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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on tax transparency to fight tax evasion and avoidance

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INTRODUCTION

Fighting tax evasion is essential to securing greater fairness and economic efficiency in the Internal Market, in line with the Commission's top political priorities[1]. Tackling corporate tax avoidance is closely linked to this agenda.

Unlike tax evasion, which is illegal, tax avoidance normally falls within the limits of the law. However, many forms of tax avoidance go against the spirit of the law, stretching the interpretation of what is "legal" as far as possible to minimise a company's overall tax contribution. Using aggressive tax planning techniques, some companies exploit legal loopholes in tax systems and mismatches between national rules to avoid paying their fair share of taxes. Moreover, tax regimes in many countries allow companies to artificially shift profits to their jurisdictions, with the effect of encouraging this aggressive tax planning.

These activities undermine fair burden sharing amongst tax-payers, fair competition between businesses and fair play between Member States in collecting the tax on profits that they are rightfully due. Taxation policy is mainly set at national level. However, with a view to securing fairer taxation and upholding the principle that taxation should reflect where economic activity takes place, the Commission is intensifying efforts to help Member States to combat tax evasion and avoidance in the Internal Market.

In addition to necessary efforts by Member States to simplify and streamline tax systems, tax transparency is a crucial element in meeting these goals. Aggressive tax planning, harmful tax regimes and tax fraud all rely on an environment of complexity and non-cooperation to thrive. Combatting tax evasion and avoidance therefore requires more openness between tax authorities and greater cooperation between governments. There must also be a stronger onus on companies to engage in tax practices that are transparent and fair.

The EU has consistently shown leadership in good governance in tax matters and, for many years, promoted principles in this area which are now gaining traction worldwide. The recent and unprecedented momentum behind the battle against tax evasion and avoidance has been fuelled largely by the public demand for fair taxation in difficult times. This new drive to ensure that everybody pays their share is delivering considerable results, at EU and international level. The EU has actively contributed to the OECD/G20 work to revise transparency standards and tackle abusive tax practices worldwide. The BEPS[2] project, due to be completed in 2015, should lead to a fundamental reform of the global tax environment, making it far more hostile to evaders and aggressive tax planners in the future.

Despite this progress, however, further measures are needed to enable Member States to protect their tax bases and businesses to compete fairly in the Internal Market, while also ensuring due compliance with fundamental rights, including the right to personal data protection.

With this in mind, the present Communication is presenting a Tax Transparency Package, focussed on the most urgent issues to be addressed in this field. This is the first step in the Commission's ambitious agenda for 2015 to fight tax evasion and avoidance. It will be followed before the summer by a detailed Action Plan on corporate taxation, which will set out the Commission's views on fair and efficient corporate taxation in the EU and propose a number of ideas to achieve this objective, including ways to strengthen discussions in the Council and to re-launch the proposal for a Common Consolidated Corporate Tax Base (CCCTB). The CCCTB could serve as an effective tool against

[1] A New Start for Europe: Political Guidelines for the next European Commission (July 2014)

[2] Base Erosion and Profit Shifting

corporate tax avoidance in the EU, in addition to cutting costs and administrative burdens for businesses in the Internal Market.

INCREASING TAX TRANSPARENCY:
MUCH ACHIEVED, MUCH MORE TO ACHIEVE

Major advances have been made towards greater transparency and cooperation between EU tax administrations in recent years.

Since 1997, Member States have politically committed to principles of fair tax competition, under the Code of Conduct on Business Taxation. They work together in the Code of Conduct Group to scrutinise tax regimes and to try to safeguard principles of good governance in tax matters in the Internal Market. While this Code, which is politically endorsed by Member States, is not legally binding, it has nevertheless been successful in eliminating a number of harmful tax practices over the years.

In 2012, the Commission presented an Action Plan with over 30 measures to combat tax fraud and evasion. Many of these focussed specifically on enhancing tax transparency and information exchange. Important progress has been made in taking these measures forward, with a number of key initiatives already completed.

The revision of the Directive on Administrative Cooperation, adopted by the Council in December 2014[3], was a significant achievement. It ensures that the EU has a solid legislative framework for the automatic exchange of information and spells the definitive end of bank secrecy for tax purposes across the EU. It requires Member States to automatically exchange a wide range of financial information with each other, in line with the new OECD/G20 global standard for automatic exchange of information between jurisdictions.

The adoption of negotiating mandates for stronger tax agreements with Switzerland, Andorra, Monaco, San Marino and Lichtenstein also marked an important advance in the EU's tax transparency agenda. The Commission is currently finalising these negotiations with the five neighbouring countries, and intends to present a proposal for their signature by summer 2015. The agreements will be significantly more ambitious than previously foreseen, as they will be aligned to the new global standard and will secure the widest scope of automatic information exchange between the parties.

Other achievements related to the 2012 Action Plan include the adoption of the revised Parent-Subsidiary Directive to prevent certain abusive tax practices by companies, the creation of a Platform for Tax Good Governance and the launch of the VAT Forum for business-to-tax authority dialogue. Certain practical initiatives have also been implemented to facilitate tax transparency, such as standard forms for exchange of information, and computerised formats for automatic information exchange in relation to non-financial income. As regards tracing money flows, tax and customs authorities are now cooperating to make better use of information on cash movements.

The fourth Anti-Money Laundering Directive, which has just been agreed by the co-legislators, also feeds into the goal of greater transparency in capital flows. Though aimed specifically at better combatting money laundering and terrorism financing, the introduction of central registers of beneficial ownership information, accessible to Financial Investigation Units all over Europe, will indirectly benefit the fight against tax evasion.

Work continues on other Action Plan initiatives, to further increase transparency in tax matters. For example, the feasibility of creating a European Tax Identification Number (TIN) is currently being explored, as it could greatly facilitate tax administrations in their work of identifying tax-payers for

[3] Council Directive 2014/107/EU amending Directive 2011/16/EU

the purpose of automatic exchange of information. Furthermore, the Commission is exploring the possibility of extending EUROFISC, a tool for the rapid exchange of information on VAT fraud, to cover direct taxation. This would help Member States to detect and rapidly inform each other of recurrent fraud schemes and aggressive tax planning trends.

The Commission will also report on Member States' progress in implementing the 2012 Recommendation on tax havens, which sets out minimum standards of good governance in tax matters that the EU's international partners should adhere to. On the basis of this report, the Commission will consider whether further measures may be needed to ensure that the EU has a coherent and consistent policy on tax transparency vis-à-vis third countries.

TOWARDS GREATER TAX TRANSPARENCY IN THE EU AND BEYOND

Despite the progress achieved, further action at EU level is still needed, given the scale of tax avoidance[4], the remaining gaps in terms of transparency and cooperation, the complexity of tax systems and the sophistication of aggressive tax planning practices.

In particular, national administrations often lack the necessary information about the impact of other countries' tax regimes and practices on their own tax systems. Preliminary investigations by the Commission, work carried out by the Code of Conduct for Business Taxation Group and recent public revelations provide real evidence of the need to introduce greater transparency into Member States' corporate tax regimes, for the sake of fair tax competition.

Tax rulings, in particular, require due attention in this regard. Tax rulings are primarily issued to provide legal certainty and are, in principle, not problematic. However, where they are used to offer selective tax advantages or to artificially shift profits to low or no-tax locations, they distort competition and erode Member States' tax bases. The Commission is already conducting state aid investigations into a number of Member States' tax rulings and has asked all Member States to provide information on their tax ruling practices, to determine whether selective tax advantages are creating competitive distortions in the Internal Market.[5]

Strengthening the transparency requirements within its own borders will also give the EU additional credibility in pushing for an ambitious transparency agenda globally. 2015 is the year in which the OECD/G20 BEPS project should be completed, and the EU should remain an active player in this international reform process.

With this Tax Transparency Package, therefore, the Commission is setting out a number of measures which can be taken in the short-term to enhance tax transparency, in order to fight against tax evasion and corporate tax avoidance in the EU, ensure the link between taxation and the place of real economic activity, and promote similar standards globally.

These are:

1. *Establishing strict transparency for tax rulings*

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There are many different estimates and reports on the scale of tax avoidance generally, and in relation to certain companies in particular, coming from tax administrations, NGOs, academics and press. There is no conclusive figure quantifying the scale of corporate tax avoidance, although the general consensus is that it seems to be substantive. One of the highest estimates refers to the amount of € 860 billion a year for tax evasion and € 150 billion a year for tax avoidance. The link to the study is; http://europeansforfinancialreform.org/en/system/files/3842_en_richard_murphy_eu_tax_gap_en_120229.pdf.

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5 http://europa.eu/rapid/press-release_IP-14-2742_en.htm

Tax rulings which result in a low level of taxation in one Member State can entice companies to artificially shift profits to that jurisdiction. Not only can this lead to serious tax base erosion for other Member States, but it can further incentivise aggressive tax planning and corporate tax avoidance.

Currently, there is little information exchange between national authorities on tax rulings. Member States whose revenues are adversely affected by the tax rulings of others cannot take the necessary action in response. In line with the joint effort to combat corporate tax avoidance, there is an urgent need for greater transparency and information sharing on cross-border tax rulings including transfer pricing arrangements.

Therefore, the Commission is putting forward a proposal for the automatic exchange of information on cross-border tax rulings. National tax authorities will be obliged to automatically share basic information on their cross-border tax rulings with all other Member States, at regular intervals. Where relevant, Member States that receive this information can then request more details. The Commission is proposing that these new requirements be built into the existing legislative framework for information exchange, through amendments to the Directive on Administrative Cooperation. This will enable automatic information exchange on tax rulings to be rapidly implemented, as the procedures and processes to do so are already in place.

2. *Streamlining legislation on the automatic exchange of information*

The agreement on the revised Savings Tax Directive in March 2014 was a major breakthrough. It extended the scope of information to be automatically exchanged by Member States on savings-related income. However, the ambition of the EU Savings Tax Directive was quickly surpassed by that of the revised Directive on Administrative Cooperation of December 2014. With this Directive, all Member States have committed to automatically exchanging information on the full spectrum of financial information for tax purposes, in line with the new OECD international standard.

Provisions of substance and procedure previously contained in the EU Savings Tax Directive are now covered by the much wider scope of the Directive on Administrative Cooperation. In order to avoid duplication and overlapping EU legislation in this field, the Commission is proposing to repeal the Savings Tax Directive as part of this Tax Transparency Package. This will ensure a simpler and streamlined legislative framework for businesses and tax administrations.

3. *Assessing potential further transparency initiatives*

The Commission will assess whether additional public disclosure of certain corporate tax information should be introduced, in a way which goes beyond administrative cooperation and provides public access to a limited set of tax information of multinational companies.

Such transparency requirements currently exist for banks (under the Capital Requirement Directive IV) and with a focus on payments to governments for large extractive and logging industries (under the Accounting Directive), in the form of "country-by-country reporting" (CBCR). Extending the obligation for public disclosure of certain tax information by multinational companies in all sectors could place companies under closer public scrutiny and create more awareness of their tax practices. It would also create a level-playing field between EU companies in terms of transparency requirements and avoid legal complexities in terms of sector definition.

However, the objectives and scope of any such possible initiative would need to be calibrated very carefully. In-depth analysis is needed to determine benefits, costs and necessary safeguards in terms of e.g. data protection, protection of business secrets etc., and look at the likely impacts including the international competitiveness dimension, also taking into account the work done in relation to the sectorial legislation already in force. Impact assessment work will therefore be launched to gather and analyse the evidence base necessary on possible options. The question of transparency requirements on aggressive tax planning arrangements which are part of the OECD BEPS work also needs to be considered, taking into account, for example, the costs and benefits of transposing such rules into EU law.

4. *Reviewing the Code of Conduct on Business Taxation*

The Code of Conduct on Business Taxation has been an important tool for challenging harmful tax regimes. Despite its voluntary and inter-governmental nature, the Code has been effective in the past in eliminating certain harmful tax practices in the Member States. However recent cases have highlighted limitations in the scope of the Code and weaknesses in the mandate of the Code of Conduct Group. For example, in the debate on whether 3 Member States' patent boxes were harmful or not, the Group was initially unable to reach a decision, due to the fact that the criteria in the Code were inadequate to evaluate this modern type of tax incentive. Tackling complex new challenges to fair taxation and safeguarding tax transparency requires more decisive action by the Code Group, and more rigorous monitoring to ensure that Member States respect their commitments. The Commission is therefore reflecting on ways in which the Code of Conduct can be improved and the Group made more effective. These reflections will be submitted to Member States and will feed into the Action Plan on Corporate Taxation, to be adopted before the summer.

5. *Working towards better quantification of the tax gap*

The tax gap is the difference between tax that is due and the amount actually collected by national authorities. Tax evasion and avoidance are not the only contributors to the tax gap, with other factors such as administrative errors and bankruptcies also playing a role. Nonetheless, statistics on the tax gap provide an important indicator of the scale of wilful non-compliance in taxation.

There is extensive evidence that tax evasion and corporate tax avoidance are persistent in the EU, and they are widely estimated to cost public budgets billions of euros a year. However, the clandestine nature of these activities, coupled with the absence of estimates in several Member States, mean that precise figures are not available. Reliable statistics on the incidence and impact of tax evasion and avoidance would allow for better targeted policy measures and provide a yardstick for measuring their success.

Therefore, the Commission, including Eurostat, will work with Member States to explore how more comparable and reliable data on the scale and economic impact of tax evasion and avoidance could be compiled. To this end, a FISCALIS project group has been launched, with a view to encouraging greater transparency between Member States on their national tax gap data and the methodologies for calculating it.

6. *Promoting greater tax transparency internationally*

The EU has been a long-time champion of standards of good governance in tax matters worldwide, and a strong supporter of the OECD/G20 BEPS project to tackle corporate tax avoidance internationally. BEPS is due to be finalised in 2015. The EU must continue to invest heavily in this project and push for an ambitious new international tax framework.

The BEPS project is expected to introduce measures for the spontaneous exchange of information between tax authorities on preferential tax rulings. Such provisions would be less ambitious that the measures proposed today for the EU and, unlike the EU rules, would not be legally binding. The EU will therefore continue to promote the idea of global automatic exchange of information for tax rulings.

The Commission is also working with the OECD and other international partners to ensure the BEPS Action Plan takes into account the capacity constraints of developing countries and to support them in strengthening their tax systems and fighting against illicit financial flows. Greater financial transparency and fairness is a key area for our partner countries to achieve their development objectives and implement the post 2015 global development agenda.

In addition, as part of its work on possible further transparency initiatives, the Commission will look into whether enhanced transparency could also improve Member States' capacity to address harmful tax practices and profit shifting beyond EU borders, how this could be achieved as well as its impact on the international competitiveness of EU companies.

CONCLUSION

With the set of initiatives outlined in this Communication, the Commission is starting to deliver on its commitment to push forward a strong and ambitious agenda against tax evasion and corporate tax avoidance.

The European Parliament, the Council and many actors from civil society all called for urgent and effective action to increase tax transparency, particularly in the field of corporate taxation. This Tax Transparency Package is a first step in responding to this call. The measures put forward in this package can make a substantial contribution to reducing corporate tax evasion and avoidance and securing fairer tax competition amongst Member States. They can also support the EU's position at the forefront of the global tax transparency agenda.

The Commission calls upon the Council to adopt these legislative proposals as a matter of high political priority. As a second step, the Commission will present, by summer, further measures to counteract tax avoidance and harmful tax competition in an Action Plan on corporate taxation.