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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Building a fair, competitive and stable corporate tax system for the EU

1. INTRODUCTION

Taxation is central to the EU's work to build a stronger, more competitive and fairer economy, with a clear social dimension. Europe needs a tax system that fits its internal market and that supports economic growth and competitiveness, attracts investment, helps to create jobs, fosters innovation and upholds the European social model. Taxation should provide stable revenues for public investment and growth-friendly policies. It should ensure that all businesses enjoy a level-playing field, legal certainty and minimal obstacles when operating cross-border. It should be part of a wider tax system in which citizens have confidence, because it is fair and meets society's socio-economic needs. The EU's priorities in taxation are therefore focussed on these goals.

2. IMMEDIATE ACTION TO MEET IMMEDIATE NEEDS: REFORMING CORPORATE TAXATION

The Commission has set an ambitious agenda to make corporate taxation fairer and more effective; better adapted to the modern economy and more responsive to emerging challenges in this field. This agenda is advancing rapidly and many important milestones have already been met. All of the initiatives announced in the Commission's Action Plan for Fair and Effective Taxation¹ have now been launched, and many new proposals have already been adopted by Member States. The Commission is also pushing the scope of its work beyond the Action Plan. As shown in the Communication on further measures to enhance transparency and the fight against tax evasion and avoidance, which followed the Panama Papers revelations, it is ready to develop swift and effective responses to issues as they arise². In addition, the Commission has carried out state aid investigations into whether certain Member States granted tax advantages to selected multinational companies³, to safeguard a fair and competitive environment for all businesses in the EU.

The Commission's first line of action was to increase tax transparency, as an essential foundation for any further reforms. Within a period of 12 months, Member States agreed on proposals for the automatic exchange of information on tax rulings⁴ and country-by-country reports of tax-related information concerning multinationals⁵. This will bring a new and unprecedented level of transparency and cooperation between tax authorities in the area of corporate taxation. The Commission also proposed public country-by-country reporting for multinationals, to provide citizens with greater oversight of companies' tax practices. This proposal, which is currently being negotiated by the Council and the European Parliament, should help restore public confidence in corporate taxation and ensure that businesses are not faced with a patchwork of national public disclosure rules. A proposal to allow tax authorities access to national anti-money

¹ COM (2015) 302 final

² COM (2016) 451 final

³ See notice on the Notion of aid § 169 to 174:

http://ec.europa.eu/competition/state_aid/modernisation/notice_of_aid_en.pdf

⁴ Council Directive (EU) 2015/2376

⁵ Council Directive (EU) 2016/881

laundering information⁶ is expected to be agreed before the end of the year. The European Parliament and Council have also started to work on their positions on proposed amendments to the Fourth Anti-Money Laundering Directive, and should advance swiftly for trilogues to begin by early 2017. In addition, the Commission has started to examine the most appropriate framework to implement the automatic exchange of information on beneficial ownership, at European level, and is exploring the best way to increase oversight of enablers and promoters of aggressive tax planning schemes. This increased tax transparency across Europe will help to expose aggressive tax planners, uncover harmful tax practices and stabilise a corporate tax environment built on openness and trust.

In parallel, the Commission is also working to ensure that all companies operating in the EU pay their taxes where profits and value are generated. This principle is essential for fair and effective taxation, but can only be effectively achieved in a Single Market through common and coordinated measures. Therefore, the Commission proposed a new Anti-Tax Avoidance Directive⁷, setting out legally-binding anti-abuse measures for the entire EU, to block some of the most prevalent forms of base erosion and profit shifting. This legislation, which Member States adopted in July 2016, allowed Member States to implement in a swift, coordinated and coherent way, the commitments they made under the OECD/G20 Base Erosion and Profit Shifting (BEPS) project. Member States' preferential regimes and transfer pricing rules are also being reviewed, to ensure a common EU approach to new international standards. This is critical to provide certainty for businesses as reforms are implemented and to prevent new loopholes emerging in the Single Market.

Finally, the Commission has presented measures to promote tax good governance globally, to ensure a fair and level-playing field between the EU and its international partners. Member States have endorsed the new External Strategy for Effective Taxation⁸, presented by the Commission in January 2016, to protect their tax bases against base erosion risks from abroad. A key component of this Strategy is a new EU listing process, to deal with non-cooperative tax jurisdictions and encourage all third country jurisdictions to meet international tax good governance standards. The first steps in this listing process have already been taken and the common EU list should be finalised in 2017. This will provide Member States with a powerful tool to deal with countries that refuse to play fair in tax matters. The EU's Financial Regulation has also been revised to prevent EU funds from being routed through tax havens, and work is underway to strengthen the tax good governance clauses in EU agreements with third countries.

3. A POSITIVE, FORWARD-LOOKING AGENDA

The initiatives set out above are vital to protect Member States' tax bases, provide a level-playing field for businesses and ensure fair and effective taxation for all taxpayers. They address the most pressing problems in corporate taxation today. However, for the longer term, there is a need to go further. Short term fixes can soon become outdated, as business models and tax planning techniques evolve faster than new responses can be

⁶ COM (2016) 452 final

⁷ Council Directive (EU) 2016/1164

⁸ COM (2016) 24 final

devised. In addition, piecemeal updates to international, EU or national tax rules create turbulence for both the tax administrations and the businesses that need to adapt to them. To boost jobs, growth and investment, it is necessary to create a favourable tax environment for business, by reducing compliance costs and administrative burdens, and by ensuring tax certainty. The importance of tax certainty in promoting investment and growth has recently been recognised by the G20 leaders, and has become the new global focus. Member States need to find a balance between implementing necessary reforms and providing a steady, clear and predictable tax environment for businesses.

The EU needs a positive, forward-looking framework for corporate taxation. It must be growth-friendly, efficient and fair, and fully support the EU's wider policy priorities, now and in the future. This is the rationale behind the Commission's proposal to re-launch the Common Consolidated Corporate Tax Base (CCCTB). The CCCTB can meet the two primary demands of businesses and citizens in Europe today – sustainable growth and social justice – and reinforce the EU's overall economic and social agenda. Indeed, analysis shows that the CCCTB can lift investment in the EU by up to 3.4% and growth by 1.2%⁹.

The Commission first proposed the CCCTB in 2011, with a view to enhancing the Single Market for businesses. The proposal was ambitious and robust, but its magnitude led negotiations in the Council to stall. However, the European Parliament, businesses, stakeholders and many Member States retained strong support for the idea of the CCCTB, given the many benefits it had to offer. Moreover, in the past few years, it has become clear that the CCCTB offers more than just a business-friendly tax system for a stronger Single Market.

Therefore, in the June 2015 Action Plan, the Commission announced that it would re-launch this important project through a more manageable two-step process. The first step focusses on securing the common base. Once this is implemented, the more complex aspect of consolidation will be introduced. Many of the most important benefits of the CCCTB lie with the consolidation aspect. Therefore, this second step in the re-launched CCCTB cannot be neglected or put aside. The work on this Package will only be complete once the full CCCTB is in place.

The re-launch of the CCCTB provides the opportunity to update the original proposal and align it with new challenges emerging in the global tax environment. The most notable change is that the CCCTB will be mandatory for all financial accounting groups with consolidated group revenues of more than EUR 750 million. This should help to maximise its potential as an anti-avoidance tool. It also means that businesses will know where they stand when it comes to the EU's anti-abuse rules and will not have to make unnecessary adjustments. As such, it will help to create a more predictable environment for businesses in the EU.

The Commission has also introduced two new elements into the proposal which directly support the EU's wider economic agenda. Research and development costs will be given a super-deduction, to encourage R&D and innovation, which are key drivers of growth. Moreover, to support small and innovative entrepreneurship, an enhanced super-deduction will be given to small starting companies without associated enterprises. The CCCTB will also address the distortive preferential treatment of debt compared to equity,

⁹ Impact Assessment on a Common Consolidated Corporate Tax Base (CCCTB) [SWD (2016) 341]

as a contribution to a strong Capital Markets Union and greater financial stability in the EU.

4. MODERN, SIMPLE, CERTAIN: A BETTER AND MORE EFFICIENT TAX ENVIRONMENT FOR BUSINESSES

Businesses in the Single Market need a simple, stable and legally certain environment in which to thrive. They should encounter minimal tax obstacles when operating cross-border and should not be burdened by unnecessary administrative burdens and costs. The EU needs a corporate tax framework adapted to the realities of 21st century business, which encourages enterprise, attracts investors and facilitates all companies – big and small.

4.1 A Single Corporate Tax System For A Single Market

The CCCTB will considerably improve the functioning of the Single Market from a tax perspective. Cross-border companies will benefit from a single set of rules to calculate their taxable profits in the EU, rather than a medley of different national systems. They will be able to file a single tax return for all their EU activities through a "One-Stop-Shop" system, dealing with just one Member State rather than multiple tax authorities. Consolidation will also mean that losses in one Member State can be automatically set off against profits in another, thereby allowing cross-border companies to enjoy the same treatment as purely domestic ones.

In the proposed Directive to re-launch the CCCTB, the Commission has kept the same ambitious approach to consolidation as was in the original proposal. However, the two-step approach will delay this advantage. To compensate, the Commission has proposed that, until consolidation is agreed, companies should have access to a simple, robust and temporary system of cross-border loss offset within the common base.

The CCCTB will be clear, stable and bound in EU law. It will be unanimously agreed by all Member States, guaranteeing a stable system which is not prone to regular changes. This will provide businesses with an unprecedented level of tax certainty. Companies will no longer have to adjust to the divergent tax rules of each Member State as they expand cross-border. They will no longer have to struggle to understand Member States' different approaches to taxing certain income. They will no longer suffer high administrative and legal costs, to deal with the complexities of transfer pricing. With the CCCTB, the main tax obstacles for businesses in the Single Market today will be removed.

The CCCTB offers major benefits to small and medium sized enterprises (SMEs), as well as large companies, in the EU. The CCCTB will only be mandatory for the largest companies. However SMEs and start-ups can opt in to the system if they want to benefit from the simplification and cost-savings it offers. Currently, SMEs are estimated to spend around 30% of taxes paid on compliance costs, and even more if they expand cross-border. The CCCTB will cut these costs substantially and reduce the expense of setting up a subsidiary in another Member State. These savings, together with the streamlined rules and simpler tax return system, will make it much easier for small and young companies to grow and expand in the Single Market.

4.2 Improved Tools To Prevent Double Taxation

Companies must pay their fair share of tax where they make their profits, but they should not have to pay more than this. One of the biggest tax obstacles to the Single Market is double taxation.

Disagreements amongst Member States over who has the right to tax certain profits often result in companies being taxed twice or more on the same income. Most recent figures indicate there are around 900 double taxation disputes ongoing in the EU, with EUR 10.5 billion at stake. Most Member States have bilateral tax treaties with each other, to relieve double taxation and there are procedures to resolve disputes. However, these procedures are long, costly and do not always result in an agreement. The multilateral Arbitration Convention, which has been agreed between Member States, provides some relief. However its scope is limited to transfer pricing disputes and there is no recourse to repeal the interpretation of the rules.

For companies within the CCCTB system, double taxation should generally become a thing of the past. A single set of rules to calculate business profits, combined with the new apportionment formula that clearly distributes taxing rights, will make it clear what profits should be taxed and where. However, cases may still arise, for example when there are transfer pricing arrangements between a group entity within and outside the EU, and for companies not within the CCCTB. For these cases, a more efficient system of resolving double taxation disputes is needed. Moreover, until the CCCTB is agreed, an effective system is needed more widely to resolve double taxation disputes.

The Commission has today proposed a Directive to improve Double Taxation Dispute Resolution Mechanisms in the EU, to reinforce a fairer, certain and more stable tax environment. The new rules will ensure that cases of double taxation are resolved more quickly and more decisively when they arise between Member States. If Member States cannot agree on how to resolve a case, the taxpayer can ask its national court to set up an Arbitration Committee to deliver a final, binding decision on the case, within a fixed timeframe. This will help to avoid uncertainty for the businesses involved. A wider scope of cases will also be able to benefit from the resolution mechanisms under today's proposal. These improvements to Dispute Resolution Mechanisms will save both businesses and administrations a considerable amount of time, money and resources and will reinforce tax certainty for companies in the EU.

5. TRANSPARENT, EFFECTIVE, COHERENT: FAIRER TAXATION FOR ALL

Fairness has become a central requirement for corporate tax policy, in Europe and internationally. Companies that benefit from the Single Market must pay tax where they make their profits and all companies should be treated neutrally for tax purposes. The EU needs a corporate tax system that ensures robust defences against corporate tax abuse, a level-playing field for businesses and fair burden-sharing for all tax-payers.

5.1 A Fairer Corporate Tax System

The CCCTB is the embodiment of a fair corporate tax system. It will address important weaknesses in the current tax framework which enable aggressive tax planning. It will remove mismatches and loopholes between national tax systems, which are exploited by tax avoiders, as all Member States will apply the same rules for

calculating companies' taxable profits. Transfer pricing, which accounts for around 70% of all profit-shifting, will be eliminated. Moreover, to strengthen the anti-avoidance capacity of the CCCTB, it will be mandatory for the largest companies operating in the EU.

The incentive for Member States to engage in harmful tax competition will be removed. Member States will no longer need to devote large resources to chasing mobile tax bases, because the CCCTB apportions profits to ensure that taxation better reflects where the real economic activity takes place. This will allow Member States to re-focus their resources on growth-friendly taxation, which incentivises investment and employment and supports wider socio-economic needs.

The CCCTB will also introduce complete transparency on each Member State's system and their effective tax rates. Member States have a sovereign right to set their own tax rates and the CCCTB does not compromise this in any way. However, it will ensure that when a Member States decides on its tax rate, this rate is then effectively applied to all companies. Hidden preferential regimes and harmful tax rulings will no longer be possible. This should increase citizens' confidence in the way companies are taxed and ensure a more level-playing field for all companies in the Single Market.

5.2 Further Anti-Abuse Measures

The CCCTB contains anti-abuse provisions to protect Member States against base erosion and profit shifting, both within the EU and with respect to third countries. This will reinforce its impact as an instrument to prevent tax avoidance. The anti-abuse measures within the CCCTB mirror those in the Anti Tax Avoidance Directive (ATAD), which were agreed by Member States in July 2016. This will ensure that all companies are subject to the same anti-abuse rules, whether they are inside the CCCTB system or not.

The Commission has also presented another proposal today to tackle hybrid mismatches involving third countries, to further reinforce EU anti-abuse provisions and address external risks. The Anti-Tax Avoidance Directive (ATAD) already deals with hybrid mismatches within the EU, eliminating a major channel of base erosion and profit-shifting. However, these mismatches are not limited to the Single Market and a solution is needed to counter-act external risks. When agreeing on the ATAD, Member States asked the Commission to bring forward another proposal, to ensure that this gap is effectively addressed. The Commission has therefore proposed new measures to address a broad range of mismatches, including hybrid permanent establishment mismatches, imported mismatches, hybrid transfers and dual resident mismatches, both within the EU and in relation to third-countries. Like the measures in the ATAD, the rules in this new proposal are in line with the OECD BEPS approach.

6. STABLE, SUPPORTIVE, UNBIASED: A MODERN TAX SYSTEM FOR A HEALTHY ECONOMY

The EU needs a corporate tax system shaped to support a more competitive, innovative and economically-stable EU. Growth and investment rely on an environment that enables business, encourages productive financing and rewards growth-friendly activities such as research and innovation. The CCCTB will make the EU a highly attractive market to invest in, by offering companies solid and predictable rules, a level-playing field, and reduced costs and administration. In addition, the Commission has reinforced the

CCCTB proposal with new provisions that specifically focus on growth-promoting activities.

6.1 Better Incentives for Innovation

The CCCTB will support Research and Development, which are key drivers of growth and competitiveness. Currently, the EU is falling behind other advanced economies when it comes to investment in research and innovation. Although nearly all Member States have some tax incentive for R&D, not all of these are effective and some are even exploited by larger firms for tax avoidance purposes. Divergent national incentives also create a complex tax environment for companies investing in R&D.

The CCCTB will offer an EU-wide tax deduction to companies that invest in real research activities. This deduction will be even more generous for start-up companies, given their importance in job creation, the promotion of healthy competition and the establishment of more efficient business models. The R&D incentive will give a boost to companies with smaller budgets, to allow them to grow, and will encourage the creation and expansion of young, innovative enterprises. It is also designed on the basis of a best practice model, so that it can't be used for avoidance purposes.

6.2 An Investment-Friendly Tax Environment

The CCCTB will also address distortions in current tax systems that can destabilise the economy. Most Member States' corporate tax systems favour debt by allowing interest payments to be deducted, without granting similar treatment to equity. This preferential treatment encourages companies to take on more debt, making them more fragile and making economies more prone to crises. This presents an obstacle to the creation of a stronger equity base in European companies. It tilts the structure of the financial market towards debt instruments and may impede efficient capital market financing. This goes against the fundamental goals of the Capital Markets Union and the capital base requirements for the Banking Union.

The CCCTB will remove the debt bias distortion, by offering an Allowance for Growth and Investment (AGI). This allowance will ensure that equity receives a similar level of tax benefits as debt does, creating a more neutral and investment-friendly tax environment. The AGI will reward companies that strengthen their financing structures and tap into capital markets¹⁰. SMEs, that often struggle to secure loans, will particularly benefit from this new provision. Given the positive impact that the AGI will have on both businesses and the wider economy, the Commission also invites Member State to consider using it for companies outside the CCCTB system too.

7. CONCLUSION

The Commission is proposing a comprehensive response to current and emerging challenges in corporate taxation and a positive new approach to taxing companies in the future. The CCCTB will deliver notable improvements to the EU's corporate tax framework, in terms of simplicity, tax certainty and fairness. It will ensure that corporate

¹⁰ Given the higher risks linked to equity financing compared to debt financing, a risk premium will be added to the yield for determining the amount for deduction. Given that increases in the equity base may go back 10 years, the reference yield for deduction will be the 10-year government benchmark bond in the euro area.

taxation is aligned to the modern economy and that it supports the goal of a stronger and more competitive Single Market. The proposal on Double Taxation Dispute Resolution and the proposal to tackle hybrid mismatches with third countries, which the Commission has also presented today, will further contribute to fairer and more efficient corporate taxation in the EU. The Commission therefore calls on Member States to swiftly agree on all of the proposals presented today, so that businesses, administrations, citizens and the European economy can start to enjoy the full advantages of this fair, competitive and stable corporate tax environment.