Only limited quantified data on the impact of the identified problems and defensive measures was available. For example in Denmark the benefit of two recent measures had been estimated at 13 million (m) Euro, in France the thin capitalisation rules

were estimated to raise over 100 m Euro per year, in Germany tax loss restrictions nearly 1500 m Euro per year, in the Netherlands interest rules more than 300 m over the period 2012 to 2015 and a further 150 m thereafter. Swedish interest rules were estimated to increase taxable profits by more than 7 bEuro and the UK estimated that the 2011 CFC reforms would cost nearly £2.4 b between 2012 and 2016. In summary some MS are able to raise tax revenues by taking specific protective measures, although the precise types of measures differ (see also Annex 9 and 10).

The main findings of the study are:

- Only 2 of the reviewed MS (FR, EE) have a formal definition of the term "Non-Cooperative Jurisdictions", and no MS has a definition of "Aggressive Tax Planning", although many of them did report having various concepts that are akin to these key concepts. In this respect, MS apply anti-abuse measures on the basis of two series of criteria taking into consideration either the level of taxation of the country concerned (e.g. no taxation at all or a lower nominal/effective tax level as compared to the situation of the MS itself), or the level to which countries cooperate in terms of exchange of information.

- Many Member States have a significant number of anti-abuse provisions covering many different forms of potentially abusive behaviour.

- All MS (except UK) have at least one general anti-abuse rule (none of them applies only to Third Countries)

- There is no clear picture if the examined measures can be considered as effective in combating what the Member States consider as abusive.

- Due to the different concepts in place, the taxpayer doing business in the EU has to cope with a complex and differing array of measures designed to protect individual Member State tax bases.

The Study is included as Annex 7 and will be published on the DG Taxation and Customs Directorate web site.

2.2.3. *Consultation of Member States administrations: Fiscalis Seminar "Administrative cooperation 2020" – May 2012*

The FISCALIS seminar aimed at launching reflections on the results of the improvements of the mechanisms of administrative cooperation including aspects of tax administration between Member States. All Member States were represented.

The Seminar offered an opportunity to exchange views as regards the future actions that could be undertaken in the area of administrative cooperation to improve the efficiency and effectiveness of existing mechanisms, to look at the critical aspects of tax administration, to discuss whether possible future actions could be taken within the framework of Council Directive 2011/16/EU or whether they would a priori require other types of legal instrument and, in this context, to also discuss the possible synergies with the actions undertaken by the OECD.

The main conclusions were recommendations to: (i) extend EUROFISC for VAT to direct taxation and to better address fraud schemes and trends, (ii) better identify

taxpayers in cross-border situations by establishing a single EU Tax Identification Number, (iii) adopt a real and concrete common approach to risk management for direct taxation to better identify fraudsters, (iv) promote closer collaboration and cross fertilization between direct and indirect taxes as well as between tax administrations and other administrative bodies, especially judicial and criminal authorities, and (v) develop high common standards for tax administrations, aimed at ensuring better tax compliance.

2.2.4. *Fiscalis Seminar on non- cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion – July 2012.*

The objective of this seminar was to exchange views and experience with the Member/Candidate States on existing measures, and discuss the aspects of possible future measures including a possible strategy at EU level.

Member States' tax officials were, in general, supportive of an EU coordinated approach to tackle non-cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion although some of them would prefer national measures (having due consideration to the principles of subsidiarity and proportionality). In particular, they supported measures to enhance existing instruments of co-operation and the development of automatic exchange of information, as well as measures to fight against VAT fraud and evasion. The Commission also invited to this seminar different representatives of business, NGOs and academia who also reacted positively to an EU coordinated approach for concretely fighting against tax fraud and tax evasion but some stressed that any new measure had to replace an existing one in order not to increase the administrative burden and not to affect competition. Overall, the business community and NGOs stressed the importance of developing further automatic exchange of information, also from a practical point of view in relation to document formats. A pivotal outcome of the seminar was support for clear common definitions of the concepts tax havens, aggressive tax planning, and tax avoidance, intentional and non-intentional double non-taxation. Some MS suggested in this respect a reference to the level of taxation. However, a possible EU strategy should be coordinated with other international fora in order to create synergies and to avoid any overlaps. The improvement of administrative cooperation and exchange of information between MS was considered as a way forward. Some NGOs pointed out that concerns of developing countries and impacts on them must be taken into account before any measures in developed countries are introduced.

Although some written comments were received after the seminar none of these included the requested quantitative data. The reports on the seminar are in Annexes 1, 2 and 3.

The Commission services have taken into account all of above-mentioned observations in the present impact assessment. It is worth noting that in both the consultation on double taxation and the July seminar that businesses were keen to emphasise that non-taxation should be distinguished from low taxation – low taxation often being a national choice and an aid to competiveness. This was not stressed as much by Member States. The debate is similar to that of 'fair' avoidance and 'aggressive' avoidance – with similar differences in opinion between administrations and taxpayers. Other members of civil society, NGOs etc., tended to stress the need for governments to be able to collect fair taxes and to combat

aggressive avoidance. Both subsidiarity and the Common Consolidated Corporate Tax Base (CCCTB) were mentioned in this context. Subsidiarity concerns generally being raised by those against greater coordination and the CCCTB being recognised as a potential 'cure' for many of the problems – but only when it is finally implemented– which seems some way in the future and of course as it is optional providing only a partial solution. The case for coordinated action in direct tax by way of the CCCTB proposal being in line with subsidiarity was covered in detail in the CCCTB proposal and the Commission responses to the reasoned opinions received.

2.2.5. Tax Policy Group and Council High-Level Working Party

2.2.5.1. Tax policy group

The high level Tax Policy Group met in Brussels on 14 July 2012. All Member States contributed to a debate based on the Commission's Communication of 27 July 2012[14] and there was general agreement that enhancing action against tax fraud and evasion is a key priority for them. Enhancing coordinated action was seen as crucial not only to increase the revenue raising capacity of the Member States but also to ensure the fairness of tax systems. There was also considerable agreement among the Member States on the need to fully exploit the potential of existing instruments for administrative assistance (in particular the recently adopted Mutual Assistance Directive, the provisions of which are to be transposed into national law by January 2013). In particular, they stressed the need to develop practical tools and instruments (IT and exchange of best practices) for exchange of information and in particular for automatic exchange; they also underlined the importance of promoting these instruments to non EU countries. Member States also stressed the need for the Council to adopt the pending proposals for amending the EU Savings Directive and the negotiating mandate to ensure application of equivalent measures by certain third countries.

Many Member States representatives indicated that new initiatives could also help to enhance the fight against tax fraud and tax evasion– as long as such measures were proportionate and did not unnecessarily increase the costs and complexity of compliance for taxpayers. As regards such possible new initiatives most Member States indicated that these could be particularly useful in the area of VAT and that in anticipation of the more comprehensive VAT system reform envisaged by the Commission in its Communication from December 2011, the proposal to develop a "quick reaction mechanism" for tackling VAT fraud appears particularly promising. The majority of Member States also supported the suggestion to examine the scope for introducing an EU Tax Identification Number (TIN) for cross border operations. Many Member States were supportive of on-going and possible future efforts to enhance exchange of information with third countries.

2.2.5.2. Council High Level Working Group (Brussels, 11 September 2012)

Again focusing on the above Communication Member States confirmed the priorities that their high level representatives had already indicated at the Tax Policy Group should be contained in the action plan.

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[14] COM(2012) 351

They also insisted on the need for all Member States to fully and loyally implement and apply the existing legislation on administrative cooperation, in particular through the development and use of concrete tools and instruments.

3. POLICY CONTEXT, PROBLEM DEFINITION, AND SUBSIDIARITY

Tax evasion and avoidance threaten government revenues in all Member States. In addition the globalisation of economies, fluid capital movements and technological developments have undermined the traditionally closed tax systems of jurisdictions around the world[15]. In current times of economic crisis and severe budgetary constraints there is a strong need to improve the efficiency of national tax systems and close opportunities for abuses so as to secure sustainable tax revenues and support high levels of compliance based fair and fairly applied tax systems.

3.1. Identification of the problems that may require action

3.1.1. Specific problems relating to tax fraud and evasion within the EU

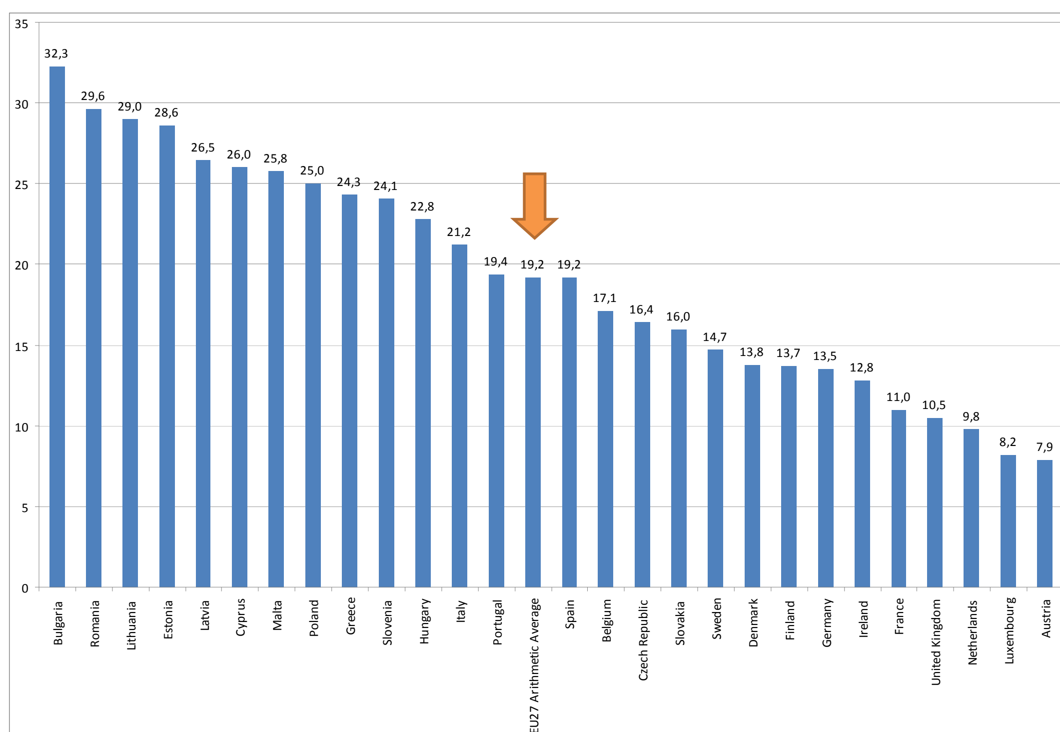
In recent years, the challenge posed by tax fraud and evasion has increased considerably. The globalisation of the economy, technological developments, the internationalisation of fraud, and the resulting interdependence of Member States' tax authorities reveal the limits of strictly national approaches and reinforce the need for joint action. The interaction of many different tax systems in the context of a global economy creates many possibilities for the undermining of Member States tax systems. Even where there exists a high degree of harmonisation within the EU, such as in the case of VAT, issues of fraud and evasion are significant. Indeed, as highlighted in the introduction, the VAT gap amounted to 12-14% of the theoretical VAT liability between the years 2000 and 2006 in the EU-25, with a considerable variation across member states: the highest VAT gap was 30% while the lowest only 1% in 2006 [16]. At present, tens of billions of euro remain offshore, often unreported and untaxed, reducing national tax revenues. The size of the shadow economy varies between 7.9% and 32.3% of GDP according to some estimation.

Figure 1: Estimate of the size of the shadow economy in 2011 (% of GDP)[17]

[15] Since the late 1990's both the OECD (see the 1998 OECD report 'Harmful tax competition: an emerging global issue') and the EU (with the 1997 tax package) with the Code of conduct for business taxation have made efforts to counter the erosion of tax bases.

[16] Reckon LLP, 2009, Study to quantify and analyse the VAT gap in the EU-25 member states.

[17] Source: Schneider, F. (2012), "Size and development of the Shadow Economy from 2003 to 2012: some new facts". The figures contained in this study are necessarily based on assumptions and should therefore be considered cautiously as their certainty is not demonstrated.



There is a need therefore to tackle fraud and evasion. Firstly, because tax fraud and tax evasion are limiting the capacity of Member States to raise revenues, to carry out their economic policy and to proceed to necessary structural reforms. Secondly, because it is an issue of fairness: the vast majority of EU taxpayers generally seek to comply with their tax obligations. Particularly in these difficult economic times, these honest taxpayers should not suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders.

The specific problems divide into three main areas. Firstly, there is a problem of tax collection within Member States related also to standards of taxpayer compliance: the broad analysis carried out by the Commission in the context of the European Semester has revealed that for many Member States there are real and substantial problems of domestic and cross border tax evasion sometimes linked to poor administrative capacity. Country-specific recommendations regarding these issues were addressed to 10 Member States. Secondly, there is a lack of effectiveness in cross-border administrative co-operation despite the existence of EU level mechanisms and procedures: the difficulty to properly identify taxpayers in the context of automatic exchange of information and the existing loopholes in the taxation of savings (with difficulties in agreeing further steps forward at Council level) are two significant examples of the limits of efficient cross border cooperation, a necessary complement to national tax sovereignty. Thirdly, there is a question of the quality of tax legislation and its fitness for purpose because of an insufficient use of existing legal instruments: the possibilities offered by the existing legislation to spontaneously exchange information or for foreign officials to be present during tax audits in other Member States are not sufficiently used.

The June 2012 Communication provides an overview of the problems and possible actions (see Annex 13).

3.1.2. *Specific problems arising from jurisdictions not complying with minimum standards of tax good governance, in particular tax havens, and from aggressive tax planning*

In an international context, the effectiveness of a tax system can be undermined in several ways:

- because of unintended loopholes within the national tax system and mismatches occurring with other countries' tax systems (national legislation and double tax conventions), leading to double non-taxation in cross-border situations. Such loopholes and mismatches can take a multitude of forms, ranging from mismatches between tax systems leading to double deductions (e.g. the same loss is deducted both in the state of source and residence) to occurrences of double non-taxation (e.g. income which is not taxed in the state of source is exempt in the state of residence). A specific example of this could be a profit participating loan (PPL) granted from a parent company in a Member State (MS1) to its subsidiary in MS2. Interest under such a loan arrangement would only be due if the MS2 subsidiary makes a profit in a given year. Also the amount of interest due could depend on the amount of profit made and be conditional to various other circumstances. Given these special conditions, the PPL arrangement could be classified as a capital contribution by the MS1 authorities under a "substance over form approach", whereas the authorities of MS2 might not apply such approach and continue to treat the arrangement as a loan. As a result, payments due would be treated as deductible interest payments in MS2 while they are treated as profit distributions exempt under a participation exemption in MS1. The effect (deduction in MS2, no-inclusion in MS1) is the result of a mismatch in the classification of the PPL arrangement.

Double non-taxation deprives Member States of significant revenues and creates unfair competition between businesses in the Single Market. In the EU Internal Market, double non-taxation gives a competitive advantage to some taxpayers, and may be detrimental for those Member States which see their tax bases eroded.

- because of taxpayers exploiting these loopholes and mismatches (aggressive tax planning). Tax planning increasingly involves ever-more sophisticated structures which develop across various jurisdictions and effectively, shift taxable profits towards states with beneficial tax regimes. Member States find it difficult to protect their national tax bases from this erosion. Thus, individual measures are often deprived of effectiveness, especially due to the cross-border dimension of many structures and the increased mobility of capital and persons in the Internal Market.

- by other jurisdictions actively or passively facilitating the erosion of other countries' tax bases. This scenario can be involve aggressive tax planning schemes, specific tax regimes providing a low level of taxation to non-residents, or a very low general level of taxation together with a reluctance to cooperate with other countries' tax administrations. Generally speaking "tax havens" are countries that base their attractiveness on opacity and harmful tax competition in the direct tax area. They offer the possibility for taxpayers of other countries to relocate their tax bases in their low-tax jurisdictions, and to conceal this from their country of residence (through means such as obstacles to the identification of beneficial ownership, bank secrecy and conduit companies).

This is increasingly relevant in the global context of economic liberalisation and in the particular case of the EU Internal Market. Free movement and new technologies offer many opportunities for using aggressive tax planning schemes which make use of 'tax havens'. The Internal Market offers enormous benefits to businesses operating within it, but protection against abuse continues to vary as between Member States. Against this background, by refusing transparency, exchange of information, and the removal of harmful tax regimes, jurisdiction not complying with good governance minimum standards, in particular 'tax havens', continue to undermine tax revenues,

Protection against such jurisdictions, in particular tax havens is difficult. Member States take a variety of defensive measures to limit the harmful effects for their tax base of tax structures using, in particular ´tax havens´. However, defensive measures by one State can often be circumvented by routing business or transactions through another State with a lower level of protection. This is especially true within the EU given the protection of the freedoms available for businesses operating within the Internal Market and secondary legislation in the area of direct taxation. Consequently, protection against the erosion of the tax base by the use of such jurisdictions is essentially only as effective as the lowest level of protection offered in a single Member State.

The precise dimensions of the revenue losses incurred are difficult to estimate precisely as mentioned above but are measured in the billions of Euro. Individual countries do sometimes estimate losses in revenue and academics have used a range of different methods to quantify the losses. These sometimes mix evasion and avoidance, combine direct and indirect taxes, include non-EU country data and use proxies such as the size of the 'shadow economy' to estimate tax losses. In addition some of the terms – evasion, avoidance and tax-havens for example are used in different ways.

All these factors make precise quantification difficult but overall it is clear there is a problem which needs resolving as quickly as possible.

Example The UK[18] recently stated that 14% of the tax gap (the difference between tax collected and the tax they thought should be collected) was due to avoidance – several billion pounds annually. Further examples of quantification are contained in Annex 6 and 10.

In addition to the primary problem – loss of tax revenue there is a secondary issue. MS' reactions to newly detected tax avoidance situations can result in additional administrative costs for tax administrations (audits and enquiries) and compliance burdens on taxpayers that could, in some cases, even lead to discouraging a number of taxpayers.

Example:

[18] Lifting the Lid on Tax Avoidance Schemes – July 2012 – http://www.hmrc.gov.uk/

The Disclosure of Tax Avoidance (DOTAS) Schemes regime in the UK- which was introduced in 2004- engages taxpayers to disclose certain tax avoidance schemes to the UK Tax Administration so that the state is informed about the use of the schemes and is in the position to consider how to counteract them, for example by changing the tax law. In 2012 its Guidance Notes were updated explaining in 115 pages the application of the DOTAS regime. If all MS introduced different and individually tailored disclosure schemes there would clearly be significant compliance costs.

Current leverage to influence third countries is of limited efficiency.

At EU level, a number of efforts have been made to try to influence third countries to apply minimum standards of good governance in tax matters, both at policy and operational levels. Communications in 2009 and 2010[19] promoted good tax governance, particularly in relations with developing countries.

At operational level, the EU has already negotiated inclusion of the clause on good governance in the tax area in 19 agreements between the EU and its MS on the one side and a third country on the other side. The full benefit of these clauses can only be evaluated when the agreements have been fully implemented. The Commission is waiting for their entry into force which has not yet taken place pending their ratification from third countries. In addition, MS should ensure the effective promotion of the principles of the Code of Conduct for business taxation[20] in selected third countries. Recently discussions have started with Switzerland and Liechtenstein. However a number of third countries remain reluctant in regard to applying the minimum standards of good governance. There is no clear consensus within the EU on a common approach to resolve difficulties. This hampers implementation.

3.2. Who is affected?

These issues affect EU MS, because of the budgetary impact of tax fraud, tax evasion and tax avoidance on their revenues, and the need to adopt corrective measures. Such measures can be of administrative nature (increased enquiries and audits) and involve additional costs for tax administrations. They can be of regulatory or legislative nature, with the need to adopt appropriate legislation to adapt the compliance requirements of taxpayers. They can be also of external policy nature, since third countries are involved.

Taxpayers (individuals and businesses) are affected in that those who profit from fraud and tax evasion have an unfair (and illegal) advantage compared to compliant taxpayers. In the case of aggressive tax planning the purpose and intention of Member States tax legislation can be undermined and issues of competition arise in relation to those taxpayers who do not choose or cannot afford to engage in such practices. Taxpayers may also be affected because of the additional compliance requirements that the fight against tax fraud, tax evasion and tax avoidance may lead the MS to adopt, and by the tax treatment that applies to the activities they perform in countries subject to anti-abuse measures.

[19] See footnotes 7 and 8

[20] OJ C 2, 6.1.1998, p. 2.

Relating to SME, there is no indication that they would be specifically affected, since such elaborated schemes based on international configurations are less likely to involve SME than large enterprises.

Welfare-state beneficiaries are also affected in an indirect way as eroded state budgets could mean shrinking budgets for public services and social benefits.

Third countries may be affected. Third countries promoting non-compliance of EU MS tax rules benefit from aggressive tax planning schemes in terms of additional revenues. The adoption of anti-abuse measures by EU MS can affect the cross-border flows between these countries and the EU. Some EU external policies are affected, to the extent that international agreements concluded with countries being considered by MS as non-cooperative or promoting aggressive tax planning might make it easier or more difficult for EU taxpayers to operate with these countries. In addition, development cooperation policy takes into account the need to assist developing countries in designing efficient tax systems in line with international standards, notably the ones of good governance in tax matters (transparency, exchange of information and fair tax competition).

3.3. The likely evolution of the problems if no action is taken (baseline scenario)

Failure to act could lead to a general undermining of the acceptance of many tax rules and thus lead to continuing or even greater levels of unwanted fraud, evasion and tax avoidance.

If no action is taken, there is a risk that revenues will continue to be lost and indeed that the problem may become greater as Member States face increasing pressure to cut public services in a situation where taxpayers come under more and more pressure. In this situation perceived injustice or lack of fairness will undermine the legitimacy and effectiveness of tax systems at a critical moment in time.

This will be in particular the case for the three specific problem areas of **tax fraud and evasion** where action has been identified as decisive and urgent. For example, in the field of direct taxation, if the loopholes of the existing savings taxation directive are not closed, taxpayers will continue to invest in products or through structures allowing the avoidance of effective taxation of savings or similar income. The absence of automatic exchange of information for more categories than purely savings interests will furthermore deprive Member States of the invaluable information on other income received and assets owned by their taxpayers in another Member State, thereby preventing effective taxation but also hindering risk analysis by tax administrations and not encouraging voluntary compliance by taxpayers. Finally, the difficult identification of taxpayers engaged in cross-border transactions will continue to generate important problems in tax administration and collection, which the on-going cuts in expenditure for tax control[21] will in turn reinforce, thereby generating a vicious circle as more and more taxpayers may be tempted by cross-border transactions to reduce their visible taxable basis.

[21] Because of the difficult economic situation and the reduced revenues, many Member States are currently reviewing the resources allocated to their various services, including in the area of taxation.

If no action is taken against **jurisdictions not complying minimum standards, in particular tax havens, as well as against aggressive tax planning**, it is likely that the problems of collecting tax for EU MS will remain or possibly increase in the coming years. No progress will materialise either in regard to third countries not complying with minimum standards of good governance in tax matters, in particular tax havens, as well as in regard to aggressive tax planning. It is likely that EU Member States will react individually, within the limited effectiveness of such measures.

As Member States react individually with measures at national level, adopted by each country according to its own criteria this results in a great variety of measures and targets and this is likely to continue in the absence of coordination (see Annex 10 for more details). Because of the relatively limited efficiency of such measures, Member States would logically attempt to strengthen them, which would risk adding compliance costs for EU taxpayers.

In addition, there is little indication currently that EU MS would launch spontaneously, i.e. in the absence of EU initiative, initiatives at bilateral or multilateral levels to overcome jointly the problems raised by the phenomena identified.

On the international side, some issues of transparency and information exchange would be dealt with in the framework of the OECD Global Forum, but this is unlikely to extend to issues of concern in the EU such as fair tax competition, tax base erosion from aggressive tax planning and tax havens.

Indeed, the restructured and strengthened OECD Global Forum on transparency and exchange of information (GF), which practically all EU Member States have now joined, monitors and encourages effective implementation of the international agreed standards of transparency and information exchange through the peer review of all its members and other jurisdictions which may require special attention. However, the principle of fair tax competition is not covered by the GF: the OECD work against preferential tax regimes is dealt with by the Forum on Harmful Tax Practices, which deals with tax regimes of OECD members only. The OECD criteria are broadly similar to the ones of the Code of conduct for business taxation (monitored by a Council group), although they apply to internationally mobile activities only.

Therefore, since the EU on-going policy on good governance in tax matters is based more generally on all three principles (transparency, exchange of information and fair tax competition), i.e. the two applied by the OECD Global Forum plus the principles of the Code of conduct for business taxation prohibiting harmful tax regimes, it is unlikely that in the absence of EU initiative the OECD work would compensate.

It is worth noting however that the OECD Committee of Fiscal Affairs has, in June 2012, held a debate on base erosion and profit shifting (BEPS) covering transfer pricing, aggressive tax planning and harmful tax competition. This represents an opportunity to perhaps address those issues which the EU has been addressing such as the principle of fair tax competition (i.e. the principles, of the Code of conduct for business taxation) in the wider OECD framework; and perhaps to expand the topics covered. This potential widening is a positive step forward, providing it complements

EU action and allows the specific interests of the EU to be fully integrated into a global consensus.

3.4. Does the EU have the right to act?

Binding Union acts intended to improve, through harmonisation or approximation, the proper functioning of the internal market can be adopted under Articles 113 TFEU (in regard to indirect taxes) and 115 TFEU (in regard to direct taxes).

The Commission can adopt recommendations on the basis of Article 292.

Member States face difficulties in protecting their national tax bases from erosion through aggressive tax planning and third countries not complying with minimum standards of good governance, despite important efforts. National provisions in this area are often not fully effective, especially due to the cross-border dimension of many structures and the increased mobility of capital and persons.

With the aim to achieve a better functioning of the Internal Market, it is necessary to encourage Member States to take a common approach towards a more effective and fair taxation, which would help diminishing existing distortions.

To this end, it is expedient to address instances in which a taxpayer derives fiscal benefits through engineering its tax affairs in such a way that income is not taxed by any of the tax jurisdictions involved (double non-taxation). The persistence of such situations can lead to artificial flows within the Internal Market and thus harm its proper functioning as well as erode Member States' tax bases.

Secondly, aggressive tax planning especially by the use of third countries not complying with minimum standards, as well as tax fraud result in shifting the tax burden to those who do not plan in this way. Taxpayers who have access to costly tax advice implementing these structures have a competitive advantage in comparison to other taxpayers, such as small and medium- sized enterprises which creates distortions of competition. Member States could be lead to individually to introduce countermeasures at national level in a manner that would undermine regular business investment and create additional tax obstacles.

Thus, these national actions (or lack of action) have a direct impact on the functioning of the internal market at large, as it can distort competition among EU businesses, and on the ability of Member States to meet the commitments of the Stability and Growth Pact[22].

Therefore, action at Union level is better fitted to achieve the objectives.

Any EU measure envisaged needs to respect the rights and principles recognized in the charter of fundamental Rights of the EU.

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22 http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm

4. OBJECTIVES

4.1. The general and specific policy objectives

The general objective is to come, through a Union approach commensurate with the need to ensure the functioning of the internal market, to a better protection of MS tax systems against abuses and loopholes and, in particular, against cross-border international tax fraud and avoidance. Such practices are detrimental to EU MS tax revenues.

This general objective translates into the following specific objectives:

- In regard to cross-border fraud and evasion in direct and indirect taxation:
  - (Objective 1) Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities
- In regard to jurisdictions not complying with minimum standards of good governance and to aggressive tax planning:
  - (Objective 2) Closing loopholes and potential for abuse of MS' direct tax systems (national legislation and double tax conventions) – this would contribute to addressing the issues of double non-taxation and aggressive tax planning
  - (Objective 3) Improving the efficiency of measures taken at national level to counter international tax avoidance – this would contribute to addressing the issue of aggressive tax planning
  - (Objective 4) Improving in an EU context the leverage that MS have towards third countries in tax matters – this would address the issue of jurisdictions not complying with minimum standards of good governance.

The operational objective is to secure and increase revenues for Member States. Given the differences of Member States tax systems and economic structures it is not easy to measure appropriately and consistently operational objectives across individual Member States. The monitoring of this operational objective will therefore need to be considered with each Member State individually in order to ensure consistency of relevant figures when the Actions are eventually being implemented.

4.2. Are these objectives consistent with other EU policies?

These objectives are consistent with other policies. They build on the existing policy of good governance in the tax area, which was subject to two Commission communications in 2009 and 2010 supported by the Council, the EP and the EESC. Moreover, they respond to the request from the European Council in March 2012 to enhance the fight against tax fraud and evasion including in relation to third countries. The objectives are also consistent with the Annual Growth Survey 2012 and its recommendations to Member States to broaden tax bases and improve tax collection.

In a wider context the objectives can be seen as being supported by the efforts made against money-laundering and terrorist financing both at the EU level and by the financial action task force (FATF), and by the rationale of Directive 2011/61/EU[23] (article 35), which sets specific conditions (notably on compliance with the international standard for transparency and information exchange) for non-EU alternative investment funds (AIF) managed by EU AIF managers when marketing in the EU.

5. POLICY OPTIONS

5.1. Overview of policy options

There is currently little harmonisation in the area of corporate tax and none in relation to personal income tax, which leads to wide differences amongst MS and affects their perception of what would be acceptable or not.

One theoretical option would be harmonisation at EU level in these areas through legally binding EU measures. This option cannot, however, be reasonably envisaged with a view to solve the existing problems quickly, given the difficulties to come to a consensus in this area , be it because it would. Urgent action is however needed to deal with the situation that MS are currently confronted with. Timing is therefore one of the factors to be taken into account and pleads at this stage for solutions not involving legally binding legislation, whose adoption often takes considerable amounts of time.

This does not of course rule out binding legislation in specific areas such as further development of administrative cooperation which is already the subject of detailed EU legislation. The Commission has also made a proposal for a Common Consolidated Corporate Tax Base (CCCTB)[24] which proposes a common base, but crucially this has been proposed as an optional base, i.e. companies and groups may opt for the CCCTB or remain within the existing national rules. This is currently being discussed in Council and will address some of the problems (for example it includes a GAAR) when adopted but in the interim period pending adoption, and afterwards for those not opting to use the CCCTB, the issues remain to be resolved.

The situation in relation to indirect taxation is somewhat different, notably in relation to VAT. A harmonised VAT system already exists. The Commission is in the process of reviewing the EU VAT system with a view to updating it[25]. This process should allow for a substantial strengthening of the EU VAT framework. Again however the urgency of dealing with current problems calls for action in advance of the full updating of the VAT system.

Reaching the objectives requires an approach based on a number of mutually reinforcing complementary actions. The analysis that follows prioritises the actions

[23] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[24] COM(2011)121

[25] COM(2010) 695 final, Green Paper on the future of VAT - Towards a simpler, more robust and efficient VAT system, 1.12.2010.

that the action plan will focus on as the best suited to respond to the problems identified (inefficient tax collection, insufficient administrative co-operation, insufficient use of existing instruments). Given that the initiative planned is of non-legislative nature , the analysis is confined to examining those elements which are likely to form part of two separate packages for, on the one hand, an action plan against fraud and evasion and, on the other hand, two Recommendations – one regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and one on aggressive tax planning.

For the purposes of the following analysis of elements to be included in an action plan a number of initiatives are discussed which have already been adopted but where decisions or implementation still need to be done. While it is true that these points should only form part of the baseline scenario, it is necessary to describe the repartition of competences and tasks between MS, the Council and the Commission to ensure the best possible outcome.

Consideration was also given to options put forward by stakeholders, such as the EU-wide list of non-transparent entities for double taxation purposes or the central database for tax authorities containing an equivalence matrix of legal entities (cf. annex 5, p. 14). However, as these approaches are limited to detect mismatches between national tax system and do not address the problem itself these options were not subject to a deeper analysis.

5.1.1. Baseline scenario : no EU change

See description under section 3.3.

5.1.2. Policy option relating to the fight against cross-border tax fraud and evasion in direct taxation

On the basis of the specific objective identified, the policy options that could be considered in the specific area of direct taxation are the following:

(1) Objective 1 - Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between MS tax authorities

- Action plan to enhance tax administration, tax enforcement and tax collection in the case of cross-border transactions

5.1.3. Policy options relating to jurisdictions not complying with minimum standards of good governance in tax matters and aggressive tax planning

On the basis of the three specific objectives identified, the policy options that could be considered on the specific issue of aggressive tax planning and jurisdictions not complying with minimum standards of good governance in tax matters are the following:

(2) Objective 2 - Close loopholes and potential for abuse of MS' direct tax systems (national legislation and double tax conventions)

- Address loopholes in national legislation through discussions in the Code of conduct Group for business taxation;

– Recommendation to prevent double non-taxation in double tax conventions

(3) Objective 3 - Improve the efficiency of measures taken at national level to counter international tax avoidance.

– Recommendation of EU compliant and effective general anti-abuse rules as a standard in MS

(4) Objective 4 - Improve in an EU context the leverage that MS might have in convincing third countries to implement good governance in tax matters

– elaborate an EU definition of third countries not complying with minimum standards of good governance in tax matters on the basis of principles recognised in this area

– toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined.

5.2. Summary of policy options

Baseline scenario
No EU change
(Objective 1) Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities
- Option A1: Presenting an action plan including prioritising specific measures
(Objective 2) To close loopholes and potential for abuse of MS' direct tax systems (national legislation and double tax conventions)
- Option B1: Address loopholes in national legislation through discussions in the Code of conduct Group for business taxation. As explained in 3.3.3 the Code of Conduct is currently discussing these issues and this option is therefore considered to be in place already - Option B2: Recommendation to prevent double non-taxation in double tax conventions.
(Objective 3) To improve the efficiency of measures taken at national level to counter international tax avoidance
- Option C1: Recommendation of EU compliant and effective general anti abuse rule (GAAR) as a standard
(Objective 4) To improve in an EU context the leverage that MS might have in convincing third countries to implement good governance in tax matters
- Option D1: Elaborate an EU definition of third countries not complying with minimum standards of good governance on the basis of principles recognised in this area - Option D2: Toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined.

6. DESCRIPTION AND IMPACT ANALYSIS OF POLICY OPTIONS (SEE ALSO ANNEX 12)

6.1. Baseline scenario: No EU Action (see also section 3.3)

If no action is taken, the problem is likely to persist or even aggravate in these times of severe economic crisis and fiscal consolidation, when many Member States need to cut expenditure and increase revenues. The inability to reduce fraud, evasion and aggressive tax planning

impairs Member States' ability to increase tax revenues and or restructure their tax systems in a way that better promotes growth as outlined in the 2012 Annual Growth Survey. Particularly in these difficult economic times, some taxpayers will continue to suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders, and persons using aggressive tax planning schemes and the possibilities provided by third countries not complying with good governance minimum standards, in particular tax havens, and the purchasing power of those other taxpayers will be adversely affected. This undermines the fairness of tax systems.

Double non-taxation will continue to occur on the basis of mismatches between tax systems of the two States involved, and be used in schemes involving aggressive tax planning and tax havens. Tax administrations will continue to support the costs of additional work to tackle double non-taxation, by costly and time intensive audits. Moreover, it would have a negative impact over taxpayers and administrations: since structures using, notably, tax havens as well as aggressive tax planning are getting more complicated and thus requesting additional financial as well as human resources to follow them, this can lead to higher costs for tax payers and tax administrations.

In addition to the negative impact on the tax revenues of the countries concerned from the shifting of profits, both phenomena will continue to cause harm by:

– distorting financial and, indirectly, real investment flows.

– undermining the integrity and fairness of tax structures. Taxpayers who have access to costly tax advice implementing aggressive tax planning structures have an unjustified competitive advantage in comparison with other taxpayers, such as small and medium- sized enterprises which leads to distortive effects. The principle of fairness of taxation is in danger as aggressive tax planning and the use of jurisdictions not complying with minimum standards of good governance is more accessible for taxpayers with income from capital who try to avoid the taxation of savings, rather than labour.

– discouraging compliance by all taxpayers: The ability of a group of taxpayers to reduce their taxes could be perceived as unfair, thus affecting public confidence in the fairness of the tax system.

– losing tax revenues in the EU Member States.

In the following tables impacts and effectiveness are presented on an ascending scale from --- to +++.

Effectiveness in achieving policy objective	--- High negative impact, policy objective not achieved
Impact on the four freedoms	-- Medium negative impact. Some MS would continue to adopt national anti-abuse measures that would not comply with EU law. Within the EU, this could impact the four freedoms.
Economic impact	--- High negative impact. In the course of the current economic and financial crisis it is likely that the lack of of EU action will lead to further losses in the MSs´ budget. This would

	affect essentially companies having cross-border activities within the EU (including SMEs) and in relation to third countries. The compliance costs (see below) resulting from multiple requirements could negatively affect the competitiveness of EU companies as compared to third countries having lower tax compliance costs and fewer tax regulation authorities. This could, together with other factors, contribute to relocation of economic activities outside the EU. In addition, this option could affect trade and investment flows involving third countries that would be considered as not complying with minimum standards by one or several MS and not by others, thereby leading to potential inconsistent approach between MS, and thus to malfunctioning of the internal market. However preferential trade arrangements between the EU and the third countries concerned should not, as such, be affected since these arrangements contain a tax carve-out provision protecting the possibility for the parties to adopt measures aimed at either adopting or enforcing national tax rules designed to combat avoidance or evasion of taxes. Moreover, this option might involve administrative or legislative actions for developing countries to prevent the misuse of their tax systems, unless these countries have concluded with the EU MS concerned a double tax convention (DTC) containing specific provisions on anti-abuse rules. There is also the possibility that national anti-abuse measures may not be able to cover triangular situations involving indirectly a developing country, such as the misuse of a DTC between an EU MS and a developing country.
Social impact	-- Medium negative impact, tends to create impression that taxation is unfair.
Impact on taxpayers/tax administrations	---- High negative impact. The compliance burden on taxpayers will remain high as a result of anti-abuse measures implemented by several MS that may be inconsistent between them and create double taxation situations, in particular in triangular situations not covered by DTC. Tax administrations are likely to increase the number of audits in order to ensure that the anti-abuse measures have been correctly implemented. This could result in additional claims and judicial appeals, which are costly for both taxpayers and tax administrations. The absence of a EU definition of criteria of good governance can also lead to higher compliance costs at level of tax payers since using individual MSs´ definitions in cross border situations are more complicated to follow.
Impact on EU budget	= No impact
Impact on	= No impact

other parties	

6.2. Objective 1 - Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities

6.2.1. Policy option A1: Presenting an action plan including prioritising specific measures

6.2.1.1. Description

An increase in the efficiency and effectiveness of tax collection is needed. In addition to the fact that Member States must improve their internal mechanisms for tax collection, the problems posed by tax fraud and evasion must be tackled through enhanced cross-border cooperation between Member States' tax administrations.

The June Communication contained a catalogue of 26 possible concrete actions which could have their own added value and would need to be subject to specific impact assessments where appropriate. Furthermore, it suggested an action plan which would present a coherent EU strategy to combat tax fraud and evasion as well as prioritise the different actions and provide a timetable for their implementation, thereby giving a strong political impetus to the process of implementing the proposed key actions and allowing to benefit from the multiplier effect of an overall, comprehensive and coordinated approach.

Within these 26 actions, 17 should be initiated by the Commission while the others fall under the responsibility of Member States tax administrations or the Council.

Concretely, the Action Plan will distinguish between actions under way or likely to be completed in the short term and actions to be developed in the medium to long term.

With regards to the prioritisation of the actions, extensive consultations have taken place with Member States in the Tax Policy Group, a FISCALIS seminar and at the Council High-Level Working Group and with the other stakeholders in the FISCALIS seminar on tax havens, aggressive tax planning, tax fraud and tax evasion (cf. paragraph 2.2). The aim of these consultations was to gauge MS' and stakeholder's reactions on the suggested concrete actions and to establish which of these are considered particularly important and urgent and should be prioritised versus those actions that are considered less urgent or more complex and could therefore be taken forward at varying speeds depending on the action.

Although all the parties consulted (Member States and other stakeholders: business community, NGOs and academia) confirmed their general support for the various actions, Member States had the opportunity to express an opinion on each individual action and its priority whereas the other stakeholders basically expressed a general view on the subject and a specific opinion only on certain individual actions. Also, all the consultations stressed the necessity for all actions to be undertaken to ensure the greatest possible reduction of costs and burdens for both tax administrations and taxpayers.

Further to these consultations, the majority of Member States and other stakeholders expressed the following respective opinions (+ means positive response, - negative, = no strong opinion, +/- some positive, some negative):

Initiatives that the Commission has already taken and requiring now priority from actors other than the Commission	**Member States**	**Other stake-holders***
(i) Adoption of amended Savings Directive	+	+
(ii) Adoption of the proposed negotiating mandate with Switzerland, Andorra, Monaco, Liechtenstein and San Marino	+	+
(iii) Approval of the draft EU/Liechtenstein agreement on anti-fraud and tax cooperation matters	=	=
(iv) Adoption of the proposed mandate to open similar negotiations with Andorra, Monaco, San Marino and Switzerland	=	=
(v) Adoption of the proposal for a quick reaction mechanism in the field of VAT	+	=
(vi) Implementation of the decision establishing an EU VAT forum	=	+
Actions proposed by the Commission at the same time as the action plan	**Member States**	**Other stake-holders***
(i) Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters	+	+/-
(ii) Recommendation on aggressive tax planning		
(iii) Improving administrative cooperation through the new application "TIN on EUROPA"	+	=
(iv) The implementing regulation of Directive 2011/16/EU on administrative cooperation in the field of taxation	+	=
(v) A Regulation amending Regulation No 3199/93 and providing for a Euro denaturant for completely and partly denaturated alcohol	+	=
Actions to be undertaken in the short term (December 2013)	**Member States**	**Other stake-holders***
(i) Better cooperation between all law enforcement services (including between direct and indirect taxation areas and not	+	+

only on tax fraud and evasion but also on tax related crimes through e.g. Europol)		
(ii) Promotion of EU IT tools and standard of automatic exchange of information in international forums	+	+
(iii) Promotion of the use of simultaneous controls and the presence of foreign officials for audits	+	+/-
(iv) EU taxpayer's charter	=	+
Actions to be undertaken in the medium term (December 2014)	**Member States**	**Other stake-holders***
(i) Developing computerised formats for automatic exchange of information	+	+
(ii) Paving the way for a potential legislative framework for an EU Tax Identification Number (TIN) for cross border operations[26]	+/-	-
(iii) Guidelines for tracing money flows	+	=
(iv) Enhancing risk management techniques (compliance risk management)	+	=
(v) Extend Eurofisc to direct taxation	+/-	=
(vi) Creation of a one-stop shop approach for all taxes in all Member States	+/-	+
(vii) Developing motivational incentives	-	+
(viii) Obtain a mandate for negotiating and concluding multilateral agreements for administrative cooperation in the field of indirect taxes with third countries	=	=
Actions to be undertaken in the longer term (beyond 2014)	**Member States**	**Other stake-holders***
(i) A methodology for joint audits by dedicated teams of trained auditors	-	+
(ii) Develop mutual direct access to national data bases	-	=
(iii) Propose a single legal instrument for administrative	-	=

[26] Some Member State and other stakeholders expressed doubts as regards the possibility to introduce an EU TIN, highlighting that other solutions could be studied such as an improved national TIN.

cooperation for all taxes (iv) Develop a tax web portal (v) Propose an approximation of administrative or criminal sanctions	 +/- -	 + -
Legend: +: Support / =: no opinion / -: No support / +/-: Diverging opinions ** Other stakeholders: business community, NGOs and academia*		

6.2.1.2. Impacts

The consultations have also allowed the Commission to fine-tune the possible orientations of several of these actions, which are presented in Annex 13, in order to ensure the greatest benefits from an overall and coordinated action plan.

In the following tables impacts and effectiveness are presented on an ascending scale from --- to +++.

Expected impact	
Effectiveness in achieving policy objective	++ Medium positive impact: through the on-going and priority actions, the action plan allows reaping the invaluable benefits of the automatic exchange of information and enhanced identification of taxpayers in the case of cross-border transactions, reacting promptly against sudden and massive VAT frauds resulting in considerable loss for the treasuries, solving cross-border VAT problems through dialogue with traders and raising awareness and education of VAT taxpayers to ease compliance; the benefits of the other concrete actions will be obtained later on.
Fundamental rights	- Low negative impact: the policy option might affect the right to the protection of personal data, recognized in Article 8 of the charter of Fundamental Rights of the EU, as the action plan may result in more personal data being exchanged in the interest of public finance; any personal data exchange should comply with the existing EU rules.
Economic impact	++ Medium positive impact: Although the introduction of additional measures may trigger modifications in the behaviour of taxpayers, the functioning of the internal market will at the same time be improved through the elimination of various bias in tax administration, enforcement and collection.
Social impact	+++ High positive impact: by improving the administrative cooperation, this policy option will increase the effectiveness and timeliness of cross-border tax administration, enforcement and collection; the

	option will also result in a deterrent effect, encouraging taxpayers to report all relevant tax information and thus increasing voluntarily tax compliance on a go-forward basis; whereas the impact on employment is very much indirect, the actual existence of a level-playing field of all taxpayers and fair and equal treatment between them will also increase significantly social cohesion and tax morale in the society.
Impact on taxpayers	++ Medium positive impact: The policy option will induce a positive effect on the horizontal equity between the various categories of income and capital and all taxpayers.
Impact on tax administrations	+++ High positive impact: although the action plan entail costs and change management, it will foremost strongly simplify procedures and administrative burdens on tax administrations through wider computerisation, exchange of best practices and common guidelines, thereby rationalising approaches and freeing resources.
Impact on EU budget	- Low negative impact: further to the adoption of an action plan, the Commission services will have to study and potentially implement various concrete actions, requiring additional human and budgetary resources.

6.3. Objective 2: Close loopholes and potential for abuse in MS' direct tax legislation and double tax conventions)

6.3.1. Policy option B1: Address loopholes in national legislation in the Code of Conduct Group for business taxation

The tax systems of EU MS are subject to a number of loopholes stemming from national legislation. Some of them are currently being examined by the Code of Conduct group.

Efforts to counter aggressive tax planning schemes at EU level have recently taken place essentially in the work of the Code of Conduct for business taxation, and focused on hybrid entities and mismatches. The Code was specifically designed to detect measures which unduly affect the location of business activity in the EU by providing a lower level of taxation, including zero taxation, than those that generally apply in the country concerned. For the purpose of identifying such harmful measures the Code sets out the criteria against which any potentially harmful measures are to be tested against, such as tax benefits reserved for (transactions with) non-residents, the granting of tax advantages even in the absence of any real economic activity, or lack of transparency.

Recently, within the Code of Conduct Group an increasing amount of work has been directed at 'mismatches' (for example hybrid, profit participating loans). The Code Group has clearly agreed on the need to resolve these mismatches and it even identified a possible solution based on mutual recognition but has not yet been able to implement this.

At broader international level, recent actions by the OECD have also targeted aggressive tax planning (ATP), focusing primarily on artificial tax avoidance issues[27].

The main conclusions are:

a) Hybrid mismatch arrangements that arguably comply with the letter of the laws of two countries but that achieve non-taxation in both countries, which result may not be intended by either country, generate significant policy issues in terms of tax revenue, competition, economic efficiency, fairness and transparency.

b) The same concern that exists in relation to distortions caused by double taxation exists in relation to unintended double non-taxation.

c) Specific and targeted rules which link the tax treatment in the country concerned to the tax treatment in another country in appropriate situations hold significant potential to address certain hybrid mismatch arrangements and have recently been introduced by a number of countries.

d) Countries' experience in relation to the design, application and effects of specific and targeted rules denying benefits in the case of hybrid mismatch arrangements is positive. The application of the rules needs however to be constantly monitored to ensure that the rules apply in appropriate circumstances and are not circumvented through the use of even more complex arrangements.

The OECD has also set up a specific restricted working group, dedicated to detecting aggressive tax planning schemes, of which14 EU MS are members.

Because this option is already underway its impact has not been formally assessed.

6.3.2. Policy option B2: Recommendation to prevent double non taxation in double tax conventions

States often undertake, in their double tax conventions (DTC), not to tax certain items of income without necessarily taking into account whether such items are subject to tax in the other party of that convention. This may lead to double non-taxation. There are examples of DTC which contain a provision to ensure that double non taxation is avoided in cross-border situations, by disallowing exemption of untaxed income. For instance, the Protocol of the DTC between France and Italy in its point 15 provides that exemption shall only be granted if and to the extent such income is taxable in the other State. However, this type of solution is rare, which means that double non-taxation may occur in the implementing double taxation conventions between EU MS.

Such type of solution could, assuming agreement on article 1 of the revised Interest and Royalty proposal[28], be applied between MS, and also between MS and third countries. It would ensure that, in bilateral relations between MS (340 DTC) and

[27] Reports: "Hybrid Mismatch Arrangements: Tax Policy and Compliance Issues, March 2012; Tackling Aggressive Tax Planning through Improved Transparency and Disclosure, February 2011

[28] Proposal for a Council directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM(2011)714, 11.11.2011.

between MS and third countries (almost 1349 DTC see also annex 8) , double non-taxation would be avoided.

Concrete action by all Member States intended to remedy the problems related to double non-taxation is needed and would improve the operation of the internal market. Therefore, the Commission recommends MS to include a clause in their DTC concluded with other EU MS and with third countries to resolve a specific identified type of double non-taxation. Support was received from Member States, the business community and NGOs.

Expected impact	
Effectiveness in achieving policy objective	+++ High positive impact, in bilateral situations covering two EU MS or one MS and a third country. This option will bring to completion the specific policy objective of closing loopholes stemming from DTC provided that MS implement the recommendation. This will have however no impact on situations involving more than 2 countries.
Fundamental rights	+ Low positive impact. Given the expected effects of the planned measures on Member States' revenues, and the potential re-allocation of additional tax revenues to welfare institutions, a positive impact could be expected with regard to some rights, such as those enshrined in art. 34 (social security and social assistance), art. 35 (health care) and art. 36 (access to services of general interest).
Economic impact	++ Medium positive impact. This option will contribute to reduce the scope of double non-taxation, and to improve accordingly the tax revenues of EU MS. It may lead tax administrations to more flexibility in dealing with cross-border situations. Insofar as the additional tax revenues would be collected from improved compliance, it may contribute to reducing compliance costs and improving competitiveness of EU companies (including SME in cross-border situations) in cross-border situations with other EU Member States or with third countries. In addition, although it is difficult to assess the impact of this measure on the overall competitiveness of economic operators, a qualitative assessment suggests that there will be an overall balance between the increases in taxes paid by current avoiders and the reduction in compliance costs due to simplification of procedures that should benefit to all operators (in addition to indirect benefits such as improved welfare and infrastructures that MS will be better enabled to finance).
Social impact	= No impact
Impact on taxpayers/tax administrations	++ Medium positive impact. By reducing the scope for double non-taxation this option would also reduce the opportunities for a small number of taxpayers to reduce their tax costs. However this could lead to reduce pressure on tax administrations and reduce

	compliance requirements for EU taxpayers in cross-border situations. This would apply between EU Member States having included such a provision in their DTCs, and also between EU Member States and third countries under the same condition.
Impact on EU budget	= No impact
Impact on other parties	= No impact

6.4. Objective 3 - Improve the efficiency of measures taken at national level to counter international tax avoidance

6.4.1. Policy option C1: Recommendation of EU compliant and effective general anti-abuse measures in MS

General anti abuse rules (GAAR) applied currently by individual MS can be summarised as rules that generally prevent taxpayers from entering into abusive transactions/planning, for the sole (or main) purpose of avoiding or reducing a tax charge.

The measures are generally laid down in primary law. Some of the measures are based on case law or derived from tax-administration practices (Denmark, France, the Netherlands and Sweden). MS apply different types of GAARs which can be categorised according to the following concepts/principles:

- abuse of law: the law is formally complied with but in a way that is not compatible with its spirit;
- the substance-over-form principle: the law is formally complied with but there is a lack of substance supporting the transaction/restructuring so that the tax authorities can disregard its form;
- the simulation/sham concept: a transaction is entered into by parties but not adhered to by them because another transaction, which is adhered to, alters or negates the first transaction.

Existing anti-abuse measures cover a wide variety of forms and targets, having been designed in a national context to address the specific concerns of MS and features of their tax systems. However, some anti-abuse measures adopted by MS may raise some compliance issues with EU rules[29] or other international rules when applied to third countries. Following the 2007 EC Communication on anti-abuse measures in the area of direct taxation (COM(2007)785)[30] and in reaction to the case law of the Court of Justice of the EU, the Council adopted a resolution in 2010[31] on coordination of tax policies in anti-abuse measures. This mainly focused on CFC and

29 Jurisprudence of the Court of Justice, e.g. Case C- 196/04 Cadbury Schweppes [2006] ECR I- 7995.
30 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0785:FIN:en:PDF
31 Council Resolution, The coordination of the Controlled Foreign Corporation (CFC) and Thin Capitalisation rules within the European Union, 10597/2010, 08.06.2010.

thin capitalisation. Article 80 of the proposed CCCTB Directive[32] contains a general anti-abuse rule stipulating that artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base. This approach could be recommended for all company tax legislation, not just the CCCTB.

The Commission could recommend to counteract aggressive tax planning practices which fall outside the scope of Member States´ specific anti-avoidance rules and that Member States adopt the following general anti-abuse rule, fitted to domestic and cross-border situations confined to the Union and situations involving third countries: "An artificial arrangement or an artificial series of arrangements which has been put in place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. National authorities shall treat these arrangements for tax purposes by reference to their economic substance." This GAAR is in compliance with Treaty Freedoms, as interpreted by the Court of Justice. This common approach towards third countries will establish a minimum protection standard against aggressive tax planning. Some support was received from Member States, the business community and NGOs.

Expected impact	
Effectiveness in achieving policy objective	++ Medium positive impact. However the effectiveness of this option will depend on EU MS' willingness to implement it at their level.
Fundamental rights	+ Low positive impact. Given the expected effects of the planned measures on Member States' revenues, and the potential re-allocation of additional tax revenues to welfare institutions, a positive impact could be expected with regard to some rights, such as those enshrined in art. 34 (social security and social assistance), art. 35 (health care) and art. 36 (access to services of general interest).
Impact on the four freedoms	++ Medium positive impact. This option would ensure that the anti-abuse measures adopted and implemented by EU MS on the basis of this template would raise no EU compliance issue.
Economic impact	+++ High positive impact. This would affect essentially companies having cross-border activities within the EU (including SMEs) and in relation to third countries. It would reduce the compliance costs (see below) of EU companies resulting from current multiple anti-abuse requirements and could positively affect the competitiveness of EU companies by bringing their compliance costs closer to those of third countries. This could, together with other factors, contribute to reducing the motivation for relocating economic activities outside the EU.

[32] COM (2011) 121

	This option could positively affect trade and investment flows in cases involving third countries by reducing inconsistencies in regulations implemented by MS towards these countries. The reduction of such inconsistencies would improve the operation of the internal market. Preferential trade arrangements between the EU and the third countries concerned should not, as such, be affected since these arrangements contain a tax carve-out provision protecting the possibility for the parties to adopt measures aimed at either adopting or enforcing national tax rules designed to combat avoidance or evasion of taxes. Moreover, since national anti-abuse measures of MS would be more consistent in their design, this option could reduce the adjustment costs for developing countries not having concluded with the EU MS concerned a DTC containing specific provisions on anti-abuse rules.
Social impact	= No impact
Impact on taxpayers/tax administrations	+++ High positive impact. The most positive impact would be for companies having cross-border activities in several MS, since the simplification of administrative burden, resulting from the implementation of EU MS's comparable anti-abuse rules, would reduce the compliance costs for taxpayers. This option is likely to have little impact on the number of audits made by tax administrations, but the consistent design of anti-abuse measures across EU MS is likely to reduce the number of potential litigations for EU companies operating in several MS, thereby having a positive impact on MS' administrative costs.
Impact on EU budget	= No impact
Impact on other parties	= No impact

6.5. Objective 4 (Options D1 and D2) - Improve in an EU context the leverage that MS might have in convincing third countries to implement good governance in tax matters

In order to add leverage in convincing third countries to implement the principles of good governance in the tax area, the Commission could recommend a common EU definition of jurisdictions not complying with minimum standards of good governance in tax matters (D1) that could be used for the purposes of national anti-abuse rules, and as second step a toolbox of measures to be applied according to whether or not those jurisdictions comply with those standards (D2).

6.5.1. *Policy option D1: Recommended EU definition of jurisdictions not complying with minimum standards of good governance in tax matters*

Currently, only few MS have a formal definition of jurisdictions not complying with minimum standards of good governance in tax matters, including tax havens, although many of them have various concepts which describe such jurisdictions. Those concepts are generally based on the level of taxation in the country concerned or its level of cooperation on the principles of transparency and information exchange. Different MS also use different terms for such countries (low tax territories, non-cooperative states or territories, non-treaty countries, countries with a low tax burden, countries with a low tax burden, tax havens). This leads MS to consider different third countries as tax havens and makes difficult the setting-up of any coordinated action within the EU.

It was highly recognised by MS and stakeholders present at the July Fiscalis seminar that a prerequisite for possible joint action at EU level should be based on a common definition of jurisdictions not complying with minimum standards of good governance in tax matters..

In order to prepare for a general approach and add leverage to EU action it is suggested to elaborate an EU definition of jurisdictions not complying with minimum standards of good governance in tax matters.

This definition could be based potentially on various criteria:

- the two criteria of transparency and information exchange, known as the 'international standard on transparency and information exchange' and recognised by the OECD and the UN. Since the assessment of these criteria is made by the OECD Global Forum on transparency and exchange of information, the EU could rely on the OECD assessment and no specific work would be considered at EU level;
- the technical criteria of tax havens developed by the OECD in its 1998 report. However, since this route is not currently being actively followed by the OECD, and is not based on an EU- agreed work, there seems to be little chance for the EU to reach agreement within a reasonable period of time;
- the sole criteria of the Code of Conduct for business taxation, as already implemented by the 27 MS and their dependent and associated territories. This route would address the concerns of a number of MS, and could be the basis for a political agreement, but still lacks any assessment of the international standard of transparency and exchange of information;
- the three principles of good governance in the tax area, i.e. including fair tax competition. Some MS have suggested the level of taxation should also be taken into account- others are less keen on this aspect.

Expected impact	
Effectiveness in achieving	+++ High positive impact. This option would be of high effectiveness, although its effectiveness depends on how many MS adopt it. The higher effectiveness would occur if all 27 MS would adopt

policy objective	this list.
Fundamental rights	+ Low positive impact. Given the expected effects of the planned measures on Member States' revenues, and the potential re-allocation of additional tax revenues to welfare institutions, a positive impact could be expected with regard to some rights, such as those enshrined in art. 34 (social security and social assistance), art. 35 (health care) and art. 36 (access to services of general interest).
Economic impact	+++ High positive impact: If the EU definition of minimum standards of good governance is commonly applied in all MS then the impact on a particular third country which is considered as not complying with such standards (which includes tax havens) is substantially different than if such a country is considered as a tax haven by one MS only. This country can be then more forced to implement the principles of good governance in the tax area, i.e. to establish a transparent tax system, to exchange tax information and not to introduce harmful tax practices. This could shift profits and income from the third countries concerned back to MS limit and thus bring additional revenues to MS budget. It would also improve the competitiveness of EU companies by broadening the geographical scope of tax requirement currently being applied mostly in the EU. In addition, although it is difficult to assess the impact of this measure on the overall competitiveness of economic operators, a qualitative assessment suggests that there will be an overall balance between the increases in taxes paid by current avoiders and the reduction in compliance costs due to simplification of procedures that should benefit to all operators (in addition to indirect benefits such as improved welfare and infrastructures that MS will be better enabled to finance).
Social impact	++ Medium positive impact: The ability of larger companies to reduce their taxes could be limited and thus affecting public confidence in the fairness of the tax system.
Impact on taxpayers/tax administrations	++ Medium positive impact: a common understanding of the EU definition and a common definition, allowing to ascertain whether a third country complies or not with standards of good governance, can reduce costs to tax administrations since such a definition can be more easily followed in all MS.
Impact on EU budget	= No impact
Impact on other parties	- Low negative impact: from the perspective of developing countries the possible shifting of profits and income from the third countries concerned back into MS could have a negative impact on tax havens economies since some of these economies are fully depended on a worldwide recognition of being a capital market

	centre.

6.5.2. *Policy option D2: Recommendation for a Toolbox of measures to be applied to jurisdictions not complying with minimum standards of good governance*

Introduction of a toolbox of measures to be used by MS and EU institutions according to their respective competences in order to better convince third countries to cooperate in the tax area with EU MS in a tailor made approach by countries.

So far, MS have reacted individually with measures at national level, adopted by each country according to its own criteria. To address international tax challenges involving, in particular, third countries national remedies only are often of limited efficiency. During the consultation process it was broadly recognised by MS that these individual or specific actions often had limited effectiveness given the international scope of the problem. Strong support was received from Member States, the business community and NGOs to introduce this toolbox. This option describes a set of measures to be used in convincing third countries to cooperate with EU MS in tax matters operated by the MS.

1. Removal from national blacklists / Blacklisting (MS level)

Once a third country would be considered as a cooperative jurisdiction by MS and the EU institutions on the basis if the EU definition of jurisdictions not complying with minimum standards of good governance, it would be recommended to remove such a country from existing blacklists of individual MS. MS would then stop from applying anti-abuse measures toward this country. Such a measure would add leverage in convincing this third country to implement the principles of good governance in the tax area and thus be considered as a cooperative jurisdiction by 27 MS.

On the contrary, if a third country is considered as a jurisdictions not complying with minimum standards of good governance, then MS could be recommended to include such a country in their national blacklists and apply the measures contained in the toolbox.

2. Conclusion of double tax conventions (DTC) / Suspension/ termination of DTC (MS level)

Once a third country implements the principles of good governance in the tax area it may be recommended to the MS to conclude DTCs with this country. A third country to which such a benefit is promised to be granted may be convinced more easily to cooperate. On the contrary, if a third country refuses the application of principles of good governance, then MS could be recommended to suspend or terminate their double tax conventions with such a country. However, in certain cases, it could be more advantageous for the overall situation, in terms of good governance, if the Member State concerned initiated re-negotiation of its double taxation agreements.

3. Ad hoc detachment of experts from EU MS (MS level) to developing countries

Some third countries, especially the developing ones suffer from a lack of resources to effectively fight against tax evasion and aggressive tax planning, for instance, to exchange of tax information properly. In order to assist such countries with providing

the relevant information EU MS could be recommended to offer closer cooperation with those countries and detach their own tax experts there for a limited period of time. This would avoid having third countries opposing capacity constraints to refuse exchanging information.

In addition to measures recommended to Member States, and in order to accompany their efforts, the following measures of EU competence could be considered by the Commission.

1. Possible enhancement of development aid for capacity building (EU level – outside the toolbox)

The Commission provides technical assistance for the implementation of the principles of good governance in the tax area (transparency, exchange of information and fair tax competition) to developing countries that are committed to these principles. In this respect further EU assistance in the tax area should continue to focus, as a priority, on supporting efforts in third countries to implement compliance with the three principles of good governance in the tax area. With this EU assistance would not run the risk of being used by countries that would ultimately engage in harmful tax practices against EU MS.

2. Impact to be taken into account when concluding preferential economic relations such as free trade agreements (EU level – outside the toolbox)

The conclusion of preferential economic relations, such as access to EU markets, with third countries identified as not complying with minimum standards of good governance, should be considered in the overall context of a costs/benefits analysis including tax aspects. In practice it means that conclusion of free trade related agreements could be accompanied by agreement on the principles of tax good governance, and their implementation, for example.

Expected impact	
Effectiveness in achieving policy objective	+++ High positive impact: the effectiveness of this option would be moderate if very few MS subscribe to it. It is likely to be high, if a large majority of (or all) the 27 MS agree on the set of measures. By raising awareness of third countries on possible measures from MS, this option would have some effectiveness.
Fundamental freedoms	= No impact
Economic impact	+++ High positive impact: The suggested option can strengthen the integrity and fairness of tax structures and encourage compliance by all taxpayers. It is also expected to bring additional revenues to MS budget. In addition, although it is difficult to assess the impact of this measure on the overall competitiveness of economic operators, a qualitative assessment suggests that there will be an overall balance between the increases in taxes paid by current avoiders and the reduction in compliance costs due to simplification of procedures that should benefit to all operators (in

	addition to indirect benefits such as improved welfare and infrastructures that MS will be better enabled to finance).
Social impact	++ Medium positive impact: the ability of larger companies to reduce their taxes could be limited and thus affecting public confidence in the fairness of the tax system.
Impact on taxpayers/tax administrations	+++ High positive impact: the approach is expected to help eliminating the use of tax non-compliant jurisdictions, and and thus to decrease costs of tax payers and tax administration which otherwise have to spend their financial and human resources to follow them in order to use them or to fight against them. The compliance burdens on tax authorities and tax payers can be also decreased. This can also eliminate or decrease undesired shifts of part of the tax burden to less mobile tax bases, such as labour, property and consumption.
Impact on EU budget	= No impact
Impact on other parties	- Low negative impact: from the perspective of developing countries the possible shifting of profits and income from the third countries concerned back into MS could have a negative impact on tax havens economies since some of these economies are fully depended on a worldwide recognition of being a capital market centre.

7. ASSESSMENT OF THE IMPACT ON SMALL AND MEDIUM ENTERPRISES (SME)

The measures assessed are primarily directed to MS. They might indirectly affect businesses and individuals, since they are taxpayers

Those taxpayers currently "using" fraud and evasion schemes or sophisticated tax planning are currently paying less tax than those fully complying with MS's tax rules. As a result of the measures envisaged, non-compliant taxpayers will in the future pay more taxes than they do currently. This should conversely result in fairer tax systems and possibly a reduction in tax rates if the full amount of tax due is collected.

However, there is no indication that SME would be specifically affected by the measures, since such elaborated schemes based on international schemas are less likely to involve SME than large enterprises. SME should, therefore, be among those taxpayers that are more likely to benefit indirectly from fairer tax systems. Simpler common EU approaches should reduce compliance costs for all companies, including SMEs.

In addition, at this stage of the assessment, it is difficult to assess the quantitative impact of the initiative on economic operators. However, a qualitative assessment suggests, for the reasons outlined above, that SMEs will "suffer" less from the

increase in tax as they are less likely to use such schemes, but benefit more from any reduction in compliance cost due to simplification. Work in the Joint Transfer Pricing Forum on SMEs confirms that SMEs tend to have fewer complex problems but suffer disproportionately from excessively complex compliance procedures.

Overall, the conclusion of the impact assessment contains no indication that the selected options might result in a disproportionate burden for SMEs as compared to the current situation. Therefore, there is no need for SME specific measures (see annex 11).

8. COMPARISON OF MAIN OPTIONS

8.1. Definition of the assessment criteria

For assessing the Policy Options to protect MS's tax systems (Policy Option A), and for closing loopholes and potential for abuses of MS' direct tax systems and improving the efficiency of measures taken at national level to counter international tax avoidance (Policy Options B, C, and D) the following criteria will be used:

– Incentive: Incentive for MS to strengthen their rules

– Effectiveness: in terms of achieving the objective

– Proportionality: Going no further in terms of EU measures than is necessary to achieve the objective

– Efficiency: The extent to which the objective can be achieved for a given level of resources/ at least cost

– Flexibility: Ease of adjustment to react to changes of the economic circumstances

8.2. Comparative assessment of Policy Option A1: Enhance tax administration, tax enforcement and tax collection in the case of cross-border transactions

Criteria	Baseline scenario (no EU action)	A1: Action plan
Incentive	=: No incentive effect	+++: As demonstrated by the call[33] addressed in March 2012 by the European Council to the Council and the Commission as well as the resolution[34] of the European Parliament one month later, there is a clear interest and a political will to develop rapidly concrete actions against tax fraud and tax evasion. As the action plan will be a central element in the way forward to this end, there is a clear incentive for Member States to adopt the action plan and later on support the implementation of the derived concrete actions and adapt their rules, procedures and systems as far as necessary.
Effectiveness	=: No effectiveness	+++: The action plan will permit to put in place streamlined working methodologies and approaches to tax administration, enforcement and collection.
Proportionality	=: Not relevant	+++: The proportionality of the action plan is ensured by: - The focus of action plan is on clear priorities where action has been identified as necessary in consultation with Member States ; - The commitment to carry out specific (proportionate) impact assessments analysing various options for each of the concrete actions before a proposal is made; - The participation of Member States in both the preparation and the adoption of the options.
Efficiency	=: No proportionality issue	+++: : The action plan will lead to better results for tax administration in terms of tax enforcement and tax collection and thereby to a better protection of MS tax systems.
Flexibility	=: Not relevant	+++: The action plan offers flexibility as it sets out concrete actions on the basis of a priority list whereas the option to be retained for each of these concrete actions will be determined on the basis of further work (including potentially studies, public consultations, seminars with Member States...) assessing the various possible ways forward.
Conclusion: The policy option 2 foreseeing an action plan presenting concrete measures reinforcing the fight against tax fraud and tax evasion is the		

33 Council of the European Union, 7824/1/12 REV1

34 European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion, P7_TA(2012)0137

preferred option as it is the only option both achieving the effectiveness of the policy objective while ensuring that the requirements to proportionality, efficiency and flexibility are respected.

8.3. Comparative assessment of Policy Option B2 : Close loopholes stemming from double tax conventions

Criteria	Baseline scenario (no EU action)	**B2: Recommendation**
Effectiveness	----: No effectiveness. Loopholes remain.	+++: This option would contribute to achieving the objective of closing loopholes stemming from DTC. The implementation would be left to the MS concerned, unless in the course of the discussions with MS it appears relevant to provide for a monitoring process. If a clause to avoid double non taxation was included in a comprehensive network of double taxation treaties between Member States, this would help meeting the objective of reducing double non taxation of cross-border activities within the EU. However, consideration should be given to possible differences of interpretation or implementation given the differences amongst the 27 tax systems.
Proportionality	=: this option does not conflict with proportionality standards.	+++: This option would be in line with the principle of proportionality standards as it directed to solve only limited cases of double non- taxation. The measures would not go beyond what is necessary to address the problems identified. At this stage, it would not involve harmonisation of Member States' law.
Efficiency	=: Not relevant	+++:From an efficiency point of view this option would be the best solution, allowing to design at EU level a template on which basis MS would amend their existing DTC or negotiate new ones, thereby closing loopholes in their DTC. MS should ensure the implementation. However, Member States would have to reopen their existing bilateral tax conventions to include such tax provisions, which could take some time and involve some administrative costs for tax administrations and for businesses covered by these conventions. The scale of these costs should be similar to those of minor changes in tax legislation. Tax conventions require regular updating to reflect changes in laws if they are to eliminate double taxation successfully. Furthermore, because of their bilateral nature, DTC might not be capable of addressing problems resulting from taxation by more than two countries.
Flexibility	=: Not relevant	+++: This option would not impose any binding obligation on Member States to eliminate double non-taxation.
Conclusion: as regards policy options, the preferred option is Policy		

8.4. Comparative assessment of policy option C1: Adopt EU compliant and effective anti-abuse measures in MS

Criteria	**Baseline scenario (no EU action)**	**C1: Recommendation**
Effectiveness	----: No effectiveness. This option would not achieve the objective.	+++: The effectiveness of this option would rely on the decision of MS, and would improve the incentive for Member States to design efficient anti- abuse rules.
Proportionality	=: this option does not conflict with proportionality standards.	++++: By leaving it to the MS to decide on the design of their own measures, the option would remain proportionate. The GAAR is designed to counteract situations which fall outside the scope of national anti avoidance rules in line with the law of the EU. This option would improve knowledge about the applicable anti abuse rule, thereby complementing Commission's actions to tackle incompatibilities with EU law by way of infringement proceedings.
Efficiency	=: Not relevant	+++: The option would be efficient since only MS considering their current measures as inefficient would adapt their rules
Flexibility	=: Not relevant	+++: The option would allow MS to have a flexible approach according to their needs. They would remain free to adopt other anti-abuse measures designed to address some specific features of their tax systems. This rule can be adapted to cater for evolutions in Court of Justice case law and new developments in Member States' laws.
Conclusion: As regards policy options, the preferred option is Policy Option C1. It would rely on MS’ willingness to implement. In addition, option C1 is proportionate and flexible: it takes into account the comments received from experts that an anti-abuse measure designed at EU level should leave open the possibility for MS to adopt relevant other measures corresponding to the specific features of their tax systems.		

8.5. Comparative assessment of policy options D1 : a definition of jurisdictions not complying with minimum standards of good governance in tax matters

Criteria	Baseline scenario (no EU action)	D1: Recommendation
Effectiveness	----: No effectiveness. This option would not achieve the objective.	++: This option would be of medium effectiveness, since its effectiveness depends on how many MS adopt it. The higher effectiveness would occur if all 27 MS would adopt this list[35].
Proportionality	=: this option does not conflict with proportionality standards.	+++: This option remains within the proportionality rules since it is based on the criteria of good governance in tax matters, which are recognised at EU level and implemented by all EU MS. In addition, the policy option would be implemented on a voluntary basis by MS.
Efficiency	=: Not relevant	+++: Adefinition of jurisdictions not complying with minimum standards of good governance in tax matters elaborated together with the MS would be a simplification that would save costs at national level. The measure is therefore efficient.
Flexibility	=: Not relevant	+++: The criteria would be reviewed on a regular basis (time period to be agreed with the EU MS and that could be annual for instance), which would therefore ensure its flexibility.
Conclusion: The preferred option is Policy Option D1, which would have the higher efficiency in achieving the objective of adding leverage towards third countries and sending a strong message to them of it were to be adopted by all 27 MS, as underlined by some experts consulted, while remaining proportionate and flexible.		

[35] An empiric example of this effect is the Global Forum on Transparency and Exchange of Information - many States took action to be removed from its black list.

8.6. Assessment of policy options D2: Toolbox of measures that could be applied towards jurisdictions not complying with minimum standards of good governance in tax matters

Criteria	Baseline scenario (no EU action)	D2: Recommendation
Effectiveness	----: No effectiveness.	+++: The effectiveness of this option would be moderate if very few MS subscribe to it. It is likely to be high, if a large majority of (or all) the 27 MS agree on the set of measures. By raising awareness of third countries on possible measures from MS, this option would have some effectiveness.
Proportionality	=: this option does not conflict with proportionality standards.	+++: MS have to take a variety of measures to limit harmful effects which can be circumvented by routing business through another state with a lower level of protection. A common apporach towards jurisdictions not complying with minimum standards of good governance in tax matters is therefore proportionate. In addition, the EU level is the lowest level where the 27 MS could discuss together and agree on a potential list of measures to be applied towards third countries.
Efficiency	=: No efficiency	+: The option would be efficient since only MS considering their current measures as inefficient would adapt their rules. When all Member States adopt the measures proposed then jurisdictions not complying with minimum standards of good governance will have a higher motivation to reform their tax systems implementing good governance in the tax area in such a way that they are no longer considered to fall within the definition compared to the situation where each MS apply different or no countermeasures.
Flexibility	=: Not relevant	++: The option is flexible because it leaves open the possibility for MS to apply some or all of the measures, and does not prevent them from applying other measures if need be.
Conclusion: The preferred option is Policy Option D2 because of its higher effectiveness in addressing a strong message of EU determination and consistency to third countries, as underlined by experts consulted, and its flexibility leaving to the MS the possibility to adopting additional measures if need be.		

9. THE PREFERRED OPTIONS

In view of its effectiveness, proportionality and flexibility, the preferred option for meeting objective 1, i.e. enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities, is the issuance of an action plan in which measures will be presented and prioritised. Choosing the no-change option would carry high risks.

The plan can focus on actions for different stakeholders and establish priorities in line with clear stakeholder preferences with emphasis on:

– Measures to enhance existing instruments of co-operation: strong support was received from Member States, the business community and NGOs, in particular to enhance automatic exchange of information and develop common formats to facilitate this type of co-operation. Support to the identification of taxpayers was given by Member States but some of them and the business community expressed reservations on the setting up of an EU TIN as potentially likely to generate administrative burden and costs;

– Prioritisation of VAT actions: strong support was received from Member States, the business community and NGOs, to develop instruments and tools aiming at fighting against VAT fraud and evasion, in particular as regards a quick reaction mechanism;

– Other supporting measures subject to further consultation and assessment.

The individual elements to be brought into the plan as identified in the Commission's June Communication[36] cover a variety of actions as set out in this Impact Assessment.

The preferred options for dealing with third countries not complying with minimum standards of good governance in tax matters, as well as with aggressive tax planning flow from the comparison tables above, as a combination of Policy Options B2, C1, D1, and D2. This is a more detailed series of measures where rapid progress in the short term could be achieved.

Four main actions could be envisaged relating to:

– A template for a double non-taxation provision to be inserted in double tax conventions between EU MS and between EU MS and third countries,

– A recommended EU wide anti-abuse measure for MS to adopt,

– A recommended EU definition of third countries not complying with minimum standards of good governance in tax matters on the basis of the principles recognised in this area (transparency, exchange of information and fair tax competition), and

[36] COM (2012) 351 final

– A recommended toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined;

The final choice of actions will depend on a political appreciation of the feasibility and relevance thereof given the potential effect on MS budget resources.

10. MONITORING AND EVALUATION

10.1. Fraud and Evasion

The monitoring and evaluation of the effects of the elements of the Action Plan and the specific measures on tax havens and aggressive tax planning will need to be foreseen in the proposals for the concrete actions. However, in order to ensure that the action plan itself is actually converted into concrete actions and that the expected results are delivered, the Commission could issue progress reports on a regular basis. Such progress reports would include details on the proposals made and their implementation status, building for example on the following indicators:

- number and types of practical instruments (including IT tools) developed by the EU and its Member States to enhance exchange of information;

- number and type of practical instruments (including IT tools) developed by the EU and its Member States to improve the identification of taxpayer;

- number and types of measures adopted in the realm of the fight against VAT fraud and evasion;

- number and types of guidelines or other tools developed by the Commission and its Member States to enhance taxpayers' compliance in the realm of VAT.

10.2. Jurisdictions not complying with minimum standards of good governance, as well as aggressive tax planning

Given the nature of the preferred options, it is not easy at this stage to define appropriate indicators.

Indeed, the best quantitative indicator would probably be based on the evolution of MS revenue losses stemming from tax fraud, evasion, as well as from the use of tax havens and aggressive tax planning. However, establishing a reliable quantitative baseline for monitoring has not been possible.

Progress could therefore be monitored by preparing regular reports from the Commission on the implementation of any recommendations to be discussed at ECOFIN level.

Such reports could cover the following information:

– the number of double tax conventions of the MS that include the clause for avoiding double non-taxation. Given the time necessary for bilateral negotiations, the assessment of the application of this measure could be made after in 3 years' time;

– the number of MS having made use of any recommended Anti-abuse measures and principles;

– the application of a common definition of third countries not complying with minimum standards of good governance in tax matters (which includes tax havens), and on adopting a toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined.

– difficulties encountered and progress achieved in convincing third countries to cooperate in tax matters. This would include as appropriate progress achieved in the Code of conduct Group on business taxation, in specific negotiations with third countries, and in international fora.

11. LIST OF ANNEXES

1. Annex 1: Agenda of the Fiscalis Seminar, Brussels, 17th July 2012 on non-cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion

2. Annex 2: Discussion Paper on possible future measures against non- cooperative jurisdictions and aggressive tax planning and a possible strategy at EU level, discussed at the Fiscalis Seminar, Brussels, 17th July 2012

3. Annex 3: Report of the Fiscalis Seminar, Brussels, 17th July 2012

4. Annex 4: Public Consultation Paper: factual examples of double taxation cases

5. Annex 5: Summary report of the responses received on the public consultation on factual examples and possible ways to tackle double non-taxation cases

6. Annex 6: Tax havens: Review of economic literature and quantitative estimations

7. Annex 7: Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

8. Annex 8: Table of Tax treaties with third countries

9. Annex 9: Tables extracted from the study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

10. Annex 10: Extract of the study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

11. Annex 11: SME Test

12. Annex 12: Impact of Policy Options

13. Annex 13: List of actions considered in the Communication of 27 June 2012

14. Annex 14: Glossary