

THE FIGHT AGAINST TAX FRAUD AND TAX EVASION

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Abstract

Collecting taxes and fighting against tax fraud and tax evasion are competences of EU Member States. In a globalised world, with globalised actors, Member States would often need more global means to collect taxes due.

The European Union provides a framework and offers instruments to handle cross-border tax issues including potential tax evasion.

On 2 March 2012, the European Council called on the Council and the Commission to rapidly develop concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries and to report by June 2012. In April the European Parliament adopted a resolution echoing the urgent need for action in this area.

Keywords: tax fraud, tax evasion, global means, fight instruments.

On 2 March 2012, the European Council called on the Council and the Commission to rapidly develop concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries and to report by June 2012. In April, the European Parliament adopted a resolution echoing the urgent need for action in this area.

As a first response, on 27 June 2012 the Commission adopted a Communication 1 - the "June Communication" (COM (2012) 351 final of 27.06.2012 Communication from the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries) which outlined how tax compliance can be improved and fraud and evasion reduced, through a better use of existing instruments and the adoption of pending Commission proposals. It also identified areas where further legislative action or coordination would benefit the EU and Member States and demonstrated the added value of working together against the increasing challenge posed by tax fraud and evasion.

The June Communication announced the preparation, before the end of 2012, of an action plan setting out concrete steps to enhance administrative cooperation and to support the development of the existing good governance policy, the wider issues of interaction with tax havens and of

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tackling aggressive tax planning and other aspects, including tax-related crimes.

In this action plan, the Commission is presenting the initiatives that the Commission has already taken, the new initiatives that can be progressed this year, the initiatives planned for the next year and those requiring a longer timeframe. In sequencing these initiatives, the Commission was mindful of the need not to overload the Member States and to take account of their capacity to take the necessary actions. In essence, this action plan contains practical actions which can deliver concrete results to all Member States and lend support in particular to those Member States to whom Country Specific Recommendations (Country-specific recommendations have been addressed to Bulgaria, the Cyprus, Czech Republic, Estonia, Hungary, Italy, Lithuania, Malta, Poland and Slovakia. Note that Member States currently benefiting from financial assistance under the European Financial Stability Facility (EFSF), the European Financial Stabilization Mechanism (EFSM) or under the provisions of Article 143 of the Treaty are recommended to implement the measures laid down in their respective Implementing Decisions and further specified in their Memorandums of Understanding and possible subsequent supplements. This concerns Greece, Ireland, Portugal and Romania), on the need to strengthen tax collection have been addressed, in the context of the 2012 European Semester exercise.

Member States and stakeholders were consulted on the content of the action plan and priorities to be given to each item. The plan takes into account their views. The strong message from the Member States was that top priority should be given to actions already under development and to the full implementation and application of the newly adopted legislation on administrative cooperation and the fight against tax fraud. The Member States also emphasized the need to adopt quickly the pending proposals in the Council and to pay particular attention to the fight against VAT fraud and evasion (Council conclusions of December 2011 (doc. 9586/12 - FISC 63 OC 213).

Future work on these actions will be guided by the need to reduce costs and complexity of tax systems for both the taxpayers and the tax administrations. For taxpayers, decreasing costs and complexity would encourage better tax compliance.

For tax administrations, the development and full use of automated tools and risk management techniques would release human and budgetary resources to concentrate on achieving the targeted objectives.

The Commission will also continue to promote the most effective use by all Member States of practical IT tools for all taxes. It will also promote a more joined-up approach between direct and indirect taxes and

between taxation and customs by making appropriate use of the FISCALIS and CUSTOMS programs to enhance communication and promote a more systematic sharing of best practices and tools, where appropriate. This can help to improve the efficiency of audits and controls and reduce the burden on taxpayers.

All the actions proposed to be taken up by the Commission in this document are consistent and compatible with the current Multiannual Financial Framework 2007-2013 and the new Multiannual Financial Framework 2014-2020.

Tax fraud and tax evasion have an important cross-border dimension. Member States can only address this problem effectively if they work together. Improving administrative cooperation between the Member States' tax administrations is therefore a key objective of the Commission's strategy in this area. A number of important steps have already been taken.

1. New framework for administrative cooperation

In the past two years, based on a proposal from the Commission, the Council has adopted a new framework for administrative cooperation (Council Directive 2010/24/EU of 16 March concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84 of 31.3.2010, P. 1); Council Regulation N° 904/2010/EU of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268 of 12.10.2010, P. 1); Council Directive 2011/16/EU of 15 February 2011).

This set of new legislative on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC - OJ L 64 of instruments paves the way for the development of new tools and instruments by the Commission and Member States. The June Communication highlights that their effective and comprehensive use by Member States is still to be attained. The Member States must ensure a full and effective implementation and application of these instruments in particular by engaging in enhanced exchange of information.

2. Closing Savings taxation loopholes

Adopting the amendments proposed by the Commission in regard to the Savings Taxation Directive (COM (2008) 727 final of 13.11.2008) will permit the closing of loopholes in the Directive and thus improve the effectiveness of this instrument. This will help Member States to better ensure effective taxation of cross-border savings income. It is now up to the Council to adopt this proposal and give a negotiating mandate to the Commission to seek corresponding changes to the existing savings taxation agreements with third countries. The vast majority of Member States have

identified this issue as a high priority. The Commission therefore urges the Council to adopt these proposals without delay.

3. Draft anti-fraud and tax cooperation agreement

Similarly, the Commission invites the Council to sign and conclude the draft of the antifraud and tax cooperation agreement between the EU and its Member States and Liechtenstein which was presented to the Council in 2009 (COM (2009) 644 final of 23.11.2009 and COM (2009) 648 final of 23. 11.2009). The Commission also invites the Council to adopt the draft of the agreement for opening similar negotiations with four other neighboring third countries. This will allow the Commission to negotiate agreements that ensure that the same instruments to fight fraud and high standards of transparency and exchange of information are available to all Member States.

4. Quick Reaction Mechanism against VAT fraud

On 31 July 2012, the Commission presented a proposal for a Quick Reaction Mechanism against VAT fraud (COM (2012) 428 final of 31.07.2012). If adopted, this proposal would enable the Commission to very quickly authorize a Member State to adopt derogating measures of a temporary nature in order to tackle cases of sudden and massive fraud with a major financial impact. The Council is urged to swiftly adopt this proposal which it has identified as a high priority.

5. Optional application of the VAT reverse charge mechanism

In 2009, the Commission presented a proposal regarding an optional application of the VAT reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud (COM (2012) 428 final of 31.07.2012). Only the part of that proposal relating to greenhouse 11.3.2011, P.1); Council Regulation N° 389/2012/EU of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) N° 2073/2004 (OJ L 121 of 8.5.2012, P. 1) gas emission allowances was adopted in March 2010 (Council Directive 2010/23/EU of 16.03.2010 amending Directive 2006/112/EC on the common system of value added tax, as regards an optional and temporary application of the reverse charge mechanism in relation to supplies of certain services susceptible to fraud (OJ L 72 of 20.03.2010, P.1)). The adoption of the remaining part of that proposal would allow all Member States to apply the reverse charge mechanism under the same conditions in those sectors where it represents the most efficient tool against 'carousel fraud', instead of adopting individual derogations to the VAT Directive which could have an adverse impact on the fight against fraud in other Member States.

6. EU VAT forum

Both business and tax authorities acknowledge that the current VAT system is burdensome to manage and vulnerable to fraud. With a view to improving the governance of VAT at EU level, the Commission has decided to create an EU VAT forum (Commission Decision (2012/C198/05) of 3 July 2012 on setting up the EU VAT forum). In this dialogue platform representatives of large, medium and small businesses and tax authorities can exchange views on practical cross border aspects of VAT administration, as well as identify and discuss best practices that could contribute to streamlining the management of the VAT system, aiming at reducing compliance costs, while at the same time securing VAT revenue.

The Commission invites Member States to participate as widely as possible, for the EU VAT forum to attain its objectives. Together with this Action plan, the Commission is presenting a series of new initiatives that respond to some of the needs identified in the June Communication.

These initiatives constitute an immediate response to the identified needs to ensure a coherent policy vis-à-vis third countries, to enhance exchange of information and to tackle certain fraud trends.

7. Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

The Commission's analysis of the current situation is that Member States recognize the potential and actual damage caused by jurisdictions not complying with minimum standards of good governance in tax matters, among which jurisdictions commonly considered as tax havens.

All Member States have responded in a different way to this situation. Taking into account the freedoms awarded to them when operating in the internal market, businesses may structure arrangements with such jurisdictions via the Member State with the weakest response. As a result, the overall protection of Member State's tax revenues tends to be only as effective as the weakest response of any Member State. This does not only erode Member States' tax bases but also endangers fair competitive conditions for business and, ultimately, distorts the operation of the internal market.

With a view to tackling this problem, the Commission recommends the adoption by Member States of a set of criteria to identify third countries not meeting minimum standards of good governance in tax matters and a 'toolbox' of measures in regard to third countries according to whether or not they comply with those standards, or are committed to comply with them. Those measures comprise the possible blacklisting of non-compliant

jurisdictions and the renegotiation, suspension or conclusion of Double Tax Conventions (DTCs). To avoid promoting business with back listed third countries, the Commission invites Member States to take additional complementary actions but in full respect of EU law.

Furthermore, Member States should consider ad hoc detachments of experts to assist tax administrations in third countries that commit to complying with minimum standards but are in need of technical assistance.

This Recommendation is an important practical first step to align the attitudes taken by Member States in regard to jurisdictions not applying minimum standards in the area concerned. To assess the need for possible further initiatives, the Commission will re-evaluate the Member States' approach and actions in this area within three years after the adoption of the Recommendation.

8. Recommendation on aggressive tax planning

The Commission considers that there is a need to ensure that the burden of taxation is shared fairly in line with the choices made by individual governments. Currently, some taxpayers may use complex, sometimes artificial, arrangements which have the effect of relocating their tax base to other jurisdictions within or outside the Union.

In doing this, taxpayers take advantage of mismatches in national laws to ensure that certain items of income remain untaxed anywhere or to exploit differences in tax rates. By paying taxes businesses can have an important positive impact on the rest of society. Aggressive tax planning could thus be considered contrary to the principles of Corporate Social Responsibility (Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility – COM (2011) 681 final of 25.10.2011).

Therefore, concrete steps are needed to address the problem.

Concrete action by all Member States intended to remedy such problems would also improve the operation of the internal market. In the light of this, the Commission recommends that Member States take common effective action in this field.

Specifically, the Member States are encouraged to include a clause in Double Tax Conventions (DTCs) concluded with other EU Member States and with third countries to resolve a specifically identified type of double non-taxation. The Commission also recommends the use of a common general anti-abuse rule. This would help to ensure coherence and effectiveness in an area where Member State practice varies considerably.

The EU tax Directives (Directives on Interest and Royalties, Mergers and Parent- Subsidiary) already allow Member States to apply anti-abuse safeguards. While respecting the EU law, Member States can use these possibilities to avoid abusive tax planning.

Furthermore, the Commission is willing to contribute to work in international tax *fora* such as the OECD to address the complexities of taxing electronic commerce by developing appropriate international standards.

9. Creation of a Platform for Tax Good Governance

The Commission plans to establish a Platform for Tax Good Governance composed of experts from Member States and stakeholders representatives to provide assistance in preparing its report on the application of the two Recommendations, and in its ongoing work on aggressive tax planning and good governance in tax matters.

10. Improvements in the area of harmful business taxation and related areas

In line with what is set out above and as indicated already in the Annual Growth Survey 2012 (Annex to the Annual Growth Survey 2012 "Growth-friendly tax policies in member states and better tax coordination in the EU", COM (2011) 815 final, VOL. 5/5 – Annex IV, par. 3.1) the Commission further points out the urgent need for a new impetus to be given to the work that is currently discussed in the context of the Code of Conduct for business taxation (OJ C 2, 6.1.1998, p. 2) (Code).

Over the past years, making progress and achieving tangible results in the Code of Conduct OJ Group charged with the assessment of tax measures that may fall within the scope of the Code (OJ C 99, 1.4.1999, p. 1) has become increasingly difficult. This relates in part to the fact that more and more complex issues are being addressed but also to a need to refine and sharpen the expected results, the timetable for such results and the means of monitoring their implementation.

The Commission therefore calls on the Member States to consider actions to improve the effectiveness in achieving the Code's original goals, for example by more rapidly taking topics to Council level when political decisions are urgently needed. The Code of Conduct Group currently also discusses the issue of mismatches where solutions are rapidly needed. If such solutions to remove mismatches are not agreed and implemented in line with clear deadlines, the Commission stands ready where appropriate to make proposals for legislative action instead.

In addition, in cases where existing Directives are found to provide opportunities for aggressive tax planning or prevent appropriate solutions by allowing double *non taxation*, the Commission will act. Work should also intensify on special tax regimes for expatriates and for wealthy individuals, which are harmful for the operation of the internal market and reduce overall tax revenues.

For its part, the Commission will continue to assist the Member States in ensuring the effective promotion of the Code of conduct for business taxation in selected third countries and to promote fair tax competition globally by negotiating good governance provisions in relevant agreements with third countries and by assisting developing countries in line with the Commission's standing policy on tax and development (COM (2010) 163 final of 21.04.2010)

11. "TIN on EUROPA" portal

The Commission also presents today a new practical instrument to improve administrative cooperation in the area of direct taxation.

Proper identification of taxpayers is essential to effective exchange of information between MS' tax administrations. Today the Commission officially launches the new application "TIN on EUROPA". This application provides samples of official identity documents containing national TINs (tax identification numbers). It thus allows any third party, and in particular financial institutions, to quickly, easily and correctly identify and record TINs in cross-border relations. In addition, an on-line checking system similar to VIES (VAT information exchange system) makes it possible to check whether the structure or the algorithm of a given TIN is correct.

This new application could be a first step towards a more consistent approach to TINs at EU level and will contribute to a more effective automatic exchange of information.

12. Standard forms for exchange of information in the field of taxation

Directive 2011/16/EU adopted on 15th February 2011 provides for the adoption of standard forms for exchange of information on request, spontaneous exchange of information, notification and feedback. Today, the Commission has adopted an implementing regulation providing for such standard forms that will enhance the effectiveness and efficiency of exchange of information. The Commission has also developed an IT application for these standard forms in all EU languages that has already been put at the disposal of the Member States and that will be deployed as of 1st January 2013.

13. A Euro denaturant for completely and partly denatured alcohol

The modifications that will be adopted in December in the area of denaturants (Commission Regulation (EC) No 3199/93 of 22 November 1993 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of exemption from excise duty (OJ L 288 of

23.11.1993, P. 12)) encompass a common EU formulation for the complete denaturing of alcohol (CDA). The main objective is to reduce opportunities for fraud. It is also intended to simplify and harmonize administrative burdens for licit movements, reduce manufacturing costs and improve market access for producers of denatured alcohol (EU and global). It will be explored whether the same approach, with similar results, could be envisaged in regard to partly denatured alcohol (PDA).

All of the world's financial centres, under the impetus of the G20, and adopting the standards developed by the OECD, made a commitment in 2009 to putting an end to tax-motivated bank secrecy. Against the exceptional backdrop of today's deep financial, fiscal and political crisis, there is no longer any excuse for tolerating tax evasion or aggressive tax avoidance.

Banner headlines should not overshadow the major strides that have been made, even if much still remains to be done. We did not wait for the latest revelations of *Offshore Leaks* to undertake far-reaching efforts in this area.

All financial centres in the world that had committed themselves, under pressure, to putting an end to bank secrecy have in fact kept their word. In addition to the "lists" published in 2009, the laws of all of the countries concerned have been scrutinised closely through "peer reviews".

The 120 countries of the **Global Forum on Transparency and Exchange of Information for Tax Purposes** are indeed assessed on the basis of precise and exacting criteria. The progress made has been substantial: all of the countries now consent to exchange bank information on request; over 900 bilateral agreements to exchange such information have been signed; and a great many opaque schemes have been dismantled. And yet major progress must still be made, and hundreds of recommendations have already been formulated. Several countries such as Lichtenstein, whose legislation had been deemed insufficient, have amended their laws in response to these demands. Others have been invited to speed up their reforms as a prerequisite to more extensive review. Ultimately, the Global Forum will examine how each country has actually implemented exchange of information, and each country will be given an overall rating that will sanction its behaviour. An initial series of 50 ratings will be available this autumn, so that those that comply with the rules and those that do not can be identified clearly.

Like Luxembourg in recent days, a growing number of States nevertheless deem it advisable to go beyond the qualitative leap in transparency that was constituted by the exchange of bank information. Now the next step is to move on to automatic exchange of information. We are actively working to achieve this. The G20 countries have decided to be

exemplary in this area, and the G8 have asked us to implement a multilateral platform whereby states can exchange information in a secure and effective manner. In order to satisfy the new requirements of the United States, under its Foreign Account Tax Compliance Act (FATCA), many countries, such as Switzerland recently, have signed agreements calling for far-reaching exchange. In co-ordination with the European Union, it is up to us to ensure the effectiveness of these agreements and to make them accessible to all interested parties.

Many countries, such as Saudi Arabia, Belize and Morocco, are preparing to sign the OECD multilateral Convention on Mutual Administrative Assistance in Tax Matters, which calls for all forms of exchange of information, and even for assistance in collecting unpaid taxes. Over 60 countries will then have joined in what is becoming the benchmark instrument for a more transparent world in which it will no longer be possible, tomorrow, to conceal one's wealth or income so as to avoid tax.

In addition to tax evasion, we can no longer tolerate aggressive tax avoidance, which public opinion massively rejects. No country can stem this global scourge on its own. Collective and co-ordinated action by governments is essential.

Here, too, the G20 has asked us to review international tax rules in order to put SMEs and multinationals on a level playing field. Combating the **erosion of tax bases and the shifting of profit** has become a priority now that taxpayers' trust in the effectiveness and fairness of their tax systems depends on it. Eliminating double taxation of transnational investment is necessary for growth and employment. While this objective must be maintained, it is also necessary to do away with "double non-taxation" and the shifting of profits to tax-free jurisdictions where no real activity takes place.

Lying at the core of the sovereignty of states, the acceptance of taxation must remain one of the cornerstones of our democracies. Today, this is threatened by insufficient co-operation between states, which has made massive evasion possible. It is also threatened by delays in tailoring our international tax rules to the globalisation of the economy and business enterprises. If we are to restore the confidence of our citizens and taxpayers, we must win the battle for transparency and the establishment of fairer global rules.

Conclusions

It is important to take effective steps to fight tax evasion and tax fraud, particularly in the current context of fiscal consolidation, in order to protect revenues and ensure public confidence in the fairness and effectiveness of tax systems. Increased efforts are required in this field, combining measures at the national, European and global levels, in full respect of Member States' competences and of the Treaties. Recalling the conclusions adopted by the Council on 14 May 2013, the European Council calls for rapid progress on the following issues:

1. priority will be given to efforts to extend the automatic exchange of information at the EU and global levels. At the level of the EU, the Commission intends to propose amendments to the Directive on administrative cooperation in June in order for the automatic exchange of information to cover a full range of income. At the international level, building on ongoing work in the EU and on the momentum recently created by the initiative taken by a group of Member States, the EU will play a key role in promoting the automatic exchange of information as the new international standard, taking account of existing EU arrangements. The European Council welcomes ongoing efforts made in the G8, G20 and OECD to develop a global standard;
2. further to the agreement reached on 14 May 2013 on the mandate to improve the EU's agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino, negotiations will begin as soon as possible to ensure that these countries continue to apply measures equivalent to those in the EU.

In the light of this and noting the consensus on the scope of the revised Directive on the taxation of savings income, the European Council called for its adoption before the end of the year;

3. Member States will also give priority to the concrete follow-up to the Action Plan on strengthening the fight against tax fraud and tax evasion;
4. in order to counter VAT fraud, the European Council expects the Council to adopt the Directives on the quick reaction mechanism and on the reverse charge mechanism by the end of June 2013 at the latest;
5. Work will be carried forward as regards the Commission's recommendations on aggressive tax planning and profit shifting. The Commission intends to present a proposal before the end of the year for the revision of the "parent/subsidiary" Directive, and is reviewing the anti-abuse provisions in relevant EU legislation.

The European Council looks forward to the OECD's forthcoming report on base erosion and profit shifting;

6. It is important to continue work within the EU on the elimination of harmful tax measures. To that end, work should be carried out on the strengthening of the Code of Conduct on business taxation on the basis of its existing mandate; [*Conclusions – 22 May 2013, EUCO 75/1/13 REV 1 8*]
7. Efforts taken against base erosion, profit shifting, lack of transparency and harmful tax measures also need to be pursued globally, with third countries and within relevant international *fora*, such as the OECD, so as to ensure a level-playing field, on the basis of coordinated EU positions. In particular, further work is necessary to ensure that third countries, including developing countries, meet appropriate standards of good governance in tax matters;
8. There is a need to deal with tax evasion and fraud and to fight money laundering, within the internal market and vis-à-vis non-cooperative third countries and jurisdictions, in a comprehensive manner. In both cases the identification of beneficial ownership, including as regards companies, trusts and foundations, is essential. The revision of the third anti-money laundering Directive should be adopted by the end of the year;
9. The proposal amending the Directives on disclosure of non-financial and diversity information by large companies and groups will be examined notably with a view to ensuring country-by-country reporting by large companies and groups;

Efforts are required to respond to the challenges of taxation in the digital economy, taking full account of ongoing work in the OECD. The Commission intends to assess these issues further, in advance of the October 2013 European Council discussion on the digital agenda.

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PUBLIC ADMINISTRATION & REGIONAL STUDIES

6th Year, No. 2 (12) – 2013

Galati University Press, ISSN 2065 -1759

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