

Towards a more certain tax environment: fighting BEPS, improving certainty and fighting tax crime and terrorism

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The EU has been a key player in the significant progress which has been made on the international tax agenda in the past 7 years – in particular by tackling tax avoidance through measures to address Base Erosion and Profit Shifting, and fight tax evasion through enhanced transparency.

With these important developments, and in the context of ongoing stagnation in economic growth and the evident risks arising from financial crime, including terrorism financing, two further areas of work have emerged, that will support an EU-wide approach to addressing ongoing and new challenges:

- (i) ensuring tax certainty that support's the EU's attractiveness as a place for business, investment and balanced growth; and
- (ii) enhancing domestic and international cooperation between agencies in tackling financial crimes

1) Tax Certainty

Measures to address Base Erosion and Profit Shifting (BEPS) were developed in the OECD/G20 BEPS Project. Those efforts are ongoing through the new Inclusive Framework on BEPS, which now has 85 members, to support and monitor the implementation of the BEPS Package.

The EU has been a frontrunner both of these areas, namely in implementing the BEPS measures, notably with Anti-tax Avoidance Directive adopted in July 2016 as well as automatic exchange of tax rulings (DAC 3) and Country-by Country reporting (DAC 4) and the pending initiative on access to Beneficial Ownership information (DAC 5) and upcoming proposal on Hybrid mismatches.

These much-needed updates to the international tax rules however represent a changing environment for business. Coherent implementation of such measures in form of hard law within EU – allows for predictability and eliminates a degree of uncertainty and possible double taxation resulting from different approaches adopted by different countries.

However, it appears that more needs to be done to prevent and reduce tax uncertainty. Tax uncertainty can directly affect domestic investment and, hence, productivity, as well as cross-border trade and foreign direct investment.

To ensure balance and encourage a conducive environment for trade and investment, the introduction of measures to tackle double non-taxation must be combined with efforts to avoid undue uncertainty in tax policy and administration. This includes



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measures to promote effective resolution of cases of double taxation, for example through mutual agreement procedures and mandatory binding arbitration. Such measures were also part of the BEPS package, and are currently the subject of an EU Commission impact assessment.

Tax certainty is also becoming a G20 priority, with a Ministerial discussion on the issue held at the recent G20 Tax Symposium.

At the EU level, options for enhancing certainty include:

- a) Further cross-border harmonisation of tax rules,
- b) Mandatory, effective and swift cross-border dispute resolution mechanisms,
- c) Binding tax rulings and advance pricing agreements (APAs),
- d) Training of tax administration officials enabling them to deal with the new global challenges;
- e) Cooperative compliance programs.

These could complement work already under way that would enhance certainty, on:

- i. Draft guidelines on the conditions and rules for the issuance of tax rulings by EU Member States (EU Code of Conduct Group)
- ii. Legislative proposals with regard to dispute resolution and hybrid mismatches in relation to 3rd countries, as well as the re-launch of the CCCTB proposal (European Commission)

Issues for discussion

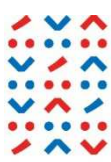
- Do Ministers share the above assessment regarding the impact of tax uncertainty on investment and economic growth?
- How can EU's tax policy framework be improved in terms of certainty to make the Internal Market more competitive at the global level?

2) Fighting Fiscal Evasion, Financial Crimes and Terrorism

By enhancing transparency with robust international standards, significant progress has been made in tackling tax evasion and other financial crimes. Risks still remain however, relating to effective implementation of those standards, and also to address new challenges emerging from developments in technology and new modes of operation. The Panama Papers leaks are only one example, reinforcing the need for ongoing vigilance in this domain.

The scope of agencies involved into effectively addressing these challenges is broad, and requires improved cooperation at the domestic, EU and international level. Challenges to improving that cooperation are both legal and procedural.

Some efforts have already begun to address these challenges, such as the EU's 4th Anti-Money Laundering (AML) directive and the work of the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC).



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Looking ahead, there are three key areas for action to improve effectiveness and address new challenges:

a) Step up inter-agency cooperation domestically. A horizontal approach to fight fiscal evasion and financial crimes, including terrorism financing, should be put in place at the national level. The Commission in its Communication of 5 July 2016 has already foreshadowed steps in this direction, including by proposing a Directive to enhance the availability of the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) information to tax authorities (DAC5).

b) Improve the international information exchange architecture, to allow faster and more effective cooperation, taking a real-time approach to fighting financial crime, while respecting appropriate legal safeguards. This would allow cross-border analysis of tax evasion risks, for example to jointly assess the relevance of information received by whistle-blowers. As far as exchange between EU Member States is concerned, such a move would require a revision of the Directive on Administrative Cooperation to provide a legal basis for enhanced cross-agency information sharing combined with clear safeguards.

c) Introduce mandatory disclosure rules (MDR) on intermediaries such as advisors, banks or other service providers, who seek to profit from the promotion, design or implementation of tax evasion and avoidance schemes, consistent with the modular framework set out in the BEPS Action 12 report. A minimum standard in such rules would ensure disclosure of

(i) schemes designed to circumvent the Common Reporting Standard for automatic exchanges of financial account information, or

(ii) passive offshore tax avoidance and evasion schemes (such as those used in the Panama Papers) based on identified 'hallmarks'.

The MDR would require such intermediaries to disclose the schemes to their local tax authority, which would subsequently exchange that information with other tax administrations. Putting effective MDR in place could require an amendment to the DAC, as foreshadowed in the Commission Communication of 5 July.

Taking concrete and timely action would significantly disrupt the supply side of the market for such tax evasion and avoidance schemes. Adopting a revision of the DAC reflecting the twin track transparency package of real time joint action and targeted disclosure would be a powerful testament to the EU's ability to act and respond to the criticism expressed following the Panama Papers and to take international cooperation in tax matters to the next level.

Issues for discussion

- Would Ministers welcome such legislative initiatives as proposed above?
- How can we improve cross-agency cooperation and better fight the use of offshore entities?