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From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)/Council

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Subject: Commission Communication on an External Strategy for Effective Taxation and Commission Recommendation on the implementation of measures against tax treaty abuse

– Draft Council conclusions

= Adoption

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1. On 28 January 2016 the European Commission adopted an "Anti-Tax Avoidance Package" composed of a cover Communication ("Next steps towards delivering effective taxation and greater tax transparency in the EU"), two legislative proposals, a Communication on an External Strategy for Effective Taxation (hereafter "the Communication") and a Recommendation on the implementation of measures against tax treaty abuse (hereafter "the Recommendation").
2. The aim of the Communication is to propose a framework for a new EU external strategy for effective taxation. It identifies the key measures which, according to the Commission, could help the EU to promote tax good governance globally, tackle external base erosion threats and ensure a level playing field for all businesses. The Commission also considers how good governance on taxation can be better integrated into the EU's wider external relation policies.

3. The Communication includes therefore proposals for inserting tax good governance clauses in all relevant agreements between the EU and third countries or regions, develops a common EU approach for the assessment and listing of third countries for tax purposes, and to enhance the link between EU assistance to developing countries and higher levels of tax good governance in those third countries.
4. The Commission Recommendation on the implementation of measures against tax treaty abuse (hereafter "the Recommendation") relates to the way to implement in EU Member States measures against tax treaty abuse that have been discussed in the context of OECD BEPS Action 6. It covers bilateral tax treaties between Member States and between Member States and third countries. Member States are encouraged to insert in their bilateral Tax treaties a General anti-avoidance rule based on a principal purpose test (PPT) and to implement and make use of the proposed new provisions to Article 5 of the OECD Model Tax Convention in order to address artificial avoidance of permanent establishment status as set out in the final report on BEPS Action 7.
5. At the ECOFIN meeting of 12 February 2016 the Presidency mentioned that Council Conclusions were envisaged regarding the Communication and the Recommendation. Furthermore, the establishment of an EU list of non-cooperative jurisdictions and coordinated defensive measures to be defined by the Council were discussed at the informal ECOFIN Council on 22 April 2016.
6. The Communication and the Recommendation were discussed at the High Level Working Party on Tax Questions on 23 February and 10 May 2016. Member States agreed on the draft conclusions annexed, which set out the views of the Council on the way forward. At the HLWP on 10 May 2016, the SE delegation entered a Parliamentary scrutiny reservation on the draft Conclusions.
7. Against this background, the Permanent Representatives Committee is therefore invited to suggest that, once the SE reservation has been lifted, the Council adopt the draft conclusions, as set out in the Annex, as an "A" item.

**Commission Communication on an External Strategy for Effective Taxation and Commission  
Recommendation on the implementation of measures against tax treaty abuse**

**Draft Council conclusions**

The Council:

1. CONFIRMS the importance of continuing and intensifying action to tackle tax fraud, tax evasion and aggressive tax planning at national, EU and global level, as requested by the European Council in May 2013 and recalled by Ministers at the informal ECOFIN on 22 April 2016;
2. RECALLS the importance of taking effective steps to fight tax evasion, tax fraud and tax avoidance as well as money laundering, in particular in times of budgetary constraints;
3. therefore WELCOMES the Commission Communication on an External Strategy for Effective Taxation and NOTES the Commission Recommendation on the implementation of measures against tax treaty abuse;
4. RECALLS that from the discussions during an informal meeting of ECOFIN ministers in Amsterdam support emerged for the establishment of an EU-list of non-cooperative jurisdictions and coordinated defensive measures, both to be defined by the Council;

**Regarding the Communication on an External Strategy, the Council:**

5. CALLS FOR a swift and comprehensive implementation of the internationally agreed standards on transparency and exchange of information developed by the OECD and ENCOURAGES all jurisdictions to commit to implement international standards as soon as possible and URGES jurisdictions that are not yet participants in the OECD's inclusive framework to join without delay;

6. AGREES on the establishment by the Council of an EU list of third country non-cooperative jurisdictions and to explore coordinated defensive measures at EU level without prejudice to Member State competence;
7. STRESSES the need to work closely and in parallel with the OECD to draw the international criteria in this area and to take into account the work of the Global Forum when developing the EU list of non-cooperative jurisdictions;
8. DECIDES that the criteria on transparency for establishing a list of non-cooperative jurisdictions have to be compliant with internationally agreed standards on transparency and exchange of information for tax purposes, in particular standards developed by the OECD, both on exchange of information on request and automatic exchange of information (Common Reporting Standard);
9. INVITES the Code of Conduct Group to consider an additional criterion for listing non-cooperative jurisdictions based on the non-existence of harmful tax regimes as defined by the criteria of the Code of Conduct on Business Taxation, and possible additional criteria, which could be inspired in particular by the OECD BEPS actions;
10. INVITES the Code of Conduct Group to start work on an EU list of non-cooperative jurisdictions by September 2016, and to determine, on the basis of a first screening by the Commission, third Countries with which dialogues should start, with a view to establishing an EU list of non-cooperative jurisdictions and exploring defensive measures at EU level to be endorsed by the Council in 2017. Those defensive measures could be considered to be implemented in the tax as well as in the non-tax area;
11. WELCOMES the pilot project for the automatic exchange of information on ultimate beneficial owners endorsed by all Member States with the aim of developing a common standard;

12. INVITES 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;
13. SUPPORTS the need to update the principles of tax good governance to be used as the new standard provision in future negotiations with third countries and INVITES the Code of Conduct Group to examine key elements which should be contained in a clause to be inserted in agreements between the EU and those countries;
14. CONCURS with the importance of tax good governance for developing countries to increase their domestic revenue mobilisation and UNDERLINES the importance of assisting them in meeting tax good governance;
15. STRESSES the importance of the Addis Tax Initiative (ATI), with its core commitment to doubling or substantially increasing support for technical cooperation on taxation and domestic resource mobilisation, already signed up to by twelve Member States, and CALLS FOR all remaining Member States to join the ATI;
16. IS READY to examine the proposal to include EU's updated tax good governance standards into the EU Financial Regulation in relation to third countries once a new proposal has been put forward by the Commission;

**Regarding the Recommendation on the implementation of measures against tax treaty abuse,**  
the Council:

17. NOTES the recommendation from the Commission to ensure that the implementation of OECD BEPS recommendations on Actions 6 and 7 is compliant with EU law;

18. REITERATES the importance of taking concrete and coherent action against double non-taxation through tax evasion or avoidance via the operation of double tax conventions, in line with the competence of Member States in negotiating double tax conventions bilaterally and the principle of subsidiarity;
  19. WELCOMES the proposed provisions with regard to a principal purpose test and permanent establishments to be included in bilateral tax treaties agreed by a Member State, while ACKNOWLEDGING that bilateral tax treaties remain the competence of the Member States and that other measures elaborated in the context of OECD BEPS Action 6 may be helpful, such as limitation on benefits (lob) clauses.
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