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From: General Secretariat of the Council
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To: Delegations

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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
– Council conclusions (25 May 2016)

Delegations will find in the annex the Council conclusions on the Commission Communication on an External Strategy for Effective Taxation and Commission Recommendation on the implementation of measures against tax treaty abuse, adopted by the Council at its 3468th meeting held on 25 May 2016.

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

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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