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IMPACT ASSESSMENT

Accompanying the document

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}

Annex 10 - Extracts from PWC Study

The issue of quantification

The Commission services encountered significant difficulties in gathering information on how EU MS' revenues were impacted by aggressive tax planning, tax havens and non-cooperative jurisdictions, as well as by anti-abuse measures[1].

Although the Commission had requested to include the quantitative impact of the identified problems and of the measures taken against non-cooperative jurisdictions (NCJ) and aggressive tax planning (ATP) for the concerned MSs, in order to be able to better quantify, on the basis of publicly available information, the current revenue losses in MS stemming from the use of non-cooperative jurisdictions and aggressive tax planning, and the potential impact of possible remedies, in this respect the outcome of the Study was quite limited due to lack of publicly available information.

The contractor explained why limited quantitative information was available on tax measures in relation to non-cooperative jurisdictions and aggressive tax planning:

'*It appears from the Study that very few information was available with respect to (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues) and with respect to the evaluation made by the concerned MSs of the effectiveness and sufficiency of such measures. This could most probably be explained by the absence of quantitative assessment, by the fact that most of the measures are relatively old [10-20 years ago], following which the quantitative assessment which might have been performed initially (if any) is no longer representative or useful today, or because such information is considered as confidential. Another element which can entail that there is no relevant quantification available in relation to a measure, is the fact that a measure has been implemented in a Law containing various measures or together with other measures. In such a case any impact assessment or evaluation will generally be a global assessment not linked to a specific measure included in the Law, therefore no relevant figures for the purposes of the current Study will be available.*'

Against this background, the quantitative information available for some countries is the following:

For **Denmark**, in general the quantitative impact of a measure is estimated in the Preparatory Works of a Bill. The Bills typically comprise more than one measure and the estimated effect is often estimated for the entire Bill as a whole.

For the older measures (measures introduced before 2000) information of the estimated quantitative impact of the measures is not easily available. Subsequent adjustments to the measures have primarily been corrections

[1] See also under point 2.2.3.2 how MS responded to the Commission services

of un-intended effects of the measures and to align with EU legislation, etc.

For the recent measures the following estimations of tax revenue were provided:

• Section 2A to the Danish Corporate Tax Act: the Act as a whole is estimated to be revenue neutral.

• Section 2C to the Danish Corporate Tax Act: the measure is estimated to secure un-intended loss of tax revenue.

• Section § 11B+§ 11 C to the Danish Corporate Tax Act: the estimated lasting tax revenue from the two measures is estimated to be EUR 13 million.

• Section § 65 D to the Danish Tax at Source Act: the Act as a whole is estimated to result in a limited loss of revenue.

In **Estonia**, there is no public information available about the quantitative impact of the measures using reasonable efforts. Any estimates accompanying bills are too general to be relevant. Although this was clearly out of scope of the assignment, the contractor has also contacted the Minister of Finance, where its contact person confirmed that as far as they are aware, no such assessments are available;

For **France,** the contractor confirmed that Parliamentary debate and official information does not give any further quantification information on the impact assessment or evaluation of the reported measures. Also they refer to an official Paper, "Evaluations préalables des articles du projet de loi de finances rectificative pour 2009", in which it is expressly mentioned that the budgetary consequences of the measures relating to ETNC cannot be estimated. However, it is indeed possible that the financial impact of the measures on the budget of the given year are estimated, but this information generally refers to the global impact for the entire set of rules relating to the corporate income tax modifications, or other proposed modifications. Such information does thus not give detailed information about the ATP/NCJ measures as such. France also reports some quantitative information with respect to its thin capitalization rule (Art. 212 du code général des impots), EUR 136 mio. (1999), EUR 125 mio. (2000), EUR 106 (2001), EUR 115 (2002), EUR 98 mio. (2003)[2].

For **Germany**, the quantitative effect of the specific measure in relation to the use of tax losses (anti-loss trafficking rule) is estimated at EUR 1.475 mio per year;

In the **Netherlands**, quantitative impact assessments were mentioned with respect to two Non-Specific Measures, being the restriction on the deduction of interest on acquisition debt EUR 31 mio (2012), EUR 62 mio. (2013), EUR 93 mio.

[2] La concurrence fiscale et l´entreprise, vingt- deuxième rapport du Président de la République, Conseil des impots, 2004.

(2014), EUR 124 mio. (2015), and EUR 155 mio. (after 2015) and the restriction on the deduction of interest on participation debt (EUR 150 mio);

In **Sweden,** prior to the entry into force of the interest stripping rules, the Swedish Tax Agency released a survey in which they estimated that the deductions for the deemed artificial party debt reduced the Swedish tax income with SEK 7 billion. Post enactment of the interest stripping rules, the Swedish Tax Agency mentioned in its latest report that the total interest reductions were back at the level of 2003-2006, meaning again an increase of the interest deductions. As Sweden has adopted an amendment to this rule, extending the scope to all intra-group loans (instead of loans granted for the purpose of acquiring a related party), a new assessment is made providing for an estimated increase of the Swedish tax income with SEK 6.29 billion (7.49 billion € on 3.09.2012);

In **Spain**, in theory, there is an obligation to prepare an economic explanation (with the quantitative impact) of the amendments and submitted it within the Draft Bills. However, in practical terms, it is difficult to obtain these economic explanations. Based on the contractor's review of the available documentation, no information was found in the explanations on the reported measures. Also, the economic explanation (the quantitative impact) is not included in the Law that approves the measures. Moreover, the economic explanations of the amendments are not easily accessible (if and when available).

In the **United Kingdom**, the information which is publicly available regarding the quantitative impact of new measures is included in the "red books", which are published along with each Budget and set out the estimated expected financial impact of material new measures. As time goes on, this information for previous budgets becomes difficult to find. Also, in some cases, the only figures available on the quantitative impact of a new measure are aggregated with several other measures and therefore not relevant for the purposes of this study. The only relevant information which was found in this respect, has is the following: the 2011 budget report sets out the expected cost of the full reform to the CFC rules (£210m in 2012-13, £540m in 2013-14, £770m in 2014-15 and £840m in 2015-16). With respect to the upcoming General Anti-Avoidance Rule, the Liberal Democrats had initially estimated that it could raise £2.1bn per year in corporation tax. However, this figure is likely to be smaller if the scope of the GAAR is narrowed (as suggested in Graham Aaronson's report). With respect to the anti-arbitrage measures, the Budget 2005 report sets out the expected Exchequer yield as a result of this policy to £130m in 2005-6, £200m in 2006-7, and £200m in 2007-8 (indexed figures);

For **Luxembourg**, the contractor confirmed on the basis of a high-level check to retrieve the information requested, that together with their experience, it considered that information regarding the quantitative assessment and evaluation which can be of any significance was not available;

Range of Anti-abuse Measures

For instance, amongst the 14 MS reviewed by the PWC study [n° 26 sq.], 165 anti-abuse measures were adopted and 8 MS had adopted at least 10 anti-abuse measures each. Many MSs have a significant number of anti-abuse provisions in their legislation, covering many different forms of potentially abusive behaviour (according to the local tax legislation or administrative practice/case law), such as shifting profits to low tax jurisdictions, erosion of the tax base through excessive debt financing, etc.

The anti-abuse measures applied by the 14 Member States covered by the PWC study can be divided in several categories:

- CFC regulations
- Transfer Pricing Measures
- Deductibility of expenses
- Measures on outbound income
- Measures on inbound income
- Disclosure Requirements
- General anti-abuse provisions
- Various measures

All Member States have at least one general anti-abuse rule (“GAAR”), except the United Kingdom, where adoption of a general anti-abuse rule is nevertheless being discussed. In particular, the foundations for these GAARs can take various forms; ranging from the “abuse of law” principle, a “simulation” or "sham" theory to the “substance over form” principle. None of these measures applies to Third Countries only. On the contrary, they are often equally applicable regardless of the territorial scope of a given transaction (i.e. purely domestic situations, transactions within the European Union and transactions outside the European Union).

With regard to the **countries targeted** at by these measures, table 4 (‘Comparison of lists’) of the PWC study shows that as a result of these various criteria used by MS, there is little or no overall consistency amongst the EU MS in their respective ‘black or grey’ lists (see tables in appendix 11).

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, and that this was also due to the absence of common definitions of NCJ or ATP between EU MS: any joint action pre-requires a common understanding of the situations considered as problematic. During the Fiscalis seminar on 17/7/2012, several MS and stakeholders suggested, as a prerequisite for efficient joint action, to agree on common definitions of NCJ and ATP.