



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Company Taxation Initiatives

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SUMMARY RECORD OF THE MEETING OF THE PLATFORM FOR TAX GOOD GOVERNANCE

held in Brussels on 23 March 2018

1. OPENING

- 1.1 The meeting was chaired by Valère Moutarlier in the morning and by Bert Zuijendorp in the afternoon. The Chair updated members on the latest EU developments in relation to direct taxation.

2. ADOPTION OF THE AGENDA

- 2.1 The Chair presented the agenda of the day.
2.2 The agenda was adopted.

3. WORK PROGRAMME

- 3.1 The Chair thanked the Members for their contributions and explained that many but not all of the suggestions had been taken on board. The selection reflected the elements in the mandate – tax evasion, tax avoidance and tax good governance - issues that matter at the EU level, while avoiding overlapping with work done by other bodies. One Member State had made a written contribution before the meeting drawing attention specifically to the need to avoid overlaps with other institutions. The Chair took note and explained that it is still important to inform the Members on the on-going developments in other fora and institutions.
- 3.2 A business association welcomed the opportunity to discuss the programme, sharing the opinion that involvement of civil society is important. The association was interested to know more about the plans for future development of the Platform's mandate. A professionals' association considered that important challenges in taxation are expected and that the Platform should support this process, and suggested to add another topic related to tax-payers' rights. Another business association recalled the need to balance tax fairness and the support to growth in Europe. A third business association stressed the need to monitor the Dispute Resolution Mechanism Directive, and the importance for the business sector to be informed of the work of the Code of Conduct (Business Taxation) Group. Another professionals' association wished to draw attention to the operational issues at the

level of tax administrations. An NGO emphasized the significance of the concept of policy coherence in the aid to developing countries.

- 3.3 DG TAXUD went on to reply to the other speakers: Tax-payers' rights are a fair point to be taken on board, and DG TAXUD also encouraged Members to feed operationally this work-stream. The real value of the Platform is in feeding the collective debate and helping the Commission to envisage what should be the next step in this agenda. The Commission is in charge for monitoring the implementation of EU law, and consequently such monitoring cannot be a task for the Platform. However, the Platform should be seen as an optimal forum to assess the effective implementation in terms of impact. Concerning information on the work of Code of Conduct of Business Taxation group, DG TAXUD explained that this is not within the mandate of the Platform. However, there has been a lot of progress in terms of transparency of the Code of Conduct Group's work.
- 3.4 An NGO welcomed the inclusion of a discussion point on coordinated approach to tax treaty spill-over analysis amongst the Member States, and informed the Platform that it had published a renewed version of a report on spill-over. The NGO also offered assistance on this topic.
- 3.4 The Chair concluded this point by stating that some new proposals would be taken into account and the draft would be turned into the final Work Programme of the Platform for 2018-19. On this basis, the different thematic areas will be scheduled, to enable the Members to contribute more actively, in order to turn the Platform into an even more cooperative and interactive forum.

4. LEGISLATIVE DEVELOPMENTS

- DIGITAL TAX PACKAGE

- 4.1 DG TAXUD explained that the COM had taken a very comprehensive approach through the Digital Tax Package. It started with a communication explaining the overall rationale of the approach, and followed by a draft Directive to define the digital permanent establishment and to modernise profit allocation rules to it. As there is no extra-territorial element in this Directive, it has been combined with a recommendation to the Member States to re-adjust the bilateral tax treaties. The last element of the package is a Directive on digital service taxation, which imposes a tax of 3% on certain e-services provided by companies exceeding the thresholds.
- 4.2 DG TAXUD went on to explain the content, approaches, political background and the framework of the package. There is a real problem to be tackled, and a solution at EU level is preferable to unilateral measures. The Commission is not looking for a ring-fenced approach for digital companies, and it does not see taxation of the digital economy as a tax-avoidance issue. DG TAXUD explained the content of the comprehensive measure, and the methodology of attributing the profits. The targeted measure is needed to fill a gap until the long-term solution is in place. Its name refers to its focus on activities where there is a large gap between the value created and Member States' ability to tax it. Both Directives are limited to the internet framework. The definition of digital presence amends the current concept of permanent establishment. The sale of goods is not in the scope of either Directive; the focus is on services. Third-country companies or specific sectors are not targeted.

The Directives do not discriminate between EU companies and third-country companies, and they do not bring EU companies into a less competitive situation compared to companies resident in 3rd countries.

- 4.3 A business association welcomed the notion that this is not a tax avoidance issue. The association considered this a more fundamental question about the division of taxation rights between countries. It was of the opinion that the COM had chosen a different approach from the methodology used for CCCTB. The association raised a doubt whether the measure adds to EU competitiveness, and found that the impact assessment was lacking such analysis. According to the association, the measures divert from standard international tax practices and bring about problematic dual standards in EU vs. OECD. The association raised a question whether data should be seen as an input factor as opposed to output, and considered that the recent US tax reform had already addressed the issue of non-taxation to a large extent. It cautioned against mentioning individual companies in the process, but was the most concerned on the principal level by the big and small country aspect, raising also a fair tax issue related to start-ups. The association stroke a note of warning against a too technical discussion to the detriment of discussing the principles.
- 4.4 DG TAXUD assured that this is not a GAFA tax. DG TAXUD encouraged also the small Member States to contribute to the discussion. The same business association took the floor, recalling that in a recent meeting, representatives of both business and Member States had preferred a solution at OECD level, and the association argued that even if the comprehensive measure is eventually found to be OECD compliant, the targeted measure will not. It wished to know more details about the targeted measure.
- 4.5 A professionals' association agreed that the newly released package is a major step forward. Nevertheless, the association was concerned about the timing of the digital tax package and worried that the EU plans risked provoking reactions from other states in the international arena.
- 4.6 Another business association also agreed on the need to revisit the taxation of new business models but preferred a multilateral solution to a quick fix and pointed out the difficulty of ring-fencing the digital economy. DG TAXUD confirmed its commitment to the multilateral fora in which it is involved.
- 4.7 An academic association generally welcomed the package and asked how MS's will be guided in applying these methods. A business association welcomed with certain reservations the EU's and OECD's search for a consensual approach on the long-term solution. On the digital service tax, the association believes that it is the sovereign right of states to define the taxes they want to levy. The association asked how the COM had come to choose the tax-rate of 3%, speculating that it might have been based on the idea to have a tax on the turn-over reflecting profits. The association asked: if this was the case, why did the proposal not allow companies to prove that they have a lower profit margin?
- 4.8 An NGO also welcomed the initiative to push for long-term fundamental reforms, pointing out the need to do it in an inclusive way. The NGO enquired whether the Member States would consider enhancing the commitments to the Multilateral Instrument during the ratification process, and implementing the Permanent

Establishment standards that have already been agreed at the global level. An academic association considered essential that there is a global agreement on the concept of the international tax standards, and warned against creating issues with international double taxation. Furthermore, the association pondered the issue of allocation of tax base.

- 4.9 A trade union supported the action as part of ensuring fair and complete taxation of all business profits. A professionals' association, although not strongly in favour of a short-term solution, hoped that the short-term solution would drive up the speed for a long-term solution. A business association asked whether the EU wishes to promote the digital agenda and developments in that area, and if so, how does that fit together with this package.
- 4.10 DG TAXUD commented that the issue has been thoroughly studied over the last four years, so waiting and further studying are not necessary any more. Concerning risk of double standards, DG TAXUD explained that there is no such risk, thanks to the work being done in parallel at the EU and global level, that it is in line with the CCTB. DG TAXUD rejected the idea that the COM would be on the side of the big Member States, and explained that the function of the package is to trigger concrete discussion between the Member States. DG TAXUD confirmed that digital service tax is a turn-over tax, and explained the rationale of this choice.
- 4.11 DG TAXUD also replied to the question on how the figures had been defined, assuring that the choice was based on the most high-quality studies, emphasizing also the discrepancy between tax reported and tax actually paid, and stressing the urgency of a public CBCR. Finally, DG TAXUD also illustrated the rationale behind the tax rate, which is not to compensate a loss of CIT revenue. In terms of the OECD, what the Commission is doing with this package is simply taking the opportunity to implement the outcome of the OECD interim report.
- 4.12 DG TAXUD stressed that the Commission is by its new proposals not taxing data input but revenues, so it is not shifting away from old traditional tax models. Sale of goods and advertisement do not trigger a tax; it is a service delivered that does triggers taxation. Replying to an opinion that some companies should not be taxed because they might be owned by a third-country owner, DG TAXUD explained that the approach is the same for all companies: If they are earning profits in a Member State, they should be taxed in the same manner.
- 4.13 In reply to the question whether the new package is pro-competitive, DG TAXUD stated that taxation is by definition distortive but we need taxation. We need to reflect on how to modernize it, or Europe will not be able to keep its position in future. Responding to the question why there are no European digital companies, DG TAXUD reported on the analysis, outcome of which was that the fact that we do not have a single market tax is an obstacle for small companies undertaking to scale up and invest in neighbouring countries. The Commission agenda is also a pro-digital single market; this proposal is not a proposal of DG TAXUD alone but results of a consensus across the Commission.
- 4.14 A Member State thanked the COM for having produced a rather complex package in a very short time. It recalled that some elements in the proposals can still be addressed at the Council, and saw the EU as the leading case for the OECD. This

Member State considered that big and small countries all deal with the tax issues in the EU, and the basic problem we are dealing with is where the actual value of the wealth is created, so this Member State urged the Commission to continue its discussions with the OECD.

- 4.15 A business association returned to its remark concerning big and small Member States and clarified its opinion, saying that although the Commission had done very good work in this area, the association's concern is that the new US tax rules being implemented going forward has to be taken into account. This association joined another business association stressing that even if the digital companies are paying 10% of tax in average and brick-and-mortar companies 23% in average, this may also reflect the differences of profit margins between different sectors. The association agreed that if data is treated as an output revenue, then it is equivalent to sales, however, this would not make it easier.
- 4.16 An academic association inquired whether the allocation of revenues raised among the Member States would be different when we go over to the digital permanent establishment in the next system. DG TAXUD confirmed that this is the case. A business association questioned if the reason why we have no digital champions in Europe, is really tax obstacles, because this kind of companies do not really need to have physical presence. DG TAXUD expressed a doubt that a new 3% tax would change this much.

5. LEGISLATIVE INITIATIVES

- INTERMEDIARIES (DAC6)

- 5.1 DG TAXUD gave a presentation on the 5th amendment to the Directive on administrative cooperation involving reporting and automatic exchange of information on cross-border arrangements that involve potentially aggressive tax planning schemes. DG TAXUD explained the technical elements of the Directive – concepts of hallmarks, marketable and bespoke arrangements, and how the proposal was changed in Council. DG TAXUD then went into more details on the definition of intermediary, and illustrated how the presence of several intermediaries or the concept of legal professional privilege affects the Directive. Information was also given about the deadline for reporting and the choice of Member State. It was also demonstrated how the main benefit test functions in its interaction with the hallmarks.
- 5.2 A business association pointed out that in some Member States, all professions which can advise on tax matters benefit from a professional privilege, and enquired whether this means that only the taxpayers will have to comply with the reporting obligation. This association was also concerned by the broad disagreement among companies on what they will have to report on. DG TAXUD explained that it was never intended to exclude taxpayers from the scope of the Directive, and went into more details justifying why the reference is always made to national rules. DG TAXUD clarified that the taxpayer does not decide whether a specific scheme is reportable; the primary obligation rests with the intermediary, who then has to notify the taxpayer in the case that the former benefits from an exemption.

- 5.3 A professionals' association joined the business association in their concern for potential differences of national transposition, and welcomed any EU level guidance on the implementation.
- 5.4 An academic association enquired what the Commission can use the material uploaded on the Central Directory for. DG TAXUD explained that the Commission is given limited access to this material for the purpose of monitoring the application of the Directive.
- 5.5 A professionals' association firmly supported tax transparency. However, it expressed some concerns regarding the practical implementation aspects of the Directive, and joined the other professionals' association in their concern about the lack of implementation guidance. This association expressed a pre-occupation about the limited scope of the main benefit test. Given that this is not a condition for all hallmarks, but is instead limited to some of them, would extend the scope of the reporting obligation and might ultimately lead to over-reporting. DG TAXUD answered the question 'in which national competent authority the reporting should take place' by referring to the text of the Directive: reporting always takes place in the competent authority of the intermediary's Member State. DG TAXUD also clarified that the additional requirements for "knowledge" or "expected knowledge" that a scheme is reportable actually narrow down the definition of intermediary, contrary to allegations that the concept is broadened. If more than one intermediary is liable to report, the avoidance of multiple reporting will depend on the diligence of the intermediary who can prove that the same information has already been reported.

6. LEGISLATIVE INITIATIVES

- EU LIST

- 6.1 DG TAXUD gave an update on the most recent developments in the EU list of uncooperative jurisdictions for tax purposes. The list has been updated already twice this year, following the ECOFIN decision that the list can be amended on the basis of the implementation of the commitment and on the basis of new commitments. The fact that some jurisdictions were keen to send new letters of commitments after the 5th December shows that the process has been quite effective. Overall the focus now has shifted towards monitoring of these commitments and engaging with all these jurisdictions. First, there is the need to remind them of their commitments that the EU expects them to implement, and secondly there is the need to provide assistance to them. In terms of transparency, the Member States have asked the jurisdictions for the authorisation to publish the letters. Up to now the large majority of the jurisdictions have agreed, and the letters have been published. In terms of defensive measures there is an on-going discussion following the conclusions of ECOFIN on this, and the Code of Conduct Group is currently continuing the work on these aspects. The Commission adopted on Wednesday 21 March a Communication detailing how the Commission intends to apply the new tax good governance article that has been inserted in EU legislation dealing with EU funds, including the Financial Regulation that covers the entire EU budget.
- 6.2 An NGO welcomed the enhanced disclosure, but at the same time regretted that the disclosure is not complete. It also asked for more details concerning the criteria 2.2: how are the countries going to be assessed with regard to the substance criterion?

Furthermore, the NGO considered that some counter-measures might be suitable for all types of jurisdictions but some other counter-measures only for certain type of jurisdictions.

- 6.3 DG TAXUD reiterated its view that there is a considerable merit in being transparent about this process and therefore the Commission welcomes the steps that have already been taken by the Council and the Member States in publishing the letters sent to these jurisdictions and also in gradually publishing the letters that have been received from these jurisdictions. However, DG TAXUD also recalled that this is an ongoing process which also depends on the willingness of the countries concerned to disclose the information. DG TAXUD pointed out that the issue of counter-measures is still an area where, in the Commission's view, there is scope for doing more, although progress has been made. In that context one of the issues indeed is whether the counter-measures should be general, or whether there is scope for targeted counter-measures. This is an ongoing work; the Member States will have to decide exactly how they are going to approach to this matter.

6. WORKSHOP IN MONTENEGRO

- 7.1 DG TAXUD outlined the FISCALIS workshop on spill-over effects of Double Tax Agreements between Member States and developing countries, which was organised in Montenegro in March. The aim of the workshop was to follow up on the discussions that already took place at the Platform on this issue, but at the same time to target a more specific audience, namely the tax treaty negotiators of the Member States.
- 7.2 The purpose of the workshop was to raise awareness among them regarding the link between taxation and developing policies. In this sense, the outcome of the workshop can be considered as a positive one. DG TAXUD explained the format in which the seminar was designed and that at the beginning and at the end of the workshop a questionnaire was distributed to the participants to share their views on the subject. DG TAXUD informed that the results of such questionnaires will be shared with the members of the Platform in one of the next meetings.
- 7.3 As general take away, DG TAXUD mentioned that the issue of spill-over effects deserves further discussion. It also emerged that sometimes the development and taxation policy pursued by a Member State are not perfectly aligned and that many of the participants were not really aware that spill-over effects analysis could be carried out on their treaty network.
- 7.4 There were no questions on this point of the agenda.

7. ANY OTHER BUSINESS

- 8.1 Under any other business, DG TAXUD updated the Platform on the ongoing Pilot Project on Fair Taxation funded by the European Parliament. DG TAXUD explained that the project already started last year but this year has a different format, as it will consist of local events organised in five Member States. The events are organised for a half a day and are intended to discuss the EU fair taxation agenda but also domestic issues related to that issue. The aim is to involve as many stakeholders as

possible. DG TAXUD will update the Platform once all the details of the dates and other information are available.

8.2 There were no questions on this point of the agenda.

8. CONCLUSIONS

9.1 The Chair thanked all members for the constructive discussions.

The preliminary date of the next PF meeting is the 27 June.

A summary record of the Platform meeting will be circulated to members and made available on the Platform website once approved.
