



The Anti Tax Avoidance Package – Questions and Answers

Brussels, 28 January 2016

1. Why has the Commission made the fight against corporate tax avoidance a priority?

Corporate tax avoidance deprives public budgets of billions of euros a year^[1], creates a heavier tax burden for citizens and causes competitive distortions for businesses that pay their share. It also undermines the EU goals of growth, competitiveness and a stronger Single Market. The cross-border nature of corporate tax avoidance means that action only at the national level cannot tackle the problem and can even lead to further problems. Unilateral efforts by Member States to protect their tax bases create administrative burdens for businesses, legal uncertainty for investors and new loopholes for tax avoiders to exploit.

Therefore, the Commission is pursuing an ambitious campaign for a coordinated EU approach against tax avoidance, following the global standards developed by the OECD last autumn, to boost Member States' collective stance against this problem, restore fairness in corporate taxation and ensure stability for businesses and investors in the EU.

2. Why has the Commission presented a new Package against tax avoidance?

The Commission has set an ambitious agenda to clamp down on corporate tax avoidance and ensure fair and efficient taxation in the EU in its June 2015 Action Plan.

Today's Anti Tax Avoidance Package is the latest step in delivering on this agenda. It contains a series of initiatives for a stronger and more coordinated EU stance against corporate tax abuse – within the Single Market and beyond. It rests on three key pillars:

- **Effective taxation** whereby all companies pay taxes where they make their profits;
- **Tax transparency** so that Member States have the information needed to ensure fair taxation;
- **Addressing the risk of double taxation** so that companies which pay their fair share of taxes are not penalised for making use of the EU's internal market

It proposes key anti-avoidance measures, which will counter-act some of the most pervasive aggressive tax planning schemes. It advances the tax transparency agenda with a proposal for country-by-country reporting between all Member States. It also sets out a new EU strategy to protect the Single Market from external base erosion threats and to promote tax good governance internationally.

The initiatives in the Anti Tax Avoidance Package reflect discussions in Council, recommendations from the European Parliament and the outcomes of the OECD's Base Erosion and Profit Shifting (BEPS) project. As such, the groundwork has been done to allow Member States to quickly adopt and implement the proposed measures.

Today's Package builds on the major initiatives presented by the Commission in 2015, which have already delivered results. Member States adopted the Commission's proposal for transparency on tax rulings in record time^[2] and other important corporate tax reforms have been launched. The Commission will continue to advance its agenda for fair and effective taxation throughout 2016 and beyond, with a number of other important proposals in the pipeline, including the re-launch of the CCCTB.

3. What are the key elements in the Package and what do they seek to achieve?

The Package contains a number of legislative and non-legislative initiatives to help Member States protect their tax bases, create a fair and stable environment for businesses and preserve EU competitiveness vis-à-vis third countries. The Package consists of:

- An **Anti-Tax Avoidance Directive**, which proposes a set of legally binding anti-avoidance measures, which all Member States should implement to shut off major areas of aggressive tax planning
- A **Recommendation on Tax Treaties**, which advises Member States how to reinforce their tax treaties against abuse by aggressive tax planners, in an EU-law compliant way

- A revision of the **Administrative Cooperation Directive**, which will introduce country-by-country reporting between tax authorities on key tax-related information on multinationals
- A Communication on an **External Strategy for Effective Taxation**, which sets out a coordinated EU approach against external risks of tax avoidance and to promote international tax good governance
- The Package also contains a **Chapeau Communication** and **Staff Working Document**, which explain the political and economic rationale behind the individual measures

Chapeau Communication			
Anti Tax Avoidance Directive	Recommendation on Tax Treaties	Revised Administrative Cooperation Directive	Communication on External Strategy
Legally binding anti-avoidance measures	Advice on how to revise tax treaties against abuse	Country-by-Country reporting between tax authorities	Measures to promote tax good governance internationally
Staff Working Document			

4. How does this Package relate to the internationally agreed measures against Base Erosion and Profit Shifting (BEPS)?

The Package complements and reinforces the OECD's BEPS project. It seeks to enshrine certain BEPS measures in EU law, so that they are swiftly and smoothly implemented in the Single Market. It creates a solid framework for Member States to deliver on their BEPS commitments in a coordinated way, and goes further so that the EU continues to lead by example in international tax good governance. The Package includes a new EU strategy to actively promote tax good governance globally – including the implementation of BEPS in third countries. As such, it also supports the OECD's work beyond the Single Market.

Today's initiatives build on work already undertaken to ensure a coordinated EU approach to BEPS. For a full overview of how the BEPS measures are being implemented in the EU, see **Annex I**.

5. Does the EU need this Anti Tax Avoidance Package if the CCCTB is to be re-launched this year?

The Common Consolidated Corporate Tax Base (CCCTB) will indeed serve as a comprehensive solution to profit shifting in the EU and the Commission will present proposals to re-launch the CCCTB later in 2016 ([MEMO/15/5174](#)).

However, we should not wait for the CCCTB to be proposed, agreed and implemented before taking action against major areas of tax avoidance. The Commission is determined to advance its agenda for fair and effective taxation as quickly as possible and is keen to respond to the European Parliament's calls for swift EU action against tax abuse. The Anti Tax Avoidance Package offers immediate and effective solutions to tackle tax avoidance, boost tax transparency and ensure a fairer and more stable business environment, while work on the CCCTB is underway.

6. Could the new measures against tax avoidance create administrative burdens for tax administrations or companies?

Member States have already committed to implementing new international tax standards and/or to introducing certain corporate tax reforms, in order to clamp down on tax avoidance. Doing this within a coordinated EU framework will greatly improve the impact of the measures that they introduce. The increased transparency and coordination amongst Member States will also make it easier for tax authorities to identify tax avoidance risks, better target their tax audits and clamp down on cases of tax abuse or situation of double non-taxation.

For businesses, a coordinated EU approach to corporate tax measures is preferable to a diverse medley of national approaches. It creates more legal certainty and reduces administrative burdens for companies operating in more than one Member State.

7. Why not harmonise corporate tax rates in the EU to remove all incentives for profit shifting?

Fair taxation does not require harmonised tax rates. It relies on Member States being able to tax companies where they make their profits, in an effective way and in line with their national rules. The headline corporate tax rate is not usually the main motivation for companies that shift profits in the EU – opaque tax rulings, special tax regimes and loopholes in national tax laws are far greater incentives for aggressive tax planners. Therefore the key to preventing tax avoidance lies in well-targeted

corporate tax reforms and greater coordination between Member States, which the Commission is proposing.

8. What are the next steps for the package?

The two legislative proposals of the Package will be submitted to the European Parliament for consultation and to the Council for adoption. The Council and Parliament should also endorse the Tax Treaties Recommendation and Member States should follow it when revising their tax treaties. Member States should also formally agree on the new External Strategy and decide on how to take it forward as quickly as possible once it has been endorsed by the European Parliament.

(1) EFFECTIVE TAXATION

9. How will the Anti Tax Avoidance Package help to ensure effective taxation?

Some companies exploit the differences in Member States' rules to minimise their tax bills by shifting profits within the EU. Aggressive tax planners also abuse weaknesses in one national system, or the absence of anti-avoidance measures in one Member State, to escape being taxed anywhere in the Single Market. Effective taxation is therefore heavily dependent on close coordination between Member States, to shut off opportunities for tax avoidance and prevent profit shifting in the Single Market.

Today's Package proposes that all Member States implement coordinated measures against tax avoidance, to boost their collective defences against aggressive tax planning. It also sets out a common approach to tackling external threats of tax avoidance and to help prevent companies from shifting untaxed profits out of the EU. The transparency provisions in the Package will ensure that all Member States have the information that they need to better detect and react to tax avoidance schemes. As such, all Member States will be better equipped to avoid situations of double non-taxation and ensure that companies operating in the EU pay taxes where they make their profits.

10. What are the proposed anti-avoidance measures and how will they help to prevent tax avoidance?

The Anti Tax Avoidance Directive sets out six key anti-avoidance measures, which all Member States should apply, to counter-act some of the most common types of aggressive tax planning (as identified in the discussions at the OECD, in Council discussions on tax avoidance and in the Study on Aggressive Tax Planning we have also published today). These are:

a) Controlled Foreign Company (CFC) rule: To deter profit shifting to no or low tax countries

Multinational companies sometimes shift profits from their parent company in a high tax country to controlled subsidiaries in low or no tax countries, in order to reduce the Group's tax liability. The proposed Controlled Foreign Company (CFC) rule should discourage them from doing this.

The CFC rule will allow the Member State where the parent company is located to tax any profits that the company parks in a no or low tax country. The CFC rule will be triggered if the effective tax rate in the third country is less than 40% of that of the Member State in question. The company will be given a tax credit for any taxes that it did pay abroad. This will ensure that profits are effectively taxed, at the tax rate of the Member State in which they were generated.

***Example:** An insurance company has its headquarters in an EU Member State. It sets up a re-insurance company as a subsidiary in a no tax third country. The insurance company makes inflated premium payments to the offshore re-insurance company, thereby reducing its taxable profits in the EU Member State. The payments that the re-insurance company receives are not taxed either, because of the third country's zero rate.*

With the proposed CFC rule, the EU Member State can tax the insurance company's profits as though they had not been shifted to the no-tax country, thereby ensuring effective taxation at the tax rate of the Member State concerned.

b) Switchover rule: To prevent double non-taxation of certain income

Dividends, capital gains and profits from permanent establishment^[3], which enter the EU from third – or non-EU – countries, are often exempt from tax to prevent double taxation. Some companies exploit this exemption to enjoy double non-taxation on this income – in other words, they avoid being taxed at all.

The Directive proposes a switchover rule, whereby companies would have to tell the EU tax authority that it had received a dividend and whether or not it had paid tax on it elsewhere. Tax authorities would then be able to deny the company tax exemptions if the income had been taxed at a very low or no rate in the third country. If the Member State determined that the dividend had indeed been properly taxed in the third country, it could give the company a credit for the tax it had paid.

***Example:** Company X is located in an EU Member State. It invests in company Y, located in a no-tax third country. On the basis of this investment, company X receives dividend payments from company*

Y.

These inbound dividends are exempt from tax in the EU Member State, based on the assumption that they were already taxed in the third country. However, the third country applies no corporate tax to the dividends that company Y distributes, so this income is not taxed at all.

With Switchover, the EU Member State will tax the inbound dividends that company X receives, if they are not effectively taxed where company Y is based. As such, the income is effectively taxed, on the same basis as it would have been had company X invested in a company in its own Member State.

c) Exit Taxation: To prevent companies from re-locating assets purely to avoid taxation

Assets such as intellectual property or patents, usually valued at their projected future income, are often not taxed when they are moved from an EU Member State to a third country. Some companies shift their high value assets from Member States to no or low tax countries, to avoid paying tax in the EU on the profits they generate once they sell these assets.

The Directive proposes that all Member States apply an exit tax on assets moved from their territory. The exit tax should be based on the value of the assets at that point in time. Since companies are obliged to send tax authorities their balance sheets containing information on their taxable assets, Member States can see when an asset such as intellectual property has "disappeared". This will ensure that profits from high value assets cannot be shifted out of the EU untaxed.

Example: *A pharmaceutical company based in a Member State develops a promising new product and deducts the costs of development from its taxable profits in that State. Just as the asset starts generating profits, it moves the product to a no tax country and applies for the patent there. As a result, all value generated on the intellectual property of this product is now untaxed.*

With the exit tax, the Member State where the product was originally developed can tax the company on the value of this product before it is moved abroad. As such, taxation better reflects where the economic activity takes place.

d) Interest Limitation: To discourage companies from creating artificial debt arrangements designed to minimise taxes

Interest payments are generally tax deductible in the EU. Some companies arrange their inter-company loans so that their debt is based in one of the group's companies in a high-tax country where interest payments can be deducted. Meanwhile, the interest on the debt is paid to the group's "lender" company which is based in a low tax country where interest is taxed at a low rate (or not at all). In this way, the Group reduces its overall tax burden. Overall, the group has paid less tax by shifting its profits in loan arrangements between its companies.

The Directive proposes to limit the amount of net interest that a company can deduct from its taxable income, based on a fixed ratio of its earnings^[4]. This should make it less attractive for companies to artificially shift debt in order to minimise their taxes.

Example: *A Group sets up a subsidiary in a no-tax third country, which then provides a high-interest loan to another company in the group, located in an EU Member State. The EU-based company must make high interest payments – which are tax deductible – to the subsidiary. In doing so, it reduces its taxable income in the Member State, while the corresponding interest income is not taxed in the third country either.*

Under the proposed interest limitation rule, the Member State will put a fixed limit on the amount of interest that the company can deduct and will tax the remainder of the payments. This should discourage companies from shifting their debts purely to reduce their tax bills.

e) Hybrids: To prevent companies from exploiting national mismatches to avoid taxation

Some companies exploit the fact that Member States treat the same income or entities differently for tax purposes (hybrid mismatches). They take advantage of these mismatches to deduct their income in both countries or to get a tax deduction in one country on income that is exempt from tax in the country of destination.

The Directive proposes that in the event of such a mismatch, the legal characterisation given to a hybrid instrument or entity by the Member State where a payment originates shall be followed by the Member State of destination.

Example: *A Group with operations in two Member States sets up a new entity in one of the States. The two States view this hybrid entity differently for tax purposes (mismatch). The entity borrows money on behalf of the group and pays interest on the loan. Because of the mismatch, both Member States allow a tax deduction for this interest payment.*

With the hybrid measures proposed in the Directive, the mismatch is eliminated and the tax deduction

will be allowed in only one Member State. As such, the income is effectively taxed within the EU.

f) General Anti-Abuse Rule: To counter-act aggressive tax planning when other rules don't apply

Aggressive tax planning, by its nature, seeks ways around the rules in order to minimise the taxes a company has to pay. Aggressive tax planners continually try to find ways of by-passing anti avoidance provisions or new tax avoidance techniques that are not covered by specific rules.

The Directive proposes a General Anti-Abuse Rule, which would tackle artificial tax arrangements if there is no other anti-avoidance rule that specifically covers such an arrangement. The GAAR acts as a safety net in cases where other anti-abuse provisions cannot be applied. It would allow tax authorities to ignore wholly artificial tax arrangements and tax on the basis of the real economic substance.

11. Do these anti-avoidance measures affect countries' right to decide their corporate tax rates?

There is no attempt to interfere with countries' sovereign right to decide their own corporate tax rates. However, countries also have a right to protect their tax bases against aggressive tax planning and unfair tax competition. If one country's policy decisions (e.g. no or low tax rate) encourages tax planning schemes that negatively impact another country's revenues, the latter has the legitimate right to take measures to protect its tax base. The Package aims to ensure that each Member State is able to effectively tax profits that are generated in its territory, in line with its own national rate and rules.

12. Why has the Commission made a Recommendation on Tax Treaties and what does this aim to achieve?

Some companies avoid taxes by "treaty shopping" i.e. by setting up artificial structures to gain access to the most beneficial tax treatment under various tax agreements with other Member States or third countries. To counter-act this, OECD BEPS proposed that countries introduce a general anti-abuse rule in their tax treaties. The Commission fully supports the goal of tackling tax treaty abuse and today's Recommendation advises Member States on how to introduce a general anti-abuse rule in their tax treaties in a way that is EU-law compliant and without hampering the freedom of establishment in the Single Market.

The Recommendation also encourages Member States to revise their definition of permanent establishment (PE), in line with the wording agreed in BEPS. The aim is to address the current situation, whereby some companies exploit weaknesses in the PE definition to avoid having a taxable presence in one or more countries where they are active.

13. What is in the new study on Aggressive Tax Planning?

The Aggressive Tax Planning study, published by the Commission today, looks at loopholes in Member States' corporate tax rulebooks may make aggressive tax planning possible. The study, which was carried out by an independent contractor, describes how multinationals can exploit the lack of coordination in tax systems – at EU level and globally – to reduce the taxes they owe. The study looks in detail at the corporate tax rules of EU Member States, focussing on several features which can facilitate aggressive tax planning. The study includes factsheets summarising the main findings for each Member State as well as an illustrative examples of tactics which can be used by multinationals to lower their taxes.

(II) TRANSPARENCY

14. How will the Anti Tax Avoidance Package help to ensure greater tax transparency?

The main transparency initiative in the Package is a proposal for country-by-country reporting between tax administrations, through which they would exchange key tax-related information on multinationals operating in the EU. This will provide Member States with crucial information to better target their tax audits and identify tax avoidance schemes. Increased transparency should also help to deter multinationals from engaging in aggressive tax planning schemes. The EU should also encourage third countries to implement country-by-country reporting, for greater transparency and accountability internationally.

Another transparency measure in today's Package is the update of the consolidated information on Member States' lists of third countries for tax purposes. This information, which was first published with the June 2015 Action Plan, is presented in an interactive online map^[5]. The aim is to create more clarity around Member States' diverse listing processes and to present the national lists more transparently for businesses and international partners. The ultimate goal is replace this consolidation of national lists with a single, clear and objective EU list (see below). In the meantime, the Commission will ensure that the online map is regularly updated, to reflect the latest situation with Member States' lists. The Commission has today updated the consolidated information, to reflect Member States' lists on 31 December 2015.

15. Why has the Commission proposed country-by-country reporting (CbCR) between tax authorities?

The Commission is determined to introduce the highest possible level of transparency and cooperation between tax authorities in the EU, as this is essential to tackling cross-border tax avoidance. Today's proposal for CbCR is another important step towards delivering on this.

It is also important for the EU to have a coordinated and legally-binding approach to country-by-country reporting, so that all Member States implement it in a uniform way. Most Member States have already committed to CbCR under BEPS. But there is a risk that they may implement the provisions in different ways, or that some Member States won't implement them at all (particularly those who are not OECD members). Enshrining these requirements in EU law will prevent loopholes in the EU's tax transparency network and administrative burdens for businesses.

16. How will the proposed CbCR between tax authorities work in practice?

The Parent company of a multinational group (or a subsidiary appointed by the Group) will have to provide specific information on the whole group to the tax authorities in the Member State where it is resident. This information must include the revenues, profits, taxes paid and accrued, accumulated earnings, number of employees and certain assets of each company in its group. The Parent company will also have to identify all of the countries in which the Group is present for tax purposes and the activities carried out in each one.

This report will then be automatically sent to the tax authorities in every Member State where the multinational group is resident or liable for tax. This information exchange will take place once a year, starting in 2017.

17. Why has the Commission not proposed public Country-by-Country reporting?

The proposal in today's Anti Tax Avoidance Package is to ensure that tax authorities have the information that they need to collect the taxes they are due, and to implement the new international requirement for country-by-country reporting consistently in the EU.

Public CbCR is a different issue, which is being looked into by the Commission. As announced in the 2015 Tax Transparency Package, the Commission is currently carrying out an impact assessment to determine whether multinationals should have to publicly disclose certain information on a country-by-country basis. Such requirements already exist in the EU for the banking sector and logging and extractive industries. The Commission will decide whether multinationals in other sectors should also be subject to such public disclosure requirements once the impact assessment is finalised. It aims to present a decision on this matter in early spring 2016.

18. Will non-EU companies also be obliged to report information to EU tax authorities under this country-by-country reporting?

Yes. Ideally, the third country where the parent company is based should provide the information to all Member States where the Group is present, in line with the international BEPS agreement. If this does not happen, the Directive states that the subsidiary in the EU will be obliged to provide the country-by-country report for the Group. If a multinational has subsidiaries in different EU Member States, it can select which of these Member States it will provide the information to. This information will then be automatically shared with the other relevant tax authorities in the EU, under the same procedure outlined above.

(III) LEVEL PLAYING FIELD

19. How will the Anti Tax Avoidance Package help to create a level playing field?

This corporate avoidance creates serious competitive distortions for businesses that pay their share. For example, the tax burden on domestic companies is estimated to be 30% higher than on multinationals, due to profit shifting. The measures to clamp down on multinational avoidance in today's Package will help to ensure fairer taxation and more equal market conditions for companies that do not avoid tax.

The Package will also create a level playing-field between Member States themselves in the area of corporate taxation. Currently, some Member States' intense efforts to fight tax avoidance are undermined by a more lenient approach in others. Aggressive tax planners often exploit the "weakest link" in the Single Market to avoid being taxed anywhere in the EU. The Package will put Member States on a more level footing when comes to fighting tax avoidance by requiring them all to apply legally binding anti-abuse measures and ensuring more openness and cooperation between tax authorities.

Finally, the Package presents a strategy to encourage third countries to deliver on their tax good governance commitments and tackle tax avoidance. This is essential to safeguard EU competitiveness

and ensure a level-playing field for EU businesses. As Member States work to deliver on international commitments for fair tax competition and tax transparency, it is important that the EU's international partners do the same. The Strategy sets out how the EU can encourage them to do so.

20. Why has the Commission presented an External Strategy for Effective Taxation?

Tax avoidance is a global problem, which cannot be tackled solely within the Single Market. Member States need a robust response to external challenges to their tax bases, to complement the internal EU measures against tax avoidance. A more coherent EU approach to working with international partners for a high level of tax good governance globally is also needed.

The differing national approaches to third countries on tax matters undermine Member States' defences against external avoidance risks and create legal uncertainty for businesses. They also send mixed messages to international partners on the EU's stance on tax good governance. A common EU approach to third countries on tax matters would have a much greater impact in encouraging tax good governance internationally and would be more effective in addressing problematic third countries.

The External Strategy also seeks to create a better link between the EU's tax policy priorities and its wider external relations. This includes using EU tax policy to greater effect to support other important policy commitments, such as international development.

21. What are the key measures in this Strategy?

The Strategy sets the path for a clear, consistent and effective EU approach to promote tax good governance globally and respond to external tax avoidance threats. The main elements are:

- **Updated tax good governance criteria:** The Strategy updates the EU's good governance criteria, in line with the latest international standards. The updated criteria reflect the new global standard for tax transparency and the OECD BEPS measures for fair tax competition. These common criteria should be consistently applied by all Member States in their relations with third countries, should underpin all EU external policies on tax matters, and should act as the yardstick by which we can assess whether or not third countries are in line with global standards. They will also serve as the basis for commitments that the EU will seek in our agreements with third countries and when screening third countries in our assessment process (see below).
- **Tax clauses in agreements:** EU agreements with third countries or regions can be useful instruments for promoting fair and transparent corporate taxation. The Strategy proposes a new and more ambitious EU approach to negotiating tax good governance clauses in certain agreements (such as trade, association and partnership agreements) with third countries.
- **Assistance to developing countries on tax matters:** The EU has a strong track record of supporting developing countries in securing domestic revenues, including by tackling corporate tax avoidance. The Strategy sets out actions to reinforce this support, building on the approach presented by the Commission at the Third Financing for Development Conference in Addis Ababa in 2015^[6]. This includes doubling the financial support to help developing countries build stable revenue bases and providing technical support to help them improve their tax administrations.
- **Tax good governance conditions for EU funds:** The Commission will strengthen and extend the good governance requirements in the EU's Financial Regulation, so that decisions on the investment of EU funds promote international transparency and fair tax practices.
- **A new EU screening and listing process:** The Strategy proposes a new EU approach to dealing with third countries that refuse to comply with tax good governance standards. The aim is to replace the current medley of national lists with a single EU list of third countries, which would result from a fair and objective screening and dialogue process with the third countries concerned.

22. Why is the Commission proposing a common EU system for screening and listing third countries?

The European Parliament, many Member States and stakeholders have expressed strong support for a common EU listing process. If the EU acts as a united block in dealing with problematic third country tax jurisdictions, it will have a much stronger impact than the current patchwork of national approaches. It would also prevent aggressive tax planners from abusing mismatches between the different national systems.

A single EU approach towards screening and listing third countries – based on clear, coherent and objective criteria – would also be easier for businesses to deal with and would eliminate administrative burdens caused by divergent national approaches. For the EU's international partners, who sometimes struggle to understand Member States' divergent national listing conditions, a common EU approach would create more clarity and legal certainty on what the EU expects when it comes to fair taxation.

23. How will this listing system work in practice?

The common EU list is intended as a "last resort" option. It would be a tool to deal with third countries that refuse to respect tax good governance principles, when all other attempts to engage with these countries have failed. The Strategy sets out a clear, fair and objective EU process for listing third countries, based on three steps:

Step 1: The Commission will identify a set of third countries that may need to be screened by the EU. This will be done through a neutral scoreboard of indicators, which will determine the potential risk level of each third country's tax system in facilitating tax avoidance. The Commission will present the findings of the Scoreboard to Member State experts in the Code of Conduct Group in Council.

Step 2: On the basis of the Scoreboard results, Member States should decide which third countries should be formally screened by the EU. This screening of the third countries' tax good governance standards will be carried out by the Commission and the Code of Conduct Group. There will be a dialogue process with the third country in question, respecting the need to avoid reputational damage, through which it can react to any concerns raised or discuss deeper cooperation with the EU on tax matters.

Step 3: After the assessment process, the Commission will recommend to Member States which third countries should be put on a common EU list, and why. Member States should take the final decision on the third countries to be listed. The conditions for de-listing will be clearly communicated to each listed third country and the list will be reviewed on a regular basis.

24. When will the EU listing process begin?

The Commission will begin work immediately to finalise the Scoreboard indicators and launch the pre-assessment (Step 1). It aims to present the first Scoreboard results to Member States in the second half of 2016. Once the Code of Conduct Group has decided which countries to screen, it should set a clear timeframe for completing this work. Third countries should also be given a reasonable deadline (12 months) to commit to addressing any concerns that are raised in the screening process. The Commission will encourage Member States to work for the publication of the common EU list by the beginning of 2019.

25. What will be the consequences for countries on the EU list?

The External Strategy states that Member States should apply common counter-measures against third countries on the EU list. These sanctions should be an incentive for the third country to improve its tax system and also protect Member States' tax bases in the meantime. Member States will need to discuss and agree on the nature of these sanctions, based on their own national experiences and taking into account other defence measures (like those contained in the anti-tax avoidance directive) in place in the EU. Member States should decide on these sanctions before the end of 2016, so that they are agreed when the first third country screenings begin.

Annex I: OECD BEPS MEASURES AND RELATED EU ACTION

The table below sets out the internationally agreed solutions to the 15 actions in the OECD's Base Erosion and Profit Shifting project, and the corresponding EU measures in each of these areas.

	OECD BEPS	EU ACTION
Action 1: Digital Economy	The digital economy is the whole economy and ring fenced solutions are not appropriate. OECD BEPS actions in general should address risks posed by digital economy.	The EU agrees that no special action needed but will monitor the situation to see if general anti-avoidance measures are enough to address digital risks.
Action 2: Hybrid Arrangements	Specific recommendations to link the tax treatment of an instrument or entity in one country with the tax treatment in another, to prevent mismatches.	The proposed Anti Tax Avoidance (ATA) Directive includes a provision to address hybrid mismatches.
Action 3: Controlled Foreign Companies (CFCs)	Best practice recommendations for implementing CFC rules.	The ATA Directive includes CFC rules.
Action 4: Interest Limitation	Best practice recommendations on limiting a company's or group's net interest deductions.	The ATA Directive includes provisions to limit interest deductions, within the EU and externally.
Action 5:	Tax rulings: Mandatory	Tax rulings: Mandatory

Harmful Tax Practices	spontaneous exchange of relevant information. Patent Boxes: Agreement on "Nexus Approach" to link tax benefits from preferential regimes for IP to the underlying economic activity.	automatic exchange of information on all cross-border rulings from 2017. Patent Boxes: Member States agreed to ensure that their Patent Boxes are in line with the nexus approach (Code of Conduct Group, 2014).
Action 6: Treaty Abuse	Anti-abuse provisions, including a minimum standard against treaty shopping, to be included in tax treaties.	The Recommendation on Tax Treaties suggests that Member States introduce a general anti-abuse rule in their treaties in an EU-compliant way.
Action 7: Permanent Establishment	Definition of Permanent Establishment (PE) is adapted in Model Tax Convention, to prevent companies from artificially avoiding having a taxable presence.	ATA Recommendation encourages MSs to use the amended OECD approach for Permanent Establishment.
Actions 8 -10: Transfer Pricing Intangibles Risk and Capital High Risk Transactions	Arm's Length Principle and Comparability Analysis confirmed as pillars of Transfer Pricing. More robust framework for implementing this standard.	Joint Transfer Pricing Forum (JTPF) working on EU approach to review and update transfer pricing. Work includes looking at more economic analysis in TP, better use of companies' internal systems, and improving TP administration.
Action 11: Data	The OECD aims to publish statistics on corporate taxation and its impact.	EU study underway on the impact of some types of aggressive tax planning on Member States' effective tax rates.
Action 12: Disclosure of Aggressive Tax Planning	Recommendation to introduce rules requiring mandatory disclosure of aggressive or abusive transactions, structures or arrangements.	The Commission will keep the issue under review, as part of its tax transparency agenda.
Action 13: Country-by-Country Reporting	Country-by-Country reporting (CbCR) between tax administrations on key financial data from multinationals. Information for tax authorities only – not public CbCR.	ATA Package proposes legally binding requirement for Member States to implement CbCR between tax authorities. Work ongoing on feasibility of public CbCR in the EU.
Action 14: Dispute Resolution	G20/OECD countries agreed to measures to reduce uncertainty and unintended double taxation for businesses, along with a timely and effective resolution of disputes in this area. A number of countries have committed to a mandatory binding arbitration process.	In 2016, the Commission will propose measures to improve dispute resolution within the EU.
Action 15: Multilateral Instrument to modify tax treaties	Interested countries have agreed to use a multilateral instrument to amend their tax treaties, in order to integrate BEPS related measures where necessary.	ATA Recommendation sets out the Commission's views on Treaty related issues, which MSs should consider in negotiations on the Multilateral Instrument.

[1] The OECD has conservatively estimated that \$100bn-\$240bn is lost to global profit shifting every year – equivalent to between 4% and 10% of global corporate tax revenues. The European Parliamentary Research Service put the revenue lost to corporate avoidance at around €50-70 billion a

year in the EU.

[2][IP/15/5780](#)

[3] The term permanent establishment refers to a non-resident company's business presence in a country which is enough to justify that country taxing the profits linked to this presence. The term is most commonly used in tax treaties but may also be found in some countries' domestic tax laws. Other terms can also be used to describe a permanent establishment e.g. branch or permanent representative.

[4] Earnings before interest, tax depreciation and amortisation (EBITDA)

[5]
http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm

[6] "Collect More, Spend Better": https://ec.europa.eu/europeaid/sites/devco/files/com_collectmore-spendbetter_20150713_en.pdf

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