



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 May 2013**

**9549/13**

**FISC 94  
ECOFIN 353**

**NOTE**

---

from: General Secretariat of the Council  
to: Delegations  
Subject: Council conclusions on tax evasion and tax fraud  
- Adoption

---

Delegations will find in Annex the text of the Conclusions on tax evasion, as adopted by ECOFIN on 14 May 2013.

**Council Conclusions**

**Commission Action Plan (17637/12) and the two Recommendations on Aggressive Tax Planning (17617/12) and on Good Governance in tax matters in third countries (17669/12)**

**The Council:**

1. REAFFIRMS that “all Member States recognise the importance of taking effective steps to fight tax evasion and tax fraud”, and RECOGNISES the need to tackle aggressive tax planning.
2. RECOGNISES the need for an appropriate combination of efforts at the national, EU and at global levels to combat tax fraud and tax evasion and also aggressive tax planning.
3. In this context, SUPPORTS further efforts at national, EU, G8, G20, OECD and global level on automatic exchange of information and on improving the implementation and enforcement of standards of beneficial ownership information that is relevant for tax purposes. NOTES that this could make a difference in the area of corporate secrecy.
4. NOTES that Member States are negotiating inter-governmental agreements with third countries to exchange a large scope of information on an automatic basis.
5. WELCOMES in that context that France, Germany, Italy, Spain and the UK have agreed to work on a pilot multilateral exchange facility using the model agreed with the US as the basis for this multilateral exchange with the aim of contributing to the creation of a new global standard, NOTES that the EU has a key role to play in supporting and promoting the acceptance of such standards globally and further WELCOMES the commitment of the British Overseas Territories and the Isle of Man to joining the pilot initiative; and the strong interest expressed by Guernsey.

6. SUPPORTS further efforts at OECD level on Base Erosion and Profit Shifting (BEPS) and RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of base erosion and profit shifting and in particular NOTES the European Council call for the European Union to coordinate its positions. NOTES that this coordination will take place through the appropriate Council bodies including the High Level Working Party and WELCOMES that progress at international level in this area is being monitored. To this end, the EU should closely monitor its legal framework and identify where common solutions would best ensure effectiveness and efficiency.
7. WELCOMES the work by the Commission on developing measures to combat tax fraud, tax evasion and aggressive tax planning. Specifically, the Council RECOGNISES the useful role the Commission Action Plan (17637/12) and the two Recommendations on Aggressive Tax Planning (17617/12) and on good governance in tax matters in third countries (17669/12) can play in this regard.
8. NOTES the non-binding nature of the Recommendations, in accordance with Article 288 of the Treaty on the Functioning of the European Union which states that "recommendations ... shall have no binding force".
9. CONFIRMS the ECOFIN Conclusions of 13 November 2012, in which the Council sets out its priorities, and non-priorities in the field of direct and indirect taxation for certain areas of its work in the short term in the area of tax fraud and tax evasion, which must be taken into account when further examining measures based on the Action Plan (17637/12).

10. EMPHASISES that within the European Union measures to combat tax fraud and tax evasion must fully respect the principle of subsidiarity and the competence of Member States in relation to tax matters.
11. RECALLS the ongoing work in the Council in the area of fighting tax fraud and tax evasion and notes that Member States are implementing the existing legal measures in particular Council Directives for Administrative Cooperation in the field of taxation and Council Directive concerning Mutual Assistance for the Recovery of claims relating to taxes, duties and other measures.
12. INVITES the Code of Conduct Group (Business Taxation) to continue its work on developing solutions to the problems caused by mismatched treatments of hybrid entities and instruments and calls on the Group to rapidly develop solutions in this regard and also NOTES the work in other international fora on this issue in this regard and also INVITES the Code of Conduct Group to take into due consideration the work in other international fora on this issue.
13. NOTES the work carried out in Council preparatory bodies to step up the fight against VAT Fraud, as well as the efforts by the Irish Presidency to combat this issue in a comprehensive manner and calls for efforts to continue to find solutions that are acceptable to all Member States.
14. NOTES the fact that the Presidency intends to write to the International Consortium of Investigative Journalists asking them to supply Member States through the relevant competent authorities with the names and details regarding all EU citizens on the “offshore leaks” list.

***Recommendation on Aggressive Tax Planning (17617/12)***

15. RECOGNISES that aggressive tax planning is a global issue and consists in taking advantage of the technicalities of the tax system or of mismatches between two or more tax systems for the purpose of reducing tax liabilities. Member States find it difficult to protect their national tax bases from erosion through aggressive tax planning. With a view to improving the functioning of the internal market and protecting tax revenues, it is necessary to encourage Member States to take all necessary steps to tackle aggressive tax planning, where appropriate, which would help diminish existing distortions.
16. CALLS upon Member States to consider where appropriate, to what extent their current national legal framework may include a General Anti Avoidance Rule which allows effective action, in compliance with the EU Treaties, against abusive tax arrangements.
17. INVITES Member States to consider the appropriateness of incorporating a General Anti Avoidance Rule, such as that suggested in the Recommendation (17617/12), in their national legislation.
18. UNDERLINES the importance of taking concrete action against double non-taxation via the operation of double tax conventions, while fully respecting the competency of Member States in negotiating double tax conventions bilaterally and the principle of subsidiarity, and taking account of all relevant factors over the course of a negotiation.

***Recommendation on Good Governance in tax matters in third countries (17669/12)***

19. CONFIRMS its wish to promote the principles of good governance in the tax area (transparency, exchange of information and fair tax competition) amongst third countries.
20. COMMITS to further work on how best to ensure that third countries meet appropriate standards of good governance in tax matters; RECALLS the OECD list of non-cooperative jurisdictions and INVITES consideration of whether developing a European list of third country non-cooperative jurisdictions is appropriate.
21. SUPPORTS the ongoing work of the Code of Conduct Group on Business Taxation. ENCOURAGES the Member States and the Commission to work closely with the OECD and the Global Forum on Transparency and Exchange of Information for tax purposes, to devise action plans aimed at combating lack of transparency and harmful tax practices in third countries.

**Future Work**

22. INVITES incoming Presidencies to work further in order to find the most appropriate ways to tackle tax fraud, tax evasion and aggressive tax planning at national, EU and global level as well as to reinforce efforts in promoting standards of good governance in tax matters to third countries, underlining the importance of strengthening cooperation with the OECD and G20, sharing views, experiences and best practices between Member States.