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DIRECTORATE-GENERAL
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Direct Taxation, Tax coordination, Economic Analysis and Evaluation
Company Taxation initiatives

SUMMARY RECORD OF THE HYBRID MEETING OF THE PLATFORM FOR TAX GOOD GOVERNANCE, AGGRESSIVE TAX PLANNING & DOUBLE TAXATION

held on

13 SEPTEMBER 2022, 9H30 – 13H00

at

Conference Centre Albert Borschette (CCAB), 4 C ROOM

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Table of Contents

Welcome and introduction

The meeting was chaired by Mr Benjamin Angel, Director for Direct Taxation, Tax Coordination, Economic Analysis and Evaluation at the EU Commission Directorate General Taxation & Customs Union. The Chair opened the meeting and shortly introduced the agenda items. He has also reminded the informal nature of the meeting and urged all participants to comply with the rules of this Commission's Expert Group. He has also confirmed that next meeting will be entirely physical, unless COVID-19 restrictions require otherwise.

Policy Coherence for Development & EU Tax Policies (Oxfam – Tax Justice Network – EuroDaD)

The Chair gave the floor to the representatives of Oxfam, Tax Justice Network and EuroDaD for their joint presentation on EU policy coherence between Development and Taxation y. Discussions on this specific topic took place during Platform meetings in the past. At that time, the Commission came forward with a toolbox approach that Member States could utilise during negotiations of their tax treaties with Developing Countries.

A representative from Oxfam[1] took the floor and presented the first agenda item. After that, he discussed the legal and political background for the Policy Coherence for Development (PCD) and delved into the concept of tax policy as a development priority of the EU. He produced findings on policy coherence and on the impact of EU tax policies in relation to Domestic Revenue Mobilisation (DRM) in some developing countries. He shared the floor with the other two presenters concerning policy recommendations. The representative from Oxfam analysed the issue of tax spill over analysis, whilst a representative from TJN[2] provided his contribution on double tax treaties' monitoring and their renegotiation. Lastly, a representative from EuroDaD[3] explained a few implications of country-by-country reporting (CbCR) vis-à-vis policy coherence for development.

To kick off the Q&A session, the presenters shared a question concerning challenges, possibilities, legal tools,

[1] Following their request, statements by representatives of Oxfam are explicitly attributed to Oxfam.
[2] Following their request, statements by representatives of the Tax Justice Network (TJN) are explicitly attributed to TJN.
[3] Following their request, statements by representatives of the European Network on Debt and Development (EuroDaD) are explicitly attributed to EuroDaD.

and other mechanisms at the disposal of EU institutions to enforce Article 208 TFEU[4] . The Chair gave the floor to a business association representative who asked how businesses can carry on their activities within developing countries without being exposed to double taxation. No solutions were discussed in detail, except for countries of residence giving up their taxing rights. From a business perspective, countries of residence are not ready to do that. Concerning Public CbCR, the EU has managed to find a difficult balance between protecting sensitive business information and publishing relevant information. Against this background, it was specifically asked to the presenters how they envisage the protection of sensitive business information.

A Commission representative from DG INTPA took the floor and thanked all presenters for the very interesting presentation. She fully echoed the strong commitment of the EU to the Policy Coherence for Development (PCD). This was also reflected in the TFEU (Article 208), the European Consensus for Development or the recent review of the Commission's Better Regulation system from 2021[5] . She also welcomed the inclusion of this principle under the Addis Tax Initiative Declaration 2025[6]. DG INTPA has been cooperating closely with Oxfam within this international working group, in order to include this principle under an updated declaration. The endorsement from all Member States, followed by the signature of the Declaration 2025 by Commissioner Jutta Urpilainen on behalf of the EU, reinforces the European Commission's commitment at the highest level. It was also confirmed that internal consultation mechanisms (e.g., inter-service consultations, inter-service groups) provide the opportunity to put the PCD into practice. DG INTPA is systematically invited to these working meetings, where the external dimension is discussed as relevant. The speaker also emphasised the important role of civil society on tax policy matters and stressed the relevance of projects led by Oxfam, EuroDaD and others in areas such as international taxation, domestic revenue mobilisation and illicit financial flows.

A speaker from an NGO reiterated the relevance of spill over analysis as a useful tool to apply to the PCD. It was added that in the Netherlands, the Government develops a yearly Policy Coherence Action Plan and a consequent report on progress in this field. This serves as basis for discussions between, on one hand, civil society and, on the other hand, public authorities. This could be an example for each EU Member State, in order to engage in such process. It was underlined that in the Netherlands there is a forum comparable to the European Commission Platform for Tax Good Governance that convenes three times a year involving public entities, businesses, and civil society. A growing body of knowledge has been observed in relation to spill over analysis, although so far only three countries have engaged in this process. It was advised to analyse the NL example as a possible best practice, to improve tax treaties or other areas which are crucial for developing

[4] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E208:EN:HTML
[5] https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en
[6] https://www.addistaxinitiative.net/ati-declaration-2025

countries.

A speaker from a professional association praised this topic as a possible way of bringing businesses and NGOs closer. In relation to treaty aggressiveness, it was enquired whether the solution is to raise taxation within developing countries. As a consequence, within home countries you would witness a lowering of taxation. From a business perspective, what matters is the compliance with the rules in place. A couple of considerations were also made: First, if you are arguing for a higher withholding tax (WHT), it would be beneficial to have more insight, for instance developing countries with both higher and lower WHT. This could be revealing concerning potential implications on inbound investments. For instance, if the increase of taxation within developing countries leads to less inbound investments, this should be carefully considered. Second, on the permanent establishment (PE) evaluation, it was enquired whether the solution is to trigger local taxation in the form of PE at an earlier stage, going further to what the OECD has already established. Against this background, it was asked how this can be balanced with the issue of aggressive tax planning in some developing countries, which operate a lower corporate income tax rate. This might lead to a scenario of a PE generation within low tax rate jurisdictions even though the ultimate goal seems to be the support of developing countries. Lastly, in relation to Public CbCR, transparency drives behaviours. The idea behind is to bring it forward and have Public CbCR not only for the EU. Other directives on green taxation, digital taxation ensure more information on total tax contribution and, in general, more information on tax collection. When you take a look at the funds of a State, you gain more information if you take into consideration the total tax contribution.

Another professional association speaker welcomed this useful discussion and raised the issue of impact on tax vis-à-vis tax sparing credits. This goes back to the OECD report of 1998[7]. The OECD did not fully recommend this sort of approach where basically the contracting State agrees to grant relief from resident taxation in respect of source taxes which have not been paid. Developing countries have been keen on this issue; for instance, some countries like Brazil do not enter into a tax treaty unless the other contracting party can accept a tax sparing provision. In 2011 the UK and Ethiopia signed a treaty that includes such provision. It was enquired whether the presenters have looked into this option as a potential way to redress the perceived imbalance of the OECD model in favour of developed countries.

A speaker from a business association enquired whether the impact of the most favoured nation clause was taken into account in relation to the EU Member States. Furthermore, the implementation of multilateral instruments has ensured that for most of double tax treaties, you can witness a general coherence about the principal purpose test (PPT), all sorts of limitations for benefits' test and PEs and their definitions. This should

[7] https://www.oecd.org/ctp/harmful/1904176.pdf

be noted as well, and it was enquired whether these aspects were duly considered by all presenters.

A speaker from Oxfam clarified that, in a scenario with no double tax treaty, there is a general interest in having businesses investing in developing countries via their capital, resources or their trade networks. A critical view on double taxation treaties stems from, among others, historical legacies and international power dynamics tilted towards residence countries of businesses. It is not argued that businesses should be subject to double taxation, but rather than taxing rights should be allocated fairly. A few countries do not operate via double taxation treaties, and it was argued that this justifies a spill over analysis to be conducted for these countries and not only. In case of a negative spill over (e.g., non-deduction of tax payment that a Danish business made to Nigeria), this should be assessed as a negative spill over for the residence country, in this case Denmark. The solution should not be the reduction of the tax within the developing country. It was argued that the developed country should take responsibility under this scenario and hence reduce its tax rate. Often it happens that the developing country offers tax exemption or reductions in light of their weaker negotiating position. In relation to DG INTPA observations, it was enquired how you can further increase dialogue and break silos on PCD.

A speaker from EuroDaD welcomed the positive approach on transparency displayed by other stakeholders. Regular dialogue is taking place with multinational corporations which reported a very good experience with voluntary and mandated CbCR, despite their concerns on disclosing potentially sensitive information. This was a concern that traced back to 2013 where the banking sector started to report in Europe. In this instance, an interesting European Parliament hearing took place where banks were invited to disclose how often the sharing of commercially sensitive information was a real issue. Banks concluded that this was not the concern they have originally anticipated. When there is no loophole for commercially sensitive information, this has not created any issue for these reporting organisations. Equally, a few light multinationals reported their experience in relation to transparency requirements for the extracting and forestry sector, because of voluntary initiatives. It was stated that their concerns do not lie on commercially sensitive information, but rather on the proliferation of different, public CbCR standards and consequent administrative challenges or extra red tape that they create for all businesses. In this instance, businesses are converging around the Global Reporting Initiative Standards[8] as it is comprehensive, it provides tax authorities what they need and allow companies to provide a narrative and a context in relation to their activities around the world. When it comes to commercially sensitive information, it has been a struggle to find relevant examples. The positive side of public CbCR is that provides very high-level information (e.g., operation country of the multinational, full-time employees, profits or collected revenues, etc.). This information is in some cases already available via expensive, private databases. Public CbCR could allow all developing countries (and not only them) to assess whether their tax systems are

[8] https://www.globalreporting.org/standards/

fit for purpose or not, in order to have an evidence-based engagement with both multinationals and EU Member States. In relation to a total tax contribution, the commitment of businesses to broaden the discussion is welcome. Public CbCR holds a particular significance for all stakeholders concerned with sustainability or international development. Developing countries need even more corporate income tax than developed countries as their informal economies make it sometimes difficult to collect other taxes, e.g. labour tax. Profit taxes are inherently more progressive than consumption taxes that can have a regressive effect. It has been interesting to observe the increasing awareness of companies in the deep consequences of their activities in the Global South. For example, Ireland has a tax treaty with Ghana and Ireland is responsible for one twentieth of the inflows in that country. If you take a closer look, you can observe that this is largely due to a semi-state company. Hence, you have one single organisation that has a massive impact on the GDP of Ghana. The corporate income tax of this organisation plays a very significant role in the Ghanian economy. Public CbCR has a very particular significance in relation to PCD, to public debate or democracy. There have been some concerns raised on the methodology of the total tax contributions papers. A lot of work is currently taking place in the private sector, in order to unify those. Taxes collected on behalf of the State (e.g., labour taxes) have been reported by companies as payments by the same companies rather than their employees. This allows room for more clarity and for more transparency, highlighting different stakeholders' contribution. In conclusion, more transparency is welcome in addition of CbCR, but not in substitution of CbCR.

A speaker from a business association argued that, once businesses are allowed not to discuss commercially sensitive information, this should not be categorised as "loophole". A constructive dialogue should be based on the assumption that both parties comply with existing rules (and no party abuses them). To raise the issue of the CbCR in the EU is odd as EU companies are actually publishing this information to the benefit of developing countries too. As a consequence, it was advised that this issue should be raised in other fora outside of the EU.

The Chair pointed out that the scope of the CbCR is not as extended as many wished. On the other hand, the EU publishes much more than any other jurisdiction in the world. The Commission is committed to promoting tax transparency and future initiatives have already been announced. A few have been delayed by the evolution of the OECD global deal. Nonetheless, the Commission stands firm in making progress in this direction.

A speaker from an NGO raised the issue of anti-abuse mechanisms and the inclusion of multilateral instruments. One of the issues that you often come across is that, in the Global South, there is very little administrative capacity. If you have a great number of companies investing in a jurisdiction, it is almost impossible for these tax administrations to keep track of the same companies, their purposes or tax structures. This also applies to potential tax abuse and consequent reactions to them. In the Netherlands anti-abuse measures have been introduced bilaterally under double taxation treaties (DDTs) but no case has been reported

yet on companies being denied a certain benefit under such DTTs. A lot of trust has been put on anti-abuse measures but evidence backing this trust is currently lacking or scarce. Hence, a study showing effectiveness of such measures would be particularly welcome. A speaker from Tax Justice Network (TJN) clarified that there is no proposal for developing countries to raise their taxes, but rather than being able to do so effectively. If a Parliament of a certain country decides to raise taxes on a specific sector or increase statutory corporate income taxes, the same country should not be prevented to do so because of a network of tax rules in force that will reduce these revenues as much as possible. In absence of a treaty, both sides of a relation can have an impact. For instance, from the exporting side, providing tax credit. This is currently done by many countries. Under this scenario, a multinational would have the right to claim tax credits in the investor country. From the point of the view of the source country, there are a certain number of incentives that could be awarded, incentives different from the ones currently existing under tax treaties. With a distinction done by the International Monetary Fund between profit-based, cost-based or tax exemptions, profit-based tax incentives are those that reduce the tax to be paid for a given profit. On the other hand, cost-based tax incentives are those that are conditioned on effective expenses carried by companies. The second type of incentives make possible investments that would have not been possible otherwise. A profit-based incentive makes the already profitable investments more profitable whilst a cost-based incentive makes an investment, originally not possible, actually possible. These business-oriented measures would become even more effective than a mere tax treaty. With regard to the impact of inbound investments, it was stressed out that recent research exists by Jansky et al.[9] who takes into account the flows' elasticity, i.e. how the financial flows change with the presence or absence of different treaties being signed at different moments in time. Even taking into account these behavioural changes of treaties, this research calculates that South Africa loses annually 400 million of dollars. Hence, heavy tax losses are present. To compensate those losses, source countries could even consider in investing in infrastructures or education of workforce, which also drive investments in a certain country. With regards to the methodological question, all raised issues have been examined (e.g., MFN, anti-abuse provisions, MLIs, etc.) thanks to a database made available by the World Bank and the G24 intergovernmental group.

A business association speaker pointed out that the focus on fairness is shared by non-governmental organisations and businesses alike. Companies pay a lot of attention to the efficiency of tax systems. What mentioned before runs the risk of making tax systems less efficient. The extension of the public CbCR should be done with a more uniform approach. Currently a lot of CbCR standards co-exist and for companies become difficult to comply with more than one standard. If you lower the threshold for the existence of PEs, this creates a high risk for companies and extra burden to comply with. From the central point of a certain company, it is very difficult to be aware of every PE. Since the BEPS process, complex rules are in place. Further PEs would be detrimental if you take into account, for instance, Chinese subsidiaries in Africa. With

[9] https://onlinelibrary.wiley.com/doi/full/10.1111/roie.12515 - *Tax treaties worldwide: Estimating elasticities and revenue foregone*

regards to WHT, it is a fact that retrieving WHT is always difficult and, in a number of cases, even ineffective. This creates de facto double taxation for companies. Systems are not unfortunately in place to assure companies in this regard. If you discuss fairness, nobody should lose sight of all competitiveness aspects. Lastly, a professional association speaker stressed out that a good tax policy can be a contributing factor for sustainable growth. What should be considered is that perfect tax policies are such only if you have tools, capacities or systems that implement them. To ensure a proper and consistent tax collection, issues such as capacity building and simplification should take centre stage. Tax morale can be really undermined by the lack of capabilities or resources aiming at implementing tax collection. No less relevant, any type of effectiveness impact is something that should be extended to legislation, comparative analysis, or risk-based effects. Transparency should be a means to an end, not an end in itself. It is important to use the standards currently available or maybe improve them, with the aim of moving towards a unified standard (e.g., financial accounting standards). A standard should allow to do as much as possible for as many parties as possible.

Lastly, the Chair stated that a follow-up on this topic could be considered for future TGG Platform meetings.

The SAFE project: tackling enablers of tax evasion & aggressive tax planning in the EU (TAXUD)

The Chair introduced a very important legislative proposal, the so-called the SAFE project. In this instance, the Commission has announced a two-step approach. The first step is the so-called UNSHELL proposal[10] . This proposal was presented at the end of 2021 and is currently under discussion in Council. There will be a first discussion on a compromised text at the end of September 2022, led by the Czech Presidency. UNSHELL is instrumental in addressing some of the issues that are experienced within the EU vis-à-vis shell companies. SAFE has been announced as an initiative which is more targeted at the difficulties that are regularly experienced in third countries (e.g., structures in tax havens are often conducive to tax evasion or aggressive tax planning). The creation of such complex structures requires a very high-level knowledge. The Commission has arrived at the following conclusion. The most effective way to limit to the maximum possible extent the use of such structures is to come up with a set of rules directly targeting those who are instrumental in creating them. The SAFE proposal is currently under a public consultation that will last until 12 October 2022[11] . The Chair gave the floor to a Commission representative to discuss the state of play of the SAFE proposal.

A Commission representative provided a presentation on the SAFE proposal for a directive (this acronym stands for “Securing the Activity Framework of Enablers”). A public consultation will be open until 12

[10] https://taxation-customs.ec.europa.eu/system/files/2021-12/COM_2021_565_1_EN_ACT_part1_v7.pdf
[11] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13488-Tax-evasion-aggressive-tax-planning-in-the-EU-tackling-the-role-of-enablers_en

October and it was also confirmed that further research on policy options and quantitative impact assessment of this directive will take place. It was also confirmed that this draft proposal is currently planned for the first half of 2023.

A speaker from a professional association confirmed that they have a dedicated technical committee to participate in the announced public consultation. It was added that the impact assessment is at this stage rather high-level but further reflections will be provided within the framework of the public consultation (for instance, in relation to solutions such as sanctions on the client). Another representative from a professional association took the floor and confirmed that their tax policy group is drafting comments to be submitted by 12 October 2022. Some observations were shared on behalf of their membership. It was acknowledged that this initiative addresses serious concerns in this field. It is welcomed that the target of this initiative is around the activities and not the professions, in order to ensure a level playing field and in light of the disparities of professional roles across the EU. On the public consultation, questions where tax evasion and tax avoidance overlap makes it difficult to address them. The two elements should be kept separate. In order to set up an effective registry, it will be key to clearly define tax enablers and the material scope of the proposal (e.g. taxes in scope of this proposal). Another key aspect to bear in mind is the communication with tax enablers along the process and, especially, the consequences that they will face in case of non-compliance. The registration should also take place at EU level, and this should be coupled with a dedicated EU database. EU Member States should be involved in order to see what it can be centralised and what not. Data comparability and availability between EU countries will make this initiative more credible. In relation to the use of the term “enablers”, the Commission seems to include under this label only tax advisors who actually breach the rules. Nonetheless, under the public consultation, one can infer a distinction between enablers and tax advisors. Under the Directive proposal, it should be clarified that tax enablers and tax advisers are not the same.

The Chair pointed out that there will be a central register but decentralised vis-à-vis its entry points. A representative from a business association highlighted that tax planning and tax compliance go hand in hand in certain business operations such as M&A. Concerns were raised in relation to aggressive tax planning and its definition within this proposal. Since the inception of the BEPS process, the definition of aggressive tax planning has been one of the difficult tasks that all stakeholders had to wrestle with. In case of tax planning linked to an M&A deal, the aggressiveness might be the result of different legal options that a company might face. In this instance, the most tax expensive option does not have to necessarily be the correct choice. Further reflections are needed.

The Chair clarified that the purpose of this Directive proposal is to tackle the 1% of tax advisors who promote aggressive tax planning and misbehave concerning tax evasion and tax avoidance. The aim is not to target an

entire group of professionals who behave themselves ethically and abide by the rules. The definition of aggressive tax planning is the biggest challenge ahead as addressing only tax evasion will not bring much added value (already a crime everywhere). This definition is not entirely uncharted territory as, under the 2020 Communication[12] on State Aid amid the Covid-19 crisis, a step-by-step description is provided on how to assess the potential risk emerging from the company receiving state aids. Since the modification of the Financial Regulation in 2018, the Commission has been working for many years with numerous financial intermediaries (FIs). For instance, the compliance departments of the EIB, EIF, etc. implement a set of steps for every transaction to detect possible risks of ATP. Almost five years of robust assessment undertaken by the Commission FIs testifies the EU commitment and its consequent efforts in the field of ATP.

A representative from an academic association thanked for the presentation and raised some doubts on the proposal at this stage. Complex tax structures, for instance the use of incorporated entities and trusts, involve multiple enablers who do not have full oversight of the full tax planning structure. The enablers who do have oversight are maybe resident in a jurisdiction outside the EU. Another issue is the definition of aggressive tax plannng. What is legal in a Member State can have adverse consequences in another Member States (e.g., hybrid financial instruments). A great deal of shell companies' activities falls under the area of shadow banking. Not all firms involved in the shadow banking sector are engaged in tax avoidance but there is a clear overlap. The ECB and financial regulators have owners' requirements related to AML but not to tax evasion. Detailed data on some shell companies, like special purpose vehicles (SPVs), falls under ECB requirements but this does not result in regulation. For example, the Governor of the Irish Central Bank stated in front of the Irish Parliament that the Irish Central Bank does not regulate SPVs. EU authorities should be encouraged to address this overlap. Another representative from an academic association pointed out their concerns on the definition of ATP. Definitions exist under article 6 of the Anti-Tax Avoidance Directive or under the hallmarks of DAC6. It is key to arrive at a coherent system and not simply add a brand-new definition. It would also be important to draw some lessons on DAC6 implementation before implementing a new layer. On enforcement, it was asked how this will work in practice in case of clients bearing the responsibility and enablers located outside the EU. The Chair replied that, in order to target the client, a public register will be put in place. If the Directive is adopted and becomes law, all clients will know that, selecting enablers not listed under the register, will expose them to sanctions. For EU countries with a regulated system, it will be important to make sure that the EU public registry will not be used as tool to perform illegal activities in such States, de facto bypassing national registration. The EU public registry will be instrumental in applying this Directive and no other goal exists.

A speaker from Oxfam advocated for the stricter policy option, imposing due diligence and mandatory

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001

registration. This option will allow the best implementation while simultaneously assessing its correct application. It was asked whether the public registry that the EU is considering could include due diligence documents. In this way, tax authorities could have these documents at their disposal once needed, not only upon request. On the definition of aggressive tax planning, it was acknowledged that this is a difficult endeavour and more information was requested on the indicators that the Commission is considering. A multiple step approach would be the best solution. The EU NCJ list has limits, but, if improved, the list of backlisted countries could serve as a red flag for jurisdictions enabling tax planning. This could be also the case for a jurisdiction with an effective tax rate below a certain threshold. The proposal for a Directive aims at targeting individuals. It was asked to investigate whether firms could also play a role in making sure that their advisors do not engage in giving advice which involves aggressive tax planning. Another possibility would be to keep track of all firms with a great record of aggressive tax planning advice, in order to make these firms accountable. After a certain number of reported cases, the same firms should not be allowed to provide tax advice in the EU.

The Chair confirmed that, among the issues to be checked, there is who is registered (e.g., firms vs firms' tax advisers). Feedback in this regard would be welcome. In relation to registration of due diligence documents, the Commission will try to achieve a legitimate balance between the objectives of the proposal and protecting business secrecy. A representative from a business association highlighted that, from a business perspective, the focus should be on the few rotten apples without making it difficult for companies that comply with all rules. In recent years, anti-abuse rules have been considerably strengthened. This helps in reducing the risks linked to aggressive tax planning. The EU should promote a targeted initiative, with clear definitions of aggressive tax planning or enablers. Concerns remain on the wrong perception related to enablers' real number. Some figures mentioned under the public consultation seem to confirm this thesis and could indicate a broader scope. It was advocated a close dialogue between businesses and the EU especially in case of firms' sanctions. The Chair thanked all interventions for their constructive criticism and clarified that the Commission aim is not to target normal business behaviour, but exclusively wrongdoings in this area.

A speaker from TJN stated their support to the central registration at EU level. This would imply a rather broad definition of legal, financial and tax services. It might be useful to decentralise or even harmonise the database format of power of attorney or power of representation. This could facilitate access to data and its practical availability. With that in place, it could also be possible to set some market access constraints, in order to prevent access of the foreign enablers into the single market.

The Chair also made some remarks in relation to the link between the proposal and the EU list of non-cooperative jurisdictions for tax purposes. This idea would not be unprecedented. As mentioned before, once

international financial institutions such the EIB or the EIF apply EU rules, the same institutions take into consideration the EU list (e.g., enhanced due diligence in case of Annex II jurisdictions' involvement or fully fledged prohibition in case of Annex I jurisdictions). This idea could be further explored for this proposal for a Directive, especially for the jurisdictions featuring on the list (Annex I). Annex II has another nature as it gathers jurisdictions committed to address identified tax deficiencies by a certain date. Activities linked to listed jurisdictions can be either legitimate or not. This depends on the rationale of the company's activities and their compliance with existing national and international rules.

A speaker from a professional association enquired whether the registry designed and implemented at EU level will include only professionals facilitating or providing fiscal, tax or legal advice or rather enablers who perpetrate wrongdoings in this specific field. Members of this association pointed out that the word "enablers" represents a charged term and they do not want to be qualified as such.

The Chair clarified that the registry would encompass only those providing tax advice. Those who are found misbehaving would be defined enablers and, as a consequence, they would be deregistered. Under this registry you should have no tax adviser that can be qualified as an enabler. Terminology has to be used correctly in order not to cast out the legitimacy of a serious and respected category of professionals within the EU. The Chair invited again every participant to feed into the public consultation by 12 October 2022. It was specified that the new legislative initiative should be presented by the second quarter of 2023. No precise month will be announced in order to make sure that Commission will go forward only with a text fit for purpose which complies with the necessary quality requirements. Lastly, the Commission is pleased that the general approach discussed today seems to be supported by different stakeholders.

European business' competitiveness vis-à-vis the US and other trading blocs (Business Europe)

A Commission representative highlighted that the issue of EU business' competitiveness is sometimes overlooked although it is as relevant as other issues more frequently covered. In order to embrace all economic opportunities in the near future, the EU has undertaken initiatives in other areas such as the Digital Single Market[13] or the Capital Markets Union[14]. Taxation has also a role to play in boosting EU competitiveness. Some EU Commission initiatives in the pipeline like BEFIT15 aim to achieve this goal among several others. The timing of this discussions is particularly welcome in this regard.

13 https://eufordigital.eu/discover-eu/eu-digital-single-market/
14 https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union_en
15 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2430

A speaker from Business Europe pointed out that this topic is particularly relevant for the well-being of all EU citizens. Corporate taxation has to be structured in an efficient way. In 2023 the thirtieth anniversary of the single market will be celebrated. Against this background, EU economies are facing unprecedented challenges to manage simultaneously the digital and green transitions. The post-pandemic scenario coupled with the war in Ukraine present systemic challenges. Removing obstacles to cross-border investments is now more important than ever before. Sound tax policy has an important role to play in supporting EU economies and removing barriers to the single market. In the midst of challenges to economic growth, competition between trading blocs is increasing. Europe needs to find new export markets to keep afloat. Lately, import substitution has been on the agenda. It can be relevant for certain products, but it cannot produce enough wealth for all EU citizens. Sound business and increasing exports are instrumental in guaranteeing growth. The emphasis of the EU Commission in the first decade of the single market was very much on removing barriers within the single market. The emphasis of the EU Commission in the last decade of the single market has been to a large extent on securing national tax bases. The goal of reducing tax avoidance and tax evasion should not squeeze out the goal of creating a tax system that contributes to job creation and EU competitiveness. Jobs should be guaranteed, particularly for the younger generations. In a study for the European Parliament FISC Subcommittee[16] published last summer, with entitled "Removal of taxation-based obstacles and distortions in the Single Market in order to encourage cross border investment", key findings stated that: "EU Member States have found it much easier to agree on curbing international tax planning than on reducing tax and administrative barriers in the Single Market. As a consequence, leeway for international tax planning has actually decreased significantly in recent years, but at the cost of a complexity explosion." Complexity in tax systems means that resources are diverted from productive investments to compliance. Companies forego profitable investments due to tax uncertainties. It is essential to reduce the administrative costs or tax compliance. To deliver jobs, it is not enough to guarantee a level playing field. The economy must be competitive as well. Not enough tax initiatives promote competitiveness. In the last decade, one exception has been the Directive on dispute resolution[17] that was adopted in 2017. Another one was the 2011 CCCTB proposal[18] . This proposal was not adopted by EU Member States and its approach was diluted from a growth-oriented measure to a distributional project. It is time that tax initiatives assess their impact on EU competitiveness. A competitiveness check should be put in place for every new proposal. It was also added that economists at the EU Commission should be deployed on economic analysis rather than on the preparation of legislative proposals. The most harmful taxes for growth and for a true transition to a greener and more digitalised economy should be addressed first, preferably at the EU level. The lack of loss offset across borders and difficulties for labour mobility across the border are good examples in this respect. In conclusion, in a

[16] https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)733964
[17] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1852&rid=9
[18] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011PC0121

world of competition between trading blocs, the EU needs to provide support to its businesses entangled in international tax disputes. When EU businesses headquartered in one of the Member States operate in India, China, or Brazil, they are often challenged to pay more in taxes, even if they follow international tax rules, arm length rules, etc. This happens to subsidiaries of other trading blocs as well. However, a big difference exists. These subsidiaries can count on the support of their governments or tax authorities. For instance, the US lawmakers take interest in how their companies and their investments are treated abroad. No EU equivalence exists as the Commission has no direct power of intervention. Nonetheless, the EU institutions can play a role in this area. The OECD has also engaged in peer reviewing and not only for its own Member Countries. Gathering information and issuing reports could help in improving the implementation of international tax rules. Such peer review could be considered at the EU level. This should be formalised but could be on a voluntary basis. Businesses could have a big role to play here. Another important area for this single market anniversary is the relaunch of the technical work of the Joint Transfer Pricing Forum[19], under its original mandate. The business community would like to encourage both the Commission and EU Member States on embarking on a new and, at the same time, old agenda of growth and investments across the EU. Achievements of the single market should be celebrated, to reap its full benefits, in order to encourage the promotion of investments and the removal of cross-border obstacles in the EU.

A Commission representative thanked Business Europe for the intervention and pointed out that in the last years the Commission has striven for a balanced approach, also promoting tax fairness, revenues' collection, or business climate within the EU. However, with some of these proposals, the Commission has encountered more difficulties despite the firm belief of the EU in their relevance. The current mandate of the Commission puts these goals at the forefront of its strategic priorities. Against this background, DG TAXUD is working on a proposal for 2023. A business association representative highlighted that, since decades, the result of the legislation is not balanced within the EU. Plenty of anti-abuse regulations exist. For companies the aim should be the efficiency of the tax systems without creating loopholes.

A speaker from a professional association echoed the previous comments, in order to achieve a rebalance in favour of tax policies facilitating growth and trade. The focus should be on simpler laws, easier to audit or in general to comply with. The concern on anti-abuse rules is not only that their focus seems inconsistent but also that they create extra layers of complexity. It is important to look at the total tax contribution, in order to pile up instruments on top of each other; for instance, carbon pricing mechanisms on top of existing energy or carbon taxes. If not, we create a limit to effectiveness and corporate tax incentives for renewable energy. A Commission representative confirmed that on BEFIT the Commission will take a close look at what can be used under existing rules and simplify as much as possible the existing legislative framework.

[19] https://taxation-customs.ec.europa.eu/joint-transfer-pricing-forum_en

A speaker from EuroDaD stressed out an issue that was not dealt with, i.e., the competitive disadvantages for small and medium enterprises. These companies do not access the same tax planning opportunities and they do not engage in ATP, and they seem to be less represented within the Platform membership or discussion. In order to ensure a level playing field against the background of EU competitiveness, larger companies' tax evasion and tax avoidance should be taken into account within the single market and beyond. Small companies often advocate the same issues as civil society organisations and their voice should be heard under the upcoming BEFIT public consultation. Tax simplicity and efficiency within the tax system are key and hopefully the BEFIT proposal will be able to deliver in this regard. As raised before, secrecy seems to remain a key component in enabling large scale corporate tax avoidance and tax evasion. This undermines the competitiveness of good actors, small and big actors alike. Transparency is a real solution to this issue. Simpler and more efficient transparency is by default public transparency. Policy solutions such as a Public CbCR common standard, a robust public registry of beneficial ownership or a robust public registry of transparent rent tax agreements could definitely benefit all businesses, in light of the level playing field of information made available for all involved actors. In this way, businesses decisions can be driven by competitiveness and real business activities, and not by whoever has the best tax "enablers".

A speaker from a professional association made a short remark on the representation of SMEs within the Platform. This association accounts for multiple SMESs among its own members or practitioners. Their views or their interests are at the forefront of this association advocacy efforts. Another business association representative highlighted that a claim to rebut is that SMEs are less engaged in tax avoidance or tax evasion than larger companies. No certainty seems to exist in this regard, and it was asked whether this claim is coupled by sound evidence or useful research. A speaker from EuroDaD replied that there is a very challenging diversity of methodology in relation to SMEs, effective tax rate and tax incidence. All studies do not compare like for like but, generally, there is a trend across academic and institutional research which points out that SMEs have a higher effective tax rate or tax incidence. Upon request, these research conclusions could be shared with all Platform members. Nonetheless, it was agreed that there are not enough studies on the incidence of aggressive tax planning within the context of SMEs. The presenter of Business Europe concluded that the focus on SMEs is indeed relevant. It was added that the EU legislative focus should not be devoted to categories that are irrelevant in real numbers.

Any Other Business

A Commission representative thanked all presenters for their contribution to the discussion and informed all Members that the next meeting of the Platform will take place in person on 8 December. To prepare future meetings, every input on possible agenda items or volunteers for presentations are very much encouraged.