European Commission publishes new Action Plan for a fairer corporate taxation system in the EU


The Action Plan represents the second of two key tax elements of the Commission's 2015 Work Program, the first element being the proposed Tax Transparency Package announced on 18 March 2015.¹

The Action Plan sets out a broad series of measures which the Commission believes will meet the goals of fairer and more efficient taxation and to effectively tackle corporate tax avoidance. These measures include the re-launch of the Common Consolidated Corporate Tax Base (CCCTB) – but with the consolidation element “postponed” – alongside a number of other proposals and activities, including matching taxation to profit generation; a better tax environment for business; tax transparency and improving European Union (EU) coordination on taxation. These areas will include action on transfer pricing, patent and innovation boxes, coordination on tax audits and making dispute resolution mechanisms more effective.

The Action Plan also includes an EU-wide listing of 30 third-country, non-cooperative tax jurisdictions,² drawing upon input from EU Member States.

The European Commission today also announced a public consultation in relation to options for public disclosure of tax information.
Detailed discussion
The Action Plan argues that any approach towards a fairer corporate taxation system in Europe should be driven by the following four objectives:

- Re-establishing the link between taxation and where economic activity takes place.
- Ensuring that Member States can correctly value corporate activity in their jurisdiction.
- Creating a competitive and growth-friendly corporate tax environment for the EU, resulting in a more resilient corporate sector, in line with the recommendations in the European Semester.
- Protecting the Single Market and securing a strong EU approach to external corporate tax issues, including measures to implement the Organisation for Economic Co-operation and Development’s (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan, to deal with non-cooperative tax jurisdictions and to increase tax transparency.

These four objectives will be met through five key action areas, many of which contain multiple proposals and activities, and are described below.

Relaunching the CCCTB project
The Action Plan notes that the CCCTB, proposed by the Commission in 2011, could be an effective tool for meeting the objectives of fairer and more efficient taxation. In terms of fairness, the plan outlines that the CCCTB would:

- Eliminate mismatches between national tax systems which the Commission believes are often exploited by aggressive tax planners.
- Be a useful instrument to eliminate the debt bias.
- Introduce complete transparency on the effective tax rate of each jurisdiction, reducing the scope for harmful tax competition.
- Remove the possibility of using preferential regimes to shift profits to no or low tax jurisdictions.
- Allow Member States to implement a common approach to third countries.
- Remove the possibility of manipulating transfer pricing, as intra-group transactions would be ignored and the consolidated group profit figure shared by a formula.

In terms of efficient taxation, the Action Plan notes that the CCCTB would reduce complexities and compliance costs as they would only have to follow one set of rules, as well as offering the advantage of being able to offset losses in one Member State against profits in another.

Regarding practicalities, the Action Plan notes that the 2011 CCCTB called for a voluntary CCCTB. The proposed CCCTB would be mandatory, at least for multinational enterprises. The proposed CCCTB would not be implemented in one single phase, but instead would be adopted in a phased approach, with the primary focus being securing the common corporate tax base. In this regard, the consolidation element of the proposal would be delayed until the common corporate tax base has been agreed and implemented. No specific timeline for implementation is proposed within the Action Plan.

The differences between the 2011 CCCTB and the CCCTB proposed in the Action Plan will require an entirely new legislative proposal to be put in place. Though no specific timeline is stated, the Commission plans to release the new proposal as soon as possible. While the new proposal is being prepared, work will continue in the framework of the 2011 CCCTB proposal on some international aspects of the common base linked to the BEPS project.

Finally, The Action Plan notes that, to partly compensate for the delay of consolidation, the ability will be granted for cross-border entities to offset profits and losses they make in different Member States. The Action Plan does not describe in detail the mechanism that will allow Member States to recapture these losses once the entity is profit-making.

Ensuring fair taxation where profits are generated
The Action Plan sets out the Commission’s view that companies benefitting from the Single Market and generating profits there should pay tax on those profits within the EU, at the place of activity. It additionally states that there has been a growing demand from the
In that regard, a number of key activities and proposals are suggested in the Action Plan, including:

- The notion that a fully-fledged CCCTB would make a major difference in reinforcing the link between taxation and where profits are generated.
- Improving the transfer pricing framework in the EU by building on OECD transfer pricing guidance to develop and coordinate more concrete implementation.
- Amending the Code of Conduct on Business Taxation so that the Code of Conduct Group “can give high priority to ensuring effective taxation.”
- Amending the Interest and Royalties Directive so that withholding tax is allowed where payments are subject to no effective tax elsewhere in the EU.
- Amending the Parent Subsidiary Directive to align it with the recast Interest and Royalties Directive.
- Taking further steps on implementation of the BEPS agenda by turning the BEPS Actions on permanent establishments, controlled foreign companies and possibly other areas into binding EU rules.
- Enforcing the “modified nexus approach” for preferential regimes (such as patent boxes), if such a step is deemed to be necessary.

**Additional measures for a better tax environment for business**

As noted, the Action Plan sets out the goal to provide a mechanism that provides cross-border entities with the ability to offset profits and losses they make in different Member States, with countries recapturing these losses once the entity is profit-making.

In addition, the Action Plan calls for improvements to be made to the current mechanisms used to resolve disputes in respect of double taxation. Action in this area is called for by summer 2016, including clearer rules and more stringent time lines. The Commission will review whether the scope of the EU Arbitration Convention, which currently covers only transfer pricing issues, should be extended within the EU, and whether it should be turned into an EU instrument.

**Further progress on tax transparency**

The Action Plan notes that transparency is a crucial element in securing fairer taxation, both in the EU and internationally. In that regard, the Action Plan recommends Member States to quickly adopt the proposal for the automatic exchange of information on cross border tax rulings, presented in March 2015, as it will ensure greater openness and cooperation between tax authorities and help governments to better protect their tax bases. That proposal, part of the 18 March 2015 Tax Transparency Package, is due to be implemented by Member States by 1 January 2016.

Meanwhile, the Commission has identified other measures which should be taken forward to further boost transparency, both in the EU and in relation to third countries. These include a common approach to non-cooperative tax jurisdictions, and proceeding on impact assessment work on further options and working with other international partners to promote transparency, including through the Extractive Industries Transparency Initiative (EITI). The Commission also stressed the importance of the implementation of the transparency elements of the BEPS Action Plan.

As part of the Action Plan, the Commission has published an EU-wide list of what it deems to be 30 third non-cooperative tax jurisdictions, compiled from Member States’ independent national blacklists. Those jurisdictions included on the EU-wide list were identified by at least 10 Member States. The Commission believes that the listing, published on the their website, will provide Member States with a transparent tool to compare their national lists and adjust their respective approaches to non-cooperative tax jurisdictions as necessary.

Further work in screening third countries for compliance with tax good governance standards will be performed on the basis of this list, with the Commission setting out that the Code of Conduct for Business Taxation Group would be the most appropriate forum to carry out such work. Screening would start with the countries that
appear most frequently on Member States’ lists of non-cooperative jurisdictions, with a view to assist them in improving their good governance standards. The Action Plan states that this work should be completed within 24 months. As a second stage, the Commission would co-ordinate countermeasures against non-cooperative jurisdictions. Information on what form these countermeasures may take was not included in the Action Plan.

Finally, and as noted in the March 2015 Tax Transparency Package, the Commission is assessing whether additional public disclosure obligations in regard to certain corporate tax information should be introduced. In that regard, the Commission has today public consultation on various possible options, which will feed into the impact assessment work that will be concluded at the latest in the first quarter of 2016.

**EU tools for coordination**

The Action Plan describes that cooperation between Member States is an essential element in tackling tax avoidance and aggressive tax planning, but also notes that the European Commission believes that the current use of cooperation instruments between Member States is sub-optimal. It is also noted that the two groups in particular - the Code of Conduct Group and the Platform on Tax Good Governance - should be reviewed to ensure they provide a positive and effective future contribution.

In that regard, the Action Plan calls for extending the mandate of the Code of Conduct for Business Taxation and changing the working methods of the Code of Conduct Group, to enable it to react more efficiently to cases of harmful tax competition. The Group should also provide guidance on how to implement non-legislative EU measures against corporate tax avoidance.

The Action Plan also calls for the mandate of the Platform on Tax Good Governance, due to expire in 2016, to be prolonged. The Platform on Tax Good Governance is a forum for Member States, businesses and non-governmental organizations to consult on tax policy issues, and to review progress on a range of measures. In addition to extending the mandate, the Commission has also expanded the scope of the Platform and enhanced its working methods, believing that the Platform can help to deliver on the new Action Plan, facilitate discussions on Member States’ tax rulings in light of the proposed new information exchange rules, and provide feedback on new anti-avoidance initiatives.

Finally, the Commission will ask the Platform on Good Tax Governance to review the possibilities for greater co-operation between tax authorities in respect of tax audits, to further determine how a more strategic approach to controlling and auditing cross-border companies can be taken forward.

**Impact and next steps**

This Action Plan effectively sets the tax work agenda for the European Commission for the next several years. It represents a highly ambitious set of actions that will require careful negotiation and discussion with Member States. However, with the exception of the call upon the Council to adopt the re-casted Interest and Royalty Directive already proposed in 2011, the Action Plan does not entail any concrete legislative proposals or other measures.

In regard to the CCCTB in particular, the Commission will have to address significant variances between the tax bases of different EU Member States. While not insurmountable, this task will add significantly to the complexities of the project and it may therefore be assumed that such complexities will take some time to work through in advance of any potential adoption by Member States. In this regard, the priorities of Member States differ substantially.

Both Member States and business will also likely give much consideration to the Commission’s public consultation on options for the potential public disclosure of tax information. In this regard, it is noted that OECD proposals for the exchange of country-by-country reporting data among countries currently call for no public disclosure of that data. Potential future differences between the OECD and European Commission...
approaches may leave European Union businesses at a competitive disadvantage, depending on the decisions made by each body, as well as the timing of those decisions.

Businesses active within the EU should therefore reinvigorate their efforts to monitor and assess European Commission developments in the tax area, including full assessment of where any losses may currently sit and what inputs they would like to have into the public consultation on tax transparency.

Endnotes


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