

Member written Contributions for the Platform's Work Program
Platform meeting 16 October 2013

1. INTERNATIONAL CHAMBER OF COMMERCE

ICC comments to EU Platform for Good Governance

After the first meeting of the Forum, Taxud has asked for comments on the work plan of the Forum. ICC makes the following preliminary comments and will provide fuller comments in autumn 2013. The comments are not comprehensive and the absence of a comment on a particular subject does not preclude later comments on the issue.

Suggested Agenda for meeting in October 2013

1. Proposed subject to tax clause
2. A discussion of the scope of tax sovereignty. This would include which tax regimes are acceptable and which are not and a clear definition of harmful tax competition. How do taxpayers and business assess which incentive regimes are acceptable in the current environment. How could decisions be made to clarify these issues in a transparent manner? Should remedies be allowed? What is harmful tax competition?
3. A discussion of the proposed timetable for the implementation of the Commission's proposals.
4. Is tax avoidance merely objectionable when it is at the expense of home country or also when it is at expense of foreign country? The question is whether countries are allowed to compete on tax policy matters and at same time condemn those taxpayers using the incentives?

Recommendation on aggressive tax planning

We note the recommendations in the work plan. A number of these recommendations relate to administrative cooperation in response to tax fraud and evasion, ICC as a representative of responsible business supports such an initiative. We are able to support the following recommendations contained in the 6 December 2012 document:

1,2,3,4,5,6,9,11,12,13,18,19,20,21, 23, 24 (this is assumed not to increase admin burden for banks et al), 26, 27, 29, 30 and 32. On the other recommendations we are either considering the issues or providing comments.

ICC will comment in due course on the issues posed by the application of a GAAR in the context of tax treaties and cross border transactions amongst other issues. We do have some specific comments on the proposed subject to tax clause

Proposed "Subject to Tax" treaty clause.

In the European Commission's recommendation on Aggressive Tax Planning there is a passage as follows

"Specifically, 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 paper then goes on to describe a new clause for tax treaties as follows:

To give effect to point 3.1, Member States are encouraged to include an appropriate clause in their double taxation conventions. Such clause could read as follows:

'Where this Convention provides that an item of income shall be taxable only in one of the contracting States or that it may be taxed in one of the contracting States, the other contracting State shall be precluded from taxing such item only if this item is subject to tax in the first contracting State'.

In case of multilateral conventions, the reference to the "other contracting State" should be replaced by a reference to the "other contracting States".

Put simply it provides a taxing right to a state where the other end of the transaction is not taxed by the other state ie "the other contracting State shall be precluded from taxing such item **only if** this item is subject to tax in the first contracting State" . The aim is to eliminate double non taxation. Our concern is to define "subject to tax" carefully and clearly.

First, it is important that it is clear that income or capital gains which are subject to tax but for which a specific exemption is provided are clearly identified as being "subject to tax". As the examples below this has particular relevance in the case of participation exemptions.

For example, the definition of "subject to tax" will require clarity as to whether assessability or actual liability is sufficient under OECD Model guidelines vs domestic law interpretations – although the recommendation broadly defines "subject to tax", there is ambiguity which needs to be clarified - for example, consideration needs to be given as to whether the utilisation of tax attributes or use of accelerated deductions to shelter taxable income would be protected. The meaning of "double non-taxation" will also need careful scoping on the type of circumstances targeted. Furthermore, such clauses should not intervene with treaty provisions providing for mutual agreement procedures.

However it must not be forgotten that exemptions and rules provided by one country are the result of deliberate tax policy and economic considerations, and competition needs to be preserved with regard to balancing the needs of upholding tax sovereignty and legitimate protection of tax revenue.

The definition of subject to tax needs to specifically address tax exemptions. In particular, is income which is exempt first subject to tax from which an exemption is granted. If this is the case then the income is subject to tax, if the exemption is provided on another basis then is the income subject to tax?

If the income is subject to a de minimis level of tax it would appear that the new clause would not be effective as the item would be "subject to tax" however at a low the rate of tax. Presumably a tax haven would simply introduce a de minimis level of tax to avoid the provision being effective in its jurisdiction where the income is currently exempt? How is it proposed that this issue will be dealt with?

Let us consider some examples. Where a state provides a participation exemption on capital gains, it would presumably allow the other state to seek to

tax the capital gain as it is only precluded from taxing if the item is subject to tax in the first contracting state unless the second state accepts that a participation exemption is provided on income which is subject to tax.

Are there other examples of tax exemptions which could be subject to this interpretation? Dividends?

Because this is a widely drawn clause, taxpayers will continue to focus on whether there are some unintended consequences of the potential width of the clause as drafted.

Another topical example could be, a taxpayer charges a royalty to an EU subsidiary for which a tax deduction is claimed by the EU subsidiary. Due to its tax planning, the other end of the transaction ends up in a jurisdiction which does not tax the royalty. How would this be treated under the new article? Would the EU jurisdiction seek to disallow the deduction because it is not taxable? If the royalty was subject to a de minimis level of tax it would appear that the new clause would not be effective as the item would be "subject to tax".

While the aim of the clause is understandable - double non taxation, the question is, does it as currently drafted hit its intended targets or are there some unintended consequences?

Some clarification would be helpful on Operating Losses,(as there are numerous examples of groups having material loss carry forwards) and how operating and or capital losses are considered in "subject to tax"?

Finally, it is important that compliance issues are considered in formulating the clause, how easily could a company could comply with such rules. For example, if a German company is purchasing goods or services from an affiliate in a low or no tax country, which may or may not have a treaty relationship with the first country, how would these rules be complied with?

Thank you for accepting these comments. We remain of course available should you have any questions or need further clarifications.

Kindest Regards,

Camilla Pagnetti



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3. BUSINESS EUROPE

Platform for Good Governance Business Europe comments including Proposed "Subject to Tax" treaty clause

Business Europe is reviewing the action plan proposed by the European Commission and will provide comments on issues as these are reviewed. Initial comments are offered on the proposed subject to tax clause. Further comments will be provided after further review. The lack of comment on aspects of the action plan does not signify agreement per se. Business Europe will provide a further comment on which parts of the action plan it can endorse and which parts are under review in due course.

Agenda for meeting in October 2013

Business Europe would propose the following agenda items for discussion:

1 Proposed subject to tax clause

2 A discussion of the scope of tax sovereignty. This would include which tax regimes are acceptable and which are not and a clear definition of harmful tax competition. How do taxpayers and business assess which incentive regimes are acceptable in the current environment. How could decisions be made to clarify these issues in a transparent manner? Should remedies be allowed? What is harmful tax competition?

3. A discussion of the proposed timetable for the implementation of the Commission's proposal and how this relates to the proposed BEPS work plan.

Proposed Subject to tax clause

In the European Commission's recommendation on Aggressive Tax Planning there is a passage as follows

"Specifically, 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 paper then goes on to describe a new clause for tax treaties as follows:

To give effect to point 3.1, Member States are encouraged to include an appropriate clause in their double taxation conventions. Such clause could read as follows:

'Where this Convention provides that an item of income shall be taxable only in one of the contracting States or that it may be taxed in one of the contracting States, the other contracting State shall be precluded from taxing such item only if this item is subject to tax in the first contracting State'.

In case of multilateral conventions, the reference to the "other contracting State" should be replaced by a reference to the "other contracting States".

Put simply it provides a taxing right to a state where the other end of the transaction is not taxed by the other state ie "the other contracting State shall be precluded from taxing such item **only if** this item is subject to tax in the first contracting State" . The aim is to eliminate double non taxation.

Business Europe is concerned that the proposal is insufficiently defined and offers the following preliminary comments.

There is merit in the inclusion of such a clause provided it does not creep at the expense of legitimate policy incentives to promote economic growth and development. Therefore there needs to be careful drafting, commentary and interpretation, and it is important to ensure clear guidelines are set for its application. For example, the definition of "subject to tax" will require clarity as to whether assessability or actual liability is sufficient under OECD Model guidelines vs domestic law interpretations – although the recommendation broadly defines "subject to tax", there is ambiguity which needs to be clarified - for example, consideration needs to be given as to whether the utilisation of tax attributes or use of accelerated deductions to shelter taxable income would be protected. The meaning of "double non-taxation" will also need careful scoping on the type of circumstances targeted. Furthermore, such clauses should not interfere with treaty provisions providing for mutual agreement procedures.

However it must not be forgotten that exemptions and rules provided by one country are the result of deliberate tax policy and economic considerations, and competition needs to be preserved with regard to balancing the needs of upholding tax sovereignty and legitimate protection of tax revenue.

The definition of subject to tax needs to specifically address tax exemptions. In particular, is income which is exempt first subject to tax from which an exemption is granted. If this is the case then the income is subject to tax, if the exemption is provided on another basis then is the income subject to tax?

If the income is subject to a de minimis level of tax it would appear that the new clause would not be effective as the item would be "subject to tax" however low the rate of tax. Presumably a tax haven would simply introduce a de minimis level of tax to avoid the provision being effective in its jurisdiction?

Examples

Where a state provides a participation exemption on capital gains, it would presumably allow the other state to seek to tax the capital gain as it is only precluded from taxing if the item is subject to tax in the first contracting state. How will the second state interpret the exemption? So is an item subject to tax with an exemption or not subject to tax per se?

Are there other examples of tax exemptions which could be subject to this interpretation?

Since dividends are usually exempt from taxation, the proposed clause would open the door to levy withholding taxes on dividends or provide the right to tax the dividend at the level of the shareholder, if the underlying profit was not subject to tax.

Example 1: A subsidiary (resident in the first contracting State) distributes a dividend to its parent company (resident in the other contracting State). The other contracting State exempts the dividend from taxation. In this case the first contracting State could levy a withholding tax on the dividend or impose a dividend distribution tax.

Example 2: A second-tier subsidiary distributes a dividend to a first-tier subsidiary (resident in the first contracting State) and the latter forwards the dividend without imposing any taxes to its parent company (resident in the other contracting State). According to the applicable double taxation treaty, the other contracting State has to apply the exemption method. However, based on the "subject to tax clause" the other contracting State could levy taxes.

Example 3: A subsidiary (resident in the first contracting State) distributes a dividend to its parent company (resident in the other contracting State). The dividend is based on profits of which 50% were subject to a 100% tax exemption. The first contracting State did not levy withholding taxes. According to the applicable double taxation treaty the parent company has to apply the exemption method. However, considering the "subject to tax clause" it seems to be questionable whether the other contracting State would be allowed to impose taxes on 50% or even 100% of the dividend paid.

Member States may lose their sovereign power to use taxes as steering instrument to foster their own economies. This applies in particular with regard to branch structures.

Example 4: A taxpayer resident in the other contracting State invests in the first contracting State via a branch structure. The investment is attracted by the first contracting State by a tax incentive (e.g., tax holidays). Since the profits made by the branch in the first contracting State are not taxed in that state for the period of the tax holidays, the other contracting State would be allowed to tax these profits.

In the context of tax treaties, the main issue is that the current drafts do not include any reasonable limitations of the range of coverage of these clauses. It might be acceptable to introduce "subject to tax clauses" in double taxation treaties in order to cover qualification conflicts resulting from different interpretations of certain provisions of the double taxation treaties itself. Whether such "subject to tax clauses" should also cover qualification conflicts resulting from different local laws, might already be questionable. However, in any case such clauses should not cover situations in which one contracting State intentionally grants local tax incentives in order to attract the taxpayer.

Another topical example could be, a taxpayer charges a royalty to an EU subsidiary for which a tax deduction is claimed by the EU subsidiary. Due to its tax planning, the other end of the transaction ends up in a jurisdiction which does not tax the royalty. How

would this be treated under the new article? Would the EU jurisdiction seek to disallow the deduction because it is not taxable? If the royalty was subject to a de minimis level of tax it would appear that the new clause would not be effective as the item would be "subject to tax".

While the aim of the clause is understandable - double non taxation, the question is, does it as currently drafted hit its intended targets or are there some unintended consequences? Is double non taxation defined adequately?

.18 July 2013

4. CONFÉDÉRATION FISCAL EUROPÉENNE

[*Secr: reacting to ACCA suggestion to discuss BEPS*]

Dear Chas,

Agreed. Thank you.

Stella Raventos-Calvo
Confédération Fiscale Européenne

Possible points to be considered in the work programme of the Platform

Dear Mr Zourek,

The CFE welcomes its inclusion as participant in the Platform. We would also like to thank you for the possibility to comment on the Platform's work programme.

We will be pleased to be of assistance to the Commission in the on-going discussion as well as in giving inputs for future Commissions actions.

Our wish is that the discussions will take place on a technical level and be related to specific TaxUD proposals, such as:

- possible amendments to the Parent-Subsidiary Directive, the Interest & Royalties Directive and the Tax Merger Directive to include clauses to prevent double-non-taxation;
- Recommendations C(2012)8805 (Tax havens) and 8806 (National GAARs and double-non-taxation clauses);
- follow-up to Communication COM(2011)712 on double taxation and the possible solutions discussed in the working papers for the stakeholder meeting of 12 April 2013.

Rather than providing general comments on the various actions proposed by the Commission, the CFE is of the view that each meeting should be devoted to the detailed analysis of each of the proposed actions, starting with the most immediate of them. This seems to us to be the only way to effectively progress with useful suggestions and comments and to reach the desired consensus (as opposed to tackling general issues, on which initial views are apparently so diverging).

We also welcome the occasion – as representatives of more than 180,000 tax advisers - to participate in a discussion which will be beneficial to our activities as tax advisers. Shedding light on an issue that is crucial to our profession (namely, how to best advise our clients in organising their business on the basis of legal certainty without the danger of incurring in professional liabilities or being publicly accused of helping our clients avoid taxes) will not only contribute to improving and clarifying the EU framework and counteracting tax evasion and tax avoidance, but it will also foster the efficiency and clarity that businesses and all other stakeholders require.

Sincerely,

Piergiorgio Valente

Stella Raventós

5. AMCHAM

Dear secretariat,

Please find below the contribution of Amcham EU for suggestions for the Platform work program.

We structured our contribution as follows:

- i) How what has been proposed actually relates to the action plan
- ii) Other areas of the action plan that have not been suggested but should be; and
- iii) Other areas that should be covered, but were not included in the action plan.

Please see our comments below. Anything other than essentially “we agree” has been highlighted in red.

Best regards.

Astrid Pieron
Partner
Mayer Brown Europe-Brussels LLP

i) Comment on areas already included in the Draft Work Program

Draft Work Program 2016	Link to Action Plan	Additional comments/proposals
Purpose	Action 9: Creation of a Platform for Good tax Governance	N/A
A) Recommendation on aggressive tax planning (inc. GAAR)	Action 8: Recommendation on aggressive tax planning Action 15: A review of anti-abuse provisions in EU legislation	It is anticipated that the draft work program should take into account the relevant action plan actions noted here.
B) Beneficial ownership registers		This area was not included in the original Action Plan per se, but following the G8 recommendations and the subsequent OECD work in this area, this is a welcome addition to the work plan.
C) Increased cooperation between tax authorities	Action 1: New framework for administrative cooperation Action 3: Draft anti-fraud and tax cooperation agreement Action 19: Promote the use of simultaneous controls and the presence of foreign officials for audits Action 32: A methodology for joint audits by dedicated teams of trained auditors Action 33: Develop mutual	It is anticipated that the draft work program should take into account the relevant action plan actions noted here. The work plan should also seek to provide input into discussions around reforming Mutual Arbitration Processes. The work plan should also

	<p>direct access to national databases</p> <p>Action 34: Elaborate a single legal instrument for administrative cooperation for all taxes</p>	<p>seek to address cooperation between EU and non-EU Member States' tax authorities.</p>
D) Double non-taxation on capital gains arising under DTCs	<p>Action 10: Improvements in the area of harmful business taxation and related areas</p>	<p>It is anticipated that the draft work program should take into account the relevant action plan actions noted here.</p>
E) Creation of dedicated tax portal to facilitate SMEs wishing to go cross border	<p>Action 27: Create a one stop shop in all Member States</p> <p>Action 29: Develop a tax web portal</p>	<p>It is anticipated that the draft work program should take into account the relevant action plan actions noted here.</p>
F) Tax Payers Code (addressing use of illegally obtained data in tackling evasion)	<p>Action 17: A Tax Payers' Code</p>	<p>It is anticipated that the draft work program should take into account the relevant action plan actions noted here.</p>
G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	<p>Action 6: EU VAT reform</p> <p>Action 11: TIN on EUROPA portal</p> <p>Action 12: Standard forms for exchange of information</p> <p>Action 16: Promote the standard of AEOI in the international for a and the EU IT tools</p> <p>Action 21: Develop a computerised format for AEOI</p> <p>Action 22: Use of an EU TIN</p> <p>Action 23: Rationalise IT instruments</p> <p>Action 26: Extend EUROFISC to direct taxation</p>	<p>It is anticipated that the draft work program should take into account the relevant action plan actions noted here.</p> <p>We consider the language "types of tax system" to be confusing and would suggest this is amended to read "elements of tax systems"</p> <p>Further, it is anticipated that the work plan include wider discussions beyond the remit of the action plan regarding the type of tax systems employed within the EU and whether (and how) these could best be reformed.</p>
H) Need for EU measures or initiatives to benefit developing countries.		<p>This area was not included in the original Action Plan per se, but we welcome its inclusion.</p> <p>It should be ensured that this area includes discussions on:</p> <ul style="list-style-type: none"> • Capacity building of LDC's tax authorities;

		<ul style="list-style-type: none"> • How Member States can work with LDC's tax authorities to facilitate mutual arbitration and exchange of information. <p>We do not believe that this area should include country by country reporting as we do not agree that such reporting would benefit developing countries.</p>
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ii) Comment on areas included in the Action plan but excluded from the Draft Work Program

Action Plan	Link to Draft Work Program 2016	Additional comments/proposals
Action 1: New framework for administrative cooperation	(C) Increased cooperation between tax authorities	We agree that this area should be included in the 2016 draft work programme.
Action 2: Closing Savings taxation loopholes		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 3: Draft anti-fraud and tax cooperation agreement	(C) Increased cooperation between tax authorities	We agree that this area should be included in the 2016 draft work programme.
Action 4: Quick reaction mechanism against VAT fraud		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 5: Optional application of the VAT reverse charge mechanism		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 6: EU VAT reform	(G) Fundamental look at type of tax system required (red tape, AEOL, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 7: Measures to encourage third countries to apply minimum governance standards		We consider that this area should also be included in the 2016 draft work program.
Action 8: Recommendation on aggressive tax planning	(A) Recommendation on aggressive tax planning (inc. GAAR)	We agree that this area should be included in the 2016 draft work programme.
Action 9: Creation of a Platform for Good tax Governance	Purpose	N/A
Action 10: Improvements in the area of harmful business taxation and	(D) Double non-taxation on capital gains arising under DTCs	We agree that this area should be included in the 2016 draft work programme.

related areas		
Action 11: TIN on EUROPA portal	(G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 12: Standard forms for exchange of information	(G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 13: A Euro denaturant for completely and partly denatured alcohol		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 14: A revision of the parent subsidiary directive		The revised draft is expected in November 2013. We consider that this area should also be included in the 2016 draft work program.
Action 15: A review of anti-abuse provisions in EU legislation	(A) Recommendation on aggressive tax planning (inc. GAAR)	We agree that this area should be included in the 2016 draft work programme.
Action 16: Promote the standard of AEOI in the international for a and the EU IT tools	(G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 17: A Tax Payers' Code	(F) Tax Payers Code (addressing use of illegally obtained data in tackling evasion)	We agree that this area should be included in the 2016 draft work programme.
Action 18: reinforced cooperation with other law enforcement bodies		We consider that this area should also be included in the 2016 draft work program.
Action 19: Promote the use of simultaneous controls and the presence of foreign officials for audits	(C) Increased cooperation between tax authorities	We agree that this area should be included in the 2016 draft work programme.
Action 20: Obtain an authorisation from Council to start negotiations with third countries for bilateral agreements on administrative cooperation in the field of VAT		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 21: Develop a computerised format for AEOI	(G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 22: Use of an EU TIN	(G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 23: Rationalise IT instruments	(G) Fundamental look at type of tax system required (red	We agree that this area should be included in the

	tape, AEOI, TIN, clearance of tax due)	2016 draft work programme.
Action 24: Guidelines for tracing money flows		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 25: Enhance risk management techniques and in particular compliance risk management		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 26: Extend EUROFISC to direct taxation	(G) Fundamental look at type of tax system required (red tape, AEOI, TIN, clearance of tax due)	We agree that this area should be included in the 2016 draft work programme.
Action 27: Create a one stop shop in all Member States	(E) Creation of dedicated tax portal to facilitate SMEs wishing to go cross border	We agree that this area should be included in the 2016 draft work programme.
Action 28: Develop motivational incentives including voluntary disclosure programmes		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 29: Develop a tax web portal	(E) Creation of dedicated tax portal to facilitate SMEs wishing to go cross border	We agree that this area should be included in the 2016 draft work programme.
Action 30: Propose an alignment of administrative and criminal sanctions		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 31: Develop an EU Standard Audit File (SAF-T)		We agree that this area is not an area for inclusion in the 2016 draft work programme.
Action 32: A methodology for joint audits by dedicated teams of trained auditors	(C) Increased cooperation between tax authorities	We agree that this area should be included in the 2016 draft work programme.
Action 33: Develop mutual direct access to national databases	(C) Increased cooperation between tax authorities	We agree that this area should be included in the 2016 draft work programme.
Action 34: Elaborate a single legal instrument for administrative cooperation for all taxes	(C) Increased cooperation between tax authorities	We agree that this area should be included in the 2016 draft work programme.

iii) Comment on additional areas of focus not included in either the Action Plan or the Draft Work Program

The international tax landscape is rapidly evolving and the work program should be flexible enough to coordinate with new areas of interest. For example:

- The OECD BEPS actions;
- The EU FTT; and
- CCCTB.

9. ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS (ACCA)

Dear All

I understand that the OECD is due to publish its paper in the next few days ahead of the G20 meeting this month looking at BEPS and other related issues. Depending upon what appears in that paper as well as any communiqué from the G20 may I propose we might look at this as an agenda item at our next meeting.

Kind regards
Chas

12. EUROPEAN FEDERATION OF PUBLIC SERVICE UNIONS (EPSU)

EPSU contributions to the Work Programme of the EU good tax governance platform

EPSU welcomes the establishment of the platform that is to assist the Commission in preparing its report on the application of the recommendations on good governance in tax matters and on aggressive tax planning, as part of its overall action plan against tax fraud and evasion. In our view, it is essential to keep the recent political momentum achieved at EU and G8 levels to curb tax dodging and provide practical orientations to ensure a good implementation of the EC recommendations.

EPSU position on the action plan is available <http://www.epsu.org/a/9521>. In brief, we have welcomed the Commission's determination to tackle at EU and international levels tax fraud as well as tax avoidance a practice which only wealthy individuals and large multinationals can afford to do with the support of tax planning advisers.

We however call for binding measures and stronger non-compliance sanctions. It is also our strong view that the EC action plan will only produce tangible results if it is supported by the appropriate human and material resources in tax administrations. This view is shared by both Parliament and EESC. It was also shared by the Commission, in a previous communication against tax fraud in 2006 that recognised that cooperation between tax administrations remained weak due lack of human resources, amongst others. Today, staffing problems are greater than in 2006.

In our view the platform should therefore address:

- **Administrative capacity to collect tax:** Since the start of the crisis until 2011, our own research commissioned to the Labour Research Department has found that employment in tax administrations has fallen in 25 EU member states, in some cases quite dramatically so, as a result of austerity measures. The research provides evidence of the negative impact on tax collection please see in EN and FR <http://www.epsu.org/a/9400>. As of today there has been no official EU wide evaluation of the financial, social and human cost of these job cuts. In our view EU-coordinated austerity facilitates tax fraud the Commission now sets itself to combat. A moratorium on needless and harmful austerity is thus a sensible step to take to stop or at least reduce tax fraud and avoidance and, then engage in a discussion on how to improve tax compliance. As more job cuts are planned, it is essential that the platform addresses the issue. The need for well-resourced tax administrations is equally crucial to step up efforts in cross-border cooperation and exchange of tax information, tax audits via simultaneous controls, presence of foreign officials etc. As a start the platform could
 - Exchange good practices/ country examples of well functioning tax administrations and political will and culture to tackle tax fraud and avoidance
 - Common principles on staffing levels and material resources necessary to effectively tackle tax fraud and avoidance
 - Effective non compliance sanctions
- **Tax havens definition and EU blacklist:** EPSU policy is that tax havens should be banned, however this requires a common definition which is not yet available. The platform should therefore address the proposed criteria set out in the EC recommendation to define a tax haven and which go, rightly, beyond the OECD's own criteria. Many researchers agree that tax havens are based upon low or no taxation, lax incorporation rules and secrecy laws on financial transactions (Harris,

2011¹) so we would not expect difficulty in reaching similar consensus in the platform. To be most effective and consistent with the objective of the platform, i.e. developing good tax governance, it is also important that

- the blacklisting of tax havens be carried out at EU level and
 - be inclusive so that all tax havens in and outside the EU are included. It is difficult to understand how we can expect non-EU tax havens to put their house in order if we fail to do so ourselves in the EU.
- **Tax planning/avoidance by multinationals and those that facilitate them:** Tax avoidance as defined in the EC recommendation, i.e. tax arrangements which have no commercial purpose other than reducing tax is not acceptable. The following topics should in our view be addressed in the platform:
 - **Developing a General Anti-Avoidance Principle**, rather than an anti-abuse clause as proposed in the action plan, would be a powerful tool to tackle tax avoidance and anchor EU tax systems in fairness and equity rather than on attractiveness to multinational companies. Such a clause should function as an overarching principle that applies to the implementation of all other tax law to prevent laws being abused in order to gain unintended tax benefits. Presentations of country examples, in and outside the EU, of how this principle is defined and put in place would be, in our view useful.
 - **Implementing Country by country reporting:** a practical presentation on how this would work on the basis of the agreement at EU level to go ahead for the banking sector and extracting industry could be a useful exercise.
 - **Establishing and coordinating public registries on wealth, companies, trust and foundations** which could be coordinated at EU level once established in all member states. These would facilitate the task of tax employees and make it more difficult for holdings, investment funds to continue their secretive placements in tax havens. As for the above a practical illustration of how to establish such registries and their use could be of benefit to platform members.
 - General discussion on the type of tax system needed for the EU that is fair, simple, progressive and efficient to finance public services, infrastructures and policies that we all need.

¹ Global corporate taxation, Education International

13. OXFAM INTERNATIONAL

Proposal for the work programme

Country-by-Country (CbC) reporting

Hereby we would like to request to put achieving further progress on Country by Country (CbC) reporting on the work programme of the platform for tax good governance. We think this topic is well-suited for being discussed by the platform as it is a topic high on the political agenda in the recent months in the European Union institutions and progress on CbC would be incredibly meaningful in terms of addressing tax avoidance and is therefore of great interest to multiple stakeholders including governments, private sector and citizens around the world. We would like the platform to explore possible next steps on Country by Country reporting and on sharing of best practices.

CbC reporting is key to addressing tax avoidance:

Tax dodging by multinational corporations costs developing countries much more than what they receive in aid. Tax dodging by companies through what is known as trade mispricing accounts for over 50% of illicit financial flows². While developing countries are “resource-rich”, the lack of reliable information about companies’ activities and payments to governments make it impossible to monitor what governments actually receive. This opacity enables multinational companies to dodge taxes, thus depriving developing countries of tax revenues which could be used to alleviate poverty and drive economic development instead. Country by country reporting (CBCR) is a reporting obligation for multinationals to break basic information about their activities (profits, number of employees, assets, volume of sales or production...) down by country of operation – including in each tax haven – so that citizens and authorities can see what the corporations are doing in their countries.

Full country-by-country reporting would provide a global picture of a company’s activities. It would give tax inspectors much more to go on when investigating companies, including indications of where they need to investigate. Country-by-country reporting would also help illustrate the distribution of profits and tax revenues that results from the current transfer pricing system³. This is important information that would help stakeholders to evaluate the impact of the current transfer pricing rules on any country, including developing countries. At present nobody is able to study this.⁴

Full country-by-country reporting should require a company to disclose data specific for each country on each of the following areas:

1. Global Overview of the Group: The name of each country in which it operates and the names of all its subsidiary companies trading in each country in which it operates;

² Kar and Curcio (2011) *Illicit Financial Flows from Developing Countries: 2000-2009 Update with a Focus on Asia*. Washington D.C.: Global Financial Integrity.

³ Transfer pricing relates to transactions within subsidiaries of a multinational company. Under the existing international framework, transfer pricing must comply with the Arm’s Length Principle. This means that transactions should be valued at the price that would have been agreed in the open market. But in practice this can be very difficult to apply. While for commodities it can be simply done by looking up comparable pricing from non-related party transactions, when it comes to proprietary goods and services or intangibles, arriving at an arm’s length price can be a much more complicated matter.

⁴ Eurodad media brief “How EU country-by-country reporting could tackle tax dodging and why this is needed”. Available at: www.eurodad.org/211928

2. **Financial performance** in every country in which it operates, making the distinction between sales within the group and to other companies, including profits, sales, purchases and labour costs;

3. **Assets** All the property the company owns in that country its value and cost to maintain.

4. **Tax information:** Full details of the amounts owed and actually paid for each specific tax. This information would allow the government to hold the company accountable for paying a fair share of its profits, and for civil society to hold government responsible of spending the gains on the most impoverished citizens in the country.

Not only would citizens, have more chance to hold companies and governments to account but also full country-by-country reporting would benefit a range of organizations:

- **Investors** would get more and better information. This is why Calvert Asset Management Company, Harrington Investments Inc., Domini Social Investments LLC and the KLP-group support this.
- **Governments** would get a fairer share of the resources being extracted and profits made.
- **Honest companies** because it would be harder for their competitors to cheat.

Costs: Would not be significant because companies' management need to collect and use this information

It is clear from the above that making progress on reporting requirements would stimulate exchange of information between countries and would also mean a significant step in the context of the work of the OECD to address 'Base erosion and Profit shifting'. Therefore civil society urges the international community to require of Multinational Corporations in all sectors, as soon as possible, to submit a worldwide combined report to the tax authorities of each country in which they operate, as well as a country-by-country (CbC) breakdown of their employees, physical assets, sales, profits and taxes due and paid.

Recent developments:

Recently we have witnessed important steps towards increasing reporting requirements of multinational companies. This includes:

- The EU Accounting Directive recently took a vital step towards combating corruption when it required companies in the extractive and logging sectors to disclose their payments to governments in every country where they operate;
- The European Parliaments Legal Affairs committee has recently voted for a requirement for country-by-country reporting of payments to governments in the banking, construction and telecommunications sectors. This is a crucial step that comes on top of the requirement for extractive and logging industries to report on a country-by-country and project-by-project basis;
- The EU has recently announced that the Capital Requirement Directive (CRD IV) will require banks to disclose profits made, taxes paid, subsidies received, turnover and number of employees on a country-by-country basis;
- The upcoming Non-Financial Reporting Directive (NFRD) represents a next opportunity for putting words into action. EU Heads of State suggested including country-by-country reporting for all large companies in the NFRD.

14. CHRISTIAN AID

Suggested points for consideration as part of the Work plan of the Platform for tax Good Governance

July 19th, 2013

At the opening meeting of the platform on June 10, 2013, members were invited to submit issues to the secretariat that could form part of the Platform's work plan.

1. We would like to propose that the issue of the **ensuring Double Tax Agreements with developing countries are development friendly** form part of the Platform's work plan.

The Commission's Action Plan makes recommendations on alterations to Double Tax Agreements, the OECDs Base Erosion Profit Shifting report also refer to this need. There is also a growing literature recognising the negative impact that DTAs are having in many developing countries. This has led to recommendations that many DTAs with developing countries should be renegotiated, and in some cases we have also seen developing countries cancelling DTAs outright.

Against this background where there appears an acceptance across developed countries that some changes to DTAs will have to be made due to reforms of international tax rules and norms, and where there is a clear need to ensure that developing countries DTAs are having a positive impact on development it seems appropriate to try and bring these developments together.

One way to do this would be for the EU to look at agree common principles on being willing to renegotiate DTAs with developing countries that desire renegotiation, and on the approach that EU Member States would seek to take in both renegotiation of existing DTAs and negotiation of any new DTAs with developing countries. If agreed the EU could also seek to ensure such principles and any common approaches to DTAs with developing countries were included in more general international (and multilateral) reform to DTAs.

Such an approach would help create both the political space for the issue of DTAs with developing countries as well as provide confidence for developing countries to seek renegotiation of DTAs without fear that they could end up with a worse outcome than present.

Given the leading role the EU has taken in developing the concept of development friendly international agreements, most notably in trade, it is logical that the EU should seek to develop this concept further in other areas of international agreements. The tax platform is an ideal place for discussions on this issue to take place not least as there is a clear overlap with the Commission Action Plan, and therefore we strongly suggest that the issue of ensuring Double Tax Agreements with developing countries are development friendly form part of the work plan of the Platform.

2. We would like to propose that the issue of the **exchange of information between jurisdictions on an automatic basis** form part of the Platform's work plan. As

an international development agency, we are particularly concerned at how the current regulations governing exchange of information between jurisdictions are weighted heavily against developing countries being able to access and benefit from this kind of information.

We are also deeply concerned that the emerging international system of tax information exchange with tax havens and secrecy jurisdictions – now a major focus of international efforts to fight tax evasion and harmful financial secrecy - may exclude access for developing countries.

We are though encouraged by the recent statement from the G8 at Enniskillen, which made clear that any changes to the international taxation system need to also work for the benefit of developing countries. We were also pleased by the G8's endorsement of automatic information exchange as the new global standard.

In fact the issue of automatic information exchange has greatly increased in significance and relevance since the Tax Platform was established, and is now globally acknowledged as an essential tool to tackle evasion, and to provide the information necessary for developed and developing countries alike to benefit from a more transparent international taxation system.

While the United States and the European Union have stated that they aim ultimately for global participation in a common international regime, some countries - and the financial sector in some tax havens - have argued that tax information should not be exchanged automatically with developing countries.

The emergence of a two-tier international tax information system would be unacceptable. There are undoubtedly practical challenges to participation in automatic tax information exchange, and a need for data confidentiality and taxpayer protection. Some countries' tax authorities may legitimately decide to prioritise other forms of international tax cooperation. However, excluding developing countries that wish to join such an international system – either directly or de facto through an unfeasible burden of immediate reciprocation of information - would in many cases freeze out those countries worst hit by tax avoidance and evasion. It would also risk incentivising the creation of new secrecy jurisdictions in countries excluded from the 'top tier' of information exchange, thereby threatening all countries' tax bases in the future.

It is clear then, that while automatic information exchange has in principle been agreed globally, there is still some discussion to be had on the implementation of such a system, and to ensure that is effective, realistic and fair. Clearly, the EU and the Tax Platform, have a role to play in progressing this issue.

We therefore strongly suggest that the issue of automatic information exchange form part of the work plan on the Platform.
