



Brussels,
TAXUD/D1/(2019) taxud.d.1(2019)

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

held in Brussels on 26 March 2019

1. OPENING

1.1 The meeting was chaired by Bert Zuijndendorp, Head of Unit DG TAXUD.

2. ADOPTION OF THE AGENDA

2.1 The Chair welcomed participants mentioning the new main representative for an NGO. He presented the agenda of the day and emphasised the choice of dealing with various issues differently from the latest Platform meetings, which had been characterised by a thematic approach.

2.2 He informed the participants that the next Platform meeting will be an "Away Day" in Overijse on 8 May and will represent a fundamental opportunity to continue analysing in depth the big themes on "The Future of Taxation" and to stimulate the debate within the Platform also in view of the settlement of the new Commissioner. He promised to give more details on that event at the end of the meeting and by e-mail during the same week.

2.3 The agenda was adopted.

3. EU LIST OF NON-COOPERATIVE JURISDICTIONS: UPDATE

3.1 The Chair, on behalf of DG TAXUD, informed the Platform members about the recent update of the EU list, commented on the main effects of the EU listing process and gave an overview of the ongoing initiatives and their development over the coming months.

3.2 The EU list was updated at 12 March ECOFIN by blacklisting 15 jurisdictions, of which 5 were already there (USVI, American Samoa, Guam, Samoa, Trinidad and Tobago), 9 were included for having failed to deliver on their commitments (Aruba, Bermuda, Belize, Dominica, Fiji, Marshall Islands, Oman, UAE and Vanuatu) and 1 was added for the insufficiency of the new "replacement" regime that it had introduced (Barbados). The blacklisting derived from the non-compliance with commitments or the insufficient commitment in the first place, except for Trinidad

and Tobago that has remained on Annex I due to its rating by the Global Forum. It was specified that 25 jurisdictions were completely cleared for their 2018 commitments, while other 34 stay on Annex II with commitments to fulfill by the end of the current year.

- 3.3 The EU listing process has demonstrated to have a very powerful impact in terms of reduction of base erosion risks and concrete and significant improvement of tax good governance globally. Furthermore, it has promoted the dialogue and cooperation with the third countries, which received explanation of the requirements and technical advice by the Commission. In addition, it has also improved the policy coherence between EU tax policy and other key EU policy areas, specially trade, development and external relations.
- 3.4 Changes to the EU list are expected for 2019; however, from 2020 onwards the list should become more stable in order to represent a firm basis for applying defensive measures. Among the new aspects to the EU listing process for the current year, it was mentioned that 3 new jurisdictions which are G20 members will be screened for the first time (Argentina, Mexico and Russia) and a new criterion (known as 3.2) relating to the implementation of CbCR minimum standard will enter into force. The Member States will continue to work on coordinated defensive measures, hopefully with a view to agreeing a robust approach by the end of 2019. At the EU level, there is a clear link between the EU list of non-cooperative tax jurisdictions and decisions related to EU funds. New EU provisions prohibit EU funds from being channeled or transited through entities in countries on Annex I. Jurisdictions in Annex II are also examined to ensure that EU funds are not involved in the harmful regimes these countries are eliminating.
- 3.5 In conclusion, DG TAXUD stressed the development and tangible positive outcomes of the EU listing process, as it now relies on the support of the Member States and provides for the consistent application of the same criteria to all jurisdictions, granting fair conditions.
- 3.6 A few questions and comments were made. An NGO, after having informed the participants about its new report on the EU list, expressed the view that the EU list of non-cooperative jurisdictions had produced positive outcomes. Firstly, it had stimulated a positive change in tax jurisdictions (specially, the zero or 2.2. tax regimes) and affected the international tax framework, including the OECD. Secondly, the Commission adopted a consistent and strict approach towards those jurisdictions which had replaced harmful practices in a non-effective way. Among the less positive results, it mentioned the rules adopted by the EU to target the developing countries, included in the grey or even the black list for their non-compliance with criteria like n. 3. In fact, it was said that countries like Morocco and Namibia perceive the EU list as a list of tax havens instead of a list of non-cooperative jurisdictions, therefore they find unreasonable and frustrating to be considered responsible for tax avoidance rather than victims. It was added that the EU list has not replaced all the black lists of the Member States, some of which continue to include more jurisdictions. Finally, it encouraged DG TAXUD to continue closely monitoring the compliance with substantial rules by zero-rate tax regimes (such as Bermuda, Virgin Islands).

- 3.7 A professionals' association appreciated the dynamic character of the EU listing process, which allows to reward jurisdictions due to their commitments. It asked the Commission how it saw the interaction between DAC6 and the black and grey list and also requested for some further comments on the results achieved as regards the coordination of defensive measures. Finally, it asked for the status of relations between the EU and the OECD in this area.
- 3.8 An NGO agreed with the participant who had expressed concerns on the treatment of the developing countries in the EU listing regime.
- 3.9 DG TAXUD thanked for the comments and answered to the points. First of all, DG TAXUD confirmed the importance of the perception regarding the EU list and underlined the key characteristic of the EU listing process to apply the same rules to all jurisdictions. At the same time, it recognized to have applied some exceptions in favour of the developing countries and to continue to provide them with technical advice and support. DG TAXUD emphasized that in the long term developing countries will reap benefits from the EU list, too. As for the concerns on tax havens, DG TAXUD assured that it requires not purely formal but substantial and long-term commitments and agreed about the necessity to monitor these States also with the cooperation of the Member States. With reference to the current permanence of national black lists, DG TAXUD stated that it can not prevent them, being the EU listing process at its preliminary stage, but that it hopes that the EU list will consolidate eventually national black lists. As for the relations with the OECD, DG TAXUD ensured that they cooperate closely and reciprocally and confirmed the efforts of the Commission to minimise the eventual divergences which exist in few areas. Finally, DG TAXUD answered the question on the interaction of the EU listing with DAC6 reminding that this directive was still under transposition in national law and recognizing that criteria for blacklisting are always susceptible of changes which appear necessary.
- 3.10 The OECD took the occasion to update the participants about the publication of Beneficial Ownership Toolkit by the Secretariat of the OECD'S Global Forum on Transparency Exchange of Information for Tax Purposes in partnership with the Inter-American Development Bank during the previous week. The toolkit set new criteria of beneficial ownership which can be adopted by the Global Forum members willing to implement standards for assessment in accordance with the international tax transparency framework.

4. IMPACT OF EU LIST ON FIRM VALUE AND STOCK PRICES

- 4.1 DG TAXUD introduced Aija Rusina, a PhD research scholar from the Norwegian School of Economics, explaining that her paper "Name and shame? Evidence from the European Union tax haven blacklist" investigated the impact of blacklisting a country on firm value, investment decisions and stock prices using the data resulted from the publication of the 2017 EU list.
- 4.2 The presentation by Aija Rusina started with some comments on the reaction of the mass media to the publication of the EU tax haven blacklist. After having clarified that her paper's main objective was to assess and gauge the effects of the EU list on share prices of multinational firms with subsidiaries in the blacklisted countries, she illustrated her hypothesis of a negative market reaction by mentioning inter alia the

reputational costs, the increase in audits and monitoring of transactions involving affiliates in tax havens, and the adoption of countermeasures and legislative changes by tax havens with the effect of jeopardising firms' tax saving strategies.

- 4.3 She summarised the results of her research stating that the publication of the EU tax haven blacklist was followed by significant negative stock returns for firms with tax haven affiliates as it reduced the value of these firms by 0.6% relative to other firms and reduced their overall market capitalization by 18 million USD. Moreover, she specified that data showed more negative stock returns for firms with a large proportion and number of tax haven affiliates and for firms with affiliates in tax havens listed unexpectedly.
- 4.4 After clarification on the sources of data analysed and the sample selection of 14,537 active firms (only MNEs), she explained the formula adopted to calculate the expected return of firms with a tax haven exposure in the hypothetical case of non-publication of the list. She then showed a graph confirming the stock price decrease suffered by firms with tax haven affiliates starting on the day of blacklist publication on 5 December 2017. She also considered and explained the reasons of some differences in market reaction. These include namely that retail firms experienced a larger stock price decrease, more tax aggressive firms faced more negative returns, firms facing high expropriation risk had less negative returns and negative effect was less pronounced in countries with low levels of investor protection and weakly governed firms.
- 4.5 Ms Rusina concluded her presentation with some remarks on the policy implication of the publication of the 2017 EU list putting emphasis on the effects of the public tax haven shaming by international organisations and news media on investors and, as a consequence, on firms' management, despite the lack of any specific sanctions or penalties.
- 4.6 DG TAXUD thanked Aija Rusina for her presentation and underlined the usefulness of analytical research founded on concrete data. The Chair also asked for eventual questions or comments by the participants.
- 4.7. An MS thanked for the interesting presentation and asked the researcher clarification on the duration of the stock price decrease, whether other eventual long-term change in firms had occurred after the publication of the EU list and which variables she had taken into consideration.
- 4.8. The researcher explained that the graph represented only daily return in percent for each day. Cumulative returns are obtained by summing up the daily returns and hence show a persistent stock price decrease, causing the reduction in firm value approximately by 1% and 18 billion of dollars erosion in the market capital of firms analysed. She specified to have compared firms located in the same country and in the same industry with and without tax haven affiliates.
- 4.9 Another MS shared the doubts expressed by the above-mentioned MS on the long-term market reaction and asked the researcher whether she had identified long-term implications of the publication of the EU list, including the impact of the removal of a jurisdiction from the EU list after a few months.

- 4.10 The researcher excluded these questions from the scope of her research due to the data which was available at that moment but found interesting to carry out further analysis looking at subsequent data concerning the level of increase in audit fees, sales of affiliates, ownership changes, etc. Moreover, she answered another question about the firm level and country level effects on governance, by observing that better governed firms reacted worse than weakly governed firms. For well governed firms, a large exposure to blacklisted tax havens confirmed suspicion of poor corporate governance, which was previously thought not to be value decreasing. For poorly governed firms, blacklist is likely to contribute to increased transparency, monitoring and auditing, which can reduce shareholder expropriation risks.
- 4.11 On request of an international NGO, she clarified that she obtained firm level results and not aggregated results for each tax jurisdiction.
- 4.12 DG TAXUD asked the researcher some practical questions and she confirmed to have started her collection of data immediately after the publication of the list. DG TAXUD reiterated the usefulness of analytical research and encouraged the researcher to continue her analysis on this issue.

5. TAX TRANSPARENCY: DRAFT GRI STANDARD

- 5.1 DG TAXUD introduced Mia D'Adhemar, a manager at Global Reporting Initiative (GRI), and invited her to present GRI's draft Standard on Tax and Payments to Governments, confirming the importance of tax transparency initiatives and the fact that they do not the exclusive remit of legislators and policy-makers.
- 5.2 Ms. Mia D'Adhemar, after a brief presentation of GRI, introduced the GRI Standards as the global best practice for reporting sustainability information, i.e. communicating about an organization's impact on the economy, the environment and society. She described the GRI standards as a set of interrelated standards, of which 3 are universal Standards that apply to every organization preparing a sustainability report while 33 are topic-specific Standards for reporting on material topics identified by organizations. She also provided some data demonstrating that GRI standards are adopted by the largest companies in the world by revenue and their global impact.
- 5.3 The Tax and Payments to Governments Project was launched by the Global Sustainability Standards Board (GSSB) in 2017 to develop new specific disclosures and promote greater transparency on a reporting organization's approach to taxes. The draft of a new topic-specific Tax and Payments to Governments Standard has been developed by a multi-stakeholder Technical Committee since January 2018 and has already been subject to a public comment receiving 85 submissions from approximately 110 organisations across business, investment institutions, civil society, etc..
- 5.4 Ms D'Adhemar concentrated on the structure of the exposure draft Standard that combines management approach disclosures with topic-specific disclosures and commented in detail on the reporting requirements of each disclosure, i.e. the approach to tax and payments to governments (Disclosure XXX-1), the tax governance and control framework (Disclosure XXX-2), the approach to stakeholder engagement and management of stakeholder concerns related to tax and payments to

governments (Disclosure XXX-3), the list of all tax jurisdictions where entities are resident for tax purposes (Disclosure XXX-4) and the country-by-country reporting of income, taxes and business activities (Disclosure XXX-5). She also mentioned some aspects concerning the application of the Standard and referred to the reasons for the non-adoption of the Standard itself.

- 5.5 She concluded with an update on the next steps of the project: the revision of the proposed Standard will take into account the respondents' comments. These comments will be published on the website in a week. It is planned to be finalized by the last trimester of the current year and will be finally submitted for approval to the Global Sustainability Standards Board.
- 5.6 The Chair gave the floor to the audience for eventual questions or comments.
- 5.7 An NGO thanked for the interesting presentation and asked further comments on the process, which allows companies to determine their material topics and the GRI's point of view about the EU proposal for mandatory reporting.
- 5.8 Mrs. Mia D'Adhemar explained that GRI standards are designed to be applicable by all organizations regardless of their characteristics and recognized that the selection of material topics is a complex process but at the same time she invited to focus on issues that stakeholders would like to know. As for the mandatory reporting, she answered that GRI supported increased transparency more broadly. Tax has been identified for inclusion in the GRI Standards due to the importance of improving the transparency and dialogue on tax and supported global requirements that also contributed to this outcome.
- 5.9 A professionals' association declared to consider the publication of the Draft standard by GRI as an important step contributing to create public trust and confirming the key role of the private sector in promoting tax transparency and responsible tax behaviour.
- 5.10 A trade and business association supported the view that the GRI standard is useful observing that it gives the chance to explain in depth how business and their approach works. Moreover, it suggested to include in the reporting requirements of the Standard more details on the activities of entities and the type of investments.
- 5.11 The Chair asked government representatives to express their opinion on voluntary reporting by the private sector as a positive development. There were no comments.

6. EU TRANSPARENCY UPDATE: ADMINISTRATIVE COOPERATION DIRECTIVE

- 6.1 DG TAXUD introduced the last presentation dedicated to the evaluation process of the Administrative Cooperation Directive (DAC) emphasizing that it represents a key instrument which provides the Tax Administrations with useful tools to assess cross-border taxpayers and arrangements and collect taxes beyond the borders of the Member States and stating that the findings of this evaluation will be useful to foresee the eventual developments which are required.
- 6.2 The presentation was given by DG TAXUD and was divided into two parts. In the first part, DG TAXUD provided an overview of the DAC and the evaluation process concerning it. In the second part, it commented on the findings of the reports on the

DAC already adopted by the Commission and provided the participants with information about the recent public consultation and next steps.

- 6.3 Firstly, DG TAXUD illustrated the scope and objectives of the Directive on Administrative Cooperation and reminded its gradual evolution through five different directives to offer an overview of the existent legal framework for an intense and efficient cooperation between the Tax administrations of the Member States. After that, it explained the aim and stages of the evaluation process and presented the two Reports adopted by the Commission respectively on 18 December 2017 and 17 December 2018.
- 6.4 In the 2017 Report concerning the application of the DAC, DG TAXUD identified three main findings: first, the fact that DAC provisions have been implemented but not all of them effectively; second, the lack of a parallelism between the great increase in the amount of data tax administrations have to deal with and their capacity to do so because of the number of staff dedicated to the EU administrative cooperation and the IT resources invested by the Member States; third, the premature character of the assessment of the benefits of DAC. DG TAXUD mentioned the measures aimed at reaching an improved and transparent approach, namely the adoption of actions for a transparent DAC implementation, the improvement of the capacity of the Member States to use information and the importance of collecting better and more transparent data on the implementation of DAC to gauge its benefits.
- 6.5 DG TAXUD concentrated also on the 2018 Report by commenting on the statistics and information on the Automatic Exchange of Information contained therein. From the graphs, it emerged that first the amount of information exchanged was huge (both in terms of number of taxpayers and value of information) but not all of it was of sufficient quality and was put to use, second a great majority of Member States was not able to assess the benefits of the exchanges and third the assessment of the impact of DAC3 and DAC4 was premature. As for the benefits of AEOI, the 2018 Report found that information was mainly used by tax authorities for risk assessment and tax assessment while to a less extent for the prefilling tax return (considered worthy of attention for its usefulness). DG TAXUD highlighted the difficulties in quantifying the benefits of AEOI in terms of additional tax revenues and deterrence but noted that 4 Member States calculated incremental tax revenue from DAC1 higher than reported costs. On the base of the statistics, DG TAXUD identified the quality of information and the better use of data as areas of improvement.
- 6.6 DG TAXUD shared the initial findings of the public consultation on DAC Evaluation carried out from 10 December 2018 to 4 March 2019, by informing that it had received 30 replies in total (plus one late reply), from different stakeholders (specially business associations and companies and EU citizens) coming from 10 different countries.
- 6.7 DG TAXUD concluded by informing the participants that DAC evaluation will be finalized by the end of June with the publication of a Staff Working Document, which could lead to an impact assessment and new input for the next policy cycle. It also specified that a codification of the DAC and all its following amending directives is ongoing and should be concluded by the end of July with the publication of the new unique DAC in the Official Journal of the EU.

- 6.8 The Chair gave the floor to the participants for a debate.
- 6.9 Some questions and comments were made. An NGO agreed with the Commission about the importance of exchange of information and stressed the need for promoting the correct use of it and avoiding the mere collection of information not followed by its effective use. Another NGO referred briefly to its contributions to the Public Consultation, made some comments on the positive effects that publication of information would have for public and developing countries and underlined the need for improvement of the exchange of tax rulings. A trade union asked for further details on the quantitative data of benefits and costs of AEOI mentioned by the DG TAXUD to know which taxes were affected. A professionals' association considered the DAC evaluation on a regular basis really useful and asked more details on next steps in this area.
- 6.10 DG TAXUD thanked for the comments and the contributions to the Public Consultation it had received. Firstly, DG TAXUD confirmed the interest of Commission in verifying the effective use of data exchanged by the Tax administrations and ensured that benefits of DAC 3 and DAC4 which were not covered by the Report will be gauged. Secondly, DG TAXUD took into consideration the comment on the need for equal access to information by developing countries but confirmed that so far the issue had not been dealt with directly in the DAC. Moreover, it observed the comment on the expansion of the scope of AEOI on tax rulings, currently limited to the cross-border ones. Thirdly, DG TAXUD reminded the scope of DAC to clarify that the figures illustrated on the costs and benefits of AEOI concerned only direct taxes and not VAT, excise duties or other taxes covered by other EU legislative act on administrative cooperation. It was suggested to look at the Report published in 2018 for further details. Finally, DG TAXUD specified that the Staff Working Document may lead to an impact assessment for further proposals in the future but at that moment it was not possible to foresee exactly whether and when it could occur. It reassured that until the entry of application of DAC 6 (i.e. 20 July 2020), rules will remain unchanged.
- 6.11 On request of an MS, DG TAXUD confirmed that the DAC codification process is ongoing and should be finalized by the end of July with the publication of the new consolidated version of DAC in the Official Journal of the European Union.
- 6.12 Finally, OECD thanked for the presentation of the preliminary outcomes of the evaluation and asked the Commission whether it had assessed the impact of Automatic exchange of information on exchange of information on request and whether the increase in tax revenues, which had emerged from statistics, was the consequence of additional tax audits or voluntary tax compliance.
- 6.13 DG TAXUD observed that a link between automatic exchange of information and exchange of information on request can be seen in practice, in the sense that the former triggered more requests for information, and mentioned the exchange of tax rulings as example. According to DG TAXUD it could be possible to identify a trend and understand its stability over time by comparing the exchanges of information on request before and after the entry into application of the automatic exchange of information. As for the figures of DAC benefits in terms of increase in tax revenue, DG TAXUD referred to the details contained in its Report published in 2018 and took the view that the increase in assessed tax connected with the automatic

exchange of information could be more likely the consequence of compliance checks or audits.

- 6.14 The last questions, raised by OECD, concerned the features and scope of the central directory. DG TAXUD explained that the central directory is a database hosted on the Commission IT infrastructure put at the service of the competent authorities of the Member States only for the exchange of tax rulings under DAC3. The Commission has a limited access to it but can know the number of tax rulings, which was indeed published in the Report published in 2018. The Commission's plan is to expand the same central directory also to DAC6 information.

7. ANY OTHER BUSINESS

- 7.1. The Commission informed that the next meeting will take place on 8 May to discuss and debate the future of taxation. It wants to be an opportunity to promote contacts and reciprocal dialogue among the Platform members.
