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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**Anti-Tax Avoidance Package: Next steps towards delivering effective taxation and
greater tax transparency in the EU**

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1. FAIR AND EFFICIENT CORPORATE TAXATION: A CORNERSTONE OF THE SINGLE MARKET

The Single Market is one of Europe's greatest achievements, designed to allow people, goods, services and capital to move freely. It reduces red tape for professionals and businesses operating cross border. It provides greater choice and lower prices for consumers. It enables people to travel, live, work and study wherever they wish. The Commission has therefore made it a priority to develop a deeper and fairer Internal Market, which is fundamental to delivering a thriving economy that benefits all.

As set out in the June 2015 Action Plan for a Fair and Efficient Corporate Tax System in the EU¹, a healthy Single Market needs a fair, efficient and growth-friendly corporate tax system, based on the principle that companies should pay taxes in the country where profits are generated. Aggressive Tax Planning undermines this principle. The majority of businesses do not engage in aggressive tax planning and suffer a competitive disadvantage to those that do. The aggressive behaviour of these companies distorts price signals and allows them to enjoy lower capital costs, disrupting the level playing field in the Single Market. Small and medium sized businesses are particularly affected by this phenomenon.

Meanwhile, Member States suffer significant revenue losses due to this aggressive tax planning by certain companies. Other less aggressive, less mobile taxpayers then have to carry a heavier burden. As Europe emerges from a difficult economic crisis, citizens understandably resent having to carry a heavier tax burden while certain corporations avoid paying their fair share, with sometimes the voluntary or involuntary complicity of national governments. This uneven burden-sharing erodes fairness in taxation, reduces general tax-payer morale and threatens the social contract between citizens and their governments. The European Parliament, voicing the concerns of European citizens, has demanded that these practices should stop.

Member States agree and understand that if they want a stronger Single Market then taxation cannot be left aside. A coordinated approach to implementing growth-friendly tax systems and tackling cross-border problems is essential for a well-functioning Single Market, a successful Capital Markets Union and to attract inward investment to the EU. Member States, now, acknowledge this and have called for an end to aggressive tax planning². This requires a common approach at EU level or the introduction of general and specific anti-tax avoidance provisions in the Union, covering both internal measures and common actions against external base erosion threats.

¹

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf

²

<http://www.consilium.europa.eu/en/press/press-releases/2015/12/08-ecofin-conclusions-corporate-taxation/>

2. AGGRESSIVE TAX PLANNING: A GLOBAL PROBLEM REQUIRING EU AND GLOBAL SOLUTIONS

Unilateral action by Member States would not adequately tackle the problem of Aggressive Tax Planning and would create problems. In a Single Market founded on free movement of goods, persons, services and capital, uncoordinated measures against profit shifting can do more harm than good. Divergent national approaches to tackling this cross-border problem can create loopholes for aggressive tax planners. Rules in one Member State can undermine the effectiveness of the rules of others. Moreover, an uncoordinated approach can bring uncertainty and administrative burdens for businesses.

An uncoordinated approach can further encourage suboptimal responses by Member States. In some instances Member States are reluctant to act, being fearful of the competitive disadvantage this might bring. Some Member States instead respond to the problem by intensifying their efforts to attract or maintain multinationals' profits in their own territories – sometimes through preferential tax regimes or individual tax rulings granting a selective advantage, which are in conflict with EU State aid rules. However, harmful tax competition tends to create greater incentives for companies to shift profits, while further reducing Member States' overall tax revenues and distracting them from growth-friendly tax policies. While preferential regimes and individual tax rulings are currently being subject to targeted enforcement action under State aid rules, this needs to be complemented by legislative measures.

Aggressive Tax Planning is a global problem, which requires European and international solutions. Many Member States now recognise that unilateral action is insufficient. There is a large degree of consensus that a coordinated response is needed to the problem of aggressive tax planning to ensure competition on a level playing field on tax matters.

3. NO TIME FOR BUSINESS AS USUAL: NEED FOR POLITICAL AMBITION AND LEGAL CERTAINTY

The Commission Communication of 17 June 2015 on "a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action" laid the groundwork for action on aggressive tax planning. The Common Consolidated Corporate Tax Base (CCCTB) is central to the Action Plan, as it would fundamentally reform corporate taxation and provide a holistic solution to the problem of profit shifting in Europe. It would also create a better tax environment for business, reducing tax burdens.

Pending the adoption of the forthcoming revised CCCTB proposal, in the immediate term, other actions were set out in the June Action Plan, and were aimed at ensuring effective taxation where profits are generated, creating a better tax environment for business, making further progress on tax transparency and strengthening EU tools for coordination. These actions link strongly to the G20/OECD project on Base Erosion and Profit Shifting (BEPS), which was still ongoing when the Action Plan was published. Since then, good progress has been made on many of these actions. However, in some areas of the Action Plan, EU level action depended on the completion of the G20/OECD exercise.

The G20/OECD reports³ were published in October 2015 and Member States are now expected to implement many of these recommendations in an EU law compliant manner. Many Member States have stated that they intend to implement these solutions as soon as possible, but there is a risk that they will do so in divergent ways or have varying interpretations of the OECD BEPS measures.

This is not sufficient. In the EU, action in the form of anti avoidance measures must be taken in a clear and coherent way, to strengthen Member States' collective stance against tax avoidance, while upholding the Treaty freedoms and EU competitiveness.

The EU can and should go further to ensure that Member States develop a common standard. The EU has tools at its disposal which can be used to ensure that anti avoidance measures are implemented in a coordinated manner in all Member States, reinforcing each other's defences against abuse, and providing more legal certainty to businesses. In particular, the EU can secure a common approach through the adoption of legal instruments. This is appropriate in some circumstances, for example where defensive measures relate to national legislation. Legislation can include some flexibility, to allow Member States to take their different circumstances into account, but could at least ensure that a minimum standard is in place across the Union. EU legislation would help level the playing field on tax for Member States and limit the distortions which undermine the Single Market.

In other cases, legislation may not be appropriate, for instance if it relates to tax treaties. In these cases, a Commission Recommendation may be a better way to provide guidance on an EU law compatible approach. In other areas, it may be appropriate to employ other tools at our disposal in the EU, such as the Joint Transfer Pricing Forum, the Code of Conduct for Business Taxation, or the Platform for Tax Good Governance Group.

Action is needed now to develop a corporate tax environment in the EU that promotes a competitive and growth friendly economy. The longer the wait, the higher the risk that diverging approaches will emerge, creating administrative burdens and uncertainty for business and damaging the Single Market. There is no case for delay. Member States have explored these issues in depth and at length, both in the EU and the OECD. During this process, businesses, NGOs and professional groups have been extensively consulted, and have made their views known. The European Parliament has delivered its reports on aggressive tax planning. All the elements are now on the table. It is time to act.

4. EFFECTIVE TAXATION: ENSURING TAX IS PAID WHERE THE VALUE IS GENERATED

As was set out in the June 2015 Action Plan, companies that benefit from the Single Market and generate profits there should pay tax on those profits within the EU, where the activity takes place. However, it is clear that this link has been broken by some companies which shift profits from where they are generated to Member States offering low tax rates and preferential regimes, and out to third countries, with no link to the place of actual economic activity. Some of the incentives offered to selected undertakings, may breach EU State aid rules and can be tackled via State aid control. The Commission has been active in pursuing cases where these rules have been breached. At

³ <http://www.oecd.org/ctp/beps.htm>

the same time, though, aggressive tax planning strategies often take advantage of wider systemic issues, such as mismatches between national tax legislation, as well as existing EU corporate tax legislation⁴, to pay a low effective level of tax (or no tax at all) at the place where the profits were generated. The European Parliament, many Member States and stakeholders have demanded change, which is why a commitment to ensure effective taxation of profits in the EU was central to the June Action Plan.

The EU has various means at its disposal to advance this agenda and progress has already been made, on a number of initiatives to ensure the effective taxation of profits in the Single Market.

The new G20/OECD guidelines on **Transfer Pricing** should help link profits to the economic activities which generate them. The Commission reviewed the mandate of the Joint Transfer Pricing Forum (JTPF)⁵, which is already deeply involved in examining how best to build on the G20/OECD BEPS work in order to develop a more effective and consistent application of the rules within the EU, reflecting the Single Market. The JTPF has repeatedly proved itself to be capable of delivering comprehensive pragmatic solutions to the problems posed by EU transfer pricing practices, and should continue to deliver results. The Commission will monitor Member States' implementation of the new rules and will consider whether stronger rules are required to prevent manipulation.

The **Code of Conduct Group on Business Taxation**⁶ has established a monitoring process which will ensure that Member States implement the revised approach to patent boxes. If Member States are not applying the new approach appropriately, then the Commission will consider introducing legislation to ensure its proper implementation.

EU Ministers of Finance have discussed effective taxation and agreed to focus efforts in the short term on a new anti-abuse clause in the **Interest and Royalties Directive**⁷. This work will continue, and the Commission is confident that agreement can be reached.

Europe now has the opportunity to go further in some areas, and take action in respect of other aggressive tax planning structures that have been discussed at the OECD and in the inter-institutional debate. These structures are discussed further both in the Staff Working Document accompanying this package and in the Commission's Aggressive Tax Planning Study. The OECD and other EU institutions have flagged the following potential additional measures which could help address aggressive tax planning:

- limiting interest deductions, one of the principal instruments for profit shifting;
- eliminating negative impacts of hybrid mismatches, so they do not result in double non taxation;

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0123:en:HTML>

⁵ http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm

⁶ http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML>

- strengthening controlled foreign company rules, which ensure that profits parked in low or no tax countries are effectively taxed;
- reinforcing rules relating to how assets are taxed when they are transferred to another state (exit taxation);
- denying the exemption of certain cross border corporate receipts in the absence of effective taxation in the other state (switchover rules);
- introducing an EU wide General Anti Abuse Rule; and
- amending the rules to make it more difficult for companies to artificially avoid having a taxable presence in a Member States or to abuse tax treaty agreements (permanent establishment and treaty abuse).

An EU wide approach to these measures would strengthen the link between profit generation and taxation in the EU. As a result, since the publication of the Action Plan, Council discussions have focussed on finding a common solution to these issues, and Member States have made good progress. These discussions have been enhanced by the publication of the BEPS reports, which are linked to several of these actions.

The Commission is convinced that the common solutions being discussed in Council would considerably enhance Member States' abilities to tackle aggressive tax planning pending the outcome of the CCCTB. The June Action Plan stated that the Commission would ensure that consensus on these items could be made legally binding. **This package therefore includes an Anti-Tax Avoidance Directive, which makes good on this promise by delivering a legislative proposal for those elements which can be implemented in national legislation** prior to agreement and introduction of the CCCTB. It also responds to the European Parliament's Resolutions that the Commission bring forward legislative proposals on these anti avoidance measures.

Some issues, however, would not be suited to a standalone directive. In particular, issues relating more to tax treaties have not been included in the Directive. Nonetheless, a coordinated approach is needed now to prevent negative spill-overs. **The Commission is therefore presenting a Recommendation on the implementation of measures relating to Permanent Establishments, as well as to the G20/OECD report on Tax Treaty abuse.** In this context, the Commission is concerned that the G20/OECD report includes Limitation of Benefits clauses as an option, although it is acknowledged that this may not be appropriate in all regions. These clauses limit the benefits of tax treaties to entities owned by residents of only one Member State, and therefore can be seen as detrimental to the Single Market by discouraging cross border investment. These rules can be problematic for the Capital Markets Union. Where Member States include rules based on the G20/OECD option of a Principal Purpose Test in their Tax Treaties, they should do so in an EU law compliant manner. For this purpose Member States are encouraged to use the additional wording included in the Recommendation.

The Anti-Tax Avoidance Package also includes a Communication that sets out steps for a more coordinated EU approach to third countries on tax matters. This will complement the anti-avoidance measures already foreseen. It examines how the EU can better promote international tax good governance standards globally and further support third countries in meeting these standards.

This Communication presents updated EU good governance criteria, in line with the latest international developments, which should underlie all EU external policies on tax matters. It seeks to improve the use of the EU's international agreements to promote tax good governance and advocates more support to developing countries in the area of corporate taxation.

In line with the commitment made in the June 2015 Action Plan, **the Communication also details a new EU process for assessing and listing third countries for tax purposes.** This reflects many of the measures which the European Parliament's TAXE and ECON Committees identified as essential for combatting aggressive tax planning involving third countries.

5. TRANSPARENCY: ENSURING EFFECTIVE ACCESS TO TAX INFORMATION

Transparency is an essential ingredient in ensuring fairer taxation, both in the EU and internationally. Member States need to have access to information on tax paid in other jurisdictions if they are to tackle aggressive tax planning. In March 2015, the Commission put forward a proposal to achieve further transparency towards tax administrations through the automatic exchange of information on cross border tax rulings. The proposal, which has been adopted by the Council in December 2015, will help ensure more effective cooperation between tax authorities and help governments to better protect their tax bases.

However, more needs to be done to ensure the fairness of taxation in the Single Market. Despite the recent adoption of the proposal for the automatic exchange on cross-border tax rulings, **tax administrations may still often lack information necessary to identify whether companies have engaged in artificially shifting substantial amounts of income into tax-advantaged environments through transfer pricing or similar practices.** The G20/OECD have recommended that countries share more information between tax authorities, including information on how much tax a company pays and on what profits on a country by country basis. This information is essential for the assessment and audit of practices in which large multi-national companies sometimes engage.

These rules should be implemented uniformly throughout the EU, in order to ensure a level playing field between Member States, and avoid the administrative burdens which might arise if businesses have to provide different information in every Member State. **The Commission is therefore putting forward a proposal to implement G20/OECD CbCR EU level,** building on the existing legislative framework for information exchange, through amendments to the Directive on Administrative Cooperation (DAC). By including CbCR within DAC, Member States would also benefit from the Directive's existing provisions on administrative cooperation, which would ease exchange of information between tax administrations.

In parallel, the Commission is currently analysing how certain accounting and tax information could in addition be made public by multinational firms on a country by country basis. Such increased corporate tax transparency could place multinational firms under closer public scrutiny, helping to ensure that profits are effectively taxed where they are generated and reinforcing public trust. Moreover, it could add to a fairer tax system in the Single Market by further contributing to reducing tax avoidance practices and related Member States' tax strategies as well as reducing unfair differences in treatment between multinational and other companies. At the same time, an initiative will

need to take into account the need to protect legitimate business secrets and promote a level playing field for globally active businesses. The Commission is assessing options as part of the ongoing Impact Assessment work and, following its completion, intends to present a legislative initiative in spring of this year.

6. ADDRESSING THE RISK OF DOUBLE TAXATION

In recognition of business concerns that measures tackling aggressive tax planning may inadvertently lead to more double taxation or disputes between tax administrations over the tax base, **the measures included in the Anti-Tax Avoidance Package have been designed so as to minimise the risk of double taxation as much as possible.** For example, the Anti-Tax Avoidance Directive explains that if double taxation arises as a result of the application of the rules, taxpayers should receive relief for the tax paid in the other state. This general principle is accompanied by more specific rules where possible, such as in the CFC provisions. Furthermore, as set out in the June Action Plan, the Commission also intends to put forward a proposal on enhancing dispute resolution procedures. Work on the impact assessment on dispute resolution is progressing, with a view to presenting the proposal in the summer.

7. WAY FORWARD

Once adopted, the CCCTB would prevent aggressive tax planning in the EU. Putting CCCTB in place therefore remains the Commission's objective. The public consultation on a revised CCCTB proposal has recently closed, and the Commission is on track to adopt the new legislative proposals in autumn 2016. The Commission will encourage Member States to adopt the proposal quickly. In the meantime, Europe cannot wait. The Anti-Tax Avoidance Package presents a pragmatic approach, bringing together key initiatives needed to enhance effective taxation and transparency in the Single Market. It will add momentum to the current reform process, keep up the pressure on Member States to act, and will help convert high level commitments into legislative action where possible.

This Package is composed of the following initiatives⁸:

- Proposal for an Anti-Tax Avoidance Directive
- Recommendation on Tax Treaty issues
- Proposal for a Directive implementing the G20/OECD Country by Country Reporting (CbCR)
- Communication on an External Strategy
- Staff Working Document, which provides further analysis and supports these initiatives.

⁸ All the actions proposed to be taken up by the Commission in this document are consistent and compatible with the current Multiannual Financial Framework 2014-2020

These initiatives reflect extensive and constructive discussions in the Council, as well as in the Code of Conduct on Business Taxation and Platform for Tax Good Governance groups, as well as in the recently released G20/OECD BEPS reports. The Commission is also indebted to the valuable tax reports of the European Parliament, and addresses many of the recommendations included in the Resolutions.

As these measures are in line with Member States' commitments, it should be possible to secure early agreement to this package. The measures provide the framework necessary to deliver real benefits to help protect the Single Market, and create a coherent and coordinated EU approach to corporate taxation – amongst ourselves and in relation to the rest of the world. It is up to Member States to take advantage of this opportunity to overcome their differences and help build a fairer and more efficient tax system in the EU.