

Platform – Draft Work Programme 2018-2019

PLATFORM ON TAX GOOD GOVERNANCE 2015-19

On 17 June 2015, the Commission adopted a Decision¹ to prolong the mandate of the Platform of Tax Good Governance, extend its scope and enhance its working methods. This Decision was directly linked to the EU Action Plan for Fair and Efficient Corporate Taxation, which was adopted on the same day.

The Action Plan launched what became an ambitious agenda for fair, effective and growth-friendly corporate taxation in the EU. The Commission made corporate tax reform a political priority and has driven forward an ambitious work programme in this field. The aim is to tackle tax evasion and avoidance, ensure sustainable public revenues and create a pro-growth tax environment in the Single Market.

The Platform for Tax Good Governance has had an important role in advancing this ambitious agenda. It is a forum from which the Commission can draw upon the cross-cutting expertise of representatives from business, civil society and national tax administrations. It helps to shape balanced, well-founded and effective solutions to corporate tax challenges and provides valuable input into the development and implementation of EU tax initiatives. The Platform has also an important role in monitoring developments in the corporate tax environment – in Europe and internationally – and exploring solutions to new challenges that arise.

The Platform's work programme should focus on key areas of EU corporate tax policy where it can provide real added value. This can entail actively contributing to non-legislative initiatives, advising on the policy development, or providing feedback on the progress in this field. To avoid overlap and to respect institutional roles, the Platform should not cover issues that are being discussed or negotiated in the Council.

The current Platform mandate runs from 17 June 2015 to 16 June 2019. The Work Programme was divided into two phases. The first phase (2015 – 2017) has now been completed. This document sets out Platform's Work Programme up to the end of the mandate. It has been designed to be flexible enough to integrate new corporate tax policy issues, as they arise.

¹ Commission Decision C(2015) 4095 establishing the Commission Expert Group "Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation" and replacing Decision C(2013)2236

Work Programme 2018-2019

This work programme of the Platform is aligned to priority areas in EU Agenda for Fair and Effective Corporate Taxation. Within each of these headings, the Commission has identified issues on which the input of the Platform would be particularly useful.

1. FAIR TAXATION

Fair and effective taxation is a topic which has been very high in the EU agenda in recent years. As a result, much has been done, both within the EU and in relation to external partners, to tackle tax abuse, ensure sustainable revenues and support a better business environment in the Single Market².

Through the European Semester, the Commission and Member States have acknowledged that tackling Aggressive Tax Planning (ATP) is at the heart of the economic and social agenda of the EU. Taking into account that no country can act effectively alone against ATP and that there are clear spillover effects between countries, it is important to address the issue of ATP in a comprehensive manner. This includes ensuring the proper coordination of national policies to address profit shifting within and outside of the EU.

A milestone achievement was the adoption of the two Anti-Tax Avoidance Directives (ATAD 1 and 2). These Directives not only transpose specific OECD BEPS outcomes into EU legislation, but also ensure that anti-avoidance measures are applied throughout the Single Market in a coordinated way. Member States must now transpose this legislation into national law, so that it can start to be effective from 2019. This may require close monitoring and feedback on any problems that arise, to ensure that the new provisions are fully and properly implemented in all Member States.

The follow-up of all countries on their OECD BEPS commitments will also need to be closely monitored, to ensure a level playing field internationally and to ensure that third countries are actually implementing the standards.

Other international developments – including tax reforms by key international partners - can also add complexity to the global tax environment and challenge the level playing field globally. It will be important to study the effects of the implementation of different standards by other key partners, to ensure that there are no negative spillover effects on the EU.

The proper implementation of the treaty-related BEPS measures is also critical. The implementation of these measures is the exclusive competence of Member States. However, they need to implement the measures in a way that is compatible both with EU law and with their BEPS commitments and signature of the Multilateral Instrument (MLI). The Anti Tax Avoidance Package of 2016 included a Commission

² https://ec.europa.eu/taxation_customs/business/company-tax/action-plan-corporate-taxation_en

Recommendation to the Member States³ on how to implement BEPS tax treaty measures in an EU-compatible way. This Recommendation was endorsed by Member States in the Council in May 2016. It will be important to monitor the implementation of these standards by Member States, with a view to ensuring the greatest level of coordination possible.

Issues to be discussed include:

- Monitoring BEPS and ATAD implementation by Member States and third country partners;
- Identifying possible remaining gaps in the anti-avoidance framework, post-BEPS;
- Developing the EU's agenda against aggressive tax planning (ATP) further;
- Ensuring coherence by Member States in the implementation of the Multilateral Instrument (MLI).

2. TRANSPARENCY

Tax transparency is a central pillar of the Commission's strategy to fight aggressive tax planning. Much has been achieved since Member States first agreed to the Council Directive on administrative cooperation in the field of taxation 2011/16/EU (DAC), which lays the ground for cooperation and information exchange between tax authorities. The DAC has been amended to address specific challenges and increase tax transparency further. As a result, there are now binding EU transparency requirements on financial accounts, tax rulings, country-by-country reporting, and certain anti-money laundering information. The latest proposal for amendment, once agreed, will set mandatory disclosure rules for intermediaries.

The full impact of those measures remains to be seen and the Commission is currently evaluating it.⁴

Nevertheless, it is already clear that the transparency revolution has not yet come to an end. More needs to be done to provide tax authorities and if needed the wider public with additional information.

The Platform should focus on identifying gaps in the current transparency framework and examining the scope for additional measures. EU tax authorities could receive more and wider information about beneficial ownership, dividends or investment income more generally, e-payments (like credit card payments), quantity and value of online sales, etc. just as some non-EU tax administrations do.⁵ Reports like the Financial Secrecy Index, supra national list, FATF and OECD peer review could help pushing for new criteria, measures and standards.

³ https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/anti_tax_avoidance/c_2016_271_en.pdf

⁴ The roadmap of the evaluation is published at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1068597_en. The evaluation follows the first Commission report to the European Parliament and the EU Council on the functioning of the Directive of December 2017. Document reference: COM/2017/0781 final.

⁵ See for instance the case of the Australian Tax Office: <https://www.ato.gov.au/General/Building-confidence/In-detail/Data-matching/>

Transparency in other policy areas with strong links to taxation – such as anti-money laundering rules, protection of whistle-blowers and public country-by-country reporting, should also be monitored.

Issues to be discussed include:

- Considering the impact of the Administrative Cooperation Directive (DAC) as it is implemented;
- Considering what action can be taken at the EU level to broaden transparency in taxation;
- Discussing how to further promote transparency in other fields with an impact on taxation (e.g. anti-money laundering; whistleblowing);
- Assessing the impact of the new EU and international transparency measures on developing countries.

3. EFFICIENT TAXATION

The EU corporate tax agenda is not solely focussed on tackling unfair competition and tax abuse. Creating a competitive, attractive and growth-friendly corporate tax environment in the EU is also a key priority, as set out in the 2015 Action Plan on Fair and Efficient Taxation. Member States need to work together to build an EU tax system that encourages growth, jobs and investment in the Single Market, that promotes innovative activities and that supports SMEs and start-ups.

The Platform is an ideal forum to discuss the key elements needed to make the EU's corporate tax environment as attractive, easy and stable for businesses as possible. This could include a discussion on cross-border tax obstacles, the debt bias in taxation and tax compliance costs, as well as R&D tax incentives.

The Platform should also follow up on the Code of Conduct on withholding taxes, which the Commission and Member State experts published in 2017. This Code aims to encourage Member States to simplify their national procedures for withholding taxes, which constitute a major tax obstacle in the Single Market. This work is particularly important in light of the goal to complete a strong Capital Market's Union in the EU.

Competitiveness is also linked to a level playing field among companies. An important consideration in this debate is the extent to which more harmonisation is needed at EU-level to boost the competitiveness of the Union as a whole, and the extent to which Member States should be given flexibility to tailor their tax systems to their specific needs.

The EU must also remain vigilant of the competitiveness of its tax systems vis-à-vis those of important trading partners. This is particularly pertinent in light of recent developments (such as the US tax reforms and Brexit), as well as the renewed international trend towards lower corporate tax rates. The Platform should consider the options open to the EU in response to these trends.

Issues to be discussed include:

- Considering the changes needed to EU tax policy to ensure that the EU is more competitive in the future;
- Examining the impact of tax policy on SMEs and start-ups, and how taxation can support their growth;
- Examining how the EU should respond to international developments which have an impact on taxation policy.
- Monitoring the reform of national withholding tax procedures, in line with the EU code of conduct on withholding tax

4. EXTERNAL STRATEGY / DEVELOPMENT

In January 2016, the Commission published the External Strategy for Effective Taxation, to help Member States forge a common position on external tax challenges. Member States endorsed this Strategy in May 2016, and all of the actions have since been taken forward. Two areas of the Strategy are particularly dynamic and will benefit from continued input from the Platform over the coming years.

4 (a) EU LIST

In December 2017, the first EU list of non-cooperative tax jurisdictions was adopted by Member States at the ECOFIN Council. The Council also endorsed the high level commitments made by other countries to address deficiencies in their tax systems within a specific timeframe. A general set of defensive measures which Member States could choose to apply was also agreed.

The EU list is not a one-shot product. It is a dynamic exercise which will need to be constantly updated, taking latest developments into account. These developments can occur, for example, when a jurisdiction implements measures to be in line with the criteria or, conversely, if it takes a backward step in this regard.

Work will also need to continue with the countermeasures to be applied towards listed jurisdictions. This will involve both national measures in the tax area and EU-level measures in other areas (e.g. EU Funds). It will be important to receive feedback on the impact of these countermeasures and to discuss possible fine-tuning that Member States could consider in future revisions.

International standards might also evolve over the coming years, and the EU listing criteria should be updated accordingly. The Platform could then be a very useful forum to discuss developments when it comes to new or different criteria to be applied for the screening of jurisdictions.

The operational and decision-making aspects of the EU listing process remain within the competence of the Code of Conduct Group. However, there are other areas that will benefit from discussion and input at the Platform.

Issues to be discussed include:

- Receiving regular updates from the Commission on the state of play of the EU listing process;
- Discussing possible options for strengthening countermeasures;
- Considering possible new listing criteria, as appropriate;
- Reporting on developments relevant to the EU list at the EU, national and international level.

4 (b) DEVELOPING COUNTRIES

The External Strategy for Effective Taxation underlined the importance of policy coherence between the EU tax policy and the EU international development policy. The Strategy set out the importance of EU assistance to developing countries in fighting tax abuse and mobilising domestic revenues. This is to keep with the EU's "Collect More, Spend Better" strategy, designed to follow up on the Addis Tax Initiative at the EU level.

The Platform should continue to look at international tax issues that specifically affect developing countries and consider the various channels of support that can be used. Discussions on the spill-over effects of national and EU tax policy on developing countries should progress, building work that started with the toolbox for Double Tax Agreements (DTAs).

The Platform should also receive regular updates on the state of play of the Addis Tax Initiative and EU action in this regard.

Issues to be discussed include:

- Discussing national, EU and international coordination in supporting developing countries in the area of tax good governance, to ensure optimal results;
- Developing a coordinated approach amongst Member States to tax policy spillover effects on developing countries;
- Sharing best practices for negotiation of DTAs with developing countries;
- Considering additional areas for action to help developing countries protect their tax bases.

5. FUTURE OF EU – FUTURE OF TAXATION

In 2017, the Commission launched a debate on the Future of Europe. This has prompted an EU-wide discourse on how the EU should evolve in all aspects – politically, economically and socially. Tax policy is central to this discussion. Member States, policy-makers, stakeholders and citizens are considering the role of taxation in the various scenarios for the future EU.

On the one hand, there is a need to examine how tax policy can meet the EU's widest objectives of social fairness, economic sustainability and global competitiveness. On the other hand, there is the need

to remain alert to the impact that emerging challenges for the EU (including globalisation, digitalisation and demographic change) will have on EU tax policy in the future. The Platform should continue to discuss the possible responses to contemporary challenges and should consider the best path for EU tax policy for the future.

Issues to be discussed include:

- Considering the interaction of tax priorities (including CCCTB and Digital Taxation) and other policy priorities;
- Examining the impact of internal and external "shocks" on the EU tax environment;
- Proposing how to integrate tax initiative in wider future EU frameworks (EMU, CMU, etc.).