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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	6 December 2012
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No Cion doc.:	SWD(2012) 403 final - Volume 12/14
Subject:	Comission Staff Working Document Impact Assessment Accompanying the document the Communication from the Commission to the European Parliament and the Council - An Action Plan to strenghten 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

Delegations will find attached Commission document SWD(2012) 403 final - Volume 12/14.

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COMMISSION STAFF WORKING DOCUMENT

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 12- Impact of Policy Options

Impact of the Policy Option for protecting MS tax systems against abuses

(Policy option A)

Objective 1 – Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross border operations

Policy option A: Action plan to enhance tax administration, tax enforcement and tax collection in case of cross- border transaction

Baseline scenario: no EU action

Effectiveness in achieving policy objective	--: Low negative impact: In the field of direct taxation, if the loopholes of the existing savings taxation directive are not closed, beneficial owners 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 the mere savings interests will furthemore deprive Member States from 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 the tax administration and collection, which the onging cuts in expenditure for tax control 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. In the field of VAT Member States will continue to be targeted by massive frauds and the only recourse available will be a lengthy procedure for requesting a derogation to the existing EU VAT legislation from Council. Also, if no action is taken to solve the problems in intra-community operations through dialogue and raise awareness and education, the tax morale and thus the tax compliance will deteriorate as fewer taxpayers will accept the burden put on their shoulders while others incur no penalty for their non-compliance.
Fundamental rights	≈: No impact
Economic impact	--: Low negative impact: Even if the no action option would avoid in principle any new costs for tax administrations and economic operators, the absence of enhanced administrative cooperation will remain a problem as it

	will continue to provide taxpayers with incentives to act in a way that prevents or hinders effective tax administration, enforcement and collection and thereby undermines fair competition in the industry at EU level and with third countries, which in turn leads to market distortions.
Social impact	--: Low negative impact: Indirectly, the continued existence of loopholes and problems in the administrative cooperation in the case of cross-border operations will maintain a negative impact in terms of fiscal pressure on diligent taxpayers and on taxpayers whose identification is easy and main income is therefore subject to closer controls (i.e. labour income).
Impact on taxpayers	≈: No impact
Impact on tax administrations	≈: No impact
Impact on EU budget	≈: No impact
Impact on other parties	≈: No impact

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

Effectiveness in achieving policy objective	+++: Very high positive impact: By foreseeing and prioritising concrete measures, the action plan will allow achieving to a very large extent the policy objective of improving administrative cooperation and in particular: – Closing loopholes in the existing savings taxation Directive; – Reaping the invaluable benefits of the automatic exchange of information; – Enhancing the efficiency and effectiveness of tax collection in the case of cross-border transactions through a better identification of taxpayers; – Providing a mechanism allowing Member States to react promptly against sudden and massive VAT frauds resulting in considerable loss for the treasuries;

	– Setting up a platform where traders and tax administrations can discuss VAT problems in relation to cross-border business; – Raising awareness and education of VAT taxpayers in order to ease compliance.
Fundamental rights	-: Very 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	+: Low positive impact: Although the introduction of additional measures may trigger modifications in the behaviour of taxpayers as a consequence of the resulting enhanced identification of taxpayers, the functioning of the internal market will at the same time be improved through the elimination of various bias introduced by enhanced tax administration, enforcement and collection.
Social impact	+++: Very high positive impact: By improving the administrative cooperation, this policy option will increase the effectiveness and timeliness of tax administration, enforcement and collection in the case of cross-border transactions; 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; the actual existence of a level-playing field of all taxpayers and fair and equal treatment between them will also increase tax morale in the society.
Impact on taxpayers	++: Medium positive impact: Through a better administrative cooperation in cross-border operations, there will be a simplification of formalities for taxpayers engaged in these transactions as well as indirectly a positive effect on the horizontal equity between the various categories of income and capital and all taxpayers.
Impact on tax administrations	++: Medium positive impact: Although the action plan may require the setting up of new systems and thereby entail administrative costs and change management actions for tax administrations, it will foremost improve the breadth of information available to them, thus

	improving their possibilities to collect tax.
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.
Impact on other parties	≈: Differentiated impacts: At this stage of the assessment of the action plan and in the absence of decision on the concrete actions to be carried out, it is difficult to assess the impact of the initiative on economic operators. These impacts will be analysed on a case-by-case basis in the (proportionate) impact assessments to be made for the specific initiatives.

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

Policy option B2: close loopholes stemming from double tax conventions

Baseline scenario: No EU Action

Effectiveness in achieving policy objective	No impact
Fundamental rights	No impact
Economic impact	Negative impact on EU MS revenues. Double non-taxation would continue to occur on the basis of mismatches between tax systems of the two contracted parties, and be used in schemes involving ATP and jurisdictions not complying with minimum standards of good governance.
Social impact	No impact
Impact on taxpayers/tax administrations	Negative impact. This option will continue to enable some taxpayers to reduce their tax cost by using ATP schemes and jurisdictions not complying with minimum standards of good governance , while other taxpayers will bear the additional compliance costs implied by anti-abuse measures implemented by MS. Tax administrations will continue to support the costs of additional work to tackle double non-

	taxation, by costly and time intensive audits.
Impact on EU budget	No impact
Impact on other parties	No impact

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

Effectiveness in achieving policy objective	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 double tax conventions provided that MS implement the recommendation. This will have however no impact on situations involving more than 2 countries.
Fundamental rights	No impact
Economic impact	Low positive impact. This option will contribute to reduce the scope of double non-taxation, and to improve accordingly the tax revenues of EU MS.
Social impact	No impact
Impact on taxpayers/tax administrations	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 taxpayers.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option C1: to adopt EU compliant and effective anti-abuse measures in MS

Baseline scenario: no EU action

Effectiveness in achieving policy objective	No impact
Impact on the four freedoms	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. Towards third countries, only free movement of capital would be concerned. These measures would be implemented as long as the Commission has not yet engaged in infringement procedures.
Economic impact	Negative impact. 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 between third countries that would be considered as non-cooperative jurisdiction by one or several MS and not by others, thereby leading to potential inconsistent approach between MS. 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 adjustment costs for developing countries, unless these countries have concluded with the EU MS concerned a double tax convention containing specific provisions on anti-abuse rules. There is also the possibility that national anti-abuse measures 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	No impact
Impact on taxpayers/tax administrations	Negative impact. The compliance burden on taxpayers will increase 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 a costly for both taxpayers and tax administrations.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option C1: Recommendation of an EU- wide general anti abuse rule as standard of the EU

Effectiveness in achieving policy objective	Positive impact. However the effectiveness of this option will depend on EU MS' willingness to implement it at their level.
Fundamental rights	No impact
Impact on the four freedoms	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	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 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. This option could positively affect trade and investment flows between third countries by reducing inconsistencies in regulations implemented by MS towards these countries.

	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 double tax convention containing specific provisions on anti-abuse rules.
Social impact	No impact
Impact on taxpayers/tax administrations	Positive impact. The most positive impact would be for companies having cross-border activities in several MS, since the implementation of EU MS's comparable anti-abuse rules would reduce the compliance costs for taxpayers. This option could 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 ligations for U 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.

Policy option D1: improve coordination towards third countries by elaborating a list of jurisdictions not complying with minimum standards of good governance

Baseline scenario: no EU action

Effectiveness in achieving policy objective	No impact
Fundamental rights	No impact
Economic impact	Negative impact: in the course of current economic and financial crisis it is likely that the lack of an EU action will not improve the current situation and even can lead to further

	losses in the MS budgets.
Social impact	Negative impact: the lack of EU definition of jurisdictions not complying with minimum standards of good governance is most likely to impact on small and medium-sized enterprises as the larger ones are likely to have tax advisers to help with using jurisdictions not complying with minimum standards of good governance.
Impact on taxpayers/tax administrations	Negative impact: No EU definition of jurisdictions not complying with minimum standards of good governance can lead to higher costs at level of tax payers and tax administrations since using individual MS definitions of jurisdictions not complying with minimum standards of good governance is more complicated to follow them.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option D1: Recommended EU definition on jurisdictions not complying with minimum standards of good governance (to be used by EU institutions and MS) based on the implementation of principles of good governance in the tax area

Effectiveness in achieving policy objective	Positive impact
Fundamental rights	No impact
Economic impact	Positive impact: If the EU definition of jurisdiction not complying with minimum standards of good governance is commonly applied in all MS then the impact on a particular third country which is considered as a jurisdiction not complying with minimum standards of good governance by 27 MS is substantially different than if such a country is considered as a jurisdiction not complying with minimum standards of good governance 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 jurisdictions not complying with minimum standards of good governance back to MS limit and thus bring additional revenues to MS budget.
Social impact	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	Positive impact: a common understanding of the EU definition and a common identification which is applied in all MS 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	Negative impact: from the perspective of developing countries the possible shifting of profits and income from jurisdictions not complying with minimum standards of good governance back into MS could have a negative impact on their economies since some of these economies are fully depended on a worldwide recognition of being a capital market centre.

- **Policy option D2 : toolbox of incentive and defensive measures to improve leverage towards third**
- **Baseline scenario: No EU action**

Effectiveness in achieving policy objective	No impact:
Fundamental rights	No impact
Economic impact	Negative impact: In the course of current economic and financial crisis no coordinated measures at EU level can lead to further losses in the MS budgets.
Social impact	Negative impact: the lack of EU coordinated countermeasures towards jurisdictions not complying with minimum standards of good governance is most likely to impact on small and medium-sized enterprises as the larger ones are likely to have tax advisers to help with tax planning and using jurisdictions not complying with minimum standards of good governance.

Impact on taxpayers/tax administrations	Negative impact: No EU toolbox of countermeasures can lead to higher costs at both level, tax payers and tax administrations, since structures using jurisdictions not complying with minimum standards of good governance and ATP are getting more complicated and thus requesting additional financial as well as human resources to follow them.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option D2: Recommendation on a Toolbox of measures (from incentives to defensives at national level) that could be applied towards jurisdictions not complying with minimum standards of good governance in a tailor made approach

Effectiveness in achieving policy objective	Positive impact:
Fundamental freedoms	No impact
Economic impact	Positive impact: The suggested option can strengthen the integrity and fairness of tax structures and courage compliance by all taxpayers. It is also expected to bring additional revenues to MS budget.
Social impact	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	Positive impact: A toolbox of coordinated measures is expected to eliminate a using of jurisdictions not complying with minimum standards of good governance and ATP 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	Negative impact: from the perspective of developing countries the possible shifting of profits and income from jurisdictions not complying with minimum standards of good governance back into

	MS could have a negative impact on their economies since some of these economies are fully depended on a worldwide recognition of being a capital market centre.