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## COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEXES to the Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation

Delegations will find attached document COM(2016) 24 final - Annexes 1 to 2.

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Encl.: COM(2016) 24 final - Annexes 1 to 2



Brussels, 28.1.2016  
COM(2016) 24 final

ANNEXES 1 to 2

## **ANNEXES**

*to the*

### **Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation**

[...]

# ANNEX 1

## GOOD GOVERNANCE STANDARDS IN TAX MATTERS

### 1. TRANSPARENCY AND EXCHANGE OF INFORMATION

Two internationally agreed standards on transparency and exchange of information for tax purposes have been developed by the OECD: exchange of information on request (EoIR) and automatic exchange of information (AEOI).

#### 1.1. Transparency and exchange of information on request

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes<sup>1</sup> conducts peer reviews of its member jurisdictions' ability to co-operate with other tax administrations in accordance with the internationally agreed standards of transparency and exchange of information on request. A first round of peer reviews was launched in 2010 and has been completed for nearly all Global Forum members. A second round of peer reviews will start in 2016 on the basis of revised Terms of Reference<sup>2</sup>. The 2016 Terms of Reference strengthen the standard for exchange of information, notably by requiring jurisdictions to maintain and exchange beneficial ownership information and to ensure that they are able to obtain and provide information from any person, including financial institutions and fiduciaries.

For the first round of reviews, the Global Forum's peer review process examined both:

- the legal and regulatory aspects of exchange (phase 1)
- and the exchange of information in practice (phase 2).

After completion of both Phases of the review process, each jurisdiction received an overall rating.

The reviews starting in 2016 will instead combine both phase 1 and phase 2 into one review.

At EU level, the assessment of third countries' compliance with the transparency and exchange of information on request standards will take into account the compliance ratings published by the Global Forum<sup>3</sup>, as a result of the peer reviews it conducts.

#### 1.2. Automatic Exchange of Information (AEOI) of financial account information

The Standard for Automatic Exchange of Financial Account Information in Tax Matters (Global Standard), developed in response to the G20 request and approved by the OECD

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<sup>1</sup> <http://www.oecd.org/tax/transparency/>

<sup>2</sup> <http://www.oecd.org/tax/transparency/exchange-of-information-on-request/#d.en.368658>

<sup>3</sup> <http://www.oecd.org/tax/transparency/GFratings.pdf>

Council on 15 July 2014<sup>4</sup>, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

In 2014, the Global Forum initiated a commitment process among its members. As a result, 94 jurisdictions are now committed to implement the Global Standard by 2017 and 2018. In August 2015, the OECD published a CRS Implementation Handbook to guide government officials and financial institutions in the implementation of the Global Standard.<sup>5</sup>

For the EU, the assessment of third countries' compliance with the AEOI standard will take into account the compliance ratings published by the Global Forum as a result of its peer reviews.

## **2. FAIR TAX COMPETITION**

Fair tax competition means that a third country should not operate harmful tax measures in the area of business taxation.

Tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the third country in question are to be regarded as potentially harmful. Such a significantly lower level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

When assessing whether such measures are harmful, account should be taken of the criteria as provided for in the Code of Conduct on Business Taxation endorsed by the Council, as well as practice and guidance agreed by the Code of Council working group.

## **3. G20/OECD BEPS STANDARDS**

Where the G20/OECD BEPS Action Plan has resulted in the adoption of minimum standards or a common approach, these should be parts of the standards covered under this section. This is particularly the case for the following measures:

- Hybrid arrangements (BEPS Action 2): common approach for rules that link the tax treatment of an instrument or entity with the tax outcomes in the counter party jurisdiction.
- Interest limitation (BEPS Action 4): common approach for rules limiting the deductibility of net interest payments.

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<sup>4</sup> <http://www.oecd.org/tax/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Brief.pdf>

<sup>5</sup> <http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm>

- Exchange of information on tax rulings (BEPS Action 5): minimum standard for mandatory spontaneous exchange of information on taxpayer rulings.
- Anti-abuse provision in tax treaties (BEPS Action 6): minimum standard for the inclusion in double tax conventions of anti-abuse provisions.
- Preventing the artificial avoidance of Permanent Establishment status (BEPS Action 7): modification of double tax conventions in relation to the definition of a permanent establishment to address commissionaires' arrangements and the artificial fragmentation of business activities.
- Transfer pricing (BEPS Action 8-10): restatement of the Arm's Length Principle and comparability analysis as the pillars of transfer pricing rules (intangibles, risks and capital, and high risk transactions).
- Standardised Country-by-Country Reporting (BEPS Action 13): minimum standard for transfer pricing documentation requirements and exchange of information for MNEs with annual consolidated group revenue equal or exceeding EUR 750 million (or near equivalent in domestic currency).
- Dispute resolution (BEPS Action 14): minimum standard to ensure that cross-border tax disputes between countries over the interpretation or application of tax treaties are resolved in a more effective and timely manner.

In assessing standards of fair tax competition, account should be taken of the outcome of the framework to be put in place by the OECD/G20 early 2016 to monitor the implementation of BEPS by OECD/G20 countries and other interested jurisdictions but also jurisdictions of relevance whose participation is essential to ensure a level playing field.

#### **4. Other relevant standards**

Relevant good governance standards for tax purposes also include Financial Action Task Force (FATF)<sup>6</sup> international standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. The FATF recommendations of February 2012 (updated in October 2015) comprise 40 specific recommendations to tackle money-laundering, including Recommendation 24 and 25 regarding the identification of beneficial owners. Tax crimes relating to direct and indirect taxes feature in the FATF recommendations as one of the designated category of offences to which the crime of money laundering should apply.

The assessment of this standard will take into account the jurisdictions with deficiencies identified by the FATF's International Co-operation Review Group (ICRG)<sup>7</sup>.

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<sup>6</sup> The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 to set standards and promote effective implementation of measures to combat money laundering, terrorist financing and other related threats to the international financial system. <http://www.fatf-gafi.org/home/>

<sup>7</sup> [http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/moreabouttheinternationalco-operationreviewgroupicrg.html?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/moreabouttheinternationalco-operationreviewgroupicrg.html?hf=10&b=0&s=desc(fatf_releasedate))

## **ANNEX 2**

### **UPDATE OF THE STANDARD PROVISION ON TAX GOOD GOVERNANCE FOR AGREEMENTS WITH THIRD COUNTRIES**

The Commission will aim to include the following core elements for a renewed good governance clause in all negotiating proposals for relevant agreements with third countries and regions.

- The core minimum standards of good governance - transparency, exchange of information and fair tax competition,
- New OECD/G20 global standard on Automatic Exchange of Information (AEOI) in relation to financial account information, and
- Additional standards based on the G20/OECD BEPS.
- Financial Action Task Force (FATF)<sup>8</sup> international standards on Combating Money Laundering and the Financing of Terrorism and Proliferation.

Considering the diversity of the EU's international partners the Council should give the Commission sufficient flexibility in its ongoing and future negotiations with third countries on the basis of the agreed clause.

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<sup>8</sup> <http://www.fatf-gafi.org/home/>