European Commission - Fact Sheet

Questions and Answers on the Action Plan for Fair and Efficient Corporate Taxation in the EU

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Why has the Commission developed an Action Plan to improve corporate taxation in the EU?

Corporate taxation in the EU needs to be fundamentally reformed. Today's corporate tax systems in EU Member States were conceived in the 1930s, when cross-border trade was more limited, business models were simpler and products were tangible. But as business evolves, so too must the tax system. The current rules no longer work in a globalised, digital, mobile business environment. This outdated system is inefficient and creates opportunities for companies to use sophisticated tax-planning schemes to escape taxes. Some companies currently generate large profits in the Single Market, but pay little or no tax in the EU.

This corporate avoidance results in significant revenue losses for Member States, a heavier tax burden for citizens and local companies and competitive distortions for businesses that pay their share.

It also undermines EU growth and competitiveness. Member States are pulled into intense competition to attract or to keep companies' profits in their own territories. Through this competition, they often undermine each other's ability to collect legitimate revenues or to focus on growth-friendly taxation. In addition, Member States' unilateral efforts to protect their tax bases with uncoordinated anti-abuse measures are creating obstacles for businesses in the Single Market and legal disputes. The lack of coordination between Member States on corporate taxation also causes legal uncertainty, administrative burdens and compliance costs for businesses and investors. This undermines the EU's goals of creating a stronger, more competitive Single Market.

The Action Plan therefore sets out a series of measures for the short, medium and long-term, to overhaul the EU's corporate tax framework and make it fair, efficient and more growth-friendly.

What does the Action Plan aim to achieve?

The Action Plan aims to establish a new approach to corporate taxation in the EU to tackle tax avoidance, ensure sustainable revenues and foster a better business environment in the Single Market.

In particular this means that:

- Companies should pay tax where they generate profits.
- Taxation should be more growth-friendly, and this should not be compromised by competition for mobile tax bases.
- One country's preferential regime should not lead to revenue losses for other countries.
- Honest businesses should not lose out to tax-avoiding competitors
- Third countries should not be able to entice companies to shift profits out of the EU.

To achieve this, corporate tax rules need to be adapted to modern realities and Member States need to cooperate much more closely on corporate tax issues.

What are the main elements of the Action Plan?

The Action Plan sets out five key areas for action which, collectively, would signficantly improve the corporate tax framework in the EU. These are:

1. Re-launching the Common Consolidated Corporate Tax Base

The Action Plan sets out how the Commission intends to re-launch the *Common Consolidated Corporate Tax Base* (CCCTB), with some changes to better address the current priorities in corporate taxation. The CCCTB, proposed by the Commission in 2011, offers a holistic solution for corporate tax reform. Member States' negotiations on this project have faltered, however, due to its scale and ambition. Nonetheless, there is a clear interest in reviving the CCCTB, given the major benefits it offers. Work will begin immediately on a new proposal to introduce a mandatory CCCTB through a

step-by-step approach.

2. Ensuring fair taxation where profits are generated

The Action Plan aims to reinstall the link between taxation and the place of activity, by closing off opportunities for profit shifting and reviewing when and where a company should be taxed. The Commission will explore various measures with Member States to ensure that companies active in the EU are effectively taxed in the EU. There are also plans to improve the transfer pricing system, ensure stricter limits on preferential tax regimes and harmonise rules to protect national tax bases.

3. Creating a better business environment

Corporate taxation can support growth and competitiveness in the EU by delivering the stability, legal certainty and administrative ease which investors and businesses look for. The Action Plan outlines measures to remove current tax obstacles for businesses in the Single Market and make it simpler and more attractive for business to operate cross-border in the EU.

4. Increasing transparency

The Commission has given high priority to improving tax transparency in the EU, to ensure fairer taxation and to better tackle abuse. In March 2015, it presented an ambitious Tax Transparency Package, as its first step in improving the EU's corporate tax framework. The Action Plan details the next steps towards greater tax transparency – within the EU and vis-à-vis third countries. This includes a common approach to non-cooperative jurisdictions, starting with a pan-EU list of listed countries.

It also launching a public consultation on tax transparency as part of the ongoing work to assess whether companies should publicly disclose certain tax information, for instance through Country-by-Country Reporting.

5. Improving EU coordination

Cooperation between Member States is essential to successfully tackle tax avoidance. The Action Plan sets out how current instruments to facilitate this cooperation could be improved, along with ideas for new ways of using existing groups to maximum potential. Together with the Action Plan, the Commission has adopted a decision to extend the work of the Platform on Tax Good Governance, a group made up of EU tax authorities, business and civil society. It will also propose a reform of the Code of Conduct Group, which tackles harmful tax competition in the EU (see separate section).

How does the Action Plan relate to the international work against Base Erosion and Profit Shifting?

The measures in the Action Plan are very much aligned with the OECD's Base Erosion and Profit Shifting (BEPS) reforms, but are shaped to meet the EU's own particular challenges and needs. The EU strongly supports the BEPS project, which is developing international solutions to profit-shifting. The EU will benefit greatly from the improved global framework for corporate taxation.

It is important, however, that all Member States apply these international reforms in a consistent way. There needs to be a common EU approach to corporate tax reform to prevent 28 different approaches from undermining the Single Market. The EU has unique features - Treaty freedoms, a single market, a currency zone, binding legislation – that require tailor-made measures.

(I) Re-launching the Common Consolidated Corporate Tax Base (CCCTB)

Why has the Commission decided to re-launch the CCCTB?

The CCCTB, if adopted, would provide a holistic solution to the current problems with corporate taxation in the EU. It would greatly improve the business environment in the Single Market by making it simpler and cheaper for companies to operate cross border. At the same time, by removing the current mismatches between national systems and fixing common anti-avoidance provisions, it could serve as a powerful tool against corporate tax avoidance.

Negotiations on the CCCTB proposal, which was put forward by the Commission in 2011, are currently stalled, largely due to its sheer scale. In November 2014, President Juncker announced that the Commission would examine how to re-launch the CCCTB in order to break this deadlock. This idea was well received by Member States, MEPs, businesses and many other groups, as the benefits of the CCCTB are widely recognised.

The Commission has therefore announced in the Action Plan that it will come forward with a new proposal within 18 months to revive the CCCTB. The proposal will be for a mandatory CCCTB, introduced through a step-by-step approach.

(II) Ensuring Fair Taxation where profits are generated

Why is the Commission focussing in the Action Plan on effective taxation where profits are generated?

The fundamental principle of corporate taxation is that companies should pay tax where they make their profits. However, this is often not the case today. Some companies make large profits in the Single Market, but to pay little or no tax on them in the EU. They take advantage of the Treaty freedoms, national mismatches and provisions in EU corporate tax law[1] to shift profits between Member States and out of the EU, untaxed.

Member States need to have a structured discussion to agree on how to ensure effective taxation. The Action Plan lays the basis for this discussion and the Commission will explore options for concrete measures to achieve this goal.

How can progress be made on international aspects of the CCCTB before the new proposal?

While the new proposal is being prepared, work in the Council on some international aspects of the common base linked to the BEPS project should continue. Consensus on these elements should be achieved within 12 months and should be made legally binding. This will ensure a coherent approach to implementing the new international standards arising from the OECD BEPS project as soon as possible.

Is the Commission planning to harmonise corporate tax rates?

The Commission has no intention of interfering with Member States' sovereign right to decide their statutory tax rates. However, there is a need to ensure that profits generated in the EU are taxed in the EU and that Member States can collect the revenue they are due from corporate taxation. There are a number of measures which can achieve this, without harmonising corporate tax rates across the EU. The Action Plan creates a basis for a much-needed discussion on effective taxation in the EU, which the majority of Member States are calling for. It will be for the Member States to discuss what they consider to be "effective" when it comes to corporate taxation in the EU and how this should be implemented.

What other measures in the Action Plan will reinforce the link between where companies make their profits and where they are taxed?

The Action Plan includes measures to improve the current transfer pricing system and ensure that preferential regimes do not encourage profit shifting.

Around 70% of all profit shifting is done through transfer pricing and the location of intellectual property (see section on transfer pricing). It is therefore important to improve the way companies determine their intra-group prices and to make sure that lower tax rates for intellectual property (brands and patents) are linked to where the underlying Research and Development (R&D) activity takes place.

What does the Action Plan say about preferential tax regimes?

Certain preferential tax regimes allow companies to shift profits away from where their real activities are based, in order to benefit from a lower tax rate in another country. Patent Boxes – which are special tax regimes for intellectual property revenues – have been identified as being particularly problematic in this respect.

In 2014, Member States agreed a non-binding new approach on Patent Boxes to ensure fairer tax competition. Under this new approach, companies should only enjoy a lower tax rate if their R&D activity is linked to the country that offers it.

The Commission will provide guidance to Member States on how to implement this new approach and monitor their progress. If, after 12 months, Member States are not properly applying the new approach, the Commission will propose binding legislation instead.

How is transfer pricing used to shift profits and how does the Action Plan address this?

Transfer pricing determines the price for goods and services sold between legal entities within the same group/corporation. In principle, the transfer price should match the market price, i.e. it should be in line with what would be paid in a transaction with an independent party. This is called the "arm's length principle". However, it is often very difficult to ensure that this rule is respected. Companies can

present various, sometimes artificial reasons as to why they have applied a particular price to an intra-group transaction and there are often no comparable market prices for e.g. intangibles, management fees and risk premia.

Transfer pricing is one of the main tools used by multinationals to shift profits. For example, a subsidiary in a low or no tax country will charge the parent company in a high tax company an inflated amount for the goods or services that it provides to it. This allows the corporation as a whole to minimise its tax burden by reducing profits in the high tax country (because the parent company has to pay these inflated amounts to the subsidiary) and increasing profits in the low/no tax country (where the subsidiary that receives these payments is based).

The Action Plan proposes to improve the transfer pricing framework in the EU, so that it better reflects current economic realities and modern business models. The Commission will work with Member States on possible options, aligned to new international guidelines in this area. Transparency and better access to comparable prices are two areas where work can already start.

Example

A company sets an unreasonably high price for a royalty for which there is no comparable market.

It then requires other companies in the group, which are based in high tax countries, to pay this royalty to a branch in a low/no tax jurisdiction.

In doing so, the corporation reduces its profits in the high tax countries and increases them in the low/no tax country, thereby minimising its overall tax burden substantially.

(III) Creating a better business environment

How can corporate tax reform create a better business environment in the EU?

Any reform of the corporate tax system must have a strong focus on improving the tax environment for business. A cohesive EU approach to corporate taxation would remove many of the tax obstacles, legal uncertainties, compliance costs and competitive distortions that many businesses face today.

The CCCTB – the Common Consolidated Corporate Tax Base – is, first and foremost, a pro-business initiative. A common base would already allow companies to calculate their profits for all EU activities with one set of rules i.e. without the burden of applying many different national rules. This would reduce administration costs for companies and allow them to focus on their business development rather than filling out dozens of forms. With consolidation on top of this common base, companies can offset profits and losses across the EU, allowing them to invest more efficiently in the Single Market.

The Action Plan also contains other measures specifically focussed on improving the Single Market for businesses, until the CCCTB is in place. These include improved tools for resolving double taxation disputes and an initiative to allow cross-border loss offset.

Actions to combat corporate tax avoidance will also improve the Single Market for millions of businesses that neither engage in aggressive tax planning nor benefit from harmful tax regimes. It will establish a level playing field and eliminate competitive distortions that currently exist. A common EU approach to corporate taxation should also reduce the pressure on Member States to engage in heavy tax competition. As such, they will be able to focus more on developing tax systems that are pro-growth and pro-jobs instead, to the benefit of many businesses.

How will SMEs be affected by the measures outlined in the Action Plan?

SMEs will benefit greatly from the business friendly elements in the Action Plan. The C(C)CTB and other measures to improve the business environment will make it easier and cheaper for SMEs (particularly start-ups) to expand and operate cross-border.

SMEs will also benefit from measures against tax avoidance– which can offer them fairer competition and a more level playing field. International profit shifting creates a competitive disadvantage for smaller companies that do not have the means for aggressive tax planning. Studies show that multinational companies pay on average 30% less tax than their domestic competitors. Corporate tax avoidance can result in SMEs carrying a heavier tax burden, as governments compensate for the revenue losses.

So tackling corporate avoidance, while improving the business environment, will bring significant benefits for SMEs in the EU.

How will the Action plan make taxation more growth-friendly?

A transparent tax system is conducive to growth. In addition a number of actions will address specific

elements of corporate taxation which should promote growth. For example, when developing the new CCCTB proposal, the Commission will ensure that it contributes to the growth and jobs agenda of the EU. The Commission will look e.g. at the treatment of research and development expenses. and at the way companies' equity financing costs are treated as compared to debt financing to promote capital markets union.

(IV) Increasing transparency

What transparency measures are included in the Action Plan?

In March 2015, the Commission proposed an ambitious Tax Transparency Package (IP/15/4610). It set out measures to ensure greater openness between Member States on their corporate tax regimes and to make companies more accountable for their tax practices. Today's Action Plan looks to extend that ambition and increase transparency with regard to non-EU countries. This includes increasing cooperation and information exchange between Member States on their approach to non-cooperative jurisdictions, in order to ensure a stronger EU stance against countries that encourage aggressive tax planning.

The Transparency Package also announced that the Commission would begin impact assessment work on possible requirements for companies to publicly disclose their tax information. Today, the Commission has launched a public consultation to gather feedback on this question.

Is the Commission going to propose any new transparency requirements for companies?

The Commission has today launched a public consultation on possible public disclosure requirements for multinational companies. The consultation is part of the Commission's ongoing work to assess whether companies should be required to make certain corporate tax information public. Such transparency requirements currently exist for banks under the Capital Requirement Directive IV and for large extractive and logging industries under the Accounting Directive, in the form of country-by-country reporting.

Extending such public disclosure obligations to multinationals in all sectors could help to deter aggressive tax planning, as companies would be subject to closer public scrutiny. However, before a decision can be taken on the feasibility of such ambitious measures, the Commission will need to carefully assess the objectives, benefits, risks and safeguards needed for such a move.

The public consultation will run for 12 weeks and the responses will feed into the Commission's decision on the possible next steps.

Why has the Commission published a list of non-cooperative jurisdictions and how was it compiled?

This pan-EU list of third-country non-cooperative jurisdictions will allow Member States to compare their national lists in an easy and transparent way.

The Commission did not decide which countries should be listed. Rather, it is relaying decisions taken at national level, since this list of non-cooperative jurisdictions is compiled from Member States' own blacklists. The "Top 30" of non-cooperative jurisdictions[2] is made up of countries that featured on at least 10 Member States' lists. Ultimately, the aim is to have a common EU approach to defining and reacting to third country non-cooperative jurisdictions. In discussions with Member States on their national blacklists, it became clear that each one uses different criteria to determine which countries to list, and takes different measures (if any at all) against listed countries.

Member States have called for an EU approach to address external threats to their tax bases. In order to effectively tax profits generated in the EU, they need common measures to stop profit shifting out of the EU. A common EU approach will carry more weight than a patchwork of national ones and will prevent tax avoiders from accessing non-cooperative jurisdictions by exploiting loopholes in different national approaches.

EU Member States themselves are committed to transparency, exchange of information and fair tax competition (Code of Conduct for Business Taxation).

What are the next steps to building an EU approach to non-cooperative jurisdictions?

Publishing a pan-EU list of non-cooperative jurisdictions is an important first step towards creating a more cohesive EU strategy towards non-cooperative jurisdictions.

As a next step, the Commission recommends that Member States (within the Code of Conduct Group) should screen the "top 30" listed countries and territories and determine an appropriate EU response. The Code Group's work has delivered successful results in relation to non-EU countries in the past. For example, Switzerland agreed to eliminate some of its harmful corporate tax regimes following scrutiny by the Code Group.

(V) Improving coordination

What measures are envisaged to improve coordination between Member States on corporate tax matters?

The Action Plan focusses on better coordination between Member States to achieve fairer and more efficient taxation in the EU. All the actions include elements which would promote cooperation, transparency and a common approach between national authorities, with a view to creating a solid EU framework for corporate taxation. There are currently a number of instruments aimed at ensuring coordination between Member States on corporate tax matters. However, these could be used to better effect and the Action Plan sets out how to achieve this.

It proposes joint audits, through which national administrations would audit a multinational together. This would allow them better access to information and a common overview of a company's tax practices in the EU. It also suggests reforms to key groups that discuss EU tax matters. The Code of Conduct Group and Platform for Tax Good Governance have played an important role in EU tax policy. However, changes are needed if these groups are to remain relevant and effective.

What is the Code of Conduct on Business Taxation and why does it need to be reformed?

Member States have committed to a non-binding Code of Conduct on Business Taxation, which sets out the criteria to assess whether national tax measures create harmful competition. This assessment is carried out by the Code of Conduct Group, which is made up of Member State representatives. In recent years, the Code has become less effective tool for tackling harmful tax regimes. This is partly because the criteria in the Code are no longer adequate to assess certain modern and complex tax regimes and partly because the Code Group lacks a strong enough mandate to act decisively.

The Commission will make a proposal to reform of the Code of Conduct to enable it to better react to modern cases of harmful tax competition. This will include extending the Group's mandate and changing its working methods. The Code Group should also be active in screening for cases of harmful tax competition in non-EU countries, as part of a EU approach to non-cooperative jurisdictions.

For more information, see:

Q&A on CCCTB Re-launch

Website on non-cooperative jurisdictions

ec.europa.eu/fair-taxation

[1] *Under the Interest and Royalties Directive and Parent Subsidiary Directive, Member States should not tax corporate tax revenue when it is moved to another Member State. These provisions are intended to prevent double taxation in the Single Market, but sometimes lead to double NON-taxation.*

[2]*Annexed to the Staff Working Document*

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General public inquiries:
Europe Direct by phone 00 800 67 89 10 11 or by email