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

**Communication on further measures to enhance transparency and the fight against tax
evasion and avoidance**

Introduction

The European Commission is pursuing an ambitious agenda for fairer, more transparent and more effective taxation in the EU, in line with its wider objective of sustainable growth and investment supporting job creation within a deeper Single Market. Companies should pay taxes in the country where their profits are generated. The fight against tax evasion and avoidance is central to this agenda.

Tax evasion and avoidance deprive public budgets of billions of euros in revenues each year, distort competition between businesses and erode the fair and level-playing field for all taxpayers. They undermine the concept of growth-friendly tax systems and hamper a successful Capital Markets Union. Innovation and competitiveness risk being stifled as small and medium sized enterprises (SMEs), which are the main source of employment in Europe, end up paying proportionately more taxes than larger companies that can afford to engage in aggressive tax planning. Tax avoidance can also increase the tax burden on labour, as governments compensate for the lost revenue by increasing taxes elsewhere, to the detriment of employment and a healthy labour market. Fair taxation is also essential for the social contract between citizens and their governments. There is a strong public call for action to combat aggressive tax practices which reduce the revenues available to governments for other purposes.

Due to the cross-border nature of tax evasion and avoidance, purely national action to tackle these problems is generally ineffective. In fact, uncoordinated national measures to combat tax abuse can exacerbate the situation, by fragmenting the Single Market, creating new burdens for tax payers and opening new loopholes for aggressive tax planners to exploit. A coordinated approach to tackling tax abuse – at both EU and international level – is essential.

To this end, the Commission has presented a number of proposals for a stronger and more coordinated EU stance against tax abuse, aligned to the international agenda and going further where necessary for the Single Market. These initiatives have already resulted in a number of landmark achievements, which should fundamentally improve the tax environment for citizens and businesses in Europe. The Commission has also launched investigations under state aid rules into whether certain Member States granted tax advantages to selected multinational companies¹.

Despite these important advances, more remains to be done to fight tax avoidance and evasion, and to limit opportunities for large-scale concealments of funds exposed in recent media leaks, known as the "Panama Papers".

This Communication outlines the progress made so far and the priority areas for action in the coming months, at EU and international level, to strengthen the fight against tax evasion, avoidance and illicit financial activity.

¹ See notice on the Notion of aid § 169 to 174:

http://ec.europa.eu/competition/state_aid/modernisation/notice_of_aid_en.pdf

PROGRESS MADE IN THE EU AGENDA TO ENHANCE TRANSPARENCY AND FIGHT TAX EVASION AND AVOIDANCE

Increased Tax Transparency

The first step towards fairer and more effective taxation was to inject more transparency into taxation across Europe. Following two ambitious transparency proposals by the Commission, Member States have recently agreed to increase the openness and cooperation between their tax authorities and intensify the scrutiny of companies' cross-border tax practices. From 2017, all Member States will automatically exchange information with each other on their cross-border tax rulings on a systematic basis. Moreover, in March 2016, Member States agreed that their tax authorities will automatically share country-by-country reports of multinationals' activities for tax purposes. These new legislative requirements will significantly improve Member States' ability to protect their tax bases and clamp down on tax avoidance schemes.

The European Union is also increasing transparency towards the public. Strict transparency requirements for banks were put in place in the wake of the financial crisis. Under the Capital Requirements Directive², financial institutions must publicly disclose key information on their activities, taxes, profits and public subsidies on a country-by-country basis, inside and outside the EU. Large extractive and logging industries are also required to conduct public Country-by-Country Reporting (CBCR) under the Accounting Directive.

In April 2016, the Commission proposed that any multinational with a turnover of more than €750 million and a presence in the EU should have to publish a specified set of tax-related data online. Country-by-Country information will have to be publicly disclosed by these companies for every EU country as well as for those tax jurisdictions that do not abide by tax good governance standards. Aggregate figures will also have to be provided for operations in the rest of the world. These rules will increase large multinationals' accountability on tax matters, enabling citizens to better scrutinise their tax behaviour and encouraging them to pay tax where they make profit, while preserving competitiveness and avoiding burdens on smaller companies. The European Parliament and Council are invited to consider this proposal swiftly.

EU measures also require transparency as regards the accounts of individuals. Since January 2016, new legislation is in force to prevent the concealment of offshore funds. Under the Administrative Cooperation Directive, Member States are obliged to automatically exchange an extensive amount of information with each other on income and capital held by individuals and entities abroad. In addition, new tax transparency agreements have also been signed with Switzerland, Liechtenstein, Andorra and San Marino, and a similar agreement will be signed with Monaco in the coming weeks. This new transparency will improve Member States' ability to detect and deal with tax evaders, while also acting as a deterrent against hiding income and assets offshore for tax purposes. Finally, under the Fourth Anti-Money Laundering Directive, Member States are required to create central registers of beneficial ownership information, to ensure greater transparency on capital flows and better combat money laundering and terrorism financing. The Commission has called on Member States to implement these rules by the end of the year.

² Directive 2013/36/EU

Fairer Taxation

The Commission's work for greater tax transparency has been coupled with an equally determined approach to ensure that Member States have the right tools in place to protect their tax bases against abuse and collect their legitimate revenues.

The Commission Action Plan for Fair and Effective Taxation³ of June 2015 sets out a series of measures to modernise corporate taxation in the EU. The Action Plan laid the foundation for a multi-pronged EU approach to clamp down on aggressive tax planning and the regimes that encourage it, while at the same time minimising the risk of unjustified double taxation. Work is already well advanced on many of the actions, not least the preparation of a proposal to re-launch the Common Consolidated Corporate Tax Base (CCCTB), which the Commission intends to present before the end of the year, to improve the environment for businesses in the Single Market while eliminating mismatches between national systems which are currently exploited by aggressive tax planners.

The Anti Tax Avoidance Package of January 2016 included legally binding measures to tackle aggressive tax planning and an External Strategy to promote tax good governance internationally. There has been significant progress on all elements of this Package. The Anti Tax Avoidance Directive was agreed by the Council in June 2016. This will help to prevent some of the most prevalent types of profit-shifting, through coordinated rules to resolve hybrid mismatches, tax controlled foreign companies and limit of the deductibility of interest, amongst other things. The External Strategy was endorsed by Council in May 2016 and work is underway on each of its actions, including the process for establishing a common EU list of non-cooperative jurisdictions. Important progress is also being made to improve other areas of corporate taxation, such as reviewing transfer pricing rules and Member States' preferential regimes, in line with new international norms. In addition, the Commission is actively pursuing cases where incentives offered to selected undertakings may breach EU state aid rules.

The Commission is also pushing for higher tax good governance at international level. Steady progress has been made to improve the tax good governance framework globally, and to tighten tax systems against abuse. In particular, the OECD Base Erosion and Profit Shifting (BEPS) measures will shut down major channels for aggressive tax planning, if fully and widely implemented.

TACKLING REMAINING CHALLENGES

Despite these important advances, the Commission is convinced that more remains to be done in the fight against tax avoidance and evasion. The recent media revelations exposed how secretive holdings and financial structures are still being used to hide income and assets offshore, often with the aid of sophisticated advice. Whilst certain structures might have a legitimate purpose, some of these activities could be supporting corruption, money-laundering and tax evasion.

Many of the new measures mentioned above, including the binding anti-abuse provisions, new transparency requirements and the common EU list of non-cooperative jurisdictions, should restrict such practices in the future. However, there are still important gaps in the EU and international tax framework that need to be addressed to

³ COM(2015) 302

prevent cross-border tax abuse and illicit financial activity. The European Parliament shares this viewpoint and has established an enquiry committee into the "Panama Papers", which should provide useful insights as regards the EU response to these revelations.

1. Harness the link between Anti Money Laundering and Tax Transparency rules

The "Panama Papers" confirmed that a lack of transparency on beneficial ownership can facilitate money-laundering, corruption and tax evasion. The responses to these problems should therefore be complementary and connected.

Today, the Commission has proposed amendments to the Fourth Anti Money Laundering Directive⁴, with the specific purpose of reinforcing EU defence mechanisms against money laundering and terrorist financing.⁵

These amendments include widening the scope of the information accessible to Financial Intelligence Units, introducing due diligence requirements for the exchange of virtual currencies and strengthening the verifications and controls on pre-paid instruments.

The Commission will also soon adopt, for the first time, an EU list of high-risk third countries with strategic deficiencies in their anti-money laundering and counter-terrorism financing regimes. The amendments to the Fourth Anti Money Laundering Directive include a harmonised list of due diligence measures that financial institutions must carry out on financial flows from these countries.

A number of the proposed amendments directly address the loopholes exposed in the recent media leaks, which enabled funds to be hidden offshore to escape taxation.

First, in the amended Anti Money Laundering Directive, the threshold for declaring beneficial ownership for passive corporate entities has been lowered. This will ensure that these structures are subject to greater transparency and scrutiny. Second, as part of their wider financial reporting obligations for tax purposes, financial institutions will be required to systematically apply current due diligence rules to existing customers, in addition to all new customers. This will allow accounts that have not been reviewed by financial institutions for over ten years, and which may have been used for illicit purposes, to be monitored. Third, the requirements for the registration of beneficial owners of trusts have been clarified, to remove gaps in the legislation and national mismatches. Fourth, access to beneficial ownership information will be improved: Member States will be required, through amendments to the Company Law Directive, to give public access to a set of information on companies and business-type trusts⁶; for other trusts, access to such information will be possible for those holding a legitimate interest. This will contribute to combatting the misuse of legal entities and arrangements.

⁴ COM(2016) 450

⁵ See also the Action Plan to strengthen the fight against terrorist financing, COM(2016) 50

⁶ Trusts which comprise any property held by, or on behalf of, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business with a view to gain profit, and other types of legal arrangements having a structure or functions similar to such trusts.

In addition to these amendments to the Fourth Anti Money Laundering Directive and the Company Law Directive, the Commission has also proposed a complementary revision of the Directive on Administrative Cooperation in the field of taxation⁷. This will ensure that tax authorities must be given access to the data provided under the EU's anti-money laundering rules, notably customer due diligence information and the information in their national beneficial ownership registries, in order to perform their tasks and not only in the context of the fight against money laundering and terrorist financing. Indeed, the fact that Member States currently have the choice of whether or not to give access to this information to tax authorities limits the effectiveness of tax audits. With access to this information, tax authorities will be able to identify the person behind an opaque company, structure or entity, and react quickly to situations of tax evasion and avoidance.

Effective supervision and enforcement are a key element to prevent money laundering, the financing of terrorism and crime generally. It is of outmost importance that Member States transpose and implement in practise this reinforced legal framework.

The Commission calls on the European Parliament and the Council to agree on the proposed amendments to the Fourth Anti-Money Laundering Directive without delay to improve the fight against terrorist finance and close important loopholes that have enabled tax evaders to escape detection when they channel funds offshore.

The European Parliament and the Council should also quickly agree to the proposed revision of the Administrative Cooperation Directive, which reinforces the synergies between EU anti-money laundering and EU tax transparency rules. This will ensure that tax authorities have access to vital information, at national level, allowing them to clamp down on tax evasion and avoidance through offshore funds.

2. Improve Information Exchange on Beneficial Ownership

The above mentioned proposals to allow tax authorities to access enhanced national beneficial ownership information will significantly improve their ability to target tax evasion and avoidance. However, effectively tackling tax evasion and avoidance will require going further, notably by making transparency on beneficial ownership immediately applicable cross-border.

The EU has long been aware of the importance of administrative cooperation between tax authorities in tackling tax abuse. The automatic exchange of information between tax authorities is one of the EU's most powerful instruments in this regard. This cross-border information exchange has recently been extended to cover all financial accounts, tax rulings and information on multinationals' activities for tax purposes.

In light of the situation highlighted by recent media revelations, there is a strong case for extending the administrative cooperation between tax authorities even further, to cover beneficial ownership information, within the EU and globally. Allowing tax authorities direct access to the detailed beneficial ownership information of other Member States would significantly improve their ability to target risks of tax evasion and avoidance.

At EU level, all EU Member States have agreed to participate in a pilot project, launched by UK, Germany, Spain, Italy and France, to exchange information on the ultimate

⁷ COM(2016) 452

beneficial owners of companies and trusts⁸. This would be a natural extension of the transparency provisions already enshrined in EU law and of the proposals presented today which allow tax authorities full access to beneficial ownership information. The automatic exchange of information on beneficial ownership could potentially be integrated into the binding tax transparency framework already in place in the EU.

At international level, the G20 has reiterated the high priority it gives to international financial transparency. In April 2016, it called on the OECD and FATF⁹ to propose a new global transparency standard for beneficial ownership by October. The Commission warmly welcomes this initiative, which would give tax authorities access to vital information to uncover complex and hidden offshore schemes worldwide. The Commission will lend any support that it can to the development of the new global transparency standard. Once more details are known on how the new global initiative will be implemented, the Commission will analyse that in the context of possibly interlinking Member States' registers of beneficial ownership.

The Commission has started to examine the most appropriate framework through which the automatic exchange of information on beneficial ownership could be implemented at EU level, to ensure that tax authorities have up-to-date and reliable information on companies and trusts abroad that are potentially relevant for them from a tax perspective.

The Commission will present a first analysis of the issue to Member States in the autumn and will, based on the feedback received, subsequently determine the appropriate next steps.

3. Increase Oversight of Enablers and Promoters of Aggressive Tax Planning

The role of certain financial intermediaries and advisors in helping their clients to conceal money offshore has been thrown into the spotlight by the recent media revelations. While some complex transactions and corporate structures may have entirely legitimate purposes, other offshore activities may be less justifiable or even illegal. A number of important steps have already been taken at EU level to prevent companies and individuals from using artificial or hidden offshore structures to avoid or evade tax. These include new transparency rules for financial accounts¹⁰, anti-abuse provisions in the Anti Tax Avoidance Directive¹¹, the EU's robust regulatory framework for the financial sector and the proposed amendments to the Fourth Anti-Money Laundering Directive. However, there appears to be a strong case for introducing further measures – either through horizontal or sectorial provisions which specifically focus on those who promote or enable tax evasion and avoidance schemes. This would help competent authorities to identify and block such activity at an early stage and to address loopholes in legislation allowing for it. It would also have a dissuasive effect on those who actively encourage and use aggressive tax planning.

⁸ <http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Taxation/Articles/G5-letter-to-G20-counterparts-regarding-action-on-beneficial-ownership.html>

⁹ Financial Task Force on Money Laundering

¹⁰ COM (2013) 348

¹¹ COM (2016) 26

OECD BEPS (Action 12) recommends that countries should require tax payers and promoters of tax planning schemes (tax advisors, legal advisors, financial institutions, etc.) to disclose any aggressive tax planning schemes that they use or promote. Some Member States¹² have already implemented such mandatory disclosure schemes at national level, while others are in the process of considering them. However, given the cross-border nature of aggressive tax planning, purely national schemes can only have limited effect. In May 2016, the Council invited the Commission "to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes". This echoes the European Parliament's repeated call for tougher measures against the enablers and promoters of tax evasion schemes.

The Commission will explore the best way to increase oversight and ensure that effective disincentives apply for promoters and enablers of aggressive tax planning schemes¹³. This could include, for example, increasing transparency on such schemes vis-à-vis tax authorities.

With this aim, in autumn 2016, the Commission will launch a public consultation to gather feedback on the most appropriate approach.

In parallel, the Commission will work closely with the OECD and other international partners on a possible global approach to greater transparency on advisors' activities, going beyond the recommendation in BEPS (Action 12).

4. Promote higher tax good governance standards worldwide

EU measures against tax evasion and avoidance are essential to help protect Member States' tax bases, ensure a level-playing field for businesses and promote a fairer and more competitive environment in the Single Market. However, given the global nature of tax abuse, it is essential to act at the international level against opaque systems and aggressive tax planning.

In this respect, the EU strongly supports the OECD's efforts to ensure worldwide implementation of higher tax good governance standards, both through the inclusive framework for the implementation of BEPS and the Global Forum's work to monitor tax transparency. The EU has swiftly implemented the new global standard for the automatic exchange of information on financial accounts (Common Reporting Standard), as well as key BEPS measures, through binding legislation. As such, it is leading by example in international tax good governance. A high priority now is to ensure that the EU's international partners also implement these higher standards of tax good governance, and the EU must intensify the pressure in global fora – particularly the G20 – to achieve this.

In January 2016, the Commission presented an External Strategy for Effective Taxation¹⁴, to ensure a coherent EU approach to promoting tax good governance worldwide. As part of this Strategy, the Commission set out a number of tools to promote

¹² UK, Ireland and Portugal

¹³ http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm

¹⁴ COM (2016) 24

good governance worldwide, including through agreements with third countries and by assisting developing countries in meeting tax good governance standards. To deal with countries that refuse to respect tax good governance standards, the Commission proposed a new EU listing process. This reflects the calls of the European Parliament¹⁵ for an EU list of uncooperative tax jurisdictions. The common EU list will be based on clear, objective and internationally justifiable criteria, a robust screening process and an open dialogue with the third countries in question. EU Finance Ministers endorsed this listing process at ECOFIN in May 2016 and called for a first EU list to be ready in 2017. They also asked the Code of Conduct Group for Business Taxation to consider appropriate countermeasures to accompany the list.

The common EU list should serve as an important dissuasive tool, targeting countries that refuse to join the global move towards fairer and more transparent taxation. Moreover, the G20's recent call for an international list of non-cooperative jurisdictions gives additional value to the EU listing process. The common EU list may serve as a blueprint for the future international one, given that it will be based on internationally agreed standards.

To facilitate the swift development of the EU list, the Commission is finalising a pre-assessment of all third countries, to determine the risk they may pose in terms of eroding the tax bases of Member States. It will present the results of this analysis to the Code of Conduct Group for Business Taxation before the summer. On this basis, Member States will be able to quickly identify the third countries that they wish to screen further from a tax good governance perspective and open a dialogue with the selected jurisdictions before the end of 2016.

The Commission will also work closely with the OECD for the development of an ambitious and effective international list of non-cooperative jurisdictions.

5. Improve the protection of whistle-blowers

There has been political consensus to fight tax evasion and avoidance in Europe over the last years, allowing important measures to be implemented, both at national level and EU level. More recent high-profile cases of corporate tax avoidance and individual tax evasion, exposed by whistle-blowers, increase the need for effective measures to protect whistle-blowers. The protection of those who report or disclose information on acts and omissions that represent a serious threat or harm to the public interest does not only enhance employees' ability to impart such information but has also the potential to crucially contribute to increased detection of fraud and tax evasion, which deprives European tax authorities from legitimate tax revenue. The European Parliament and many stakeholders have thus called for improved protection of whistle-blowers.

Whistle-blower protection is indispensable considering that institutional processes of accountability rely on exposure of information to identify possible wrongdoing. Protection of whistle-blowers in the public and in the private sector contributes to address mismanagement and irregularities, including cross-border corruption relating to national or EU financial interests. Also from the perspective of the functioning of the Single Market and corporate social responsibility, it can help disciplining companies and

¹⁵ TAXE 1 and 2 Reports: <http://www.europarl.europa.eu/committees/en/taxe/work-in-progress.html>

protect societal interests, which have the potential to enhance trust in the market and therefore attract potential investors and business partners.

The Commission fully supports the objective of protecting whistle-blowers against retaliation. The Commission has taken steps to protect whistle-blowers in EU sectorial legislation as well as within the EU institutions. For example, Member States are required to establish effective and reliable mechanisms to encourage the reporting to competent authorities of potential or actual breaches of anti-money laundering rules. Financial institutions and other obliged entities have to put in place procedures for employees or persons in a comparable position which report breaches of those rules. Similar requirements are in place for law firms and audit firms and in other areas of EU law such as market abuse and collective investment in transferable securities. EU law on trade secrets sets a framework in which the importance of professional conduct and confidentiality of business information is balanced by effective protection of whistle-blowers.

As long as there is no specific provision for the protection of whistle-blowers laid down in EU law, national legislation applies. This includes areas such as tax law compliance, which is not currently covered by EU provisions to protect whistle-blowers.

The Commission will continue to monitor Member States' provisions for whistle-blowers and facilitate research and exchange of best practice to encourage improved protection at national level. In parallel, it will assess the scope for further action at EU level.

With a view to strengthening the protection of whistle-blowers, the Commission is assessing the scope for horizontal or further sectorial action at EU level, while respecting the principle of subsidiarity.

Conclusion

In recent years, significant progress has been made in the fight at EU level to tackle tax evasion, avoidance, fraud and corruption. The Commission has presented proposals to enhance tax transparency, significantly reduce opportunities for aggressive tax planning and promote tax good governance globally. Once these are fully implemented, they will permanently change the tax landscape in Europe, making it fairer, more open and more efficient for citizens, businesses and Member States in the Single Market.

However, the battle for a fairer and more transparent tax system must be a continuous effort with a capacity to react quickly to new circumstances and events. The practices highlighted by the recent media leaks compel the EU to go further in improving its internal coordination against abusive tax practices, and to work hand-in-hand with international partners – particularly the G20 and OECD – for an ambitious global agenda against financial misdeeds.

The measures outlined in this Communication can make a substantial contribution to preventing the opaque and sometime illicit schemes that have been recently exposed in the media. Firm and effective action in these areas would allow the EU to retain its position at the forefront of global tax good governance, and to push its international partners to follow suit. This will increase fairness and help to foster jobs, growth and investment in Europe.