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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
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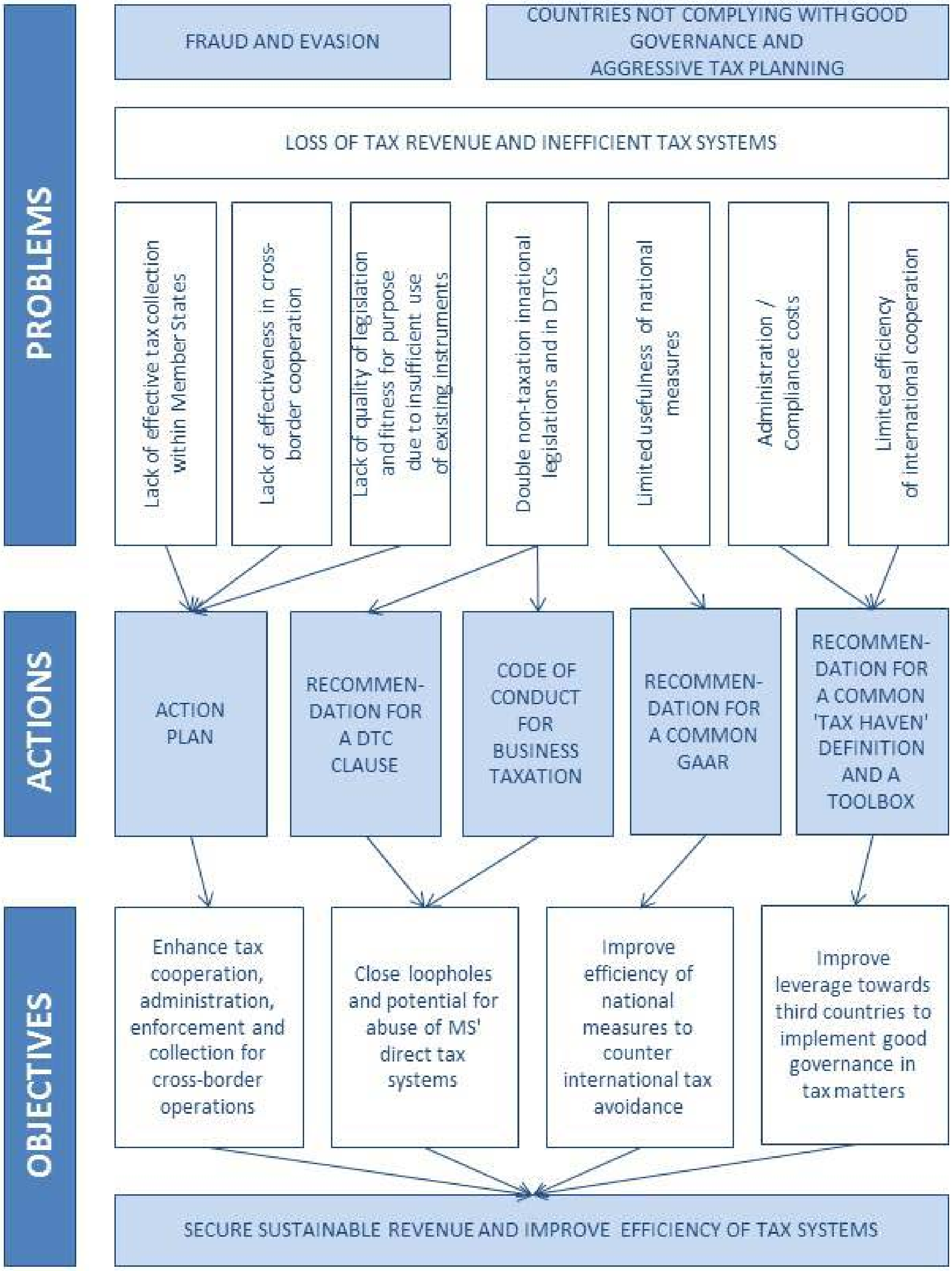

1. INTRODUCTION

The common purpose of national tax systems of EU Member states (MS) is to be effective and fair, i.e. to provide the revenues necessary to public finances and to share the burden amongst taxpayers in a fair way according to the democratic choices of each State. However, EU MS tax systems are vulnerable to revenue loss in a complex international environment where national tax systems struggle to cope with the challenges of the modern internationalised world.

EU MS budgets are currently under heavy pressure, as underlined in the Annual Growth Survey 2012[1] and there is a need for a concentration of tax policy priorities on the potential of Member States for making their respective tax structures more growth-friendly as well as improving the design and functioning of individual taxes.

In particular, the VAT gap, which is the amount of VAT not collected due to fraud, legitimate avoidance, errors, bankruptcies etc. and therefore represents an upper boundary for evasion related VAT revenue losses, represented 12-14 % of the theoretical VAT liability in the EU-25 between 2000 and 2006[2]. A study[3] revealed that while some Member States had a theoretical VAT gap below 5% (Denmark, Spain, Ireland, Luxembourg, the Netherlands, Portugal and Sweden), for others the theoretical VAT gap was above 20% (Greece, Hungary, Italy, Lithuania, Latvia and Slovakia). The total theoretical VAT gap for the EU-25 excluding Cyprus was above €100 billion in 2006. Assuming that a 12% VAT gap prevails, that would amount to a revenue loss of about 0.9% of GDP or EUR 114 bn in 2012.

Furthermore, EU Member States lose both individual and corporate income tax revenue, from the shifting of profits and income into other jurisdictions. The revenue losses which can arise from both illegal tax evasion and legal tax avoidance are difficult to estimate. According to some estimates concerning only the United States the revenue cost of profit shifting towards "tax havens" by US multinationals could be up to $60 billion (b), while individual tax evasion could cost up to $50 b yearly[4]. Estimates of this kind are not available for the EU, but on the basis of the similar amount of FDI stocks in "tax havens" in both USA and the EU the tax revenue losses can be estimated to be of similar magnitude (see annex 6).

The Commission has promoted a policy for tackling tax fraud and tax evasion which has been mainly based on transparency, exchange of information and fair tax competition. Since 2004, when the so called "Parmalat" Communication on preventing and combating corporate and financial Malpractice within and beyond the EU[5] was adopted, the EU policy has been further developed, in particular in the Communications on co-ordinated strategy to improve the fight against fiscal fraud (2006)[6], and more recently on "Promoting Good Governance in Tax Matters" (2009)[7] and on "Tax and Development" (2010)[8]. Nevertheless progress has been uneven and the basic problems arising from a lack of common vision and coordination remain.

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1 COM (2011) 815 final
2 Reckon LLP, 2009, Study to quantify and analyse the VAT gap in the EU-25 member states. Available at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_cooperation/combating_tax_fraud/reckon_report_sep2009.pdf
3 Idem.
4 J. G. Gravelle (2009): Tax Havens: Tax Avoidance and Evasion. CSR Report for congress.
5 COM(2004) 611 final
6 COM(2006) 254 final
7 COM (2009) 201 final
8 COM (2010) 163 final

In this context on 2 March 2012, the European Council called on the Council and the Commission to develop concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries and to report by June 2012. The Commission's response took the form of a Communication[9] adopted on 27th June 2012. The Commission also announced that it would come forward later this year with an action plan on these suggestions and a complementary initiative on jurisdictions not complying with minimum standards of good governance in tax matters, in particular tax havens, as well as aggressive tax planning.

The action plan is designed to mobilise the different actors by identifying areas where they need to act both in relation to existing law and initiatives as well as new areas of potential activity. Its purpose is to give a focus and prioritisation to common and individually supportive work in this area in response to the European Council's call for action.

The impact assessment also focuses on the particular issues posed by jurisdictions not complying with minimum standards of good governance in tax matters, as well as aggressive tax planning (with a particular emphasis on company taxation). Although the distinction between illegal evasion and legal avoidance (or planning) is well known the subdivision of avoidance into 'aggressive' or 'unacceptable' and perfectly acceptable 'planning' is a source of on-going disputes between governments and taxpayers.

Other institutions and organisations are also paying close attention to the issue of tax avoidance and tax evasion in relation to tax havens: the European Economic and Social Committee adopted in May 2012 an opinion on *Tax and financial havens: a threat to the EU's internal market*[10], the Council of Europe adopted in April 2012 a report on *Promoting an appropriate policy on tax havens*[11] and the G20 has actively promoted and monitored the work of the OECD Global Forum on transparency and information exchange since 2008 (see the latest report of June 2012 to the G20 in Los Cabos[12]).

The purpose of this impact assessment is to assist the Commission in identifying policy orientations and priorities to be promoted and developed at EU level. Given the policy orientation nature of the initiatives this impact assessment analyses in a manner commensurate with each of the problems at stake the actions that could be considered to address the problems. In the event of further decisions on legislative action, this impact assessment would be supplemented by individual focused impact assessments.

9 COM (2012) 351 final
10 INT/587 – CESE 1289/2012, http://www.eesc.europa.eu/?i=portal.en.int-opinions.19620
11 http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18151&Language=EN
12 http://www.oecd.org/ctp/exchangeofinformation/G20_Progress_Report_June_2012.pdf

Terms used in this document can be found in a comprehensive glossary in annex 14 (also see COM(2012)351 unless otherwise stated)

Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced.

Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities.

Tax havens, also sometimes referred to as **'non-cooperative jurisdictions'** (NCJ) are commonly understood to be jurisdictions which are able to finance their public services with no or nominal income taxes and offer themselves as places to be used by non-residents to escape taxation in their country of residence. The OECD has identified three typical 'confirming' features of a tax haven: (i) lack of effective exchange of information, (ii) lack of transparency, and (iii) no requirement for substantial activities. In addition they often offer preferential tax treatment to non-residents in order to attract investment from other countries. Tax havens therefore compete unfairly and make it difficult for 'non' tax havens to collect a fair amount of taxation from their residents.

Tax avoidance is a term that is difficult to define but which is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow (OECD Glossary of Tax Terms).

2. PROCEDURAL ISSUES AND CONSULTATIONS OF INTERESTED PARTIES

2.1. Organisation and timing

2.1.1. Impact Assessment Steering Group

The Commission Work Programme for 2012 includes the adoption of a Communication on good governance in relation to tax havens and aggressive tax planning.

The Impact Assessment Steering Group was set up by DG Taxation and Customs Union (DG TAXUD) of the Commission met three times, in January, July and September 2012.

2.1.2. Impact Assessment Board (IAB) meeting

A draft of this impact assessment (IA) was submitted to the Impact Assessment Board and discussed at its meeting of 17th October 2012. In its opinion dated 19 October 2012, the Board suggested some improvements of the draft IA report.

In its overall assessment, the Board recommended that the IA report should strengthen the problem definition by better focussing on the concrete problems the initiative aims to address. The report should describe those problems in a non-technical language and, where possible, provide concrete examples. Second, the report should better describe the content of the options, streamline their presentation, for instance by merging all ‘no EU action’ options, and provide greater clarity on the discarded options. Third, the report should better assess impacts on the administrative burden, SMEs and competitiveness. It should include quantitative elements, for instance regarding the number of national anti-abuse measures and its expected evolution. Finally, the report should provide greater detail on stakeholders’ different views, in particular Member States’ support to the envisaged measures.

In order to take into account the recommendations of the Board a number of changes have been made to the IA report. The problem description has been significantly streamlined, the objectives have been better linked to the corresponding problems, a glossary of technical terms has been added, the analysis has been expanded to wider market actors, several concrete examples have been added, the baseline scenario has been consolidated amongst objectives, the impact analysis on SME has been strengthened, and more details have been provided on stakeholders’ views.

2.2. Consultation and expertise sought

The Commission has been consulting widely and has received input from various sources on this impact assessment work. However, the assessment has suffered from a lack of quantitative data in the whole process.

2.2.1. Public consultation on double non-taxation

Double non-taxation in the sense discussed here occurs as a result of the exploitation of loopholes and mismatches between the tax systems of different jurisdictions. This exploitation can undermine EU MS’s budgets and, ultimately impact on other taxpayers.

On 29 February 2012, the Commission launched a three month public consultation[13] to gather contributions on factual examples and possible ways to tackle double non-taxation cases. The purpose of this public consultation was to establish evidence concerning double non-taxation within the EU and in relation with third countries. Members of the public were encouraged to provide factual examples of cases of double non-taxation on cross-border activities that they had encountered or had knowledge of.

There were in total 25 replies from different stakeholders, including 15 from business community, 4 from non-governmental organisations, and 4 from academics and other tax professionals. Several contributions were also sent from non-EU stakeholders (i.e. USA). Although half of the replies came from contributors resident in two Member States (United Kingdom and Belgium), most of these were from international organisations. So a reasonable range of national views was received. Given the limited number of total replies this fact did not have further impact on the current analysis.

[13] Consultation and Summary report is provided as annexes 4 and 5

The non-governmental organisations that contributed to the consultation welcomed it and provided some input, while underlining the practical difficulties to provide factual examples of double non-taxation.

On the other hand, the business community expressed some concerns on the scope of the consultation. In the general comments provided by the business community the following points are worth highlighting:

– Several found it important to make a clear distinction between actual double non-taxation (e.g. due to mismatches of hybrid entities and hybrid instruments) and other related concepts raising similar concerns (such as harmful tax competition and low taxation). Others called for a definition of "double non-taxation".

– Most of the organisations stressed that direct taxation falls within the competence of the Member States' sovereignty. Several therefore found that any measures against double non-taxation should be handled at the Member State level, while others found some coordination appropriate (e.g. to avoid mismatches).

– Many of the organisations felt that the issue of double non-taxation should not be addressed separately from that of double taxation. The two phenomena are seen as two sides of the same coin.

– Some organisations stressed that measures against double non-taxation could have an adverse impact on European economic competitiveness.

– Several organisations also called for coordination with other initiatives on EU and international level that address aspects of double (non-) taxation e.g. the EU Code of Conduct Group and the OECD report on Hybrid Mismatches.

2.2.2. Data collection study from Price-Waterhouse-Coopers (PWC) on tax measures in 14 Member States in relation to non-cooperative jurisdictions and aggressive tax planning

Given the difficulties of direct measurement of the effects of fraud, evasion and aggressive tax planning PWC were asked to collect data and analyse relevant information available in the public domain on existing and proposed tax measures of 14 EU Member States (Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxemburg, Malta, Spain, Sweden, the Netherlands, the United Kingdom) in relation to non-cooperative jurisdictions and aggressive tax planning. The sample was selected on a judgement basis to provide a cost effective method of collecting a representative sample of EU wide information.

The purpose of the study was to obtain factual information on the measures taken and envisaged by EU MS in relation to non-cooperative tax jurisdictions and aggressive tax planning, with a possible estimate of the cost and benefits of such measures.

Only limited quantified data on the impact of the identified problems and defensive measures was available. For example in Denmark the benefit of two recent measures had been estimated at 13 million (m) Euro, in France the thin capitalisation rules were estimated to raise over 100 m Euro per year, in Germany tax loss restrictions nearly 1500 m Euro per year, in the Netherlands interest rules more than 300 m over the period 2012 to 2015 and a further 150 m thereafter. Swedish interest rules were estimated to increase taxable profits by more than 7 bEuro and the UK estimated that the 2011 CFC reforms would cost nearly £2.4 b between 2012 and 2016. In summary some MS are able to raise tax revenues by taking specific protective measures, although the precise types of measures differ (see also Annex 9 and 10).

The main findings of the study are:

- Only 2 of the reviewed MS (FR, EE) have a formal definition of the term "Non-Cooperative Jurisdictions", and no MS has a definition of "Aggressive Tax Planning", although many of them did report having various concepts that are akin to these key concepts. In this respect, MS apply anti-abuse measures on the basis of two series of criteria taking into consideration either the level of taxation of the country concerned (e.g. no taxation at all or a lower nominal/effective tax level as compared to the situation of the MS itself), or the level to which countries cooperate in terms of exchange of information.

- Many Member States have a significant number of anti-abuse provisions covering many different forms of potentially abusive behaviour.

- All MS (except UK) have at least one general anti-abuse rule (none of them applies only to Third Countries)

- There is no clear picture if the examined measures can be considered as effective in combating what the Member States consider as abusive.

- Due to the different concepts in place, the taxpayer doing business in the EU has to cope with a complex and differing array of measures designed to protect individual Member State tax bases.

The Study is included as Annex 7 and will be published on the DG Taxation and Customs Directorate web site.

2.2.3. Consultation of Member States administrations: Fiscalis Seminar "Administrative cooperation 2020" – May 2012

The FISCALIS seminar aimed at launching reflections on the results of the improvements of the mechanisms of administrative cooperation including aspects of tax administration between Member States. All Member States were represented.

The Seminar offered an opportunity to exchange views as regards the future actions that could be undertaken in the area of administrative cooperation to improve the efficiency and effectiveness of existing mechanisms, to look at the critical aspects of tax administration, to discuss whether possible future actions could be taken within the framework of Council Directive 2011/16/EU or whether they would a priori require other types of legal instrument and, in this context, to also discuss the possible synergies with the actions undertaken by the OECD.

The main conclusions were recommendations to: (i) extend EUROFISC for VAT to direct taxation and to better address fraud schemes and trends, (ii) better identify taxpayers in cross-border situations by establishing a single EU Tax Identification Number, (iii) adopt a real and concrete common approach to risk management for direct taxation to better identify fraudsters, (iv) promote closer collaboration and cross fertilization between direct and indirect taxes as well as between tax administrations and other administrative bodies, especially judicial and criminal authorities, and (v) develop high common standards for tax administrations, aimed at ensuring better tax compliance.

2.2.4. *Fiscalis Seminar on non- cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion – July 2012.*

The objective of this seminar was to exchange views and experience with the Member/Candidate States on existing measures, and discuss the aspects of possible future measures including a possible strategy at EU level.

Member States' tax officials were, in general, supportive of an EU coordinated approach to tackle non-cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion although some of them would prefer national measures (having due consideration to the principles of subsidiarity and proportionality). In particular, they supported measures to enhance existing instruments of co-operation and the development of automatic exchange of information, as well as measures to fight against VAT fraud and evasion. The Commission also invited to this seminar different representatives of business, NGOs and academia who also reacted positively to an EU coordinated approach for concretely fighting against tax fraud and tax evasion but some stressed that any new measure had to replace an existing one in order not to increase the administrative burden and not to affect competition. Overall, the business community and NGOs stressed the importance of developing further automatic exchange of information, also from a practical point of view in relation to document formats. A pivotal outcome of the seminar was support for clear common definitions of the concepts tax havens, aggressive tax planning, and tax avoidance, intentional and non-intentional double non-taxation. Some MS suggested in this respect a reference to the level of taxation. However, a possible EU strategy should be coordinated with other international fora in order to create synergies and to avoid any overlaps. The improvement of administrative cooperation and exchange of information between MS was considered as a way forward. Some NGOs pointed out that concerns of developing countries and impacts on them must be taken into account before any measures in developed countries are introduced.

Although some written comments were received after the seminar none of these included the requested quantitative data. The reports on the seminar are in Annexes 1, 2 and 3.

The Commission services have taken into account all of above-mentioned observations in the present impact assessment. It is worth noting that in both the consultation on double taxation and the July seminar that businesses were keen to emphasise that non-taxation should be distinguished from low taxation – low taxation often being a national choice and an aid to competiveness. This was not stressed as much by Member States. The debate is similar to that of 'fair' avoidance and 'aggressive' avoidance – with similar differences in opinion between administrations and taxpayers. Other members of civil society, NGOs etc., tended to stress the need for governments to be able to collect fair taxes and to combat aggressive avoidance. Both subsidiarity and the Common Consolidated Corporate Tax Base (CCCTB) were mentioned in this context. Subsidiarity concerns generally being raised by those against greater coordination and the CCCTB being recognised as a potential 'cure' for many of the problems – but only when it is finally implemented– which seems some way in the future and of course as it is optional providing only a partial solution. The case for coordinated action in direct tax by way of the CCCTB proposal being in line with subsidiarity was covered in detail in the CCCTB proposal and the Commission responses to the reasoned opinions received.

2.2.5. Tax Policy Group and Council High-Level Working Party

2.2.5.1. Tax policy group

The high level Tax Policy Group met in Brussels on 14 July 2012. All Member States contributed to a debate based on the Commission's Communication of 27 July 2012[14] and there was general agreement that enhancing action against tax fraud and evasion is a key priority for them. Enhancing coordinated action was seen as crucial not only to increase the revenue raising capacity of the Member States but also to ensure the fairness of tax systems. There was also considerable agreement among the Member States on the need to fully exploit the potential of existing instruments for administrative assistance (in particular the recently adopted Mutual Assistance Directive, the provisions of which are to be transposed into national law by January 2013). In particular, they stressed the need to develop practical tools and instruments (IT and exchange of best practices) for exchange of information and in particular for automatic exchange; they also underlined the importance of promoting these instruments to non EU countries. Member States also stressed the need for the Council to adopt the pending proposals for amending the EU Savings Directive and the negotiating mandate to ensure application of equivalent measures by certain third countries.

Many Member States representatives indicated that new initiatives could also help to enhance the fight against tax fraud and tax evasion– as long as such measures were proportionate and did not unnecessarily increase the costs and complexity of compliance for taxpayers. As regards such possible new initiatives most Member States indicated that these could be particularly useful in the area of VAT and that in anticipation of the more comprehensive VAT system reform envisaged by the Commission in its Communication from December 2011, the proposal to develop a "quick reaction mechanism" for tackling VAT fraud appears particularly promising. The majority of Member States also supported the suggestion to examine the scope for introducing an EU Tax Identification Number (TIN) for cross border operations. Many Member States were supportive of on-going and possible future efforts to enhance exchange of information with third countries.

2.2.5.2. Council High Level Working Group (Brussels, 11 September 2012)

Again focusing on the above Communication Member States confirmed the priorities that their high level representatives had already indicated at the Tax Policy Group should be contained in the action plan.

[14] COM(2012) 351

They also insisted on the need for all Member States to fully and loyally implement and apply the existing legislation on administrative cooperation, in particular through the development and use of concrete tools and instruments.

3. POLICY CONTEXT, PROBLEM DEFINITION, AND SUBSIDIARITY

Tax evasion and avoidance threaten government revenues in all Member States. In addition the globalisation of economies, fluid capital movements and technological developments have undermined the traditionally closed tax systems of jurisdictions around the world[15]. In current times of economic crisis and severe budgetary constraints there is a strong need to improve the efficiency of national tax systems and close opportunities for abuses so as to secure sustainable tax revenues and support high levels of compliance based fair and fairly applied tax systems.

3.1. Identification of the problems that may require action

3.1.1. Specific problems relating to tax fraud and evasion within the EU

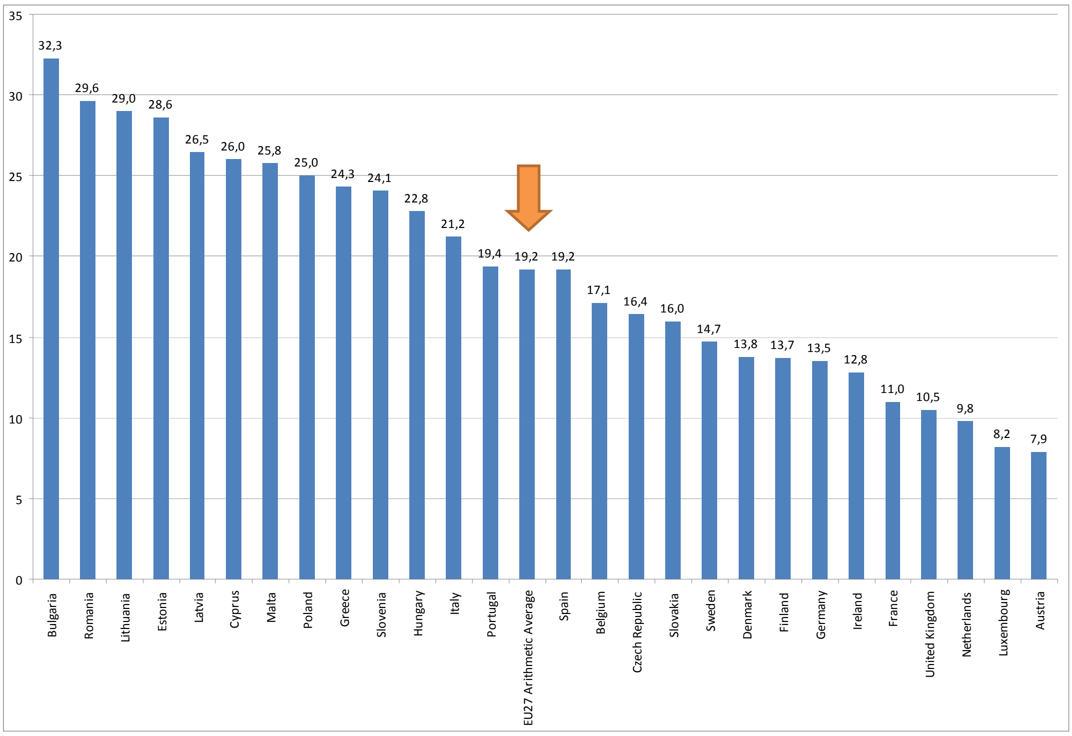
In recent years, the challenge posed by tax fraud and evasion has increased considerably. The globalisation of the economy, technological developments, the internationalisation of fraud, and the resulting interdependence of Member States' tax authorities reveal the limits of strictly national approaches and reinforce the need for joint action. The interaction of many different tax systems in the context of a global economy creates many possibilities for the undermining of Member States tax systems. Even where there exists a high degree of harmonisation within the EU, such as in the case of VAT, issues of fraud and evasion are significant. Indeed, as highlighted in the introduction, the VAT gap amounted to 12-14% of the theoretical VAT liability between the years 2000 and 2006 in the EU-25, with a considerable variation across member states: the highest VAT gap was 30% while the lowest only 1% in 2006 [16]. At present, tens of billions of euro remain offshore, often unreported and untaxed, reducing national tax revenues. The size of the shadow economy varies between 7.9% and 32.3% of GDP according to some estimation.

Figure 1: Estimate of the size of the shadow economy in 2011 (% of GDP)[17]

15 Since the late 1990’s both the OECD (see the 1998 OECD report ‘Harmful tax competition: an emerging global issue’) and the EU (with the 1997 tax package) with the Code of conduct for business taxation have made efforts to counter the erosion of tax bases.

16 Reckon LLP, 2009, Study to quantify and analyse the VAT gap in the EU-25 member states.

17 Source: Schneider, F. (2012), "Size and development of the Shadow Economy from 2003 to 2012: some new facts". The figures contained in this study are necessarily based on assumptions and should therefore be considered cautiously as their certainty is not demonstrated.



There is a need therefore to tackle fraud and evasion. Firstly, because tax fraud and tax evasion are limiting the capacity of Member States to raise revenues, to carry out their economic policy and to proceed to necessary structural reforms. Secondly, because it is an issue of fairness: the vast majority of EU taxpayers generally seek to comply with their tax obligations. Particularly in these difficult economic times, these honest taxpayers should not suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders.

The specific problems divide into three main areas. Firstly, there is a problem of tax collection within Member States related also to standards of taxpayer compliance: the broad analysis carried out by the Commission in the context of the European Semester has revealed that for many Member States there are real and substantial problems of domestic and cross border tax evasion sometimes linked to poor administrative capacity. Country-specific recommendations regarding these issues were addressed to 10 Member States. Secondly, there is a lack of effectiveness in cross-border administrative co-operation despite the existence of EU level mechanisms and procedures: the difficulty to properly identify taxpayers in the context of automatic exchange of information and the existing loopholes in the taxation of savings (with difficulties in agreeing further steps forward at Council level) are two significant examples of the limits of efficient cross border cooperation, a necessary complement to national tax sovereignty. Thirdly, there is a question of the quality of tax legislation and its fitness for purpose because of an insufficient use of existing legal instruments: the possibilities offered by the existing legislation to spontaneously exchange information or for foreign officials to be present during tax audits in other Member States are not sufficiently used.

The June 2012 Communication provides an overview of the problems and possible actions (see Annex 13).

3.1.2. *Specific problems arising from jurisdictions not complying with minimum standards of tax good governance, in particular tax havens, and from aggressive tax planning*

In an international context, the effectiveness of a tax system can be undermined in several ways:

- because of unintended loopholes within the national tax system and mismatches occurring with other countries' tax systems (national legislation and double tax conventions), leading to double non-taxation in cross-border situations. Such loopholes and mismatches can take a multitude of forms, ranging from mismatches between tax systems leading to double deductions (e.g. the same loss is deducted both in the state of source and residence) to occurrences of double non-taxation (e.g. income which is not taxed in the state of source is exempt in the state of residence). A specific example of this could be a profit participating loan (PPL) granted from a parent company in a Member State (MS1) to its subsidiary in MS2. Interest under such a loan arrangement would only be due if the MS2 subsidiary makes a profit in a given year. Also the amount of interest due could depend on the amount of profit made and be conditional to various other circumstances. Given these special conditions, the PPL arrangement could be classified as a capital contribution by the MS1 authorities under a "substance over form approach", whereas the authorities of MS2 might not apply such approach and continue to treat the arrangement as a loan. As a result, payments due would be treated as deductible interest payments in MS2 while they are treated as profit distributions exempt under a participation exemption in MS1. The effect (deduction in MS2, no-inclusion in MS1) is the result of a mismatch in the classification of the PPL arrangement.

Double non-taxation deprives Member States of significant revenues and creates unfair competition between businesses in the Single Market. In the EU Internal Market, double non-taxation gives a competitive advantage to some taxpayers, and may be detrimental for those Member States which see their tax bases eroded.

- because of taxpayers exploiting these loopholes and mismatches (aggressive tax planning). Tax planning increasingly involves ever-more sophisticated structures which develop across various jurisdictions and effectively, shift taxable profits towards states with beneficial tax regimes. Member States find it difficult to protect their national tax bases from this erosion. Thus, individual measures are often deprived of effectiveness, especially due to the cross-border dimension of many structures and the increased mobility of capital and persons in the Internal Market.

- by other jurisdictions actively or passively facilitating the erosion of other countries' tax bases. This scenario can be involve aggressive tax planning schemes, specific tax regimes providing a low level of taxation to non-residents, or a very low general level of taxation together with a reluctance to cooperate with other countries' tax administrations. Generally speaking "tax havens" are countries that base their attractiveness on opacity and harmful tax competition in the direct tax area. They offer the possibility for taxpayers of other countries to relocate their tax bases in their low-tax jurisdictions, and to conceal this from their country of residence (through means such as obstacles to the identification of beneficial ownership, bank secrecy and conduit companies).

This is increasingly relevant in the global context of economic liberalisation and in the particular case of the EU Internal Market. Free movement and new technologies offer many opportunities for using aggressive tax planning schemes which make use of 'tax havens'. The Internal Market offers enormous benefits to businesses operating within it, but protection against abuse continues to vary as between Member States. Against this background, by refusing transparency, exchange of information, and the removal of harmful tax regimes, jurisdiction not complying with good governance minimum standards, in particular ‘tax havens’, continue to undermine tax revenues,

Protection against such jurisdictions, in particular tax havens is difficult. Member States take a variety of defensive measures to limit the harmful effects for their tax base of tax structures using, in particular ´tax havens´. However, defensive measures by one State can often be circumvented by routing business or transactions through another State with a lower level of protection. This is especially true within the EU given the protection of the freedoms available for businesses operating within the Internal Market and secondary legislation in the area of direct taxation. Consequently, protection against the erosion of the tax base by the use of such jurisdictions is essentially only as effective as the lowest level of protection offered in a single Member State.

The precise dimensions of the revenue losses incurred are difficult to estimate precisely as mentioned above but are measured in the billions of Euro. Individual countries do sometimes estimate losses in revenue and academics have used a range of different methods to quantify the losses. These sometimes mix evasion and avoidance, combine direct and indirect taxes, include non-EU country data and use proxies such as the size of the 'shadow economy' to estimate tax losses. In addition some of the terms – evasion, avoidance and tax-havens for example are used in different ways.

All these factors make precise quantification difficult but overall it is clear there is a problem which needs resolving as quickly as possible.

Example The UK[18] recently stated that 14% of the tax gap (the difference between tax collected and the tax they thought should be collected) was due to avoidance – several billion pounds annually. Further examples of quantification are contained in Annex 6 and 10.

In addition to the primary problem – loss of tax revenue there is a secondary issue. MS’ reactions to newly detected tax avoidance situations can result in additional administrative costs for tax administrations (audits and enquiries) and compliance burdens on taxpayers that could, in some cases, even lead to discouraging a number of taxpayers.

Example:

18 Lifting the Lid on Tax Avoidance Schemes – July 2012 – http://www.hmrc.gov.uk/

The Disclosure of Tax Avoidance (DOTAS) Schemes regime in the UK- which was introduced in 2004- engages taxpayers to disclose certain tax avoidance schemes to the UK Tax Administration so that the state is informed about the use of the schemes and is in the position to consider how to counteract them, for example by changing the tax law. In 2012 its Guidance Notes were updated explaining in 115 pages the application of the DOTAS regime. If all MS introduced different and individually tailored disclosure schemes there would clearly be significant compliance costs.

Current leverage to influence third countries is of limited efficiency.

At EU level, a number of efforts have been made to try to influence third countries to apply minimum standards of good governance in tax matters, both at policy and operational levels. Communications in 2009 and 2010[19] promoted good tax governance, particularly in relations with developing countries.

At operational level, the EU has already negotiated inclusion of the clause on good governance in the tax area in 19 agreements between the EU and its MS on the one side and a third country on the other side. The full benefit of these clauses can only be evaluated when the agreements have been fully implemented. The Commission is waiting for their entry into force which has not yet taken place pending their ratification from third countries. In addition, MS should ensure the effective promotion of the principles of the Code of Conduct for business taxation[20] in selected third countries. Recently discussions have started with Switzerland and Liechtenstein. However a number of third countries remain reluctant in regard to applying the minimum standards of good governance. There is no clear consensus within the EU on a common approach to resolve difficulties. This hampers implementation.

3.2. Who is affected?

These issues affect EU MS, because of the budgetary impact of tax fraud, tax evasion and tax avoidance on their revenues, and the need to adopt corrective measures. Such measures can be of administrative nature (increased enquiries and audits) and involve additional costs for tax administrations. They can be of regulatory or legislative nature, with the need to adopt appropriate legislation to adapt the compliance requirements of taxpayers. They can be also of external policy nature, since third countries are involved.

Taxpayers (individuals and businesses) are affected in that those who profit from fraud and tax evasion have an unfair (and illegal) advantage compared to compliant taxpayers. In the case of aggressive tax planning the purpose and intention of Member States tax legislation can be undermined and issues of competition arise in relation to those taxpayers who do not choose or cannot afford to engage in such practices. Taxpayers may also be affected because of the additional compliance requirements that the fight against tax fraud, tax evasion and tax avoidance may lead the MS to adopt, and by the tax treatment that applies to the activities they perform in countries subject to anti-abuse measures.

[19] See footnotes 7 and 8

[20] OJ C 2, 6.1.1998, p. 2.

Relating to SME, there is no indication that they would be specifically affected, since such elaborated schemes based on international configurations are less likely to involve SME than large enterprises.

Welfare-state beneficiaries are also affected in an indirect way as eroded state budgets could mean shrinking budgets for public services and social benefits.

Third countries may be affected. Third countries promoting non-compliance of EU MS tax rules benefit from aggressive tax planning schemes in terms of additional revenues. The adoption of anti-abuse measures by EU MS can affect the cross-border flows between these countries and the EU. Some EU external policies are affected, to the extent that international agreements concluded with countries being considered by MS as non-cooperative or promoting aggressive tax planning might make it easier or more difficult for EU taxpayers to operate with these countries. In addition, development cooperation policy takes into account the need to assist developing countries in designing efficient tax systems in line with international standards, notably the ones of good governance in tax matters (transparency, exchange of information and fair tax competition).

3.3. The likely evolution of the problems if no action is taken (baseline scenario)

Failure to act could lead to a general undermining of the acceptance of many tax rules and thus lead to continuing or even greater levels of unwanted fraud, evasion and tax avoidance.

If no action is taken, there is a risk that revenues will continue to be lost and indeed that the problem may become greater as Member States face increasing pressure to cut public services in a situation where taxpayers come under more and more pressure. In this situation perceived injustice or lack of fairness will undermine the legitimacy and effectiveness of tax systems at a critical moment in time.

This will be in particular the case for the three specific problem areas of **tax fraud and evasion** where action has been identified as decisive and urgent. For example, in the field of direct taxation, if the loopholes of the existing savings taxation directive are not closed, taxpayers will continue to invest in products or through structures allowing the avoidance of effective taxation of savings or similar income. The absence of automatic exchange of information for more categories than purely savings interests will furthermore deprive Member States of the invaluable information on other income received and assets owned by their taxpayers in another Member State, thereby preventing effective taxation but also hindering risk analysis by tax administrations and not encouraging voluntary compliance by taxpayers. Finally, the difficult identification of taxpayers engaged in cross-border transactions will continue to generate important problems in tax administration and collection, which the on-going cuts in expenditure for tax control[21] will in turn reinforce, thereby generating a vicious circle as more and more taxpayers may be tempted by cross-border transactions to reduce their visible taxable basis.

21 Because of the difficult economic situation and the reduced revenues, many Member States are currently reviewing the resources allocated to their various services, including in the area of taxation.

If no action is taken against **jurisdictions not complying minimum standards, in particular tax havens, as well as against aggressive tax planning**, it is likely that the problems of collecting tax for EU MS will remain or possibly increase in the coming years. No progress will materialise either in regard to third countries not complying with minimum standards of good governance in tax matters, in particular tax havens, as well as in regard to aggressive tax planning. It is likely that EU Member States will react individually, within the limited effectiveness of such measures.

As Member States react individually with measures at national level, adopted by each country according to its own criteria this results in a great variety of measures and targets and this is likely to continue in the absence of coordination (see Annex 10 for more details). Because of the relatively limited efficiency of such measures, Member States would logically attempt to strengthen them, which would risk adding compliance costs for EU taxpayers.

In addition, there is little indication currently that EU MS would launch spontaneously, i.e. in the absence of EU initiative, initiatives at bilateral or multilateral levels to overcome jointly the problems raised by the phenomena identified.

On the international side, some issues of transparency and information exchange would be dealt with in the framework of the OECD Global Forum, but this is unlikely to extend to issues of concern in the EU such as fair tax competition, tax base erosion from aggressive tax planning and tax havens.

Indeed, the restructured and strengthened OECD Global Forum on transparency and exchange of information (GF), which practically all EU Member States have now joined, monitors and encourages effective implementation of the international agreed standards of transparency and information exchange through the peer review of all its members and other jurisdictions which may require special attention. However, the principle of fair tax competition is not covered by the GF: the OECD work against preferential tax regimes is dealt with by the Forum on Harmful Tax Practices, which deals with tax regimes of OECD members only. The OECD criteria are broadly similar to the ones of the Code of conduct for business taxation (monitored by a Council group), although they apply to internationally mobile activities only.

Therefore, since the EU on-going policy on good governance in tax matters is based more generally on all three principles (transparency, exchange of information and fair tax competition), i.e. the two applied by the OECD Global Forum plus the principles of the Code of conduct for business taxation prohibiting harmful tax regimes, it is unlikely that in the absence of EU initiative the OECD work would compensate.

It is worth noting however that the OECD Committee of Fiscal Affairs has, in June 2012, held a debate on base erosion and profit shifting (BEPS) covering transfer pricing, aggressive tax planning and harmful tax competition. This represents an opportunity to perhaps address those issues which the EU has been addressing such as the principle of fair tax competition (i.e. the principles, of the Code of conduct for business taxation) in the wider OECD framework; and perhaps to expand the topics covered. This potential widening is a positive step forward, providing it complements

EU action and allows the specific interests of the EU to be fully integrated into a global consensus.

3.4. Does the EU have the right to act?

Binding Union acts intended to improve, through harmonisation or approximation, the proper functioning of the internal market can be adopted under Articles 113 TFEU (in regard to indirect taxes) and 115 TFEU (in regard to direct taxes).

The Commission can adopt recommendations on the basis of Article 292.

Member States face difficulties in protecting their national tax bases from erosion through aggressive tax planning and third countries not complying with minimum standards of good governance, despite important efforts. National provisions in this area are often not fully effective, especially due to the cross-border dimension of many structures and the increased mobility of capital and persons.

With the aim to achieve a better functioning of the Internal Market, it is necessary to encourage Member States to take a common approach towards a more effective and fair taxation, which would help diminishing existing distortions.

To this end, it is expedient to address instances in which a taxpayer derives fiscal benefits through engineering its tax affairs in such a way that income is not taxed by any of the tax jurisdictions involved (double non-taxation). The persistence of such situations can lead to artificial flows within the Internal Market and thus harm its proper functioning as well as erode Member States' tax bases.

Secondly, aggressive tax planning especially by the use of third countries not complying with minimum standards, as well as tax fraud result in shifting the tax burden to those who do not plan in this way. Taxpayers who have access to costly tax advice implementing these structures have a competitive advantage in comparison to other taxpayers, such as small and medium- sized enterprises which creates distortions of competition. Member States could be lead to individually to introduce countermeasures at national level in a manner that would undermine regular business investment and create additional tax obstacles.

Thus, these national actions (or lack of action) have a direct impact on the functioning of the internal market at large, as it can distort competition among EU businesses, and on the ability of Member States to meet the commitments of the Stability and Growth Pact[22].

Therefore, action at Union level is better fitted to achieve the objectives.

Any EU measure envisaged needs to respect the rights and principles recognized in the charter of fundamental Rights of the EU.

[22] http://ec.europa.eu/economy_finance/economic_governance/sgp/index_en.htm

4. Objectives

4.1. The general and specific policy objectives

The general objective is to come, through a Union approach commensurate with the need to ensure the functioning of the internal market, to a better protection of MS tax systems against abuses and loopholes and, in particular, against cross-border international tax fraud and avoidance. Such practices are detrimental to EU MS tax revenues.

This general objective translates into the following specific objectives:

- In regard to cross-border fraud and evasion in direct and indirect taxation:
  - (Objective 1) Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities
- In regard to jurisdictions not complying with minimum standards of good governance and to aggressive tax planning:
  - (Objective 2) Closing loopholes and potential for abuse of MS' direct tax systems (national legislation and double tax conventions) – this would contribute to addressing the issues of double non-taxation and aggressive tax planning
  - (Objective 3) Improving the efficiency of measures taken at national level to counter international tax avoidance – this would contribute to addressing the issue of aggressive tax planning
  - (Objective 4) Improving in an EU context the leverage that MS have towards third countries in tax matters – this would address the issue of jurisdictions not complying with minimum standards of good governance.

The operational objective is to secure and increase revenues for Member States. Given the differences of Member States tax systems and economic structures it is not easy to measure appropriately and consistently operational objectives across individual Member States. The monitoring of this operational objective will therefore need to be considered with each Member State individually in order to ensure consistency of relevant figures when the Actions are eventually being implemented.

4.2. Are these objectives consistent with other EU policies?

These objectives are consistent with other policies. They build on the existing policy of good governance in the tax area, which was subject to two Commission communications in 2009 and 2010 supported by the Council, the EP and the EESC. Moreover, they respond to the request from the European Council in March 2012 to enhance the fight against tax fraud and evasion including in relation to third countries. The objectives are also consistent with the Annual Growth Survey 2012 and its recommendations to Member States to broaden tax bases and improve tax collection.

In a wider context the objectives can be seen as being supported by the efforts made against money-laundering and terrorist financing both at the EU level and by the financial action task force (FATF), and by the rationale of Directive 2011/61/EU[23] (article 35), which sets specific conditions (notably on compliance with the international standard for transparency and information exchange) for non-EU alternative investment funds (AIF) managed by EU AIF managers when marketing in the EU.

5. POLICY OPTIONS

5.1. Overview of policy options

There is currently little harmonisation in the area of corporate tax and none in relation to personal income tax, which leads to wide differences amongst MS and affects their perception of what would be acceptable or not.

One theoretical option would be harmonisation at EU level in these areas through legally binding EU measures. This option cannot, however, be reasonably envisaged with a view to solve the existing problems quickly, given the difficulties to come to a consensus in this area , be it because it would. Urgent action is however needed to deal with the situation that MS are currently confronted with. Timing is therefore one of the factors to be taken into account and pleads at this stage for solutions not involving legally binding legislation, whose adoption often takes considerable amounts of time.

This does not of course rule out binding legislation in specific areas such as further development of administrative cooperation which is already the subject of detailed EU legislation. The Commission has also made a proposal for a Common Consolidated Corporate Tax Base (CCCTB)[24] which proposes a common base, but crucially this has been proposed as an optional base, i.e. companies and groups may opt for the CCCTB or remain within the existing national rules. This is currently being discussed in Council and will address some of the problems (for example it includes a GAAR) when adopted but in the interim period pending adoption, and afterwards for those not opting to use the CCCTB, the issues remain to be resolved.

The situation in relation to indirect taxation is somewhat different, notably in relation to VAT. A harmonised VAT system already exists. The Commission is in the process of reviewing the EU VAT system with a view to updating it[25]. This process should allow for a substantial strengthening of the EU VAT framework. Again however the urgency of dealing with current problems calls for action in advance of the full updating of the VAT system.

Reaching the objectives requires an approach based on a number of mutually reinforcing complementary actions. The analysis that follows prioritises the actions

[23] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[24] COM(2011)121

[25] COM(2010) 695 final, Green Paper on the future of VAT - Towards a simpler, more robust and efficient VAT system, 1.12.2010.

that the action plan will focus on as the best suited to respond to the problems identified (inefficient tax collection, insufficient administrative co-operation, insufficient use of existing instruments). Given that the initiative planned is of non-legislative nature , the analysis is confined to examining those elements which are likely to form part of two separate packages for, on the one hand, an action plan against fraud and evasion and, on the other hand, two Recommendations – one regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and one on aggressive tax planning.

For the purposes of the following analysis of elements to be included in an action plan a number of initiatives are discussed which have already been adopted but where decisions or implementation still need to be done. While it is true that these points should only form part of the baseline scenario, it is necessary to describe the repartition of competences and tasks between MS, the Council and the Commission to ensure the best possible outcome.

Consideration was also given to options put forward by stakeholders, such as the EU-wide list of non-transparent entities for double taxation purposes or the central database for tax authorities containing an equivalence matrix of legal entities (cf. annex 5, p. 14). However, as these approaches are limited to detect mismatches between national tax system and do not address the problem itself these options were not subject to a deeper analysis.

5.1.1. *Baseline scenario : no EU change*

See description under section 3.3.

5.1.2. *Policy option relating to the fight against cross-border tax fraud and evasion in direct taxation*

On the basis of the specific objective identified, the policy options that could be considered in the specific area of direct taxation are the following:

(1) Objective 1 - Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between MS tax authorities

- Action plan to enhance tax administration, tax enforcement and tax collection in the case of cross-border transactions

5.1.3. *Policy options relating to jurisdictions not complying with minimum standards of good governance in tax matters and aggressive tax planning*

On the basis of the three specific objectives identified, the policy options that could be considered on the specific issue of aggressive tax planning and jurisdictions not complying with minimum standards of good governance in tax matters are the following:

(2) Objective 2 - Close loopholes and potential for abuse of MS' direct tax systems (national legislation and double tax conventions)

- Address loopholes in national legislation through discussions in the Code of conduct Group for business taxation;

– Recommendation to prevent double non-taxation in double tax conventions

(3) Objective 3 - Improve the efficiency of measures taken at national level to counter international tax avoidance.

– Recommendation of EU compliant and effective general anti-abuse rules as a standard in MS

(4) Objective 4 - Improve in an EU context the leverage that MS might have in convincing third countries to implement good governance in tax matters

– elaborate an EU definition of third countries not complying with minimum standards of good governance in tax matters on the basis of principles recognised in this area

– toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined.

5.2. Summary of policy options

Baseline scenario	
No EU change	
(Objective 1) Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities	
- Option A1:	Presenting an action plan including prioritising specific measures
(Objective 2) To close loopholes and potential for abuse of MS' direct tax systems (national legislation and double tax conventions)	
- Option B1:	Address loopholes in national legislation through discussions in the Code of conduct Group for business taxation. As explained in 3.3.3 the Code of Conduct is currently discussing these issues and this option is therefore considered to be in place already
- Option B2:	Recommendation to prevent double non-taxation in double tax conventions.
(Objective 3) To improve the efficiency of measures taken at national level to counter international tax avoidance	
- Option C1:	Recommendation of EU compliant and effective general anti abuse rule (GAAR) as a standard
(Objective 4) To improve in an EU context the leverage that MS might have in convincing third countries to implement good governance in tax matters	
- Option D1:	Elaborate an EU definition of third countries not complying with minimum standards of good governance on the basis of principles recognised in this area
- Option D2:	Toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined.

6. DESCRIPTION AND IMPACT ANALYSIS OF POLICY OPTIONS (SEE ALSO ANNEX 12)

6.1. Baseline scenario: No EU Action (see also section 3.3)

If no action is taken, the problem is likely to persist or even aggravate in these times of severe economic crisis and fiscal consolidation, when many Member States need to cut expenditure and increase revenues. The inability to reduce fraud, evasion and aggressive tax planning impairs Member States' ability to increase tax revenues and or restructure their tax systems in a way that better promotes growth as outlined in the 2012 Annual Growth Survey. Particularly in these difficult economic times, some taxpayers will continue to suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders, and persons using aggressive tax planning schemes and the possibilities provided by third countries not complying with good governance minimum standards, in particular tax havens, and the purchasing power of those other taxpayers will be adversely affected. This undermines the fairness of tax systems.

Double non-taxation will continue to occur on the basis of mismatches between tax systems of the two States involved, and be used in schemes involving aggressive tax planning and tax havens. Tax administrations will continue to support the costs of additional work to tackle double non-taxation, by costly and time intensive audits. Moreover, it would have a negative impact over taxpayers and administrations: since structures using, notably, tax havens as well as aggressive tax planning are getting more complicated and thus requesting additional financial as well as human resources to follow them, this can lead to higher costs for tax payers and tax administrations.

In addition to the negative impact on the tax revenues of the countries concerned from the shifting of profits, both phenomena will continue to cause harm by:

– distorting financial and, indirectly, real investment flows.

– undermining the integrity and fairness of tax structures. Taxpayers who have access to costly tax advice implementing aggressive tax planning structures have an unjustified competitive advantage in comparison with other taxpayers, such as small and medium- sized enterprises which leads to distortive effects. The principle of fairness of taxation is in danger as aggressive tax planning and the use of jurisdictions not complying with minimum standards of good governance is more accessible for taxpayers with income from capital who try to avoid the taxation of savings, rather than labour.

– discouraging compliance by all taxpayers: The ability of a group of taxpayers to reduce their taxes could be perceived as unfair, thus affecting public confidence in the fairness of the tax system.

– losing tax revenues in the EU Member States.

In the following tables impacts and effectiveness are presented on an ascending scale from --- to +++.

Effectiveness in achieving policy objective	--- High negative impact, policy objective not achieved
Impact on the four freedoms	-- Medium negative impact. Some MS would continue to adopt national anti-abuse measures that would not comply with EU law. Within the EU, this could impact the four freedoms.
Economic impact	--- High negative impact. In the course of the current economic and financial crisis it is likely that the lack of of EU action will lead to further losses in the MSs´ budget. This would

	affect essentially companies having cross-border activities within the EU (including SMEs) and in relation to third countries. The compliance costs (see below) resulting from multiple requirements could negatively affect the competitiveness of EU companies as compared to third countries having lower tax compliance costs and fewer tax regulation authorities. This could, together with other factors, contribute to relocation of economic activities outside the EU. In addition, this option could affect trade and investment flows involving third countries that would be considered as not complying with minimum standards by one or several MS and not by others, thereby leading to potential inconsistent approach between MS, and thus to malfunctioning of the internal market. However preferential trade arrangements between the EU and the third countries concerned should not, as such, be affected since these arrangements contain a tax carve-out provision protecting the possibility for the parties to adopt measures aimed at either adopting or enforcing national tax rules designed to combat avoidance or evasion of taxes. Moreover, this option might involve administrative or legislative actions for developing countries to prevent the misuse of their tax systems, unless these countries have concluded with the EU MS concerned a double tax convention (DTC) containing specific provisions on anti-abuse rules. There is also the possibility that national anti-abuse measures may not be able to cover triangular situations involving indirectly a developing country, such as the misuse of a DTC between an EU MS and a developing country.
Social impact	-- Medium negative impact, tends to create impression that taxation is unfair.
Impact on taxpayers/tax administrations	---- High negative impact. The compliance burden on taxpayers will remain high as a result of anti-abuse measures implemented by several MS that may be inconsistent between them and create double taxation situations, in particular in triangular situations not covered by DTC. Tax administrations are likely to increase the number of audits in order to ensure that the anti-abuse measures have been correctly implemented. This could result in additional claims and judicial appeals, which are costly for both taxpayers and tax administrations. The absence of a EU definition of criteria of good governance can also lead to higher compliance costs at level of tax payers since using individual MSs´ definitions in cross border situations are more complicated to follow.
Impact on EU budget	= No impact
Impact on	= No impact

other parties	

6.2. Objective 1 - Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities

6.2.1. Policy option A1: Presenting an action plan including prioritising specific measures

6.2.1.1. Description

An increase in the efficiency and effectiveness of tax collection is needed. In addition to the fact that Member States must improve their internal mechanisms for tax collection, the problems posed by tax fraud and evasion must be tackled through enhanced cross-border cooperation between Member States' tax administrations.

The June Communication contained a catalogue of 26 possible concrete actions which could have their own added value and would need to be subject to specific impact assessments where appropriate. Furthermore, it suggested an action plan which would present a coherent EU strategy to combat tax fraud and evasion as well as prioritise the different actions and provide a timetable for their implementation, thereby giving a strong political impetus to the process of implementing the proposed key actions and allowing to benefit from the multiplier effect of an overall, comprehensive and coordinated approach.

Within these 26 actions, 17 should be initiated by the Commission while the others fall under the responsibility of Member States tax administrations or the Council.

Concretely, the Action Plan will distinguish between actions under way or likely to be completed in the short term and actions to be developed in the medium to long term.

With regards to the prioritisation of the actions, extensive consultations have taken place with Member States in the Tax Policy Group, a FISCALIS seminar and at the Council High-Level Working Group and with the other stakeholders in the FISCALIS seminar on tax havens, aggressive tax planning, tax fraud and tax evasion (cf. paragraph 2.2). The aim of these consultations was to gauge MS' and stakeholder's reactions on the suggested concrete actions and to establish which of these are considered particularly important and urgent and should be prioritised versus those actions that are considered less urgent or more complex and could therefore be taken forward at varying speeds depending on the action.

Although all the parties consulted (Member States and other stakeholders: business community, NGOs and academia) confirmed their general support for the various actions, Member States had the opportunity to express an opinion on each individual action and its priority whereas the other stakeholders basically expressed a general view on the subject and a specific opinion only on certain individual actions. Also, all the consultations stressed the necessity for all actions to be undertaken to ensure the greatest possible reduction of costs and burdens for both tax administrations and taxpayers.

Further to these consultations, the majority of Member States and other stakeholders expressed the following respective opinions (+ means positive response, - negative, = no strong opinion, +/- some positive, some negative):

Initiatives that the Commission has already taken and requiring now priority from actors other than the Commission	**Member States**	**Other stake-holders***
(i) Adoption of amended Savings Directive	+	+
(ii) Adoption of the proposed negotiating mandate with Switzerland, Andorra, Monaco, Liechtenstein and San Marino	+	+
(iii) Approval of the draft EU/Liechtenstein agreement on anti-fraud and tax cooperation matters	=	=
(iv) Adoption of the proposed mandate to open similar negotiations with Andorra, Monaco, San Marino and Switzerland	=	=
(v) Adoption of the proposal for a quick reaction mechanism in the field of VAT	+	=
(vi) Implementation of the decision establishing an EU VAT forum	=	+
Actions proposed by the Commission at the same time as the action plan	**Member States**	**Other stake-holders***
(i) Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters	+	+/-
(ii) Recommendation on aggressive tax planning		
(iii) Improving administrative cooperation through the new application "TIN on EUROPA"	+	=
(iv) The implementing regulation of Directive 2011/16/EU on administrative cooperation in the field of taxation	+	=
(v) A Regulation amending Regulation No 3199/93 and providing for a Euro denaturant for completely and partly denaturated alcohol	+	=
Actions to be undertaken in the short term (December 2013)	**Member States**	**Other stake-holders***
(i) Better cooperation between all law enforcement services (including between direct and indirect taxation areas and not	+	+

only on tax fraud and evasion but also on tax related crimes through e.g. Europol)		
(ii) Promotion of EU IT tools and standard of automatic exchange of information in international forums	+	+
(iii) Promotion of the use of simultaneous controls and the presence of foreign officials for audits	+	+/-
(iv) EU taxpayer's charter	=	+
Actions to be undertaken in the medium term (December 2014)	**Member States**	**Other stake-holders***
(i) Developing computerised formats for automatic exchange of information	+	+
(ii) Paving the way for a potential legislative framework for an EU Tax Identification Number (TIN) for cross border operations[26]	+/-	-
(iii) Guidelines for tracing money flows	+	=
(iv) Enhancing risk management techniques (compliance risk management)	+	=
(v) Extend Eurofisc to direct taxation	+/-	=
(vi) Creation of a one-stop shop approach for all taxes in all Member States	+/-	+
(vii) Developing motivational incentives	-	+
(viii) Obtain a mandate for negotiating and concluding multilateral agreements for administrative cooperation in the field of indirect taxes with third countries	=	=
Actions to be undertaken in the longer term (beyond 2014)	**Member States**	**Other stake-holders***
(i) A methodology for joint audits by dedicated teams of trained auditors	-	+
(ii) Develop mutual direct access to national data bases	-	=
(iii) Propose a single legal instrument for administrative	-	=

[26] Some Member State and other stakeholders expressed doubts as regards the possibility to introduce an EU TIN, highlighting that other solutions could be studied such as an improved national TIN.

cooperation for all taxes (iv) Develop a tax web portal (v) Propose an approximation of administrative or criminal sanctions	 +/- -	 + -
Legend: +: Support / =: no opinion / -: No support / +/-: Diverging opinions ** Other stakeholders: business community, NGOs and academia*		

6.2.1.2. Impacts

The consultations have also allowed the Commission to fine-tune the possible orientations of several of these actions, which are presented in Annex 13, in order to ensure the greatest benefits from an overall and coordinated action plan.

In the following tables impacts and effectiveness are presented on an ascending scale from --- to +++.

Expected impact	
Effectiveness in achieving policy objective	++ Medium positive impact: through the on-going and priority actions, the action plan allows reaping the invaluable benefits of the automatic exchange of information and enhanced identification of taxpayers in the case of cross-border transactions, reacting promptly against sudden and massive VAT frauds resulting in considerable loss for the treasuries, solving cross-border VAT problems through dialogue with traders and raising awareness and education of VAT taxpayers to ease compliance; the benefits of the other concrete actions will be obtained later on.
Fundamental rights	- Low negative impact: the policy option might affect the right to the protection of personal data, recognized in Article 8 of the charter of Fundamental Rights of the EU, as the action plan may result in more personal data being exchanged in the interest of public finance; any personal data exchange should comply with the existing EU rules.
Economic impact	++ Medium positive impact: Although the introduction of additional measures may trigger modifications in the behaviour of taxpayers, the functioning of the internal market will at the same time be improved through the elimination of various bias in tax administration, enforcement and collection.
Social impact	+++ High positive impact: by improving the administrative cooperation, this policy option will increase the effectiveness and timeliness of cross-border tax administration, enforcement and collection; the

	option will also result in a deterrent effect, encouraging taxpayers to report all relevant tax information and thus increasing voluntarily tax compliance on a go-forward basis; whereas the impact on employment is very much indirect, the actual existence of a level-playing field of all taxpayers and fair and equal treatment between them will also increase significantly social cohesion and tax morale in the society.
Impact on taxpayers	++ Medium positive impact: The policy option will induce a positive effect on the horizontal equity between the various categories of income and capital and all taxpayers.
Impact on tax administrations	+++ High positive impact: although the action plan entail costs and change management, it will foremost strongly simplify procedures and administrative burdens on tax administrations through wider computerisation, exchange of best practices and common guidelines, thereby rationalising approaches and freeing resources.
Impact on EU budget	- Low negative impact: further to the adoption of an action plan, the Commission services will have to study and potentially implement various concrete actions, requiring additional human and budgetary resources.

6.3. Objective 2: Close loopholes and potential for abuse in MS' direct tax legislation and double tax conventions)

6.3.1. Policy option B1: Address loopholes in national legislation in the Code of Conduct Group for business taxation

The tax systems of EU MS are subject to a number of loopholes stemming from national legislation. Some of them are currently being examined by the Code of Conduct group.

Efforts to counter aggressive tax planning schemes at EU level have recently taken place essentially in the work of the Code of Conduct for business taxation, and focused on hybrid entities and mismatches. The Code was specifically designed to detect measures which unduly affect the location of business activity in the EU by providing a lower level of taxation, including zero taxation, than those that generally apply in the country concerned. For the purpose of identifying such harmful measures the Code sets out the criteria against which any potentially harmful measures are to be tested against, such as tax benefits reserved for (transactions with) non-residents, the granting of tax advantages even in the absence of any real economic activity, or lack of transparency.

Recently, within the Code of Conduct Group an increasing amount of work has been directed at 'mismatches' (for example hybrid, profit participating loans). The Code Group has clearly agreed on the need to resolve these mismatches and it even identified a possible solution based on mutual recognition but has not yet been able to implement this.

At broader international level, recent actions by the OECD have also targeted aggressive tax planning (ATP), focusing primarily on artificial tax avoidance issues[27].

The main conclusions are:

a) Hybrid mismatch arrangements that arguably comply with the letter of the laws of two countries but that achieve non-taxation in both countries, which result may not be intended by either country, generate significant policy issues in terms of tax revenue, competition, economic efficiency, fairness and transparency.

b) The same concern that exists in relation to distortions caused by double taxation exists in relation to unintended double non-taxation.

c) Specific and targeted rules which link the tax treatment in the country concerned to the tax treatment in another country in appropriate situations hold significant potential to address certain hybrid mismatch arrangements and have recently been introduced by a number of countries.

d) Countries' experience in relation to the design, application and effects of specific and targeted rules denying benefits in the case of hybrid mismatch arrangements is positive. The application of the rules needs however to be constantly monitored to ensure that the rules apply in appropriate circumstances and are not circumvented through the use of even more complex arrangements.

The OECD has also set up a specific restricted working group, dedicated to detecting aggressive tax planning schemes, of which14 EU MS are members.

Because this option is already underway its impact has not been formally assessed.

6.3.2. *Policy option B2: Recommendation to prevent double non taxation in double tax conventions*

States often undertake, in their double tax conventions (DTC), not to tax certain items of income without necessarily taking into account whether such items are subject to tax in the other party of that convention. This may lead to double non-taxation. There are examples of DTC which contain a provision to ensure that double non taxation is avoided in cross-border situations, by disallowing exemption of untaxed income. For instance, the Protocol of the DTC between France and Italy in its point 15 provides that exemption shall only be granted if and to the extent such income is taxable in the other State. However, this type of solution is rare, which means that double non-taxation may occur in the implementing double taxation conventions between EU MS.

Such type of solution could, assuming agreement on article 1 of the revised Interest and Royalty proposal[28], be applied between MS, and also between MS and third countries. It would ensure that, in bilateral relations between MS (340 DTC) and

[27] Reports: "Hybrid Mismatch Arrangements: Tax Policy and Compliance Issues, March 2012; Tackling Aggressive Tax Planning through Improved Transparency and Disclosure, February 2011

[28] Proposal for a Council directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM(2011)714, 11.11.2011.

between MS and third countries (almost 1349 DTC see also annex 8) , double non-taxation would be avoided.

Concrete action by all Member States intended to remedy the problems related to double non-taxation is needed and would improve the operation of the internal market. Therefore, the Commission recommends MS to include a clause in their DTC concluded with other EU MS and with third countries to resolve a specific identified type of double non-taxation. Support was received from Member States, the business community and NGOs.

Expected impact	
Effectiveness in achieving policy objective	+++ High positive impact, in bilateral situations covering two EU MS or one MS and a third country. This option will bring to completion the specific policy objective of closing loopholes stemming from DTC provided that MS implement the recommendation. This will have however no impact on situations involving more than 2 countries.
Fundamental rights	+ Low positive impact. Given the expected effects of the planned measures on Member States' revenues, and the potential re-allocation of additional tax revenues to welfare institutions, a positive impact could be expected with regard to some rights, such as those enshrined in art. 34 (social security and social assistance), art. 35 (health care) and art. 36 (access to services of general interest).
Economic impact	++ Medium positive impact. This option will contribute to reduce the scope of double non-taxation, and to improve accordingly the tax revenues of EU MS. It may lead tax administrations to more flexibility in dealing with cross-border situations. Insofar as the additional tax revenues would be collected from improved compliance, it may contribute to reducing compliance costs and improving competitiveness of EU companies (including SME in cross-border situations) in cross-border situations with other EU Member States or with third countries. In addition, although it is difficult to assess the impact of this measure on the overall competitiveness of economic operators, a qualitative assessment suggests that there will be an overall balance between the increases in taxes paid by current avoiders and the reduction in compliance costs due to simplification of procedures that should benefit to all operators (in addition to indirect benefits such as improved welfare and infrastructures that MS will be better enabled to finance).
Social impact	= No impact
Impact on taxpayers/tax administrations	++ Medium positive impact. By reducing the scope for double non-taxation this option would also reduce the opportunities for a small number of taxpayers to reduce their tax costs. However this could lead to reduce pressure on tax administrations and reduce

	compliance requirements for EU taxpayers in cross-border situations. This would apply between EU Member States having included such a provision in their DTCs, and also between EU Member States and third countries under the same condition.
Impact on EU budget	= No impact
Impact on other parties	= No impact

6.4. Objective 3 - Improve the efficiency of measures taken at national level to counter international tax avoidance

6.4.1. Policy option C1: Recommendation of EU compliant and effective general anti-abuse measures in MS

General anti abuse rules (GAAR) applied currently by individual MS can be summarised as rules that generally prevent taxpayers from entering into abusive transactions/planning, for the sole (or main) purpose of avoiding or reducing a tax charge.

The measures are generally laid down in primary law. Some of the measures are based on case law or derived from tax-administration practices (Denmark, France, the Netherlands and Sweden). MS apply different types of GAARs which can be categorised according to the following concepts/principles:

– abuse of law: the law is formally complied with but in a way that is not compatible with its spirit;

– the substance-over-form principle: the law is formally complied with but there is a lack of substance supporting the transaction/restructuring so that the tax authorities can disregard its form;

– the simulation/sham concept: a transaction is entered into by parties but not adhered to by them because another transaction, which is adhered to, alters or negates the first transaction.

Existing anti-abuse measures cover a wide variety of forms and targets, having been designed in a national context to address the specific concerns of MS and features of their tax systems. However, some anti-abuse measures adopted by MS may raise some compliance issues with EU rules[29] or other international rules when applied to third countries. Following the 2007 EC Communication on anti-abuse measures in the area of direct taxation (COM(2007)785)[30] and in reaction to the case law of the Court of Justice of the EU, the Council adopted a resolution in 2010[31] on coordination of tax policies in anti-abuse measures. This mainly focused on CFC and

[29] Jurisprudence of the Court of Justice, e.g. Case C- 196/04 Cadbury Schweppes [2006] ECR I- 7995.

[30] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0785:FIN:en:PDF

[31] Council Resolution, The coordination of the Controlled Foreign Corporation (CFC) and Thin Capitalisation rules within the European Union, 10597/2010, 08.06.2010.

thin capitalisation. Article 80 of the proposed CCCTB Directive[32] contains a general anti-abuse rule stipulating that artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base. This approach could be recommended for all company tax legislation, not just the CCCTB.

The Commission could recommend to counteract aggressive tax planning practices which fall outside the scope of Member States´ specific anti-avoidance rules and that Member States adopt the following general anti-abuse rule, fitted to domestic and cross-border situations confined to the Union and situations involving third countries: "An artificial arrangement or an artificial series of arrangements which has been put in place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. National authorities shall treat these arrangements for tax purposes by reference to their economic substance." This GAAR is in compliance with Treaty Freedoms, as interpreted by the Court of Justice. This common approach towards third countries will establish a minimum protection standard against aggressive tax planning. Some support was received from Member States, the business community and NGOs.

Expected impact	
Effectiveness in achieving policy objective	++ Medium positive impact. However the effectiveness of this option will depend on EU MS' willingness to implement it at their level.
Fundamental rights	+ Low positive impact. Given the expected effects of the planned measures on Member States' revenues, and the potential re-allocation of additional tax revenues to welfare institutions, a positive impact could be expected with regard to some rights, such as those enshrined in art. 34 (social security and social assistance), art. 35 (health care) and art. 36 (access to services of general interest).
Impact on the four freedoms	++ Medium positive impact. This option would ensure that the anti-abuse measures adopted and implemented by EU MS on the basis of this template would raise no EU compliance issue.
Economic impact	+++ High positive impact. This would affect essentially companies having cross-border activities within the EU (including SMEs) and in relation to third countries. It would reduce the compliance costs (see below) of EU companies resulting from current multiple anti-abuse requirements and could positively affect the competitiveness of EU companies by bringing their compliance costs closer to those of third countries. This could, together with other factors, contribute to reducing the motivation for relocating economic activities outside the EU.

32 COM (2011) 121

	This option could positively affect trade and investment flows in cases involving third countries by reducing inconsistencies in regulations implemented by MS towards these countries. The reduction of such inconsistencies would improve the operation of the internal market. Preferential trade arrangements between the EU and the third countries concerned should not, as such, be affected since these arrangements contain a tax carve-out provision protecting the possibility for the parties to adopt measures aimed at either adopting or enforcing national tax rules designed to combat avoidance or evasion of taxes. Moreover, since national anti-abuse measures of MS would be more consistent in their design, this option could reduce the adjustment costs for developing countries not having concluded with the EU MS concerned a DTC containing specific provisions on anti-abuse rules.
Social impact	= No impact
Impact on taxpayers/tax administrations	+++ High positive impact. The most positive impact would be for companies having cross-border activities in several MS, since the simplification of administrative burden, resulting from the implementation of EU MS's comparable anti-abuse rules, would reduce the compliance costs for taxpayers. This option is likely to have little impact on the number of audits made by tax administrations, but the consistent design of anti-abuse measures across EU MS is likely to reduce the number of potential litigations for EU companies operating in several MS, thereby having a positive impact on MS' administrative costs.
Impact on EU budget	= No impact
Impact on other parties	= No impact

6.5. Objective 4 (Options D1 and D2) - Improve in an EU context the leverage that MS might have in convincing third countries to implement good governance in tax matters

In order to add leverage in convincing third countries to implement the principles of good governance in the tax area, the Commission could recommend a common EU definition of jurisdictions not complying with minimum standards of good governance in tax matters (D1) that could be used for the purposes of national anti-abuse rules, and as second step a toolbox of measures to be applied according to whether or not those jurisdictions comply with those standards (D2).

6.5.1. *Policy option D1: Recommended EU definition of jurisdictions not complying with minimum standards of good governance in tax matters*

Currently, only few MS have a formal definition of jurisdictions not complying with minimum standards of good governance in tax matters, including tax havens, although many of them have various concepts which describe such jurisdictions. Those concepts are generally based on the level of taxation in the country concerned or its level of cooperation on the principles of transparency and information exchange. Different MS also use different terms for such countries (low tax territories, non-cooperative states or territories, non-treaty countries, countries with a low tax burden, countries with a low tax burden, tax havens). This leads MS to consider different third countries as tax havens and makes difficult the setting-up of any coordinated action within the EU.

It was highly recognised by MS and stakeholders present at the July Fiscalis seminar that a prerequisite for possible joint action at EU level should be based on a common definition of jurisdictions not complying with minimum standards of good governance in tax matters..

In order to prepare for a general approach and add leverage to EU action it is suggested to elaborate an EU definition of jurisdictions not complying with minimum standards of good governance in tax matters.

This definition could be based potentially on various criteria:

– the two criteria of transparency and information exchange, known as the 'international standard on transparency and information exchange' and recognised by the OECD and the UN. Since the assessment of these criteria is made by the OECD Global Forum on transparency and exchange of information, the EU could rely on the OECD assessment and no specific work would be considered at EU level;

– the technical criteria of tax havens developed by the OECD in its 1998 report. However, since this route is not currently being actively followed by the OECD, and is not based on an EU- agreed work, there seems to be little chance for the EU to reach agreement within a reasonable period of time;

– the sole criteria of the Code of Conduct for business taxation, as already implemented by the 27 MS and their dependent and associated territories. This route would address the concerns of a number of MS, and could be the basis for a political agreement, but still lacks any assessment of the international standard of transparency and exchange of information;

– the three principles of good governance in the tax area, i.e. including fair tax competition. Some MS have suggested the level of taxation should also be taken into account- others are less keen on this aspect.

Expected impact	
Effectiveness in achieving	+++ High positive impact. This option would be of high effectiveness, although its effectiveness depends on how many MS adopt it. The higher effectiveness would occur if all 27 MS would adopt

policy objective	this list.
Fundamental rights	+ Low positive impact. Given the expected effects of the planned measures on Member States' revenues, and the potential re-allocation of additional tax revenues to welfare institutions, a positive impact could be expected with regard to some rights, such as those enshrined in art. 34 (social security and social assistance), art. 35 (health care) and art. 36 (access to services of general interest).
Economic impact	+++ High positive impact: If the EU definition of minimum standards of good governance is commonly applied in all MS then the impact on a particular third country which is considered as not complying with such standards (which includes tax havens) is substantially different than if such a country is considered as a tax haven by one MS only. This country can be then more forced to implement the principles of good governance in the tax area, i.e. to establish a transparent tax system, to exchange tax information and not to introduce harmful tax practices. This could shift profits and income from the third countries concerned back to MS limit and thus bring additional revenues to MS budget. It would also improve the competitiveness of EU companies by broadening the geographical scope of tax requirement currently being applied mostly in the EU. In addition, although it is difficult to assess the impact of this measure on the overall competitiveness of economic operators, a qualitative assessment suggests that there will be an overall balance between the increases in taxes paid by current avoiders and the reduction in compliance costs due to simplification of procedures that should benefit to all operators (in addition to indirect benefits such as improved welfare and infrastructures that MS will be better enabled to finance).
Social impact	++ Medium positive impact: The ability of larger companies to reduce their taxes could be limited and thus affecting public confidence in the fairness of the tax system.
Impact on taxpayers/tax administrations	++ Medium positive impact: a common understanding of the EU definition and a common definition, allowing to ascertain whether a third country complies or not with standards of good governance, can reduce costs to tax administrations since such a definition can be more easily followed in all MS.
Impact on EU budget	= No impact
Impact on other parties	- Low negative impact: from the perspective of developing countries the possible shifting of profits and income from the third countries concerned back into MS could have a negative impact on tax havens economies since some of these economies are fully depended on a worldwide recognition of being a capital market

	centre.

6.5.2. Policy option D2: Recommendation for a Toolbox of measures to be applied to jurisdictions not complying with minimum standards of good governance

Introduction of a toolbox of measures to be used by MS and EU institutions according to their respective competences in order to better convince third countries to cooperate in the tax area with EU MS in a tailor made approach by countries.

So far, MS have reacted individually with measures at national level, adopted by each country according to its own criteria. To address international tax challenges involving, in particular, third countries national remedies only are often of limited efficiency. During the consultation process it was broadly recognised by MS that these individual or specific actions often had limited effectiveness given the international scope of the problem. Strong support was received from Member States, the business community and NGOs to introduce this toolbox. This option describes a set of measures to be used in convincing third countries to cooperate with EU MS in tax matters operated by the MS.

1. Removal from national blacklists / Blacklisting (MS level)

Once a third country would be considered as a cooperative jurisdiction by MS and the EU institutions on the basis if the EU definition of jurisdictions not complying with minimum standards of good governance, it would be recommended to remove such a country from existing blacklists of individual MS. MS would then stop from applying anti-abuse measures toward this country. Such a measure would add leverage in convincing this third country to implement the principles of good governance in the tax area and thus be considered as a cooperative jurisdiction by 27 MS.

On the contrary, if a third country is considered as a jurisdictions not complying with minimum standards of good governance, then MS could be recommended to include such a country in their national blacklists and apply the measures contained in the toolbox.

2. Conclusion of double tax conventions (DTC) / Suspension/ termination of DTC (MS level)

Once a third country implements the principles of good governance in the tax area it may be recommended to the MS to conclude DTCs with this country. A third country to which such a benefit is promised to be granted may be convinced more easily to cooperate. On the contrary, if a third country refuses the application of principles of good governance, then MS could be recommended to suspend or terminate their double tax conventions with such a country. However, in certain cases, it could be more advantageous for the overall situation, in terms of good governance, if the Member State concerned initiated re-negotiation of its double taxation agreements.

3. Ad hoc detachment of experts from EU MS (MS level) to developing countries

Some third countries, especially the developing ones suffer from a lack of resources to effectively fight against tax evasion and aggressive tax planning, for instance, to exchange of tax information properly. In order to assist such countries with providing the relevant information EU MS could be recommended to offer closer cooperation with those countries and detach their own tax experts there for a limited period of time. This would avoid having third countries opposing capacity constraints to refuse exchanging information.

In addition to measures recommended to Member States, and in order to accompany their efforts, the following measures of EU competence could be considered by the Commission.

1. Possible enhancement of development aid for capacity building (EU level – outside the toolbox)

The Commission provides technical assistance for the implementation of the principles of good governance in the tax area (transparency, exchange of information and fair tax competition) to developing countries that are committed to these principles. In this respect further EU assistance in the tax area should continue to focus, as a priority, on supporting efforts in third countries to implement compliance with the three principles of good governance in the tax area. With this EU assistance would not run the risk of being used by countries that would ultimately engage in harmful tax practices against EU MS.

2. Impact to be taken into account when concluding preferential economic relations such as free trade agreements (EU level – outside the toolbox)

The conclusion of preferential economic relations, such as access to EU markets, with third countries identified as not complying with minimum standards of good governance, should be considered in the overall context of a costs/benefits analysis including tax aspects. In practice it means that conclusion of free trade related agreements could be accompanied by agreement on the principles of tax good governance, and their implementation, for example.

Expected impact	
Effectiveness in achieving policy objective	+++ High positive impact: the effectiveness of this option would be moderate if very few MS subscribe to it. It is likely to be high, if a large majority of (or all) the 27 MS agree on the set of measures. By raising awareness of third countries on possible measures from MS, this option would have some effectiveness.
Fundamental freedoms	= No impact
Economic impact	+++ High positive impact: The suggested option can strengthen the integrity and fairness of tax structures and encourage compliance by all taxpayers. It is also expected to bring additional revenues to MS budget. In addition, although it is difficult to assess the impact of this measure on the overall competitiveness of economic operators, a qualitative assessment suggests that there will be an overall balance between the increases in taxes paid by current avoiders and the reduction in compliance costs due to simplification of procedures that should benefit to all operators (in

	addition to indirect benefits such as improved welfare and infrastructures that MS will be better enabled to finance).
Social impact	++ Medium positive impact: the ability of larger companies to reduce their taxes could be limited and thus affecting public confidence in the fairness of the tax system.
Impact on taxpayers/tax administrations	+++ High positive impact: the approach is expected to help eliminating the use of tax non-compliant jurisdictions, and and thus to decrease costs of tax payers and tax administration which otherwise have to spend their financial and human resources to follow them in order to use them or to fight against them. The compliance burdens on tax authorities and tax payers can be also decreased. This can also eliminate or decrease undesired shifts of part of the tax burden to less mobile tax bases, such as labour, property and consumption.
Impact on EU budget	= No impact
Impact on other parties	- Low negative impact: from the perspective of developing countries the possible shifting of profits and income from the third countries concerned back into MS could have a negative impact on tax havens economies since some of these economies are fully depended on a worldwide recognition of being a capital market centre.

7. ASSESSMENT OF THE IMPACT ON SMALL AND MEDIUM ENTERPRISES (SME)

The measures assessed are primarily directed to MS. They might indirectly affect businesses and individuals, since they are taxpayers

Those taxpayers currently "using" fraud and evasion schemes or sophisticated tax planning are currently paying less tax than those fully complying with MS's tax rules. As a result of the measures envisaged, non-compliant taxpayers will in the future pay more taxes than they do currently. This should conversely result in fairer tax systems and possibly a reduction in tax rates if the full amount of tax due is collected.

However, there is no indication that SME would be specifically affected by the measures, since such elaborated schemes based on international schemas are less likely to involve SME than large enterprises. SME should, therefore, be among those taxpayers that are more likely to benefit indirectly from fairer tax systems. Simpler common EU approaches should reduce compliance costs for all companies, including SMEs.

In addition, at this stage of the assessment, it is difficult to assess the quantitative impact of the initiative on economic operators. However, a qualitative assessment suggests, for the reasons outlined above, that SMEs will "suffer" less from the increase in tax as they are less likely to use such schemes, but benefit more from any reduction in compliance cost due to simplification. Work in the Joint Transfer Pricing Forum on SMEs confirms that SMEs tend to have fewer complex problems but suffer disproportionately from excessively complex compliance procedures.

Overall, the conclusion of the impact assessment contains no indication that the selected options might result in a disproportionate burden for SMEs as compared to the current situation. Therefore, there is no need for SME specific measures (see annex 11).

8. COMPARISON OF MAIN OPTIONS

8.1. Definition of the assessment criteria

For assessing the Policy Options to protect MS's tax systems (Policy Option A), and for closing loopholes and potential for abuses of MS' direct tax systems and improving the efficiency of measures taken at national level to counter international tax avoidance (Policy Options B, C, and D) the following criteria will be used:

– Incentive: Incentive for MS to strengthen their rules

– Effectiveness: in terms of achieving the objective

– Proportionality: Going no further in terms of EU measures than is necessary to achieve the objective

– Efficiency: The extent to which the objective can be achieved for a given level of resources/ at least cost

– Flexibility: Ease of adjustment to react to changes of the economic circumstances

8.2. Comparative assessment of Policy Option A1: Enhance tax administration, tax enforcement and tax collection in the case of cross-border transactions

Criteria	Baseline scenario (no EU action)	A1: Action plan
Incentive	=: No incentive effect	+++: As demonstrated by the call[33] addressed in March 2012 by the European Council to the Council and the Commission as well as the resolution[34] of the European Parliament one month later, there is a clear interest and a political will to develop rapidly concrete actions against tax fraud and tax evasion. As the action plan will be a central element in the way forward to this end, there is a clear incentive for Member States to adopt the action plan and later on support the implementation of the derived concrete actions and adapt their rules, procedures and systems as far as necessary.
Effectiveness	=: No effectiveness	+++: The action plan will permit to put in place streamlined working methodologies and approaches to tax administration, enforcement and collection.
Proportionality	=: Not relevant	+++: The proportionality of the action plan is ensured by: - The focus of action plan is on clear priorities where action has been identified as necessary in consultation with Member States ; - The commitment to carry out specific (proportionate) impact assessments analysing various options for each of the concrete actions before a proposal is made; - The participation of Member States in both the preparation and the adoption of the options.
Efficiency	=: No proportionality issue	+++: : The action plan will lead to better results for tax administration in terms of tax enforcement and tax collection and thereby to a better protection of MS tax systems.
Flexibility	=: Not relevant	+++: The action plan offers flexibility as it sets out concrete actions on the basis of a priority list whereas the option to be retained for each of these concrete actions will be determined on the basis of further work (including potentially studies, public consultations, seminars with Member States...) assessing the various possible ways forward.
Conclusion: The policy option 2 foreseeing an action plan presenting concrete measures reinforcing the fight against tax fraud and tax evasion is the		

33 Council of the European Union, 7824/1/12 REV1

34 European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion, P7_TA(2012)0137

preferred option as it is the only option both achieving the effectiveness of the policy objective while ensuring that the requirements to proportionality, efficiency and flexibility are respected.

8.3. Comparative assessment of Policy Option B2 : Close loopholes stemming from double tax conventions

Criteria	Baseline scenario (no EU action)	B2: Recommendation
Effectiveness	----: No effectiveness. Loopholes remain.	+++: This option would contribute to achieving the objective of closing loopholes stemming from DTC. The implementation would be left to the MS concerned, unless in the course of the discussions with MS it appears relevant to provide for a monitoring process. If a clause to avoid double non taxation was included in a comprehensive network of double taxation treaties between Member States, this would help meeting the objective of reducing double non taxation of cross-border activities within the EU. However, consideration should be given to possible differences of interpretation or implementation given the differences amongst the 27 tax systems.
Proportionality	=: this option does not conflict with proportionality standards.	+++: This option would be in line with the principle of proportionality standards as it directed to solve only limited cases of double non- taxation. The measures would not go beyond what is necessary to address the problems identified. At this stage, it would not involve harmonisation of Member States' law.
Efficiency	=: Not relevant	+++:From an efficiency point of view this option would be the best solution, allowing to design at EU level a template on which basis MS would amend their existing DTC or negotiate new ones, thereby closing loopholes in their DTC. MS should ensure the implementation. However, Member States would have to reopen their existing bilateral tax conventions to include such tax provisions, which could take some time and involve some administrative costs for tax administrations and for businesses covered by these conventions. The scale of these costs should be similar to those of minor changes in tax legislation. Tax conventions require regular updating to reflect changes in laws if they are to eliminate double taxation successfully. Furthermore, because of their bilateral nature, DTC might not be capable of addressing problems resulting from taxation by more than two countries.
Flexibility	=: Not relevant	+++: This option would not impose any binding obligation on Member States to eliminate double non-taxation.
Conclusion: as regards policy options, the preferred option is Policy		

8.4. Comparative assessment of policy option C1: Adopt EU compliant and effective anti-abuse measures in MS

Criteria	Baseline scenario (no EU action)	C1: Recommendation
Effectiveness	----: No effectiveness. This option would not achieve the objective.	+++: The effectiveness of this option would rely on the decision of MS, and would improve the incentive for Member States to design efficient anti- abuse rules.
Proportionality	=: this option does not conflict with proportionality standards.	++++: By leaving it to the MS to decide on the design of their own measures, the option would remain proportionate. The GAAR is designed to counteract situations which fall outside the scope of national anti avoidance rules in line with the law of the EU. This option would improve knowledge about the applicable anti abuse rule, thereby complementing Commission's actions to tackle incompatibilities with EU law by way of infringement proceedings.
Efficiency	=: Not relevant	+++: The option would be efficient since only MS considering their current measures as inefficient would adapt their rules
Flexibility	=: Not relevant	+++: The option would allow MS to have a flexible approach according to their needs. They would remain free to adopt other anti-abuse measures designed to address some specific features of their tax systems. This rule can be adapted to cater for evolutions in Court of Justice case law and new developments in Member States' laws.
Conclusion: As regards policy options, the preferred option is Policy Option C1. It would rely on MS' willingness to implement. In addition, option C1 is proportionate and flexible: it takes into account the comments received from experts that an anti-abuse measure designed at EU level should leave open the possibility for MS to adopt relevant other measures corresponding to the specific features of their tax systems.		

8.5. Comparative assessment of policy options D1 : a definition of jurisdictions not complying with minimum standards of good governance in tax matters

Criteria	Baseline scenario (no EU action)	D1: Recommendation
Effectiveness	----: No effectiveness. This option would not achieve the objective.	++: This option would be of medium effectiveness, since its effectiveness depends on how many MS adopt it. The higher effectiveness would occur if all 27 MS would adopt this list[35].
Proportionality	=: this option does not conflict with proportionality standards.	+++: This option remains within the proportionality rules since it is based on the criteria of good governance in tax matters, which are recognised at EU level and implemented by all EU MS. In addition, the policy option would be implemented on a voluntary basis by MS.
Efficiency	=: Not relevant	+++: Adefinition of jurisdictions not complying with minimum standards of good governance in tax matters elaborated together with the MS would be a simplification that would save costs at national level. The measure is therefore efficient.
Flexibility	=: Not relevant	+++: The criteria would be reviewed on a regular basis (time period to be agreed with the EU MS and that could be annual for instance), which would therefore ensure its flexibility.
Conclusion: The preferred option is Policy Option D1, which would have the higher efficiency in achieving the objective of adding leverage towards third countries and sending a strong message to them of it were to be adopted by all 27 MS, as underlined by some experts consulted, while remaining proportionate and flexible.		

35 An empiric example of this effect is the Global Forum on Transparency and Exchange of Information - many States took action to be removed from its black list.

8.6. Assessment of policy options D2: Toolbox of measures that could be applied towards jurisdictions not complying with minimum standards of good governance in tax matters

Criteria	Baseline scenario (no EU action)	D2: Recommendation
Effectiveness	----: No effectiveness.	+++: The effectiveness of this option would be moderate if very few MS subscribe to it. It is likely to be high, if a large majority of (or all) the 27 MS agree on the set of measures. By raising awareness of third countries on possible measures from MS, this option would have some effectiveness.
Proportionality	=: this option does not conflict with proportionality standards.	+++: MS have to take a variety of measures to limit harmful effects which can be circumvented by routing business through another state with a lower level of protection. A common apporach towards jurisdictions not complying with minimum standards of good governance in tax matters is therefore proportionate. In addition, the EU level is the lowest level where the 27 MS could discuss together and agree on a potential list of measures to be applied towards third countries.
Efficiency	=: No efficiency	+: The option would be efficient since only MS considering their current measures as inefficient would adapt their rules. When all Member States adopt the measures proposed then jurisdictions not complying with minimum standards of good governance will have a higher motivation to reform their tax systems implementing good governance in the tax area in such a way that they are no longer considered to fall within the definition compared to the situation where each MS apply different or no countermeasures.
Flexibility	=: Not relevant	++: The option is flexible because it leaves open the possibility for MS to apply some or all of the measures, and does not prevent them from applying other measures if need be.
Conclusion: The preferred option is Policy Option D2 because of its higher effectiveness in addressing a strong message of EU determination and consistency to third countries, as underlined by experts consulted, and its flexibility leaving to the MS the possibility to adopting additional measures if need be.		

9. THE PREFERRED OPTIONS

In view of its effectiveness, proportionality and flexibility, the preferred option for meeting objective 1, i.e. enhance tax co-operation, tax administration, tax enforcement and tax collection for cross-border operations between Member States tax authorities, is the issuance of an action plan in which measures will be presented and prioritised. Choosing the no-change option would carry high risks.

The plan can focus on actions for different stakeholders and establish priorities in line with clear stakeholder preferences with emphasis on:

– Measures to enhance existing instruments of co-operation: strong support was received from Member States, the business community and NGOs, in particular to enhance automatic exchange of information and develop common formats to facilitate this type of co-operation. Support to the identification of taxpayers was given by Member States but some of them and the business community expressed reservations on the setting up of an EU TIN as potentially likely to generate administrative burden and costs;

– Prioritisation of VAT actions: strong support was received from Member States, the business community and NGOs, to develop instruments and tools aiming at fighting against VAT fraud and evasion, in particular as regards a quick reaction mechanism;

– Other supporting measures subject to further consultation and assessment.

The individual elements to be brought into the plan as identified in the Commission's June Communication[36] cover a variety of actions as set out in this Impact Assessment.

The preferred options for dealing with third countries not complying with minimum standards of good governance in tax matters, as well as with aggressive tax planning flow from the comparison tables above, as a combination of Policy Options B2, C1, D1, and D2. This is a more detailed series of measures where rapid progress in the short term could be achieved.

Four main actions could be envisaged relating to:

– A template for a double non-taxation provision to be inserted in double tax conventions between EU MS and between EU MS and third countries,

– A recommended EU wide anti-abuse measure for MS to adopt,

– A recommended EU definition of third countries not complying with minimum standards of good governance in tax matters on the basis of the principles recognised in this area (transparency, exchange of information and fair tax competition), and

[36] COM (2012) 351 final

– A recommended toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined;

The final choice of actions will depend on a political appreciation of the feasibility and relevance thereof given the potential effect on MS budget resources.

10. MONITORING AND EVALUATION

10.1. Fraud and Evasion

The monitoring and evaluation of the effects of the elements of the Action Plan and the specific measures on tax havens and aggressive tax planning will need to be foreseen in the proposals for the concrete actions. However, in order to ensure that the action plan itself is actually converted into concrete actions and that the expected results are delivered, the Commission could issue progress reports on a regular basis. Such progress reports would include details on the proposals made and their implementation status, building for example on the following indicators:

- number and types of practical instruments (including IT tools) developed by the EU and its Member States to enhance exchange of information;

- number and type of practical instruments (including IT tools) developed by the EU and its Member States to improve the identification of taxpayer;

- number and types of measures adopted in the realm of the fight against VAT fraud and evasion;

- number and types of guidelines or other tools developed by the Commission and its Member States to enhance taxpayers' compliance in the realm of VAT.

10.2. Jurisdictions not complying with minimum standards of good governance, as well as aggressive tax planning

Given the nature of the preferred options, it is not easy at this stage to define appropriate indicators.

Indeed, the best quantitative indicator would probably be based on the evolution of MS revenue losses stemming from tax fraud, evasion, as well as from the use of tax havens and aggressive tax planning. However, establishing a reliable quantitative baseline for monitoring has not been possible.

Progress could therefore be monitored by preparing regular reports from the Commission on the implementation of any recommendations to be discussed at ECOFIN level.

Such reports could cover the following information:

– the number of double tax conventions of the MS that include the clause for avoiding double non-taxation. Given the time necessary for bilateral negotiations, the assessment of the application of this measure could be made after in 3 years’ time;

– the number of MS having made use of any recommended Anti-abuse measures and principles;

– the application of a common definition of third countries not complying with minimum standards of good governance in tax matters (which includes tax havens), and on adopting a toolbox of measures to be applied according to whether or not the third countries concerned comply with the minimum standards defined.

– difficulties encountered and progress achieved in convincing third countries to cooperate in tax matters. This would include as appropriate progress achieved in the Code of conduct Group on business taxation, in specific negotiations with third countries, and in international fora.

11. LIST OF ANNEXES

1. Annex 1: Agenda of the Fiscalis Seminar, Brussels, 17th July 2012 on non-cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion

2. Annex 2: Discussion Paper on possible future measures against non- cooperative jurisdictions and aggressive tax planning and a possible strategy at EU level, discussed at the Fiscalis Seminar, Brussels, 17th July 2012

3. Annex 3: Report of the Fiscalis Seminar, Brussels, 17th July 2012

4. Annex 4: Public Consultation Paper: factual examples of double taxation cases

5. Annex 5: Summary report of the responses received on the public consultation on factual examples and possible ways to tackle double non-taxation cases

6. Annex 6: Tax havens: Review of economic literature and quantitative estimations

7. Annex 7: Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

8. Annex 8: Table of Tax treaties with third countries

9. Annex 9: Tables extracted from the study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

10. Annex 10: Extract of the study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

11. Annex 11: SME Test

12. Annex 12: Impact of Policy Options

13. Annex 13: List of actions considered in the Communication of 27 June 2012

14. Annex 14: Glossary

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{SWD(2012) 404 final}

EUROPEAN COMMISSION
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TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
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Annex 1

Fiscalis 2013 Programme

NON-COOPERATIVE JURISDICTIONS, AGGRESSIVE TAX PLANNING, TAX FRAUD AND TAX EVASION

BRUSSELS (BE), 17 JULY 2012

AGENDA

10:00-13:00

1. Outline results of the public consultation on double non-taxation (Presentation and discussion)

2. Review of existing measures in relation to non-cooperative jurisdictions and aggressive tax planning and presentation of the outcome of a PWC Study on existing and proposed tax measures of a sample of EU Member States (Presentation and discussion)

3. Report from the Commission to the Council on concrete ways to improve the fight against tax fraud and tax evasion including in relation to third countries pursuant the European Council conclusions of 1st and 2nd March 2012 (Presentation)

4. Commission's Discussion Paper on possible future measures against non-cooperative jurisdictions and aggressive tax planning and a possible strategy at EU level (Presentation and discussion)

EUROPEAN COMMISSION
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SEMINAR ON NON-COOPERATIVE JURISDICTIONS, AGGRESSIVE TAX PLANNING, TAX FRAUD AND EVASION

17 July 2012

14:30-18:00

AGENDA

1. Outline results of the public consultation on double non-taxation (Presentation and discussion)

2. Review of existing measures in relation to non-cooperative jurisdictions and aggressive tax planning and presentation of the outcome of a PWC Study on existing and proposed tax measures of a sample of EU Member States (Presentation and discussion)

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ANNEX 2

DISCUSSION PAPER ON POSSIBLE FUTURE MEASURES AGAINST NON-COOPERATIVE JURISDICTIONS AND AGGRESSIVE TAX PLANNING AND A POSSIBLE STRATEGY AT EU LEVEL – SEMINAR JULY 17 2012

The challenges raised by non-cooperative tax jurisdictions and aggressive tax planning need to be tackled urgently. In addition the European Council called on the Council and the Commission on the 2nd March 2012 to develop concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries and to report by June 2012.

The Commission's response is the Communication[1] adopted on 27th June 2012, which deals more specifically with concrete ways to improve the fight against tax fraud and tax evasion. The Commission also announced that it would come forward later this year with an action plan on these suggestions and an initiative on tax havens and aggressive tax planning.

In order to assist in the preparation of this initiative, the Commission is holding this seminar in order to gather the views of Member States and stakeholders on possible measures.

Issues to be discussed with the Member States and interested Parties

1. ISSUE 1: CHALLENGES TO BE ADDRESSED

Problem description

EU Member States lose both individual and corporate income tax revenue from the shifting of profits and income into low-tax countries. The revenue losses from this tax avoidance and evasion are difficult to estimate, but some have suggested that the annual cost of offshore tax abuses may be around $100 billion per year.

Whatever the precise amount of such losses, their importance contributes to an unfavourable tax environment for both MS and taxpayers. Indeed, the main challenges currently being faced are:

- the erosion of tax bases because of (national and international) tax avoidance and evasion and its economic consequences. Losses in EU MS' tax revenues cause undesired shifts of part of the tax burden to less mobile tax bases, such as labour, property and consumption, while international tax avoidance is facilitated by the use of non-cooperative jurisdictions and schemes abusing MS's tax systems;

[1] COM (2012) 351

- increasing administrative costs and compliance burdens on tax authorities and taxpayers may lead to discouraging compliance by all taxpayers. Effectiveness of anti-abuse measures is also affected by free movement within the EU and with third countries;
- undermining the integrity and fairness of tax structures;
- distorting financial and, indirectly, real investment flows.

Possible solutions

A possible solution is to aim at building an EU favourable tax environment (for MS, taxpayers, and investors) where on the one hand erosion of tax bases would be efficiently tackled (within the EU and in relation to third countries) and on the other hand confidence of taxpayers would be enhanced (i.e. by stable tax policies, and if possible moderate levels of taxation).

Question 1:

a) do participants agree that the main current challenges have been correctly identified? Should any others be mentioned?
b) do participants agree that an EU solution is favourable to a series of individual national solutions? What other approaches could be considered?

2. ISSUE 2: THIRD COUNTRIES DIMENSION

Problem description

International tax avoidance is facilitated by schemes abusing MS' tax systems and by the use of non-cooperative tax jurisdictions. MS react individually with measures at national level, adopted by each country according to its own criteria. Moreover, EU MS and institutions currently use a number of different measures that could be seen as incentives or defensive measures towards third countries. However these individual or specific actions often seem to have limited effectiveness.

Possible solutions

a) Identification of cooperative and non-cooperative jurisdictions

A coordinated approach could be developed within the EU towards non-cooperative jurisdictions so as to increase the effectiveness of defensive measures. This could include adopting at EU level a definition of non-cooperative jurisdictions, which could be based on how third countries implement the principles of good governance in the tax area (transparency, exchange of information and fair tax competition), and could be used by both EU MS and EU institutions.

b) Toolbox of incentives and defensive measures

The Commission services would like to assess a toolbox of incentives and defensive measures to be used by MS and EU institutions according to their respective competences in order to better convince third countries to cooperate in the tax area with EU MS.

Such toolbox could cover a range of measures among which, for instance:

- incentives for cooperative jurisdictions (i.e. jurisdictions implementing the criteria under a) above) could cover measures to be adopted:
    - at national level (removal from national blacklists, conclusion of double tax conventions (DTC), twinning programmes, ad hoc detachment of experts to answer request from EU MS,…);
    - at EU level (possible enhancement of development aid for capacity building against strict conditionality,…).
- defensive measures against non-cooperative jurisdictions could similarly be identified for possible adoption:
    - at national level (suspension/ termination of DTC, blacklisting, application of a uniform rate of withholding tax on payments to these countries reported by a third party, denial of deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction, application of transfer pricing rules for transactions between non associated companies resident in a non- cooperative jurisdiction, penalties…);
    - at EU level in the tax area (application of tax anti-abuse measures such as the CCCTB GAAR mentioned below, examining the possibility of an EU-wide framework whereby MS introduce a targeted tax regime to balance an aggressive one from a third country, possible penalties defined at EU level,…) or in other areas (discouraging project financing in NCJ, discouraging EU companies from establishing related entities in NCJ, impact to be taken into account when concluding preferential economic relations such as free trade agreements or when granting financial support and technical assistance…).

Question 2 :

a) Do participants believe that a joint action of EU MS could increase the effectiveness of defensive measures towards third countries?

b) Do participants agree that an EU definition of non-cooperative jurisdictions could be based on the implementation of the principles of good governance in the tax area? Would participants see any other relevant (tax and non-tax) criteria to be taken into account?

c) Do participants agree with the suggested toolbox of incentives and defensive measures? What other measures could be taken into consideration?

3. ISSUE 3: ANTI-ABUSE MEASURES

Problem description

Anti-abuse measures adopted by MS may raise some issues of compliance with EU rules or other international rules when applied to third countries.

Possible solutions

Following the 2007 EC Communication on anti-abuse measures in the area of direct taxation (COM(2007)785)[2] and in reaction to the case law of the Court of Justice of the EU, the Council adopted a resolution in 2010[3] on coordination of tax policies in anti-abuse measures. This mainly focused on CFC and thin capitalisation. In addition, article 80 of the proposed CCCTB Directive[4] contains a General anti-abuse rule stipulating that artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base. On this basis, the Commission could assist MS in designing anti-abuse measures in full compliance with EU and other international commitments.

Question 3

a) Could the introduction of an EU-wide general anti abuse rule such as the one provided for in the CCCTB improve the effectiveness of the fight against aggressive tax planning?

b) How useful would it be for MS to design their anti-abuse measures on the basis of the one provided for in the CCCTB proposal? Could the Commission have a role in assisting them in designing such measures?

4. ISSUE 4: DOUBLE TAX CONVENTIONS

Problem description

EU businesses operate in a Global Economic Scenario and therefore aggressive tax planning is not limited to the Internal Market. Schemes of aggressive tax planning frequently imply the use (or abuse) of Double Tax Conventions (DTCs) which often leads to double non taxation.

Possible solutions

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[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0785:FIN:en:PDF

[3] Council Resolution, The coordination of the Controlled Foreign Corporation (CFC) and Thin Capitalisation rules within the European Union, 10597/2010, 08.06.2010.

[4] COM (2011) 121/4, 16.03.11,

Some DTC between Member States contain a provision to ensure that double non taxation is avoided[5]. Such a type of approach could be, subject to agreement on article 1 of the revised Interest and Royalty proposal[6], be a possible solution for cross-border interest, royalty and licence fee payments between MS, and also between MS and third countries.

<u>Question 4</u>

a) Do you find the concept above suggested appropriate in order to tackle aggressive tax planning? If not, what are the strength and weaknesses of it? Do you have other suggestions?

5. ISSUE 5: ANY OTHER SUGGESTIONS

As pointed out the above concepts should not be seen as exhaustive. Other more general concepts could also be considered, for example:
Measures to increase transparency and to introduce enhanced reporting obligations or final withholding taxes at source (in cases of many taxpayers and relatively low amounts).

<u>Question 5</u>

a) We would therefore ask you to provide any other suggestion you might have for ways in which non- cooperative jurisdictions and aggressive tax planning could be tackled?

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[5] e.g. the Protocol of the DTC between France and Italy point 15 provides that exemption shall only be granted if and to the extent such income is taxable in the other State.
[6] Council directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM(2011)714, 11.11.2011.

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ANNEX 3

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Company Taxation Initiatives

REPORT OF MEETING

1. Meeting	Fiscalis Seminar
2. Subjects	Non-cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion
3. Date and Place	17th July 2012, Brussels
4. Participants	Representatives of EU Member States (morning session) Representatives of business, NGOs and academia (afternoon session) DG TAXUD (D1, D2, C4)
4. Objectives	Exchange of views and experience on the outline results of the public consultation on double non-taxation, on the Communication on concrete ways to improve the fight against tax fraud and tax evasion including in relation to third countries, and on existing measures, and possible future measures in relation to non-cooperative jurisdictions and aggressive tax planning.
5. Results	Several delegations actively participated in the discussion. In general, MS were supportive towards an EU coordinated approach to tackle non-cooperative jurisdictions, aggressive tax planning, tax fraud and tax evasion although some of them would prefer national measures (having due consideration to the principles of subsidiarity and proportionality). Stakeholders in the afternoon session also reacted positively on an EU coordinated approach but they stressed that any measure newly introduced had to replace the current one in order not to increase administrative burden and not to effect competition.

6. Some more general comments:

- Participants in both sessions emphasised that actions should be coordinated with other international fora in order to create synergies and to avoid any overlaps.
- Participants in both session underlined that clear joint definitions (NCJs, ATP, tax avoidance, intentional and non-intentional double non-taxation) are needed. Some MS suggested a reference to the level of taxation. Amid it was stressed that COM should avoid including any of such definitions in non-tax legislation.
- Participants in both sessions also agreed that administrative cooperation and exchange of information between MS have to be improved. The idea was tabled to establish a network of coordination between MS to tackle NCJs and ATP.

- Participants in both sessions were also in favour of introducing voluntary disclosure mechanism.
- Some NGOs pointed out that concerns of developing countries and impacts on them should be taken into account before any measures in developed countries are introduced. Some also raised doubts about strict conditionality of development aid.
- From the NGOs' point of view full country-by-country reporting (CBCR) could be an appropriate measure whilst representative of business sector raised doubts about efficiency of such a measure.
- As regards anti-abuse measures, concerns were expressed about their effectiveness given the Treaty rules. Some suggested that any EU anti-abuse measure should be supplementary to the national ones and not replace them. The business sector suggested focusing on other areas than GAAR.
- Participants in both sessions welcomed all three initiatives of the Commission (Communication of 27 June on tax fraud and tax evasion, December Communication on tax havens and aggressive tax planning, and perspective of an Action Plan by year-end).

7. Follow–up

The Commission asked for written comments before 17th August 2012, and for estimations on the quantitative impact of tax havens and aggressive tax planning. Some written contributions were sent but none on data or quantitative impact.

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Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Company Taxation Initiatives

Brussels,
TAXUD D1 D(2012)

Staff working paper

The internal market: factual examples of double non-taxation cases

Consultation document

Important notice: this document is a staff working paper of D.G. Taxation and Customs for discussion and consultation purposes. It does not purport to represent or pre-judge any formal proposal of the Commission.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111
Office: SPA3 08/17 - Tel. direct line +32 229-55762

PUBLIC CONSULTATION PAPER

The Internal Market:
Request for contributions on factual examples and possible ways to tackle double non-taxation cases

Note:

This document is being circulated for consultation to all interested parties. The sole purpose of this consultation is to contribute to the debate, to collect relevant information and to help the Commission develop its thinking in this area.

This document does not necessarily reflect the views of the European Commission and should not be interpreted as a commitment by the Commission to any official initiative in this area.

Each contribution received will be acknowledged.

All contributions received, including anonymous ones, will be taken into account. Your identity (personal data) and the content of your contribution will only be published on the Internet if you give your specific consent to this by indicating "Yes" in the relevant boxes in the questionnaire. For more detailed information on how your personal data and contribution will be treated, we recommend that you read the specific privacy statement on the consultation website[1].

In the interests of transparency, organisations responding to this consultation are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and by subscribing to its Code of Conduct

(see https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en).

If the organisation is not registered, its submission will be published separately from those of registered organisations.

[1] [link to the website for this specific consultation]

1. IDENTIFICATION OF THE STAKEHOLDER

The Commission services would be interested in receiving contributions from all interested parties on the issues described below. In order to analyse the responses, it will be useful to group the answers by type of responder.

<u>Question</u> -You could be included in one of the following groups[2]:

Multinational enterprise	Large company
Medium small micro sized enterprise (SMEs)	Academic
Non-Governmental organisation (NGO)	Tax advisor or tax practitioner

Others. Please specify ______________________________

Name/denomination of your organization/entity/company ______________________

Country of domicile______________________________

Contact details, including e-mail address ______________________

Brief description of your activity or your sector ______________________

Do you agree to publication of your personal data?

Yes No

Do you agree to have your response to the consultation published along with other responses?

Yes No

2. Introduction

The Commission is launching this fact-finding public consultation in order to establish evidence concerning double non-taxation within the EU and in relation with Third Countries. Members of the public are encouraged to provide factual examples of cases of double non-taxation on cross-border activities that they have encountered or have knowledge of. Double non-taxation cases encompass cases where there is no taxation of the activities as well as cases where the taxation is extremely low. Double non-taxation cases do not encompass cases where a company is not taxed because the activity is effectively taxed elsewhere, e.g. the exemption of dividends paid to parent companies where there is taxation of the activities in

2 For the purposes of identification, please check whether your company is a medium, small or microenterprise, according to the Commission Recommendation (2003) 361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; in its annex, Title I, Article 2, SMEs are defined as enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

the subsidiary, or where a company is not taxed in a profitable year because of losses carried forward form previous years.

The scope of this consultation only includes cases of double non-taxation, i.e. cases where the tax rules of two countries combined lead to non-taxation. The decisions in single member states on how to tax certain types of income received by resident and/or non resident are therefore outside the scope of this consultation as direct taxation generally falls within the competence of the member states although legal measures of approximation is issued for the establishment and functioning of the internal market.

The consultation concerns taxes which companies or other entities pay directly to tax authorities (i.e. "direct taxes") such as corporate income taxes, non-resident income taxes, capital gains taxes, withholding taxes, inheritance taxes and gift taxes.

It is undesirable that in the EU Internal Market a taxpayer is subject to double non-taxation on his/her cross-border activity as this gives the taxpayer a competitive advantage compared to other taxpayers who are subject to ordinary taxation. Our aim is to obtain a better picture of the real problem and, if possible, of its financial impact. You are also invited to provide any suggestions you might have for ways in which the different cases of double non-taxation could be tackled, for instance by legislative approaches, increased information measures or good governance rules.

Legislative approaches (i.e. closing loopholes and stopping mismatches) could be done at different levels. The different levels would be unilateral legislation in the individual Member States, bilaterally between the Member States or on EU level through directives.

Increased information measures could include rules on disclosure to the tax authorities (e.g. early mandatory disclosure of certain tax planning schemes).

Good governance rules could be e.g. soft law agreements between Member States or exchange of good practices.

3. Background

International double taxation is usually defined as the imposition of comparable taxes in two or more States on the same taxpayer in respect of the same subject matter and for identical periods. Its harmful effects have been widely recognized and in particular are mentioned in the first paragraph of the OECD Model Tax Convention.

But also the opposite situation, double non-taxation, has potential harmful effects in terms of fairness of the tax systems and potential distortion of the Internal Market.

In the Annex IV to the Annual Growth Survey 2012, the Commission acknowledged that Member States have to consider revenue-raising measures. Better tax coordination at the EU-level has a role to play in this context.

Therefore, the avoidance of double non-taxation has an enhanced importance in the present Economic Crisis context.

The European Council conclusions of 24 June 2011[3] asked the Commission to ensure the avoidance of harmful practices and proposals to fight tax fraud and tax evasion.

The Commission, in the Communication on Double Taxation in the Single Market[4] stated that in a period when MS are looking for secure and additional tax revenues, it is important for their credibility towards their taxpayers that they take the necessary measures to remove double taxation and double non-taxation.

Moreover, in the Communication, the Commission announced that as regards double non-taxation, it would launch a fact-finding consultation procedure.

The Commission is presenting this consultation to the public in order to gather evidence of double non-taxation within the EU and in relation with Third Countries and of its potential impact on the Internal Market in order to identify and develop the appropriate policy response to double non-taxation.

4. Questions submitted to the public and to interested parties

We have, based on various sources including international tax literature, articles and lectures, identified a number of issues where double non-taxation could occur. These issues are briefly presented below in order to facilitate the consultation. It should however be stressed that we also invite you to describe any other double non-taxation issues (see issue 10 – Other issues?). The list of issues shall not be seen as exhaustive.

Issue 1 – Mismatches of entities

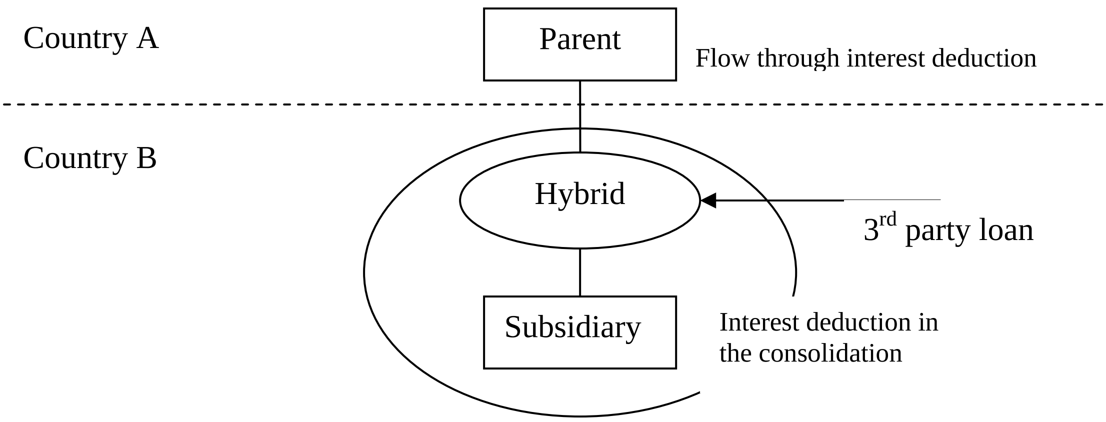
Mismatches of entities occur when entities ('hybrid entities') are treated differently for tax purposes in two jurisdictions (i.e. transparent entity in one jurisdiction and non-transparent in the other).

Assume an enterprise with a parent company in country A and a subsidiary in country B intends to finance an investment by the subsidiary in e.g. machinery or the market introduction of a product. The parent does not have sufficient funds itself so that third-party debt will be used to finance the operation. This debt financing would usually lead to one net financing cost in either country A or country B.

Use of an inserted entity that is treated as transparent in Country A, but is treated as a company in Country B (assuming such an entity can be arranged) could lead to double deduction. If the inserted entity takes up the third-party loan; Country A would give deduction against the parent company' income if Country A applies word-wide income taxation, and Country B would give deduction against the income of the subsidiary if it has some form of consolidation or group loss offset possible.

[3] http://register.consilium.europa.eu/pdf/en/11/st00/st00023.en11.pdf

[4] COM(2011)712 final



The outcome of this mismatch in entity qualification is that tax deductible expenses (in this example interest expense) can be deducted in both countries when the 'real' expense is only incurred once.

Double non-taxation can also occur if the mismatch of the hybrid entity is the reverse (i.e. the hybrid entity is seen as an entity in the country of the owners (country A), but seen as transparent by the country where the hybrid entity is located (country B)). In these cases income of the hybrid entity can be excluded from taxation in both countries. If Country A exempt income like dividends and capital gains from shares; it will not tax the income as the income is seen as income of an entity resident in country B. Country B will not tax either unless the activities in the country B qualify as a permanent establishment for the owners in country B.

Question A – Do you find such mismatches of entities relevant in the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of mismatches of entities between member states or towards third countries?

Yes No Do not know

Question C - Please give relevant details about these mismatches of entities *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which these mismatches of entities could be tackled *(max 500 words)*.

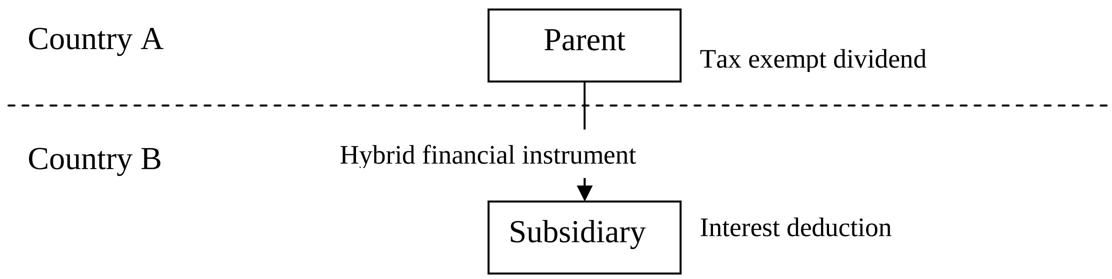
Issue 2 - Mismatches of financial instruments

There are financial instruments that include characteristics of both debt and equity (or seen from the creditor/shareholder: loan and shares). These financial instruments are usually known as hybrid financial instruments and include instruments such as preferred shares and profit participating loans.

Member states will not necessarily qualify these hybrid instruments in the same way. If there is a mismatch in the qualifications of such financial instruments between member states (i.e. as debt in one jurisdiction and as equity in the other), double non-taxation might occur.

Assume an enterprise with a parent company in country A and a subsidiary in country B intends to finance an investment of the subsidiary in e.g. machinery or the market introduction of a product (i.e. the same factual situation as under issue 1) but this time, the parent does have sufficient funds itself and intends to use them for the investment.

The parent company may choose to use of a hybrid financial instrument that is treated as equity in country A, but as debt in country B. When the subsidiary is funded with such an instrument, the subsidiary will have interest deductions in country B while the corresponding income for the parent company in country A will be dividends which in many member states are tax exempt income for parent companies.



The outcome of this mismatch of financial instrument qualification is an interest deduction in one member state without taxation of the corresponding income in another member state.

Question A – Do you find such mismatches of financial instruments relevant in the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of mismatches of financial instruments between member states or towards third countries?

Yes No Do not know

Question C - Please give relevant details about these mismatches of financial instruments *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which these mismatches of financial instruments could be tackled *(max 500 words)*.

Issue 3 – Application of Double Tax Conventions leading to double non-taxation

Member States have over the years concluded bilateral or multilateral double tax conventions (DTCs) with each other that help to allocate taxing rights between the signatory states and provide relief if double taxation arises.

The application of DTCs (in connection with national legislation in the signatory states) could in some cases lead to double non-taxation.

The commentary to Article 23A of the OECD Model Tax Convention already tackles with one situation of double non-taxation that would arise from a conflict of qualifications of income. In such cases the state of residence is according to the OECD commentary not required to exempt the income when the source state based on its domestic law considers that the provisions of the treaty precludes it from taxing.

This does however not solve all cases of double non-taxation that comes from the application of DTCs. It does for instance not solve cases where the double non-taxation is based on different interpretations of the facts or of the provisions of the treaty. This could for example be cases where the two countries have different interpretations of when electronic commerce will constitute a permanent establishment. This would result in double non-taxation if the state of residence believes there is a permanent establishment (and exempt the income) and the source state believes there isn't a permanent establishment (and therefore does not tax the income).

Question A – Do you find such cases relevant in the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of cases where member states application of double tax conventions lead to double non-taxation?

Yes No Do not know

Question C - Please give relevant details about these cases *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which this problem could be tackled *(max 500 words)*.

Issue 4 - Transfer pricing and unilateral Advance Pricing Arrangements

An advance pricing arrangement (APA) is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions over a fixed period of time. An APA may be unilateral involving only one tax administration.

In transfer pricing there can be good reasons for issuing unilateral APAs or similar advance agreements concerning transfer pricing although bilateral APAs should be preferred over unilateral APAs. Unilateral arrangements give the taxpayers certainty of the taxation of intra-group transactions in the issuing member state.

APAs may however create double non-taxation. This could e.g. be the case if the member state (Country A) where the associated enterprise is situated is not aware of the APA issued in the other Member State (Country B). If the APA determines that the group may use one transfer pricing method (e.g. the cost plus method) for a controlled transaction, there could be a risk for double non-taxation if Country A believes that the arm's length price should be determined on the basis of another method (e.g. the comparable uncontrolled price method).

The outcome of using different transfer pricing methods could be double non-taxation as well as double taxation. The risk of double taxation can be tackled by using the EU Arbitration Convention[5].

It could be noted that member states with the "Code of Conduct" (Business Taxation) have committed themselves to spontaneously exchange details of concluded unilateral APAs. The Exchange of Information should be made to any other tax administration directly concerned by the unilateral APA and should be done as swiftly as possible after the conclusion of the APA.[6]

Question A – Do you find unilateral advance pricing arrangement relevant in the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of unilateral advance pricing arrangements that could lead to double non-taxation?

Yes No Do not know

Question C - Please give relevant details about these unilateral advance pricing arrangements *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways to tackle unilateral advance pricing arrangements leading to double non-taxation *(max 500 words)*.

Issue 5 – Transactions with associated enterprises in countries with no or extremely low taxation

There could be a risk of double non-taxation if member states do not have appropriate rules in place to deal with transactions with associated enterprises in countries with no or low taxation.

These appropriate rules would include transfer pricing rules to ensure arms length conditions between the associated enterprises.

There could also be a risk of double non-taxation if dividend exemption applies to untaxed profits. The aim of the profit distribution exemption between groups of companies is to prevent double taxation of parent companies on the profits of their subsidiaries. The exemption should therefore only apply when the profits of the subsidiary has been (effectively) taxed.

[5] Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

[6] Communication 2007/71 on the work of the EU Joint Transfer Pricing Forum in the field of dispute avoidance and resolution procedures and on Guidelines for Advance Pricing Agreements within the EU, paragraph 68.

Similarly there could be a risk of double non-taxation if interest and royalty payments are exempted from withholding tax in cases where the company which is the beneficial owner is not (effectively) taxed. This would create double non-taxation as the payment will be deductible in the EU member state and not (effectively) taxed in the other country.

Question A – Do you find transactions with associated enterprises in no/low tax countries relevant for the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of transactions with associated enterprises in no/low tax countries that could lead to double non-taxation?

Yes No Do not know

Question C - Please give relevant details about these kinds of transactions *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled *(max 500 words)*.

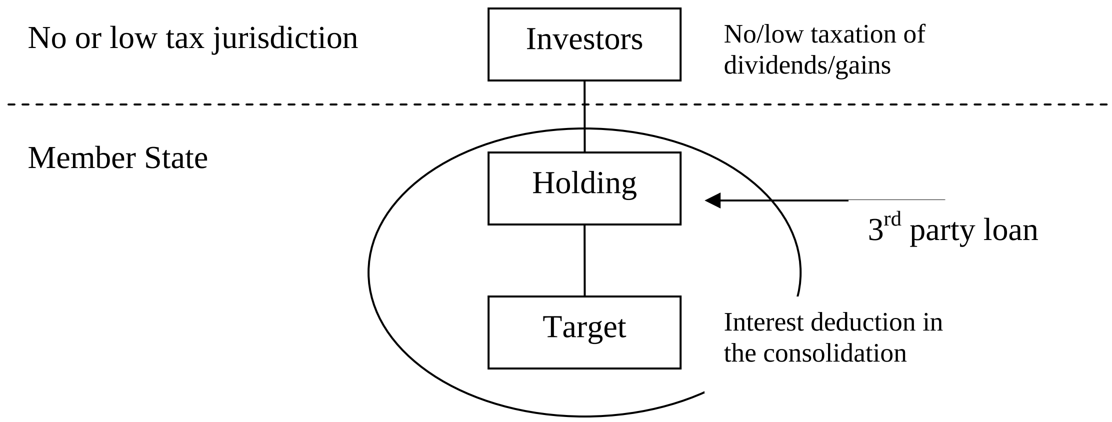
Issue 6 – Debt financing of tax exempt income

Double non-taxation might occur if interest deductions are allowed on debt that finances income that is not (effectively) taxed in any country.

One example of this could be the financing of foreign subsidiaries or permanent establishments in countries with no or low taxation. Many member states apply the principle of territoriality for corporate taxation. This means that income not related to activities in the member state is kept outside the tax base. Dividends and capital gains on shares in subsidiaries are tax exempt and income from permanent establishments in other countries is also tax exempt.

Double non-taxation could incur if full interest deductions are allowed for debt financing of activities in foreign subsidiaries and permanent establishments that are not subject to (effective) taxation. The corresponding income from the shares will be tax free and the underlying activities in the subsidiary or the permanent establishment will only be taxable outside the member state, where it's not (effectively) taxed.

Another example could be cases where foreign investors are allowed to allocate their debt financing in relation to acquisition of target companies through consolidation between the acquiring holding company and the target company (see illustration).



Dividends could flow out of the member state without tax. Furthermore gains on the (direct or indirect) sale of shares in the target company will in most cases not be taxable. The outcome will therefore be double non-taxation as there will be interest deductions inside the member state and no taxation of the corresponding income (the dividend or capital gain) outside the member state.

Question A – Do you find these cases relevant for the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of cases where debt financing of tax exempt income is deductible?

Yes No Do not know

Question C - Please give relevant details about these case(s) *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled *(max 500 words)*.

Issue 7 - Different treatment of passive and active income

Some member states apply special tax regimes for passive income such as interests and royalties.

Some of these regimes are justified by technical reasons (i.e. to compensate the inflation depreciation effect) or just by a tax policy choice of a Member State.

Sometimes, however, these regimes may potentially lead to situations of effective double non-taxation.

Double non-taxation might incur in these cases through a combination of the exemption (or extremely low taxation) in the member state with the special regime and the tax rules in another member state. This could for instance be the case if the other member state allow deductions for interest and royalty payments and do not have a withholding tax on the payments. The outcome here would be deductions in one member state and no (effective) taxation in the member state with the special regime.

There could also be a risk of double non-taxation if the other member state apply the principle of territoriality for corporate taxation and therefore exempt income from activities abroad (whether its dividends from subsidiaries, gains on subsidiary shares or income from foreign permanent establishments). The outcome here would (effectively) be a double exemption.

These tax special regimes only apply to passive income and therefore active business activities would be excluded from these double non-taxation schemes.

Question A – Do you find these special regimes relevant for the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of such special regimes leading to double non-taxation?

Yes No Do not know

Question C - Please give relevant details about these case(s) *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled *(max 500 words)*.

Issue 8 – Double Tax Conventions with third countries

EU businesses operate in a Global Economic Scenario and therefore situations of potential risk of double non-taxations are not limited to the Internal Market. Schemes of double non-taxation frequently imply the use (or abuse) of Double Tax Conventions (DTCs) with Third Countries.

Some DTC between member states and developing countries contain sparing tax clauses[7] and matching tax clauses[8] that intend to promote genuine economic activities in the developing countries. These clauses can however be misused in some circumstances to achieve double non-taxation beyond the initial intentions.

Most member states also have DTCs with countries that (partly or fully) have no or extremely low taxation. These DTCs can also be used to achieve double non-taxation especially if the member state according to the DTC shall apply the exemption method for elimination of double taxation or if the member state according to the DTC cannot apply any (or only low) withholding tax on dividends, interest and/or royalties.

Other schemes include the combination of two DTCs or one DTC combined with EU legislation to achieve double non-taxation.

[7] The State of residence grants a tax credit taking into account the tax that would have been paid at the State of source in absence of a certain tax incentive.

[8] The State of resident grants a notional tax credit, independently of the effective taxation at the State of source.

On 28th April 2009 the Commission issued a Communication on Promoting Good Governance in Tax Matters[9] to present concrete actions that could be taken to better promote the principles of good governance in the tax area (transparency, exchange of information and fair tax competition)

Having full regard to the principle of subsidiarity, the Communication concluded "there is a need to ensure more coherence between Member States individual positions in the international tax arena, and the good governance principles such as in bilateral tax treaties with third countries".

Future discussions on double non-taxation could take into account the principles of good governance in the tax area.

Question A – Do you find double tax conventions with third countries to be relevant for the future discussions on double non-taxation?

Yes No Do not know

Questions B – Are you aware of double tax conventions with third countries that can be used to achieve double non-taxation?

Yes No Do not know

Question C - Please give relevant details about these double tax conventions with third countries *(max 500 words)?*

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled *(max 500 words)*.

Issue 9 –Disclosure

Double non-taxation can be very difficult to detect in an ordinary tax audit. The availability of the relevant information is crucial for detection of double non-taxation and for policy responses to them.

The OECD published in February 2011 a report on disclosure initiatives to tackle aggressive tax planning[10]. In the report it was concluded (in paragraph 29) that:

> "Disclosure initiatives can help fill the gap between the creation/promotion of aggressive tax planning schemes and their identification by the tax authorities. Mandatory early disclosure rules, for example, have proven to be very effective in providing governments with timely, targeted and comprehensive information on aggressive tax planning schemes, thus allowing timely policy and compliance responses."

[9] COM(2009) 201.

[10] "Tackling aggressive tax planning through improved transparency and disclosure (Report on disclosure initiatives". The report can be found on http://www.oecd.org/dataoecd/13/55/48322860.pdf.

The mandatory early disclosure rules are rules created by some member states which require certain promoters of tax planning schemes to disclose these schemes to the tax administration. Promoters could be e.g. accountants, solicitors, banks and financial institutions. The rules require the promoters to provide the tax administration with information about schemes falling within certain descriptions. The promoter must explain how the scheme is intended to work and must normally do so before making the scheme available to clients.

Other types of disclosure initiatives could be e.g. additional tax reporting obligations, questionnaires, co-operative compliance programmes and rulings.

Question A – Do you agree that targeted disclosure initiatives could be a way to tackle double non-taxation?

Yes No Do not know

Question B – Do you have knowledge of the experiences with disclosure rules in member states?

Yes No Do not know

Question C – If your answer is yes to A, please specify which disclosure initiatives you believe could be a way to tackle double non-taxation *(max 500 words)*?

Question B - If your answer is yes to B, please specify what the experiences in member states are *(max 500 words)*?

Issue 10 – Other issues?

As written above the list of issues (issues 1-8) shall not be seen as exhaustive. We would therefore also invite you to describe any other double non-taxation issues that you have encountered or that you are aware of.

We would also be interested in suggestions of increased information measures – not being disclosure (issue 9) - you might have for ways to tackle double non-taxation.

It should be recalled that the consultation only concerns taxes which companies and other entities pay directly to the tax authorities (i.e. "direct corporation taxes"). You should therefore only include double non-taxation issues concerning direct corporation taxes.

It should also be recalled that the cases should be cases with double non-taxation of the activities. This does not include cases where there is low taxation in one tax year because of losses carried forward from previous years nor does it include cases where the "non- taxation" in one jurisdiction is matched by a corresponding (effective) taxation in another jurisdiction. The former is a question on the timing while the later is a question of allocation of taxing right – neither of them is a question of double non-taxation.

Question A– Are you aware of double non-taxation not described above?

Yes No Do not know

Question B - Please give relevant details about these kinds of double non-taxation case(s) *(max 500 words)?*

Question C – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled *(max 500 words)*.

Question D - Please provide any other suggestions of increased information measures – not being disclosure - you might have for ways to tackle double non-taxation *(max 500 words)*.

5. Who is consulted?
All interest parties including tax professionals in practice, in business and in academia.

6. How can I contribute?
You are invited to reply to this consultation by completing the questionnaire by sending a response by letter, fax or email within 3 months of the date of publication.

Email: TAXUD-D1-Consultation-DNT@ec.europa.eu
Postal address: European Commission
Directorate-General for Taxation and Customs Union
Rue de Spa 3, Office 8/007
B-1049 Brussels
Belgium
Fax: +32-2-29 56377

7. What will happen next?
At the end of the consultation process the Commission will publish a report summarising the outcome of the consultation on the website of the Taxation and Customs Directorate General (http://ec.europa.eu/taxation_customs/common/consultations/tax/index_en.htm).

In addition, the Commission will analyse carefully analyse the information provided in order to identify and develop the appropriate policy response. The results will be used as input to the Communication on strengthening good governance in the tax area ("tax havens, uncooperative jurisdictions and aggressive tax planning") planned for the 4th quarter of 2012.

8. Any questions?
Please contact: TAXUD-D1-CONSULTATION-DNT@ec.europa.eu or tel. +32 2 29 64846 or +32 2 29 55136 or fax: +32-2-2956377

We hope you will take this opportunity to contribute your views!

EUROPEAN
COMMISSION

Brussels, 6.12.2012
SWD(2012) 403 final

Volume 5/14

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
{SWD(2012) 404 final}

EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Company Taxation Initiatives

Annex 5

Brussels, 5 July 2012
TAXUD D1 D(2012)

Summary report

of

the responses received on the public consultation

on

factual examples and possible ways to tackle double non-taxation cases

Main conclusions

Background

In a period when Member States are looking for secure and additional tax revenues, it is important for their credibility towards their taxpayers that they take the necessary measures to remove both double taxation and double non-taxation. Both situations can jeopardize the idea of a single market and are therefore unacceptable.

Cross border double non-taxation and double taxation occur when taxpayers trade or invest across the borders. The globalisation, or the increasing economic integration of markets that is being driven by rapid technological change and policy liberalisation, has significantly increased cross-border trade and investments in recent years. It can therefore be feared that the problems with both phenomena have increased.

As the Commission previously has indicated there is - while having full regard to the principle of subsidiarity - a need to ensure more coherence between Member States individual positions in the international tax arena and the good governance principles. This requires a greater degree of coordination at EU level so as to ensure that the momentum towards a more open and constructive tax co-operation continues at a global level.[1]

In November 2011 the Commission stated in the Communication on Double Taxation in the Single Market[2] that it would take some concrete initiatives in order to address double taxation problems and that it would launch a fact-finding consultation procedure in order to gather evidence of double non-taxation.

The Commission launched the public consultation on February 29, 2012.

Some highlights from the consultation[3]

The non-governmental organisations who contributed to the consultation welcomed the consultation but found it difficult to provide factual examples of double non-taxation, although some input was provided. The non-governmental organisations find most of the issues mentioned in the consultation relevant for the future work on double non-taxation.

On the other hand the business community expressed concerns on the scope of the consultation. Many of the contributors from the business community did not provide answers to the specific questions in the public consultation note, but instead provided broader and more general comments on the issues raised in the public consultation note. There were

[1] COM(2009)201
[2] COM(2011)712
[3] Annex 1 provides a more detailed presentation of the contributions received.

however some business contributors who provided answers to the different questions in the public consultation.

In the general comments provided by the business community the following points are worth highlighting:

- Several found it important to make a clear distinction between actual double non-taxation (e.g. due to mismatches of hybrid entities and hybrid instruments) and tax competition (low taxation). Others called for a definition of "double non-taxation".

- Most of the organisations stressed that direct taxation falls within the competence of the Member States' sovereignty. Several therefore found that any measures against double non-taxation should be handled at the Member State level, while others found some coordination appropriate (e.g. to avoid mismatches).

- Many of the organisations felt that the issue of double non-taxation should not be addressed separately from that of double taxation. The two phenomena are seen as two sides of the same coin.

- Some organisations stressed that measures against double non-taxation could have an adverse impact on European economic competitiveness.

- Several organisations also called for coordination with other initiatives on EU and international level that address aspects of double (non-) taxation e.g. the EU Code of Conduct Group and the OECD report on Hybrid Mismatches.

Summary analysis

The number of contributions could be perceived as limited if the number of contributions to this public consultation is compared with the number of contributions to previous public consultations, e.g. the consultation on double taxation. It is however not possible to make such a simple comparison.

Firstly, this public consultation only concerns the direct taxation of companies. It does not concern the taxation of individuals. Fewer people are therefore directly affected by the issues examined.

Secondly, the public was asked for contributions on factual examples of double non-taxation for corporate taxpayers. The corporate tax system is a highly technical area where it is very difficult for the public to contribute with factual examples. As stated by Tax Justice Network (TJN):

> "One thing we want to address, is that for TJN and its members it is very difficult to identify the concrete examples the European Commission is looking for, since of their nature it is needed to access to internal company accounts."

This is probably also one of the reasons why the contributors in general have only been able to identify concrete factual examples of double non-taxation to a limited extent.

The contributors have on the other hand not been able to identify additional examples of double non-taxation to the ones presented in the consultation paper in the area of direct corporate taxation either. This could perhaps indicate that the Commission have identified those issues that can be perceived as resulting in double non-taxation (or at least the major issues). However it should be noted that some argue that not all of the issues are real double non-taxation cases.

The double non-taxation issue which most contributors find least acceptable is double-non taxation due to mismatches between countries qualification of hybrid entities and hybrid financial instruments. Several contributors also found application of Double Tax Conventions leading to double non-taxation relevant for the future discussions.

On the other issues mentioned in the consultation paper the contributors were divided; while some found the issues relevant for future discussion others found the issues irrelevant.

Furthermore most contributors from the business community would prefer solutions to be found on Member State level as direct taxation falls within the competence of the Member States sovereignty. Several of these organisations however support the Common Consolidated Corporate Tax Base and community action against double taxation.

The Business Community believe that solutions should deal with both double taxation and double non-taxation issues.

Follow-up

Notwithstanding on-going initiatives such as the Common Consolidated Corporate Tax Base (CCCTB) there seems to be a need for a more in-depth analysis of double non-taxation especially on qualification of hybrid entities and hybrid financial instruments.

DG TAXUD agrees with the contributors stating that duplication of work already undertaken in other EU forums, e.g. the Code of Conduct Group (Business Taxation), and in the OECD should be avoided. The OECD has already conducted analysis of arrangements that exploits national differences in the tax treatment of instruments and entities to deduct the same expense in several different countries or to make income "disappear".[4] The Code of Conduct Group has already performed analysis on profit participating loans and has started to work on other mismatches.[5]

DG TAXUD expects that the Code of Conduct Group (Business Taxation) will continue its work regarding anti abuse and mismatches. The Group is expected to take the extensive work already conducted by OECD into account in order to avoid duplication of work. DG TAXUD will discuss with the OECD how best to cooperate on these issues.

DG TAXUD will also – building on the positive Joint Transfer Pricing Forum (JTPF) experiences - continue to examine the potential benefits of setting up a Forum on double taxation for purely EU tax matters and will examine whether it should also cover double non-taxation. This could be relevant for a possible examination of issues of double taxation and double non-taxation arising from the application of double tax conventions.

[4] OECD report on "Hybrid Mismatch Arrangements: Tax Policy and Compliance Issues".
[5] Report to the Council (ECOFIN) on 11 June 2012 (doc.10903/12 FISC 77, par 17-18)

The Commission intends to publish a Communication on good governance in the tax area in relation to tax havens and aggressive tax planning before the end of 2012.

Annex 1

The internal market: factual examples of double non-taxation cases

INTRODUCTION

The Commission launched this fact-finding public consultation in order to establish evidence concerning double non-taxation within the EU and in relation with Third Countries. Members of the public were encouraged to provide factual examples of cases of double non-taxation on cross-border activities that they have encountered or have knowledge of.

This Consultation had been announced in the Communication on Double Taxation in the Single Market. [6]

The key issues to which stakeholders were invited to reply were the following[7]:

Issue 1 – Mismatches of entities

Issue 2 – Mismatches of financial instruments

Issue 3 – Application of Double Tax Conventions leading to double non-taxation

Issue 4 – Transfer Pricing and unilateral Advance Pricing Arrangements

Issue 5 – Transactions with associated enterprises in countries with no or extremely low taxation

Issue 6 – Debt financing of tax exempt income

Issue 7 – Different treatment of passive and active income

Issue 8 – Double Tax Conventions with third countries

Issue 9 – Disclosure

Issue 10 – Other issues?

The dead-line for contributions was on 30th May 2012. Later answers were also accepted.

The Commission have received 25 contributions to the public consultation - 15 from Business Community (Business and Accounting Organisations), 4 from Tax Advisors or Tax Practitioners, 4 from Non-Governmental Organisations (NGOs), 1 from an International Organisation (OECD) and 1 Anonymous[8].

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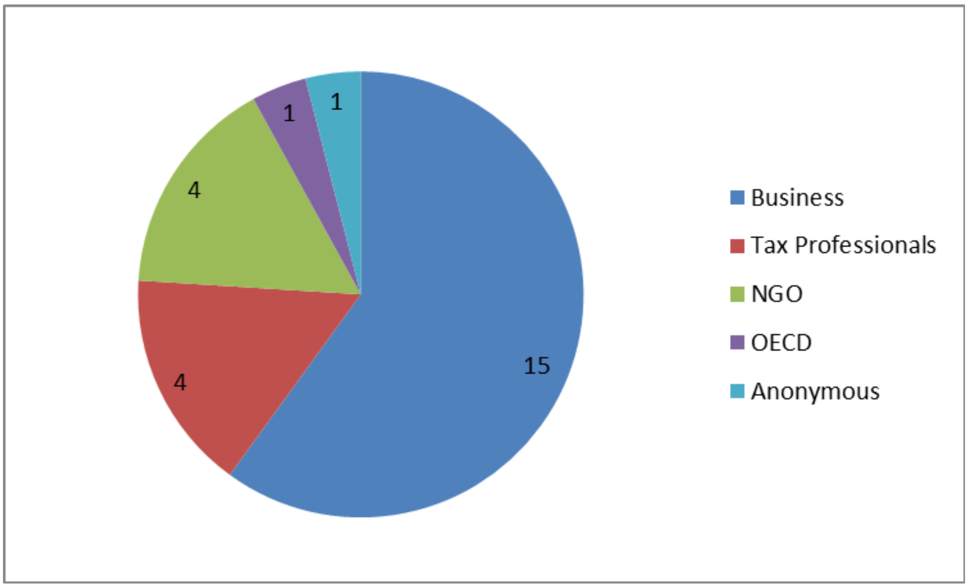
[6] COM(2011)712 final

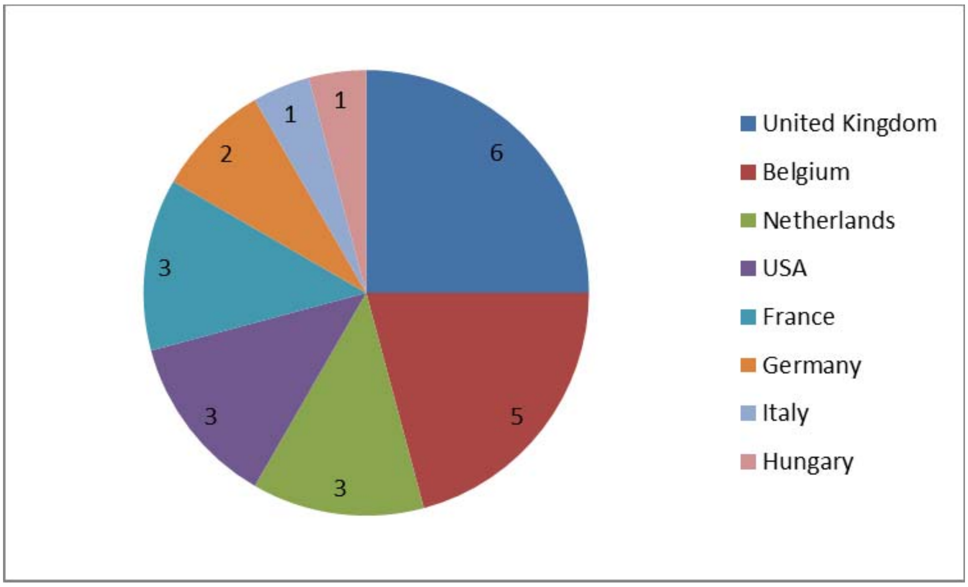
[7] The issues were briefly described in the consultation paper.

[8] This presentation does not include remarks or comments received in the anonymous contribution.



16 of the contributors are registered at the Interest Representative Register.

6 of the contributors are resident in the United Kingdom, 5 in Belgium, 3 in France, the Netherlands and USA, 2 in Germany and 1 in Italy and Hungary.[9]



The list of contributors can be found in Annex 2.

[9] In fact, many of the contributors are international organised (e.g. OECD and a number of business and professional associations and NGOs)

General remarks

In the contributions received there were numerous general remarks on the consultation especially by the business community. In the following these general remarks are divided into the general remarks by the business community and the general remarks by non-governmental organisations and others. The reason for this split is that the general remarks by the business community are quite similar and many of the positions are shared among the business contributors. The general remarks by non-governmental organisations are in general shorter than the ones from the business community as all of the non-governmental organisations concentrated on the questionnaire.

<u>Non-Governmental organisations and others</u>

The non-governmental organisations concentrated their contributions on the questionnaire in the consultation and did not provide many general comments. They did however welcome this consultation on double non-taxation. One contributor [EURODAD] wrote:

> "[The contributor] welcomes this consultation on double non-taxation. Given the devastating consequences of double non-taxation within the EU and not least across developing countries and the enormous potential for domestic resource mobilisation that lays in taxation, we highly appreciate this initiative and would like to thank you for the opportunity to contribute to shaping EU policies on this specific area.".

Another non-governmental organisation [Tax Justice Network] made the general comment that they found it difficult to contribute concrete examples:

> "One thing we want to address, is that for [the contributor] and its members it is very difficult to identify the concrete examples the European Commission is looking for, since of their nature it is needed to access to internal company accounts. We have called on the advisory and accountancy sector (notably the Big 4) to deliver these examples, which the[y] advice and account on. We hope they did so in a large extent."

A third non-governmental organisation [HU IFA branch] found that double non-taxation should be solved together with double taxation:

> "From the point of view of taxpayers, double non-taxation is not really a problem. Most taxpayers would actually strive to exploit these possibilities. Therefore, tax advisors, we would generally be reluctant to comment on these issues. However, we believe that where double non-taxation occurs, double taxation could also usually occur in the reverse situation. Therefore, we would welcome and promote an approach whereby double non-taxation issues are solved together with (and not instead of) double taxation problems. This is a major driver for us to participate in this process."

A tax professional (Jarass) found that tackling double non-taxation for fairer and more robust tax systems is very important. The contributor therefore proposes to tax earnings before interests and taxes (EBIT) instead of profit in order to tax all income once and only once. The contributor believes:

> "Our proposal would systematically tax all income once and only once. Double as well as non taxation would be systematically avoided"

<u>*Business*</u>

Scope of the consultation

A number of contributors belonging to the Business Community criticized the structure of the public consultation. Many of the contributors therefore only made general remarks on the public consultation. One contributor [AmCham] wrote:

> "The consultation identifies a number of issues where different cases of double non-taxation could occur based on various sources including international tax literature, articles and lectures and presents a 'non-exhaustive' list of examples in a questionnaire format. However, this structure does not allow for comments on whether the examples listed present a problem or not, which makes it very difficult to respond in a meaningful way. Therefore, rather than answering the questions within the consultation document, this position paper provides broader comments on the arguments against a general prohibition of double non-taxation."

Another contributor [CBI] found it:

> "somewhat disturbing that normal EC procedures have not been followed, and anonymous submissions have been invited. As a result, there will be no way to check the accuracy of any assertions or allegations made in such anonymous submissions. [The contributor] has been publicly supportive of ending aggressive, artificial tax schemes. This consultation, however, will damage that process by its confusion – perhaps especially in anonymous replies – between aggressive schemes, normal tax planning and, legitimate responses to government-enacted incentives."

Some contributors were also calling for a wider perspective on the issues as they believe tax cannot be considered in isolation. One contributor [AmCham] wrote:

> "Even though the scenarios discussed in the consultation may arise because of asymmetry in tax treatment, the consultation needs to look wider than just tax and include an understanding of the associated legal and accounting analysis before concluding on the impact of targeting double non-taxation. The latter cannot be considered in isolation without understanding the interaction with other legislative systems."

Double non-taxation or tax competition

Most contributors from the business community found it important to define 'double non-taxation or to make a clear distinction between double non-taxation and tax competition. One contributor [BusinessEurope] wrote:

> "the questions in the consultation paper go beyond what we normally consider to be double non-taxation. We believe it is important to make a clear distinction between actual double non-taxation cases (e.g. due to mismatches of hybrid entities and hybrid instruments) and tax competition (low taxation). However, some of the questions in the Consultation paper seem to relate to the latter."

Similarly another contributor [CBI] wrote:

> "Although the consultation only covers direct taxes, the paper defines double non-taxation much more broadly than simply the use of hybrid instruments and entities which comprise true "double non-taxation". In fact the consultation seeks to include examples of territorial non-taxation (or relatively low taxation) of specific activities compared to other Member States."

A third contributor [CIOT] asked for a definition of "double non-taxation":

> "it would have been helpful if, before this consultation was undertaken, more consideration had been given to the precise meaning of double non-taxation. A limited definition of double non-taxation in an effort to narrow the scope so that only the most egregious schemes with artificiality were targeted would have been preferable. Currently the extremely broad definition of double non-taxation in the consultation document seems to be targeting both such 'schemes' and genuine tax planning by EU multi-national companies in member states who choose to structure their EU operations efficiently to remain competitive."

Several contributors stressed that Member States have the right within the rules on state aid to adapt more or less attractive tax regimes. One contributor [BusinessEurope] stressed that non-taxation therefore often is intentional.

> "It must be recognized that non-taxation is not always a result of aggressive tax planning. On the contrary, non-taxation is often an intentional consequence of national tax policy objectives. A general prohibition of double non-taxation would depart from such national objectives.
>
> It is therefore crucial to have a very clear notion of "double non-taxation". Some fiscal administrations consider e.g. tax incentives for research and development or notional interest deductions as double non-taxation. [The contributor] considers that tax measures that have been introduced by national legislators to incentivize certain behaviour of tax payers should not be stigmatized. Otherwise every deviation between two national tax systems (e.g. differences in depreciation rules) would have to be regarded as double non-taxation."

Several contributors are supportive of fighting artificial tax schemes. They stressed that the European Court of Justice has allowed genuine economic establishment. They also stressed that the court clearly ruled in support of the right to take advantage of lower rates, unless "the arrangements are wholly artificial". One contributor [TEI] further explained that it

> "wholly supports focused action dealing with abusive structuring that takes advantage of double non-taxation. [The contributor] welcomes the opportunity to discuss the conditions and consequences of such abuse with the Commission. We regret, however, that developing various instruments and requirements for Member States to include in

> their local legislation to deal with the consequences of tax competition (such as the examples given under points 5 through 8 of the Consultation) would create tax uncertainty and limit competitiveness and growth within the EU. The recent ECJ decision in favour of 3M Italia SpA held that there is no EU law obligation for a Member State to enact anti-avoidance provisions where there is no abuse of EU law."

Member States sovereignty

According to several contributors any measures against double non-taxation should be handled at Member States level. One contributor [AmCham] wrote:

> "EU Member States retain extensive competences in direct tax matters and can determine the scope of their tax jurisdiction, either unilaterally or bilaterally. This allows Member States to introduce domestic rules on anti-avoidance, which we believe remains the better approach to address double non-taxation rather than a new EU-wide regime. If EU-wide restrictions were to go ahead, they would constrain normal commercial transactions and also reduce the attractiveness of Europe as a place to invest."

The same contributor [AmCham] pointed out that Member States already have national rules that deal with avoiding double non-taxation:

> "The UK anti-arbitrage rules, introduced in 2005, apply to both deductions of interest and receipts, and are designed to counter artificial arrangements avoiding UK tax. The deduction rules apply to companies within the charge to corporation tax, which includes UK resident companies and the UK permanent establishments of overseas companies. Likewise, many other EU jurisdictions already have a limitation on exempt dividends derived from passive income along with limitations on deductible interest on acquisition of subsidiaries which generate tax exempt dividends. These are all relevant examples of how things can and do work at individual Member State level."

Another contributor [NFTC]

> "believes that bilateral tax treaties remain the only appropriate tool to address differences between independent sovereigns' tax rules on income from cross-border activities, and in doing so, are the appropriate mechanism for separating the permissible from the impermissible tax arbitrage."

On the other hand a third contributor [BusinessEurope] wrote:

> "There is an obvious risk that there will be a variety of national non coordinated initiatives in this area. In order to avoid double taxation as well as double non-taxation it is of utmost importance that countries can agree on a common set of principles and apply them consistently."

The same contributor [BusinessEurope] also wrote:

> "The only way such mismatches (double non-taxation but also double taxation) could be avoided would be for governments to liaise on their tax policy with other governments to mutually agree a policy to avoid these mismatches. Such a review would also need to consider how to avoid any unintended consequences and in particular any double taxation caused by any actions considered. In these circumstances it is difficult to see how business could comment on the policy changes that would need to be considered as changes could be made in either national context."

A fourth contributor [ICAEW] also believes there could be some co-ordination:

> "it is appropriate for the European Commission to undertake work to ensure that the tax systems of the member states are co-ordinated to achieve agreed policy objectives. It is, however, important to ensure that the tax systems of the member states remain competitive in the current world where business is genuinely global and has real choices between different geographical locations."

A contributor [EBIT] believes that the EU should also recognise the sovereignty of third countries. The contributor wrote

> "that Third Countries are free to design their own tax systems including the provision of tax incentives and that the EU should target only those Third Countries which maintain or introduce harmful tax practices. In practice this should lead the EU to at least exclude from the scope of the Consultation's outcome any genuine economic activities which are taxed at a low effective tax rate."

Double taxation and double non-taxation

Several contributors see double non-taxation and double taxation as two sides of the same coin. They therefore stressed that double taxation should also be addressed by the Commission. One contributor [STEP] wrote:

> "We would begin by noting that double non-taxation arises in the same manner as double taxation as a result of a lack of co-ordination between national tax authorities regarding the basis on which taxes are levied. The problems of double non-taxation and double taxation should therefore be addressed via similar remedies."

Another contributor [PwC] stressed that

> "The crucial point is that the phenomena of both double taxation and double non-taxation – are inevitable consequences of the fact that the corporate income tax systems of EU Member States have not been harmonised. There are strong arguments both for and against such harmonisation and there seems limited desire by many Member States at present to move in that direction. In our view, both phenomena – double taxation and double non-taxation – are two sides of the same coin. One should not be addressed without the other."

Coordination with other international initiatives

A number of the contributors from the business community pointed out that any initiative should be coordinated with other relevant international initiatives: A contributor [EBIT] wrote:

> "[The contributor] is concerned that the Commission initiative duplicates other pre-existing initiatives such as those of the Code of Conduct Group.

The same contributor also wrote:

> [The contributor] was concerned that the Consultation document has apparently not been coordinated with the OECD"s report on Hybrid Mismatch Arrangements, and vice versa. This is a very worrying development as the phenomena of double taxation and double non-taxation are global issues which should be addressed globally in a coordinated way."

Another contributor [CIOT] similarly drew the attention to

> "the OECD document on Hybrid Mismatch Arrangements published very shortly after this consultation (March 2012). It advocates a different approach to countering these situations. We agree with the OECD that the better way to address these issues is with specific domestic anti avoidance rules and/or rules specifically addressing hybrid mismatch arrangements rather than harmonisation. This is the only way in which problems can be addressed without interfering with the rights of member states to set their own tax policy.
>
> Where there are cases of countries applying different policies and tax rates (for example where participation exemption is given to very low or nil taxed dividends), this should be left to each EU Member State to decide how to implement tax policy; to do otherwise will equate to tax harmonisation.
>
> We would also mention that the Code of Conduct Group has also recently considered hybrid instruments (PPLs). We are surprised, therefore, to see this parallel initiative from the Commission without reference to the Code of Conduct Group's prior and ongoing work in this area."

Impact on European economic competitiveness

There were several contributors who were concerned with the impact on European economic competitiveness. One contributor [EBIT] stated that:

> "[The contributor] considers that care should be taken that the current initiative will not adversely impact the European economy's competitiveness which would be the case if measures were unilaterally introduced in Europe whilst -ideally- still building on an international consensus within the OECD regarding their parallel initiative in respect of hybrid mismatch arrangements and the fight against harmful tax competition.
>
> Should the EU adopt any new rule targeting double non-taxation, especially as regards transactions with non-EU Third Countries, this should in [the contributor's]

view be applicable only to the extent that those countries would apply the same principles (as done in the EU Savings Directive approach). The key word is reciprocity here, and the application of the same principles in non-EU Third Countries should not be simply aspirational as it currently is (see the Commission's strategy to promote “good governance” with Third Countries), otherwise EU-based companies will be subject to stricter rules than companies located in most non-EU countries and therefore disadvantaged competitively. So, any action should be undertaken in cooperation with relevant Third Countries."

Another contributor [CIOT] wrote:

> "Another significant omission from the consultation is any consideration of the impact that the proposals would have on EU headquartered multi-national companies. If all of the situations addressed in the consultation were prohibited, this would result in an increase in the tax base of all EU Member States, which would significantly impact the ability of multi-national companies headquartered in the EU to remain globally competitive unless statutory headline tax rates were lowered. It would also hinder legitimate business restructuring and constrain normal commercial transactions both within and outside the EU."

Responses to the questions in the consultation paper

Issue 1 – Mismatches of entities

Question A - Do you find such mismatches of entities relevant in the future discussions on double non-taxation?

Yes	6
No	0
Do not Know	0

Question B – Are you aware of mismatches of entities between member states or towards third countries?

Yes	5
No	1
Do not Know	0

Question C – Please give relevant details about these mismatches of entities

It should be noted that several of the contributors who only provided general remarks acknowledged that hybrid entity mismatches can lead to double non-taxation (see also the summary of the general remarks).

One contributor informed that there is a mismatch as the French SNC (société en nom collectif) are transparent for tax purposes in the United Kingdom and can opt to be subject to corporate tax in France. The contributor however stressed that such mismatches do not necessarily lead to double non-taxation.

Another contributor also gives the example of an entity that can opt for transparency: Amongst the transparent entities, there could be some entities having the same legal nature in two countries but which, in one country only, can be treated as transparent entities by option. E.g., under Italian tax legislation (Art. 115 and 116 of the TUIR- Unified Direct Taxation Code) private limited liability companies meeting some conditions relating to their members can opt for the same tax transparency regime applicable to partnerships. This possibility was introduced in order to eliminate economic double taxation in the event of dividends distribution, as in Italy the distribution of dividends is taxed in the hands of receiving shareholders. There could according to the contributor lead to both economic double non-taxation and juridical double non-taxation of dividends whenever the Member State of residence of the (two or more) corporate shareholders applies a total participation exemption regime. A regime – the optional tax transparency for certain private limited companies – which was introduced to prevent economic double taxation in light of the tax treatment of domestic dividends could thus be used beyond its purpose and could give rise to unintentional double non-taxation. The contributor thus believe that, amongst the “hybrid entities”, it would be necessary to include also those entities that can benefit from tax transparency by virtue of an option, and not only those that have access to this regime by their own legal nature.

A third contributor has certain doubts as to whether the example quoted by the public consultation is really relevant. In any case, they feel that in order for double non-taxation to occur in the given example, a number of specific circumstances must be present: Country A must not regard the “hybrid” to be a PE of the Parent (as otherwise, it would probably not allow the deduction of interest, save for special circumstances such as cross-border tax grouping), and Country B must have in place a group relief regime, which, for instance, Hungary does not have. Notably, as a Hungarian registered partnership is fiscally opaque, interest deduction with a Hungarian partnership as a debtor is available irrespective of the fact that the same entity is treated as a transparent entity from the perspective of the parent company’s jurisdiction. As such, interest deduction could be possible with the parent as well. Hungarian tax deduction cannot be denied for this reason.

This contributor however finds that mismatch of entities can be relevant in a number of other cases, the most prominent of which is where Country A (in which the parent is located) considers its hybrid subsidiary in Country B to be a transparent PE whereas Country B regards the same entity as a company. When the hybrid is sold, Country B would generally regard that it is not entitled to tax the capital gains on such a sale whereas Country A does not regard it either as being entitled to tax those gains (treating the gains as the income attributable to the PE). The result will be double non-taxation, and this is indeed a mismatch that has frequently been exploited in the past. Notably, no effective Hungarian double tax treaty has yet had a provision equivalent to Article 23A, Paragraph 4, in the OECD model.

Question D – Please provide any suggestions you might have for ways in which these mismatches of entities could be tackled

One contributor thinks that there would be at least two alternative ways to tackle mismatches of entities, which would allow each national authority to immediately identify these mismatches.

> The introduction of an “automatic information exchange” mechanism. EU Member States should systematically exchange a list of all entities which, in their respective jurisdictions, are treated as tax transparent. This list should indicate the legal nature and conditions (if any) for transparency, and should include both those entities which are tax transparent by legal nature and those that can be tax transparent by way of option; it should also be updated at the occasion of any tax regime change.
>
> Alternatively, as the forms of business organisations tend to coincide (from the company law viewpoint) from one Member State to another, each Member State could communicate this list to the Commission, which could use it for creating a central database (accessible to any national tax authority) containing an “equivalence matrix” of legal entities, in which each national tax authority could check what legal entities, set up in other Member States, correspond to the entities which are treated as tax transparent in its own jurisdiction, and what is the tax treatment of these correspondent entities.

Another contributor on a similar note believes that an EU-wide list of non-transparent entities for double taxation purposes could go a long way towards solving this problem. The lists in the Merger and Parent-Subsidiary Directives could be used as a very good starting point.

Another contributor believes that in the example given in the Public Consultation, interposing a company can be justified by other reasons (in particular, legal or statutory reasons). If it is not the case, double non-taxation can be tackled by the doctrine of abuse of rights (*abus de droit)*. The different treatment of the same entity can be the result of not only differences in the tax rules, but very profound differences between legal and statutory systems. The debate should therefore be taken within a broader context.

Issue 2 – Mismatches of financial instruments

Question A - Do you find such mismatches of financial instruments relevant in the future discussions on double non-taxation?

Yes	5
No	0
Do not Know	0

Question B – Are you aware of mismatches of financial instruments between member states or towards third countries?

Yes	4
No	1
Do not Know	0

Question C – Please give relevant details about these mismatches of financial instruments

It should be noted that several of the contributors who only provided general remarks acknowledged that hybrid financial instrument mismatches can lead to double non-taxation (see also the summary of the general remarks).

One contributor gives the following example: The treatment of ORA (Obligation Remboursable en Actions) in French-American schemes. These are treated as debt instruments in France allowing the deduction of coupons and as capital instruments in USA generating tax-exempt income.

Another contributor believes that this is one of the most typical and most exploited forms of double non-taxation, and it is impossible to list the many kinds and circumstances. However, most of them do seem to follow the basic pattern as described in the Commission’s example. Mismatching is thus not precluded even in Hungary. Participating loan is always considered in Hungary as a loan. The Hungarian debtor can thus get access to interest deduction in the case where the income the creditor receives may be qualified in the non-Hungarian situation as dividends received and exempt from taxation there. Hungarian interest deduction cannot be denied for this reason. Such a scheme has proliferated, for example, in respect of the Netherlands – Hungary double tax convention.

Question D – Please provide any suggestions you might have for ways in which these mismatches of financial instruments could be tackled

One contributor believes that double non-taxation results from the different tax and accounting approach.

Another contributor stresses that the underlying problem is that companies can exploit differences in the definition of the tax base, and that tax treaties are an inadequate way of dealing with this problem. This proves the necessity of a Common Consolidated Corporate Tax Base, and to make it compulsory, not voluntary, to address mismatches within the EU.

Another contributor thinks that the mismatching addressed by Issue 2 goes to the heart of the tax and accounting legislation of each country, which is very difficult to overcome by definitions in any treaties. This issue may primarily be solved by promoting some kind of harmonisation of these rules, such as the CCCTB initiative. Switch-over clauses (as domestic, unilateral measures) could also be a good way of coping with his problem, but those clauses are much more restrictive on taxpayers and therefore on the fundamental freedoms of Community law.

Issue 3 – Application of Double Tax Conventions leading to double non-taxation

Question A - Do you find such cases relevant in the future discussions on double non-taxation?

Yes	5
No	0
Do not Know	0

Question B - Are you aware of cases where member states application of double tax conventions lead to double non-taxation?

Yes	3
No	1
Do not Know	1

Question C – Please give relevant details about these cases

A contributor points out that the Tax Convention between France and Italy can lead to a situation of double non-taxation in the case of a French enterprise that has a building site in Italy that lasts slightly less than 12 months. As France adopts the territoriality principle, the building site will not be taxed in either of both countries.

A second example is a triangular situation where a company from State A has its place of effective management in a State with low taxation; like Serbia that exempts the business income.

Another contributor gives the example of the treatment of real estate income and capital gains arising from SPI (Société a Prépondérance Immobilière) in the tax convention between France and Luxembourg. The contributor notes that the DTC between France and Luxembourg has been changed to address this problem.

According to another contributor, one of the problems in relation to Double Tax Conventions is the tension between source and residence taxation, as a result of which double non-taxation can occur. Broadly speaking there is a difference between countries using the model treaties of the United Nations (source-based, used by a lot of developing countries) and the OECD (residence-based). The problem can be clarified in a hypothetical Dutch example. The Netherlands has an extensive network of DTC's in which the Netherlands strives to lower (preferably to 0%) the withholding tax levied by source countries on dividends, royalties and interest. The Netherlands themselves don't levy a withholding tax on most interest payments or on royalties. When one takes the hypotheses of a DTC between the Netherlands and source-country X with a 0% withholding tax on interest and royalties, and residence-country Y being a country with no corporate income tax this could lead to the following situation: interest and royalties are not being taxed when entering the Netherlands, nor when leaving the Netherlands. In residence-country Y the income is not taxed. So the hypothetical company could end up untaxed on the income it transfers out of country X through interest and royalty payments via the Netherlands to country Y.

Another contributor believes that this issue is also a typical source of double non-taxation as well as double taxation. From the point of view of the taxpayers, it is mostly problematic where either there is a mismatch of facts or that of timing. The first issue should be easy to avoid by adequate communication between the tax authorities, whereas the second one should be overcome by a less formal application of the concept of "tax period" or "tax year", combined with better communication. Foreign earned business income can be exempted from taxation in a Hungarian treaty situation irrespective of the fact whether the Hungarian beneficiary does or does not pay in fact tax abroad. The Hungarian tax authorities do not usually request the taxpayer to prove that tax has been paid in the other jurisdiction on the income to be exempted from Hungarian taxation. In a few recent cases (see, e.g., the new Hungarian treaty concluded with the US in 2010, and with the UK and Germany in 2011), exemption is subject on the Hungarian side to effective taxation applied in the other contracting state. The contributor reiterates that no effective Hungarian double tax treaty has yet had a provision equivalent to Article 23A, Paragraph 4, in the OECD model.

Question D – Please provide any suggestions you might have for ways in which this problem could be tackled

One contributor suggests the renegotiation of tax conventions and need for an agreement between Member States.

Another contributor believes that in situations where a company is resident in a Member State under the principle of territoriality, the other Member State should not apply the threshold for building sites. As regards, triangular situations where a company has its effective management in a State of low taxation, the solution would be to use the centre of economic interests as the tie-breaker for the tax residence of companies and not the place of effective management.

A third contributor believes that a shift toward a more source-based taxation would be preferred in relation to active corporate income. This way taxes would be levied where real economic activities are located. This is both legally and economically fairer than a predominantly residence based model, which would nonetheless remain applicable to passive income (personal and corporate). It would also help developing countries to close the existing gap with more developed countries. Double taxation can be prevented by the residence country by granting a credit for taxes on income levied by the source state.

Another contributor thinks that a possible solution would be a better communication between the tax authorities, perhaps aided by a permanent forum for solving intra-EU double (non-) taxation issues which could go a long way of solving many issues in a quick and straightforward manner. Ultimately, though, the solution could only be either the harmonisation of tax rules (e.g., CCCTB) or the application of an EU-wide, multilateral international treaty or a Council Directive on the avoidance of double (non-) taxation.

Issue 4 – Transfer Pricing and unilateral Advance Pricing Arrangements

Question A - Do you find unilateral advance pricing arrangement relevant in the future discussions on double non-taxation?

Yes	2
No	2
Do not Know	1

Question B - Are you aware of unilateral advance pricing arrangements that could lead to double non-taxation?

Yes	2
No	2
Do not Know	1

Question C – Please give relevant details about these unilateral advance pricing arrangements

According to one contributor,[10] Energias de Portugul SA has a subsidiary in the Netherlands (EDP Finance BV) that issues publicly traded bonds and lends the proceeds onwards to related entities abroad. In 2007, the subsidiary obtained an APA in the Netherlands that specifies its minimum taxable income as an arms-length return on equity plus a spread of 0.03% on on-lent funds, minus operational costs. At the start of 2010, the subsidiary had total equity of EUR 23 million while it had on-lent over EUR 10 billion. Due to the tax ruling, the subsidiary's tax charge for 2010 was less than EUR 1 million even though it earned net interest income, after operational costs and expenses, of EUR 63 million. This illustrates according to the contributor that unilateral APAs specifying an alternative tax base may result in almost complete double non-taxation of intra-group payments, because the payments may be tax deductible in one member state but largely excluded from the tax base in another member state due to such an APA.

Another contributor stresses that a unilateral APA is regulated in detail in Hungarian statutory law. The local business community has welcomed its introduction. The Arbitration Convention does not seem to be efficient. Formation of arbitration panels has not yet been known in Hungary, although Hungarian experts have been listed with the Joint Transfer Pricing Forum to work as arbiters.

Question D – Please provide any suggestions you might have for ways to tackle unilateral advance pricing arrangements leading to double non-taxation.

[10] The contributor (Tax Justice Network) has confirmed that the information in the example is publicly available in the annual accounts.

According to one contributor, the suggestion that unilateral advance pricing arrangements (APAs) may result in 'double non-taxation' may be correct in theory but it is, in their experience, generally not correct in practice and could lead to the conclusion that APAs are a bad thing. By contrast, APAs can be an important element in providing the certainty to business that is so essential in encouraging the investment required for economic growth.

Another contributor adds that in their day-to-day business experience there have been very few instances where unilateral APAs have resulted in a tax advantage due to a different transfer pricing method being applied in the country of the counterparty company compared to the method adopted by the company which has negotiated the unilateral APA. In any event, to the extent that this is an issue, it should wherever possible be addressed via the relevant tax treaty mutual agreement procedure, rather than being categorised as double non-taxation. Within the framework of the Code of Conduct Group, a solution to combat unilateral APAs has been found by relying upon the spontaneous exchange of information, which is now compulsory under the new EU Directive on the exchange of information.

A third contributor believes that APAs should preferably be bilateral to avoid that they result in unintended double non-taxation in combination with, for example, double tax conventions. In the contributors view more openness at the European level would be desirable. APAs should be made public, so that public scrutiny of the agreement is possible as a safeguard against secret deals that deviate from normal tax rules. If public disclosure is not possible, the minimum that should be aimed at is information exchange between Tax Authorities on APAs being agreed with business. This could be achieved with a European database that is accessible by all European Tax Authorities and other cooperating tax authorities.

Another contributor feels that this is one of those issues where existing and/or purely unilateral measures should be enough to tackle the problem, and should be left out of the scope of the present consultation. Better use of MAPs, better use of the exchange of information clauses should be enough to eliminate most of these issues, or simply a better unilateral regulation of the APA processes. Ultimately, though, the elimination of transfer pricing problems could only come through the elimination of transaction-based transfer pricing approaches instead of more robust and fail-safe systems (e.g. formulary apportionment) or CCCTB.

Issue 5 – Transactions with associated enterprises in countries with no or extremely low taxation

Question A - Do you find transactions with associated enterprises in no/low tax countries relevant for the future discussions on double non-taxation?

Yes	3
No	2
Do not Know	0

Question B - Are you aware of transactions with associated enterprises in no/low tax countries that could lead to double non-taxation?

Yes	2

No	2
Do not Know	1

Question C – Please give relevant details about these kinds of transactions

One contributor explains that the Netherlands is one of the countries not levying withholding tax on most interest and royalties, while striving for a low or 0% source taxation in Double Tax Conventions with third countries. Switzerland is a jurisdiction with low taxes in the heart of the European Union. As KPMG puts it[11], one of the strategic advantages of Switzerland is its "low taxation with various tax planning possibilities". Low-tax jurisdictions can be used for diminishing taxation in several ways. For example, shifting corporate income from an EU subsidiary to a Swiss headquarter (or a Swiss subsidiary in charge of "corporate financial services" or a Swiss letterbox) can be achieved not only through "classic" transfer mispricing of traded merchandise, but also through overpriced royalties (for which there is no market based "arms-length" price) and interest payments (in the case of "thin capitalization" of the foreign subsidiary). Notably, EU member states cannot raise a source tax on these transfer payments, as the bilateral Taxation of Savings Income Agreement between the EU and Switzerland stipulates a zero withholding tax on intra-firm dividends, royalties and interest payments. (In the case of developing countries, withholding taxes on dividends, royalties and interest are likewise often abolished, or at least significantly lowered, by means of bilateral double tax agreements.)

Another contributor stresses that the dividends received inside or outside Hungary are exempt from corporate tax. It is not precluded that the taxpayer benefits from this regime irrespective of the fact whether the subsidiary, out of which dividends are paid, is subject to normal taxation. As an example for mismatching that can occur in Hungary, it can be mentioned that interest of the loan can be deducted, which is paid to a creditor subject to low tax or no tax, although the burden of proof is laid on the debtor to prove genuine business purposes, and interest must be consistent with pricing at an arm's length. Interest deduction cannot yet be denied for the sole reason that the creditor is not subject to taxation comparable to the Hungarian debtor's tax liability, or is not subject to taxation at all due to the qualification of the other jurisdiction, different from the Hungarian one.

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled

According to a contributor, the participation exemption for holding companies across most EU Member States seems to be under attack in this issue. This is the cornerstone of the tax systems of most EU Member States so this does seem inappropriate. Many countries place restrictions on certain (usually related-party) acquisitions of subsidiary shares, but if groups could not borrow at all in a tax efficient manner to fund an acquisition of exempt participations, then they would have to look at alternatives e.g. asset purchases or at worst relocate to non-EU jurisdictions.

Another contributor stresses that the exemption method for relief from double taxation of foreign profits and dividends in particular is by far the most common method adopted by OECD countries. Moreover this issue has already been identified by the Code of Conduct

[11] The contributor refers to a publication by KPMG.

Group which has adopted specific guidance for EU Member States regarding CFCs or switch-over provisions.

A third contributor reiterates a preference for source taxation for active business profits. The unilateral or treaty-based exemption of withholding taxes on passive income (royalties, dividends and interests) creates strong incentives for profit shifting to non- or low tax jurisdictions and induces tax competition in the rest of the world which backfires on EU competitiveness. This could be achieved by the implementation of the Common Consolidated Corporate Tax Base, and to make it compulsory not voluntary. Second, the European Commission could promote or mandate a differentiation in outgoing payments, following the Brazilian example. When the third country, where interest or royalties are going to, is a low- or non-tax jurisdiction a higher withholding tax rate would be applied. What is needed for this is an independent list of low-tax jurisdictions, for which these stricter requirements would apply. Such a list can be issued independently by the European Union. The report on "Promoting an appropriate policy on tax havens" by the PACE (Parliamentary Assembly of the Council of Europe) could serve as a model. A common list for the entire EU, instead of the different lists that are currently used by national tax authorities, would facilitate cross-border business and enhance the functioning of the single market.

Another contributor points out that these issues should be solved on a unilateral basis (anti-abuse, CFC legislation etc.) and should be left out of the scope of the present consultation.

Another contributor stresses that the fact that interests and royalties are deductible allow companies to move interest and royalties between countries within the Group so that the effective tax rate decreases and results in double non taxation.

Issue 6 – Debt financing of tax exempt income

Question A - Do you find these cases relevant in the future discussions on double non-taxation?

Yes	2
No	2
Do not Know	1

Question B - Are you aware of cases where debt financing of tax exempt income is deductible?

Yes	1
No	1
Do not Know	3

Question C – Please give relevant details about these cases

No specific information provided.

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled

According to one contributor, it is not clear why the consultation document apparently labels the deductibility for taxation purposes of costs made to obtain tax exempt income or gains from assets (such as substantial shareholdings) as 'double non-taxation', where a Member State deliberately has decided that the income or gain should be tax exempt. Real economic costs which negatively impact the commercial profits of a company should in the contributor's view be deductible for taxation purposes.

Another contributor believes that the participation exemption for holding companies across most EU Member States seems to be under attack in this issue (see more details above under issue 5).

Another contributor stresses that this issue targets borrowing via a local acquisition company to acquire and tax group/tax consolidate with a local target company, where a sale of the shares of the resulting acquired sub-group by the investors would be tax free. This is a consequence of tax policy choices made by the countries concerned rather than double non taxation. Moreover, in the scenario used in the Consultation document, the acquisition is financed through a third party loan, that is to say through an economic operator which will itself be subject to tax. In other words, this is not a double non-taxation situation: the profits of a company are matched with the losses of its parent: at group level no profit is realised, so why would it be taxed, and the lending bank is taxable on the interest it receives.

Another contributor reminds that interest deduction is not precluded in Hungary, even if the income received is not taxed, e.g., due to dividends received deduction, although double dip is prohibited by statutory law in general. The benefits of interest deduction and exempted dividends do not derive from the same factual circumstances. Interest deduction is not precluded either where the creditor is a PE of the Hungarian company that operates in a low-tax jurisdiction. For example, privileged Swiss PEs are used by Hungarian companies to generate through it income from private loans. This does not seem to be restricted either by the Hungarian, or the Swiss tax authorities. The interest expense assumed by the holding company of an LBO (leveraged buy-out) scheme can be used to reduce the taxable basis of the target company after merger. This is not prohibited under Hungarian statutory law, although such a scheme can be challenged by the tax authorities, based on a GAAR (general anti abuse rule). Foreign resident corporate taxpayers[12] do not pay tax in Hungary, but in exceptional cases. Therefore, the income of dividends, interest, royalties and capital gains derived from the disposal of shares is widely exempt from Hungarian corporate taxation despite the fact that the beneficiary may operate in a low-tax jurisdiction.

Another contributor suggests possible solutions as to tax interests and royalties at source or to subject the assets to a property tax.

Issue 7 – Different treatment of passive and active income

Question A - Do you find these special regimes relevant in the future discussions on double non-taxation?

Yes	2
No	2

[12] Non-resident companies are taxable in Hungary if it has a permanent establishment.

Do not Know	1

Question B - Are you aware of such special regimes leading to double non-taxation?

Yes	2
No	2
Do not Know	1

Question C – Please give relevant details about these cases

One contributor reiterates that the Netherlands has an extensive network of DTC's in which the Netherlands strive to lower (preferably to 0%) the withholding tax on dividends, royalties and interest. The Netherlands themselves don't levy a withholding tax on most interest payments or royalties. The contributor also repeats the hypothetical Dutch example already mentioned under Issue 3 above, where the hypothetical company could end up untaxed.

According to another contributor, interest and royalty deduction is independent in Hungary of the fact whether the beneficiary of payment operates in a low-tax jurisdiction. This may cause double non-taxation with the beneficiary because the income the latter derives is exempt from Hungarian taxation (at the moment there is no withholding tax in Hungary that would be applicable to the Hungarian-earned income of foreign enterprises).

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled

One contributor stressed that it is not clear why Issue 7 of the Consultation Document mentions tax incentives for the promotion of research and development in the context of double non-taxation. The level of taxation is exactly what the EU Member State in question wanted to achieve.

According to another contributor, this Issue amongst other things concerns special regimes for the taxation of income from intellectual property. This contributor considers that it is not a situation of double non-taxation but the result of legitimate policy choices of the Member State concerned, i.e. the promotion of research and development. Some of these tax regimes have been notified in advance to the Commission which decided that they do not amount to State aid within the meaning of Article 107(1) TFEU.

A third contributor reiterates that a shift toward a more source-based taxation would be preferred in relation to distributions of active corporate income (already mentioned above under Issue 5).

Another contributor believes that these issues should be solved on a unilateral basis (anti-abuse, CFC legislation etc.) and should be left out of the scope of the present consultation.

Issue 8 – Double Tax Conventions with third countries

Question A - Do you find double tax conventions with third countries to be relevant in the future discussions on double non-taxation?

Yes	3
No	0
Do not Know	2

Question B - Are you aware of double tax conventions with third countries that can be used to achieve double non-taxation?

Yes	1
No	2
Do not Know	2

Question C – Please give relevant details about these double tax conventions with third countries

According to one contributor, the DTC-networks of some EU-countries could be used for low- or double non-taxation, since withholding tax on royalties and interest are not levied. In addition dividend-conduits are possible. This is when a route A-B-C for dividends is more beneficial than a direct A-C route because of beneficial tax treaties between A and B and between B and C. Also DTC's may also lead to double non-taxation with respect to capital gains (for example the India-NL and India-Cyprus treaties, which in many cases give exclusive taxing rights to the low-tax regimes on capital gains on the sale of shares in Indian companies). A couple of clear examples concerning US-corporations have according to the contributor appeared in press articles. In the outlined structures – which lead to a lower overall tax rate – EU-countries like Ireland and the Netherlands play a prominent role.

Another contributor stresses that Hungarian double tax conventions typically do not contain tax sparing clauses. Double non-taxation can still occur in a few cases. For instance, under the Hong Kong – Hungary treaty, Hungary does not require effective taxation while granting exemption on the Hungarian side. At the same time, Hong Kong may exempt from Hong Kong taxation under its national law the passive income derived through a Hong Kong-based PE of a Hungarian enterprise outside Hong Kong.

Question D – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled

A contributor repeats that the European Commission could promote or mandate a differentiation in outgoing capital flows, following the Brazilian example (see above under Issue 5).

According to another contributor, although these issues could be relevant for the future discussion on double non taxation, the EU should at present primarily concentrate on solving double (non-) taxation that occurs within the EU. Given the "four freedoms" regime in an EU context, full elimination of double (non-) taxation within the EU should be a priority. Indeed, we cannot really talk of a true internal market as long as these issues are not solved by either harmonisation measures as the CCCTB, or by adopting a multilateral instrument on the avoidance of double (non-) taxation within the EU.

Another contributor thinks that the tax convention benefits should be conditional to a minimum corporate taxation rate of 25%.

Issue 9 – Disclosure

Question A - Do you agree that targeted disclosure initiatives could be a way to tackle double non-taxation?

Yes	3
No	1
Do not Know	1

Question B - Do you have knowledge of the experiences with disclosure rules in member states?

Yes	3
No	2
Do not Know	0

Question C – If your answer is yes to A, please specify which disclosure initiatives you believe could be a way to tackle double non-taxation

According to a contributor, it is not relevant in France as the doctrine on abuse of rights (*abus de droit)* tackles these situations.

Another contributor strongly advocates for Automatic Information Exchange between jurisdictions on a multilateral basis. One of the mayor problems with non-automatic information exchange is that information is only exchanged on request. This means one needs to know what one is looking for, before one makes a request for it.

Another contributor thinks that the policy of replacing exchange of information by a withholding tax is dangerous as the tax authorities do not know the identity of the tax payer. As a result, there is a risk that capital gains are not properly taxed.

Question D – If your answer is yes to B, please specify what the experiences in member states are

One contributor claims that in the Netherlands the Ministry of Finance has reported repeatedly that TIEA's lead to a low amount of information exchange. In general terms, Nobel Laureate Stiglitz (2001), with his research on market failure due to information asymmetries in market exchanges, provided a convincing theoretical framework to understand the role of public disclosure of relevant information. In its recent report on OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, the contributor provides evidence based on IRS findings about the crucial role of information reporting for tax compliance In this framework, country by country reporting is widely believed to create a massive voluntary and anticipatory adjustment in corporate profit shifting because of reputational and audit risks associated with improved taxpayer compliance. Furthermore, Argentina's tax administration AFIP's recent example of clamping down on massive tax evasion by the world's largest grain exporters is an example showing the relevance of intra-firm trading and financial data being included in corporate annual accounts on a country-by-country basis.

Another contributor stresses that Hungary has not yet taken any step to introduce voluntary disclosure rules or apply any method that would be applied with a view to constituting any form of an enhanced relationship to be established under the respective OECD documents. Hungary applies advance rulings, but has not launched so far any project on the horizontal enforcement of taxation rights and liabilities. In general, no special disclosure rules, whether mandatory or voluntary, are aimed at aggressive tax planning.

Issue 10 – Other issues?

Question A - Are you aware of double non-taxation not described above?

Yes	2
No	0
Do not Know	2

Question B - Please give relevant details about these kinds of double non-taxation cases

One contributor explains that the Hungarian CFC legislation does not seem to be efficient. Notably, there are no income or asset tests to filter out passive income or tainted assets. The definition on genuine business activity is dubious. As passive income is not excluded from the scope of substantive business activity, it can happen that a CFC operates in a jurisdiction with a ring fencing regime, obtains income from third countries to meet the offshore criterion of the low tax jurisdiction, and yet is still able to show genuine business activity there for the purposes of Hungarian legislation. Interestingly, the Hungarian CFC law does not refer to the lack of the comprehensive exchange of tax information across the border. Besides, there are no comprehensive reporting obligations in Hungary on the offshore activity of business.

According to another contributor, recent events in connection with VAT also fall under double non-taxation.

Question C – Please provide any suggestions you might have for ways in which these kinds of double non-taxation could be tackled

No specific information provided.

Question D – Please provide any other suggestions of increased information measures – not being disclosure – you might have for ways to tackle double non-taxation

One contributor points out that many of the problems of double taxation or absence of taxation in fact relate to characterisation or anomalies of tax treaties.

One contributor suggests consulting or financial firms could provide their legal opinion on sophisticated schemes to lower taxation or that lead to double non-taxation and disclose these schemes.

Annex 2

List of Contributors

Name	Sector	Country	Interest Representative Register
OECD	International organisation	France	No
European Network on Debt and Development (EURODAD)	Non-Governmental organisations	Belgium	Yes
IFA Hungarian branch	Non-Governmental organisations	Hungary	Yes
Tax Justice Network	Non-Governmental organisations	Belgium	Yes
Weltwirtschaft, Ökologie & Entwicklung	Non-Governmental organisations	Germany	No
Cerioni, Dr. Luca	Tax advisor or tax practitioner	Italy	No
Fibbe, Gijs	Tax advisor or tax practitioner	Netherlands	No
Grossman, Andrew	Tax advisor or tax practitioner	United Kingdom	No
Jarass, Dr. Lorenz	Tax advisor or tax practitioner	Germany	No
American Chamber of Commerce to the European Union (AmCham)	Trade, business & professionals associations	Belgium	Yes
BusinessEurope	Trade, business & professionals associations	Belgium	Yes
Confederation of British Industry (CBI)	Trade, business & professionals associations	United Kingdom	Yes
European Business Initiative on Taxation (EBIT)	Trade, business & professionals associations	Netherlands	Yes
Federation Bancaire Française	Trade, business & professionals associations	France	Yes
Federation of European Accountants	Trade, business & professionals associations	Belgium	Yes
Institute of Chartered Accountants in England and Wales (ICAEW)	Trade, business & professionals associations	United Kingdom	Yes
MEDEF	Trade, business & professionals associations	France	Yes
National Foreign Trade Council, Inc (NFTC)	Trade, business & professionals associations	USA	Yes

PricewaterhouseCoopers International Limited (PwC)	Trade, business & professionals associations	United Kingdom	Yes
Society of Trust and Estate Practitioners (STEP)	Trade, business & professionals associations	United Kingdom	Yes
Tax Executives Institute, Inc (TEI)	Trade, business & professionals associations	USA	Yes
The Chartered Institute of Taxation (CIOT)	Trade, business & professionals associations	United Kingdom	No
United States Council for International Business	Trade, business & professionals associations	USA	No
VNO-NCW	Trade, business & professionals associations	Netherlands	Yes
Anonymous	Unknown	n/a	No

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IMPACT ASSESSMENT

Accompanying the document

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

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ANNEX 6 – Tax havens: literature review and quantitative estimates

Definition of tax havens used in economic data

The economic literature often uses a broad definition of tax havens. A tax haven in this respect can be defined simply as a country, which imposes low or no tax on corporate income with a goal of attracting capital (Gravelle, 2009). Estimates on profit or investment flow, and revenue losses related to tax haven operations are generally based on this broad definition.

When the broad definition is used, the list of tax haven jurisdiction is quite long. The famous list of Hines and Rice (1994) contains 41 countries, many of which are small island states in the Caribbean or elsewhere, or other small countries, and also includes a few European countries, such as Ireland, Cyprus, Malta, Luxembourg and Switzerland. These countries also appear in a list of 50 countries of Gravelle (2009), which is a combination of various lists[1].

The **analyses of tax planning and profits shifting operations of multinational companies** in economic literature are based and the broad definition. These operations, which aim at the reduction of taxes, but within the limits of existing law, are often labelled **tax avoidance**. Tax havens in a broad sense play an essential role in tax avoidance behaviour of multinational companies. Operations, which are criminal or illegal, often **labelled tax evasion or fraud**, require secrecy and non-transparency, and therefore a narrower definition of tax havens would be more relevant in the analyses of these operations. According to Gravelle (2009) a large part of tax haven operations of multinational companies can be characterized as tax avoidance, while some of them are in the limit of tax evasion. Tax haven operations of private individuals have more a character of tax evasion and are hence associated with a narrower definition.

The estimates of profit and investment flows and tax revenue losses associated with tax havens depend also on the definitions used. Most existing estimates of these flows are based on the broad definition, and thus include both tax avoidance and tax evasion.

[1] Organization for Economic Development and Cooperation (OECD), *Towards Global Tax Competition*, 2000; Dhammika and James R. Hines, "Which Countries Become Tax Havens?" December 2006; Tax Justice Network, "Identifying Tax Havens and Offshore Finance Centers: http://www.taxjustice.net/cms/upload/pdf/Identifying_Tax_Havens_Jul_07.pdf; The OECD's "gray" list as of April 2, 2009, http://www.oecd.org/dataoecd/38/14/42497950.pdf.; GAO Report, *International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions*, GAO-09-157, December 2008.

Evidence on international tax planning

There are no precise estimates of the extent of income shifting to tax havens, but indirect evidence suggests that it is fairly massive. Revealing evidence is presented in Gravelle (2009). According to this paper the amount of US foreign company profits relative to GDP in G-7 countries is between 2.6% and 0.3 % (weighted average 0.6%). In larger countries often included in tax havens lists (including Luxembourg, Ireland, the Netherlands, Switzerland, Cyprus, and a few Asian and Caribbean countries) the amounts are higher, reaching 18.2% in Luxembourg, 7.6% in Ireland and 4.6% in the Netherlands. In small island states and other small countries often figuring in tax haven lists these amounts are still many multiples: for instance Bermuda 645.7%, British Virgin Islands 354.7% and Cayman Islands 546.7%, Jersey 35.6% and Guernsey 11.2%. These numbers suggest that some multinational companies indeed locate their profits in so-called tax havens (although these numbers do not indicate how much taxes are avoided through these operations).

The EU is a very important source of FDI in tax havens worldwide. In 2010, the total FDI stock in tax havens originating from the EU (768 bn USD) was almost as high as the stock originating from the US (824 bn USD)[2]. This suggests that the EU is approximately as relevant as an economic partner to tax havens worldwide as the US is. In relative terms, 21% of all FDI US outwards FDI stocks are directed to tax havens whereas this figure is 14% in the EU.

It is worth to take into account that FDI from the EU is highly important for tax havens: For the entire set of the 45 economies, the EU-originated FDI stock is equal to 55% of their combined GDP. The maximum value (for Bermuda) is 2130% meaning that the EU-originated FDI-stock for this country is more than 21 times higher than its GDP.

The share of tax havens in receiving FDI from the EU is particularly high on the European and the Northern American continent. Within non-EU Europe 65% of FDI stock originating from the EU countries is in tax havens (Switzerland, Liechtenstein, Andorra, Gibraltar, the two Channel Islands, Isle of Man and San Marino). Disregarding Switzerland, the figure is still 26% for non-EU and non-Switzerland Europe. For North America and the Caribbean (including US which is the single largest recipient of EU outward FDI) this amounts to 10% of all EU-originated FDI.

Gumpert – Hines Jr. –Schnitzer (2012) provide some evidence on tax haven behaviour of German companies. They find that German manufacturing firms, which, unlike US companies, do not have the tax deferral motivation for using tax havens, are more likely to invest in tax havens when they also have investments in high-tax locations, and vice versa,

[2] FDI stock data published by the OECD and the Eurostat are used. The tax havens taken into account are the ones listed by Gravelle (2009), apart from the four EU Member States which are included there (CY, IE, LU, MT) and Monaco for which no data is available. This leaves 45 countries. 2010 data are used apart from some unavailable entries where 2009 or 2008 figures are taken. Note that the FDI data published for most EU MSs disregards the investments made by through special purpose entities (SPE), leading to a marked underestimate of total EU-originated FDI.

investment in a tax haven makes an investment in a high-tax location more likely. The interpretation is that tax havens are used to reallocate profits between foreign affiliates away from high-tax jurisdictions.

The role of wealthy individuals and bank secrecy

Also wealthy individuals all over the world make extensive use of tax havens. The purpose of these operations is to hide income from tax authorities in order to avoid domestic income taxation. These operations are often illegal and thus characterized as tax evasion rather than avoidance. The simplest form of such operations is to open a bank account in a tax haven under a false name (in the name of the company located in the tax haven) and deposit money in that account using electronic transfers. The extent of these operations is less known than the tax avoidance operations of multinational companies, but anecdotal evidence suggests that the money flows related to these operations are at least as important than those of MNCs.

Bank secrecy is essential for the success of these operations. In recent years international efforts have been taken to end the bank secrecy by compelling tax haven to conclude the exchange of tax information agreements (e.g. G20 initiative, OECD initiative, EU Savings Directive). A recent paper by Johannesen and Zuckman (2012) examines the effect of these agreements on banks deposits in tax havens. They show that the number of bilateral treaties allowing for information exchange between tax haven and non-tax haven countries has increased very significantly since 2009, but cross-border deposits in tax havens have remained stable in the same period as a whole. There was, however, some reallocation between tax havens is a way that the havens that signed many treaties have lost deposits at the expense of havens that have signed few treaties. The authors conclude that information exchange treaties are a relatively inefficient way of fighting tax evasion. The main reasons for this are that there are too few bilateral treaties leaving many countries outside the exchange of information, and secondly that the exchange of information is often not automatic, but only upon request, which is a relatively tedious way of detecting tax evasion.

Estimates on tax revenue losses

Some estimates on tax revenues losses caused by tax haven operations exist for the US (but not for the EU countries). Gravelle (2009) presents some of these estimates, which have a relatively wide range of variation. **Corporate tax avoidance** could cost to the federal government up to $60 billion (in 2004), if it is assumed that 35% tax rate is applied on $180 billion corporate profits shifted out of the US. There are also estimated of the revenues gain that could be obtained by eliminating the deferral in the US tax system. These estimated, that vary between $11 billion and $26 billion, give also an indication of the revenue cost from profit shifting by US companies.

Concerning the revenue cost of **individual tax evasion** Gravelle (2009) presents some estimates found in literature. In the case of the USA estimates are based on the value of individual net worth invested outside the US being $1.5 trillion. Depending which rate of return and tax rate is applied on the net worth, the estimates of tax revenue losses vary from $50 billion to $15 billion. The Tax Justice Network has estimated that the worldwide revenue loss from individual tax evasion for all countries would be $255 billion, using the tax rate of 30% and the rate of return of 7.5%. It the same rate are applied on the US case, the revenue loss would be $33 billion.

As already mentioned, there are no direct estimates of the revenue loss effect of tax planning in the EU. However, for purely indicative purposes, it is worth taking into consideration the fact that the EU has a similar amount of foreign direct investment (FDI) stocks in tax havens as the US does[3]. FDI stocks in tax havens are closely related to corporate income arising in these jurisdictions, which are in turn often affected by tax planning. The extremely high profits generated by foreign owned corporations in tax havens compared to the GDP of these territories (indicated above) also suggest that investment into tax havens is motivated by tax planning opportunities. For these reasons, while taking into account the differences in tax planning incentives of US and EU actors due to the different tax regimes in the two territories, the similarities in the volume of US and EU FDI in tax havens can be taken as an indication that the magnitude of the revenue loss estimates available for the US is representative for the EU, too.

The impact of tax havens on non-haven countries

Are the tax haven operations of multinational companies harmful for non-haven countries? In this respect two different views are presented in economic literature.

According to the first view tax haven operations are wasteful, they erode the tax bases in non-haven countries and distort competition. The paper by Slemrod – Wilson (2006) is the best known representative of this view. They show with a help of a theoretical model that tax havens induce a welfare loss, since they intensify tax competition and force the non-haven countries to set lower tax rates, and hence the lower supply of public goods, than would be the case without tax havens. Tax havens are wasteful, since tax avoidance operations require a lot of resources form the companies, and also impose an administrative burden on the governments, who try to prevent these operations. Hence, much more resources are needed to collect the same tax revenue than would be the case without tax havens. All the countries would be better-off, if they could agree to increase their tax rates and lower enforcement, in other words, cooperate more in preventing tax haven operations.

A positive view on tax haven, presented, for instance in Dharmapala (2008) and Desai – Foley –Hines Jr. (2005) is the following.

[3] See also Bilicka and Fuest (2012) who use FDI to proxy economic links between economies.

All capital is not equally mobile across borders. Tax havens allow lower effective tax rates on mobile capital, and thus setting higher tax rates on immobile capital. In this way tax haven in fact mitigate tax competition, which is welfare enhancing. The evidence supporting this view id that 40% of US MNCs do not have affiliates in tax havens (in 1999), indicating that not all companies are equally able to make use of tax havens. Dharmapala (2008) also demonstrates that corporate income tax revenues in the US have not declined in 1994-2006 in spite of massive FDI flows to tax havens in the same period. Hence, tax havens seem not to have eroded the CIT base in the US. This argument should be, however, more qualified since the development of CIT revenues may depend also on many other factors. For instance, in the EU CIT revenues have remained relatively stable in spite of substantial reductions in statutory corporate income tax rates, but this is explained by base broadening and the increase of incorporation of domestic firms (see, de Mooij and Nicodème, 2008). Hence, without tax havens the increase of CIT revenues could have been faster.

This issue thus remains controversial and would require further investigation.

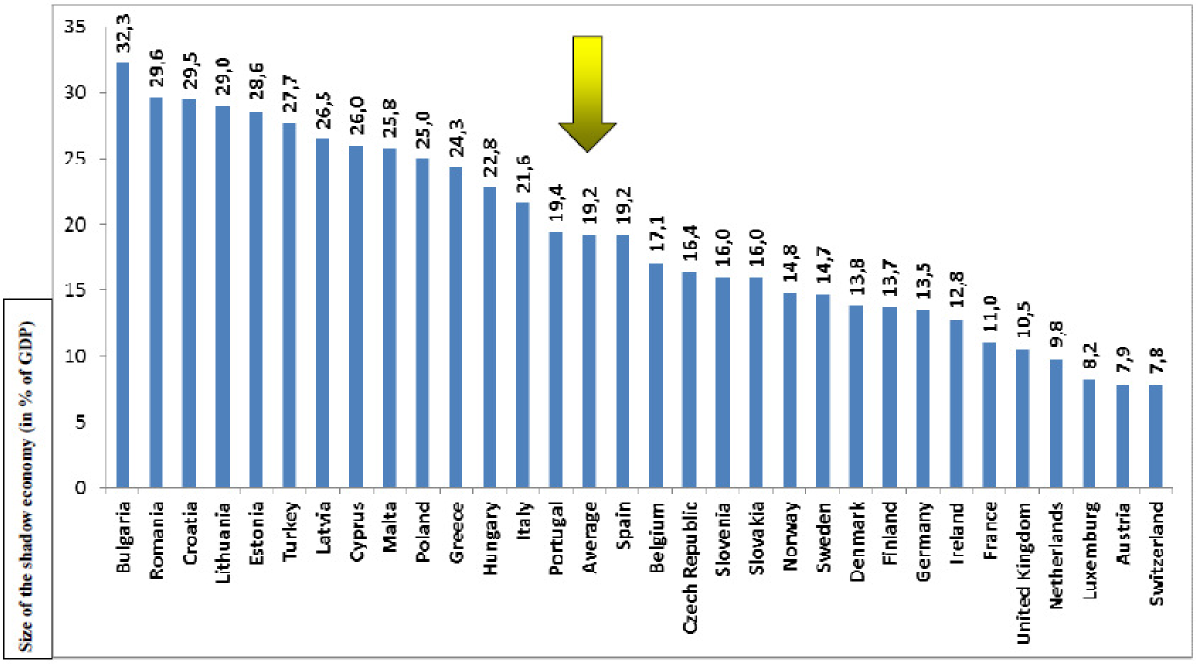
Tax havens and the shadow economy

Tax havens have several links with the shadow economy, although such links are difficult to demonstrate because of their very nature. It seems at least that without ‘tax havens’ it would be more difficult for undeclared activities and profits to be concealed to the tax authorities of EU MS through opaque legal and corporate structures.

The shadow economy includes those economic activities and the income derived thereof that circumvent or avoid government regulation or taxation. The major component (about two thirds) is undeclared work, which refers to the wages that workers and business don't declare to avoid taxes or documentation. The rest is represented by business underreporting profits to avoid tax regulation[4].

[4] Schneider (2011), The Shadow Economy in Europe 2011

Figure 1: Size of the shadow economy of 31 European Countries in 2012, % of GDP



Source: Schneider, F. (2011), "Size and development of the Shadow Economy from 2003 to 2012: some new facts ".

Table 1: Size of the shadow economy of 31 European countries over 2003 – 2012, % of off. GDP

Country / Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Austria	10.8	11	10.3	9.7	9.4	8.1	8.47	8.2	7.9	7.6
Belgium	21.4	20.7	20.1	19.2	18.3	17.5	17.8	17.4	17.1	16.8
Bulgaria	35.9	35.3	34.4	34	32.7	32.1	32.5	32.6	32.3	31.9
Cyprus	28.7	28.3	28.1	27.9	26.5	26	26.5	26.2	26	25.6
Czech Republic	19.5	19.1	18.5	18.1	17	16.6	16.9	16.7	16.4	16.0
Denmark	17.4	17.1	16.5	15.4	14.8	13.9	14.3	14	13.8	13.4
Estonia	30.7	30.8	30.2	29.6	29.5	29	29.6	29.3	28.6	28.2
Finland	17.6	17.2	16.6	15.3	14.5	13.8	14.2	14	13.7	13.3
France	14.7	14.3	13.8	12.4	11.8	11.1	11.6	11.3	11	10.8
Germany	17.1	16.1	15.4	15	14.7	14.2	14.6	13.9	13.7	13.3
Greece	28.2	28.1	27.6	26.2	25.1	24.3	25	25.4	24.3	24.0
Hungary	25	24.7	24.5	24.4	23.7	23	23.5	23.3	22.8	22.5
Ireland	15.4	15.2	14.8	13.4	12.7	12.2	13.1	13	12.8	12.7
Italy	26.1	25.2	24.4	23.2	22.3	21.4	22	21.8	21.2	21.6
Latvia	30.4	30	29.5	29	27.5	26.5	27.1	27.3	26.5	26.1
Lithuania	32	31.7	31.1	30.6	29.7	29.1	29.6	29.7	29.0	28.5
Luxemburg (Grand-Duché)	9.8	9.8	9.9	10	9.4	8.5	8.8	8.4	8.2	8.2
Malta	26.7	26.7	26.9	27.2	26.4	25.8	25.9	26	25.8	25.3
Netherlands	12.7	12.5	12	10.9	10.1	9.6	10.2	10	9.8	9.5
Poland	27.7	27.4	27.1	26.8	26	25.3	25.9	25.4	25	24.4
Portugal	22.2	21.7	21.2	20.1	19.2	18.7	19.5	19.2	19.4	19.4
Romania	33.6	32.5	32.2	31.4	30.2	29.4	29.4	29.8	29.6	29.1
Slovenia	26.7	26.5	26	25.8	24.7	24	24.6	24.3	24.1	23.6
Spain	22.2	21.9	21.3	20.2	19.3	18.4	19.5	19.4	19.2	19.2
Slovakia	18.4	18.2	17.6	17.3	16.8	16	16.8	16.4	16	15.5
Sweden	18.6	18.1	17.5	16.2	15.6	14.9	15.4	15	14.7	14.3
United Kingdom	12.2	12.3	12	11.1	10.6	10.1	10.9	10.7	10.5	10.1
27 EU-Countries / Average	22.3	21.9	21.5	20.8	19.9	19.3	19.8	19.5	19.2	18.4

Source: Schneider, F. (2011), "Size and development of the Shadow Economy from 2003 to 2012: some new facts" .

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ANNEX 7

Jean-Pierre DE LAET
Head of Unit "Economic analysis, evaluation & impact assessment support"
Directorate General Taxation and Customs Union
European Commission
Rue De Spa 3 6/14 B 1000 Brussels

13 July 2012

Our Reference: 0120454/1/025810SKI.LSE
Your Reference: Specific Contract N° 12 implementing Framework Contract N° TAXUD/2010/CC/101

Dear Sir,

Subject: Draft final report on "Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non-cooperative jurisdictions and aggressive tax planning"

We refer to the Specific Contract N° 12 implementing Framework Contract N° TAXUD/2010/CC/101 titled *"Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non-cooperative jurisdictions and aggressive tax planning"* (below ***"the Study"***).

In accordance to this contract, we are pleased to provide you with the results of our Study.

We would like to thank you for the opportunity to work with the Commission on this interesting project.

Should you have any questions, do not hesitate to contact us.

Yours faithfully,

Ine Lejeune
Partner
Tax Services

Patrice Delacroix
Partner
Tax Services

PwC EU Services
Europees Economisch Samenwerkingsverband/Groupement Européen d'Intérêt Economique/
European Economic Interest Grouping
Maatschappelijke zetel/Siège social/Registered office: Woluwe Garden, Woluwedal 18,
B-1932 Sint-Stevens-Woluwe
T: +32 (0)2 710 4211, F: +32 (0)2 710 4299, www.pwc.com
BTW/TVA BE 0872.793.825 / RPR Brussel - RPM Bruxelles / INGBE16 3101 8056 4374 - BIC BBRUBEBB

Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non-cooperative jurisdictions and aggressive tax planning

Content

Tables

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Preface

This document constitutes the Report on the Study on existing and proposed tax measures in the European Union in relation to Non-Cooperative Jurisdictions and Aggressive Tax Planning including country data and a comparative analysis. The Study was conducted in three phases.

Phase 1. The first preliminary phase was mainly intended to define our approach. To ensure the relevance of this Study, but also its practicability, we decided, together with the European Commission, to limit the scope to a representative sample of 14 European Union Member States, namely Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Spain, Sweden and the United Kingdom.

Phase 2. The second phase focused on country data-collection. For this purpose, we set up a model questionnaire aimed at collecting information in every participating country on current income tax legislation, as well as related legislative work or publicly available documents, on existing and proposed tax measures in relation to Third Countries. So as to gain a clear view on the questionnaire's propensity to provide the required level of detail and data, we completed the questionnaire for Belgium before providing it to the participating countries as a pilot, together with the blank questionnaire (to be completed). This pilot was meant to constitute a valid benchmark for all the other participating countries.

On 4 June 2012, the model questionnaire and the pilot for Belgium were circulated to the PwC member firms in each of the 14 participating countries.[1] The completed questionnaires were received during the days that followed.

Phase 3. During the third phase, i.e. the final report phase including the comparative analysis, we selected several criteria on the basis of the completed questionnaires in order to categorise the reported measures and, more broadly, compare the collected information with a view to drafting this Report. In doing so, we have identified the key features of the definitions and measures provided, reported them in additional summary tables, and written intermediate recapitulative statements that serve as a basis for our general conclusion.

Moreover, as this Study is based on several key documents (a model questionnaire, the pilot for Belgium, the first draft of the Report, etc.), these were reviewed by a Dedicated Multidisciplinary Quality Team composed of Ine Lejeune, Axel Smits, John Preston and Peter Merill, which assisted our

[1] "PwC" is the brand under which member firms of PricewaterhouseCoopers International Limited (PwCIL) operate and provide services. Together, these member firms form the PwC network. Each member firm in the network is a separate and independent legal entity and does not act as an agent for PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms, nor can it control the exercise of their professional judgment or bind them in any way.

Project Team throughout the Study to ensure the robustness of the methodology, data collection, assumptions and conclusions. Where needed, adjustments have been made on the basis of their comments so as, in each document, to reflect the high standards of quality we share and to attain as far as feasible the level of information sought by the European Commission.

The data collected is based on the provisions in force as of 31 May 2012. The Report was submitted to the European Commission in draft form on 27 June 2012. This final version is dated 30 June 2012.

This Study provides general guidance only. It does not constitute professional advice. The reader should not therefore act upon the information contained in this Report without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this review, and, to the extent permitted by law, PwC, its employees and agents accept no liability, and disclaim all responsibility, for the consequence of any party acting, or refraining from acting, in reliance on the information contained in this review or for any decision based on it.

Finally, we should like to thank all the PwC member firms involved, which have contributed to the success of this Study by the quality of their work.

Ine Lejeune	Patrice Delacroix
Global Relationship Partner	Partner, Project Leader

Executive Summary

The European Commission is currently drafting a Communication on good governance in the tax area in relation to the so-called concepts of Non-Cooperative Jurisdictions and Aggressive Tax Planning. In order to contribute to the assessment it is currently carrying out, the European Commission is looking for additional input and information on existing anti-abuse measures that apply, exclusively or otherwise, to Third Countries (i.e. non-EU/EEA countries).

In this context, we were engaged by the European Commission to perform the present Study, which has been conducted in three phases and included a data-collection service and a comparative analysis on existing and proposed tax measures in the European Union in relation to the concepts of Non-Cooperative Jurisdictions and Aggressive Tax Planning.

The first, preliminary phase was mainly intended to define our approach for the Study and its scope. To ensure the Study's relevance, and also its practicability, we decided, together with the European Commission, to limit the scope to a representative sample of 14 European Union Member States, namely Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Spain, Sweden and the United Kingdom.

The second phase focused on country-data collection. For this purpose, we set up a model questionnaire aimed at collecting information in each participating country on the current income tax legislation, as well as related legislative work or publicly available documents, on existing and proposed tax measures in relation to Third Countries. To gain a clear view on the questionnaire's ability to provide the required level of detail and data, we completed it for Belgium before providing it to the participating countries as a pilot, together with the blank questionnaire (to be completed). This pilot was meant to constitute a valid benchmark for all the other participating countries.

On 4 June 2012, the model questionnaire and the pilot for Belgium were circulated to the PwC member firms[2] in each of the 14 participating countries. The completed questionnaires were received during the days that followed. If needed, further clarifications were requested so that the completed questionnaires were finalised on 26 June 2012.

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During the third phase, i.e. the final report phase including the comparative analysis, we selected several criteria on the basis of the completed questionnaires to categorise the reported anti-abuse measures and, more broadly, compare the collected information with a view to drafting this Report. In doing so, we identified the key features of the definitions and measures provided, reported them in additional summary tables, and wrote intermediate recapitulative statements that served as a basis for our general conclusion.

In particular, given the specific scope of the Study, the reported anti-abuse measures have been divided into two main categories: those specifically applicable to transactions with Third Countries ("Specific Measures") and other measures ("Non-Specific Measures"). Moreover, the Study also provides additional insight into the most recently reported Specific Measures ("New Specific Measures", i.e. measures enacted or substantially amended on or after 1 January 2007, plus possible future measures).

The Study also offers valuable insight into the essential concepts of NCJ and ATP. In fact, the data collected showed that few Member States have a clear definition of the terms "Non-Cooperative Jurisdictions" and "Aggressive Tax Planning", although many of them did report having various concepts that are akin to these key concepts. In this respect, it is interesting to note that anti-abuse measures in some participating countries apply to countries where the level of taxation is inappropriate (e.g. no taxation at all or a very low nominal/effective tax rate), whereas, in other Member States, the decisive criterion is the level to which countries cooperate in terms of exchange of information (which is more like the OECD approach). However, these countries, sometimes featuring on black, grey or white 'lists', are not always Third Countries.

The Study also finds that there are not many Specific Measures, i.e. measures specifically dedicated to tackle abuse or aggressive tax planning in relation to Third Countries. However, that does not mean that MSs do not have measures to fight what they consider to be abusive transactions in relation to Third Countries. Indeed, many anti-abuse provisions apply to Third Countries, even if these measures also usually apply in purely domestic situations or within the European Union. Moreover, we cannot rule out the possibility that some of these measures are, in practice, more often applied to transactions/arrangements with Third Countries than in purely domestic situations or within the European Union.

For instance, some Member States lay down more stringent rules for entities/taxpayers established/resident in countries with which they have no double tax treaty (or no double tax treaty including an exchange of information clause). Given the available network of double tax treaties within the European Union (and also Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC), there is much less a chance that these rules apply within the European Union than to Third Countries, so that, *de facto*, these rules might essentially be applicable to Third Countries. The case law of the Court of Justice of the European Union also restricts the scope of application of existing anti-abuse measures within the EU.

Notwithstanding the absence of a precise definition of “abuse”, we can conclude that many MSs have a significant number of anti-abuse provisions in their legislation, covering many different forms of potentially abusive behaviour (according to the local tax legislation or administrative practice/case law), such as shifting profits to low tax jurisdictions, erosion of the tax base through excessive debt financing, etc.

This is particularly true if we consider that all Member States report having at least one general anti-abuse rule (“GAAR”), except the United Kingdom, where adoption of a general anti-abuse rule is nevertheless being discussed. In particular, the foundations for these GAARs can take various forms; ranging from the “abuse of law” principle, a “simulation” or "sham" theory to the “substance over form” principle. None of these measures applies to Third Countries only (let alone to Non-Cooperative Jurisdictions). On the contrary, they are often equally applicable regardless of the territorial scope of a given transaction (i.e. purely domestic situations, transactions within the European Union and transactions outside the European Union).

That said, based on the information collected, it is difficult to assess whether the anti-abuse provisions listed in the Study can be considered as effective in combating what the Member States consider as abusive: most countries did not report any (actual or predicted) quantitative impact of the identified abuses or the anti-abuse measures (i.e. tax revenues) or make any evaluation of the effectiveness and sufficiency of the measures. A limited number of them did, i.e. France, Germany, The Netherlands, Sweden and The United Kingdom have cited figures reflecting the expected budgetary impact of some measures.

The data collection is based on the law as at 31 May 2012. The Report was submitted to the European Commission in draft form on 27 June 2012. This final version is dated 30 June 2012.

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1. Objective and Scope of the Study

1. **Communication on Good Governance.** We understand that the European Commission (below ***"the Commission"***) is currently drafting a Communication on good governance in the tax area in relation to so-called Non-Cooperative Jurisdictions (below ***"NCJs"***) and so-called Aggressive Tax Planning (below ***"ATP"***). In order to contribute to the assessment it is currently carrying out, the Commission is looking for additional input and information on existing anti-abuse measures applying, exclusively or otherwise, to Third Countries (i.e. non-EU/EEA countries).

2. **Activities in scope.** The Study takes the form of a *data collection service* (combined with a comparative analysis) based on a *review* of the current income tax legislation applicable in the different Member States (below ***"MSs"***) and related legislative work. The report does not comprise any quantitative assessment (no financial estimates, cost-benefit analysis or impact assessment).

The scope of the Study is further defined as follows:

- In the framework of this Study, only Third Countries could be considered as NCJs, to the exclusion of any MS;
- ATP is only considered in relation to structures put in place with Third Countries, to the exclusion of structures put in place between MSs only;
- Only income/direct taxation is considered in the scope of the Study;
- The 14 MSs identified by the Commission for the Study are: Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxemburg, Malta, the Netherlands, Spain, Sweden and the United Kingdom;
- The data collection service focuses on describing measures which have been enacted as from 1 January 2007 (up to 31 May 2012). Apart from that, we also list existing measures (with a brief explanation), which have been enacted prior to 1 January 2007 but which also fall in scope of the Study;
- As regards the measures included in the data collection service, the main purpose of the Study is to refer to measures specifically relating to NCJ and ATP. Nevertheless, we also refer in a high-level manner to Non-Specific Measures, which are not specifically relating to NCJ and ATP but which could also be applied in these cases;
- The data collection service is only based on the review of the MSs' existing income tax legislation (including double tax treaties and other international agreements), related public legislative work and public administrative doctrine (parliamentary works, parliamentary questions, practice notes, rulings, etc., provided it is available in the public domain). The data collection does not include a review of the available literature on the subject;
- Such review is to be carried out by the PwC network.

3. **Twofold Description.** The description of the current situation in the MSs comprises two main parts:

- **NCJ/Third Countries.** The various measures the MSs under review have taken against NCJs/Third Countries at the national level (and international bilateral level, if any). The description of an existing measure *covers inter alia* the problem supposed to be tackled by the provision in question (its stated objective). Besides, provided that the documentation under review does so, the report also includes the (expected) quantitative impact of the identified problems and of the measures taken against NCJs for the concerned MSs, e.g. their tax revenues. In case no quantitative information is available, this is mentioned in the report.

- **ATP.** The various measures the MSs under review have taken against ATPs (carried out by, *inter alia*, multinational companies) at the national level (and international bilateral level, if any). The description of an existing measure *covers inter alia* the problem supposed to be tackled by the provision in question (its stated objective). Besides, provided that the documentation under review does so, the report also includes an evaluation (post-enactment) made by the concerned MSs of the effectiveness and sufficiency of the measures taken by such MSs against ATP (including impact on MSs' revenues). In case no quantitative information is available, this is mentioned in the report.

2. Methodology

4. Based on the reporting obligations and timetable as set forth in the revised RfO of 2 May 2012, we prepared a timetable and identified the different project phases as set out below.

2.1. Phase 1 – Kick-off

5. As a first step, the project was presented and discussed with the key project team members (including the Project Leader and Project Team) to define their roles and expectations and to present the way forward.

The kick-off meeting took place on 16 May 2012 in the presence of the Commission, the Project Leader and the Project Team.

During the meeting, we have, amongst other things, discussed the approach for the drafting of the Questionnaire to be sent out to the PwC member firms, bearing in mind the objective of “data collection” as set forth in the RfO. In addition, the different project steps and timeline were validated during the said meeting.

2.2. Phase 2 – Intermediary Report

6. We drafted a Questionnaire to be sent out to the PwC member firms located in the different MSs.

7. The purpose of the Questionnaire was to obtain the required data in view of the data collection service as described above.

8. So as to have a clear view on the interpretation of the questions included in the Questionnaire, we suggested working with a "pilot" and thus having the Questionnaire already completed for one country. Such pilot allowed the Commission to assess whether the Questionnaire was suitable to provide the required level of details and data. It also gave the Commission the opportunity to provide for the necessary amendments where needed.

In order to be as time efficient as possible and given the timing constraint, we suggested having the Questionnaire filled in for Belgium as a pilot, also considering the very recent changes in tax legislation with respect to tax havens, etc. The Belgian pilot was thus considered as an interesting and valid benchmark for all other MSs and served as a guide to our experts of the PwC member firms for the completion of the Questionnaire with the data from their respective MSs.

Once finalised by the Project Team, the pilot was sent for comments and approval to the members of the Dedicated Multidisciplinary Quality Team.

9. A final step within this phase consisted in providing the intermediary report to the Commission, including a draft table of contents, the Questionnaire, the Belgian pilot and a status of the work carried out to date.

10. This intermediary report was sent to the Commission on 30 May 2012. It was followed by a conference call on 1 June 2012, in which the Commission made some suggestions and recommendations. On that basis, the intermediary report was finalised by PwC and approved by the Commission on 4 June 2012. The Questionnaire was then sent out to the PwC member firms.

2.3. Phase 3 – Final Report

11. Once the Commission has validated the draft intermediary report including the Questionnaire and the Belgian pilot, we liaised with the various PwC member firms located in the different MSs to obtain their input on the provided Questionnaire.

12. For the purposes of the final report, the input of 13 additional MSs as identified by the Commission was required. The MSs which provided their input during this phase were: Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxemburg, Malta, the Netherlands, Spain, Sweden and the United Kingdom.

13. To conclude this phase, a report was to be submitted to the Commission by 29 June 2012 at the very latest. This report includes an updated table of contents, a description of the methodology applied for

the purpose of the Study, the completed Questionnaires of the 14 MSs as listed above and a comparative analysis based on the input obtained from the PwC member firms.

2.4. Project Team

14. Our organisation model was based on a Project Team acting as a Central Contact, a Project Leader and a Dedicated Multidisciplinary Quality Team.

- **Project Leader:** For this project, the Project Leader was Patrice Delacroix (Tax Partner PwC Belgium, Member of the EU Direct Tax Group of the Global Financial Services Network and the EUDTG Working Group). Patrice has previously acted as a Project Leader for several other studies of the Commission including amongst others the Study on labour and corporate taxation of the financial sector, the Study on the taxation of financial instruments and the Feasibility Study on a Simplified "Relief at Source" System implementing the principles of the FISCO Recommendation[3]);

- **Project Team:** For this project, the Project Team was composed of the following persons:

  – Mathieu Protin (Manager, PwC Belgium). Mathieu also participated in the Commission's Study on labour and corporate taxation of the financial sector, the Study on the taxation of financial instruments and the Feasibility Study on a Simplified "Relief at Source" System implementing the principles of the FISCO Recommendation3);
  – Annemie Wynants (Manager, PwC Belgium). Annemie also participated in the Study on labour and corporate taxation of the financial sector;
  – Team of Corporate Tax Consultants of PwC Belgium;

- **Dedicated Multidisciplinary Quality Team:** For this project, the Dedicated Multidisciplinary Quality Team was composed of the following persons:

  – Axel Smits (Tax Partner PwC Belgium, Central Cluster International Taxation Leader, Intellectual Property expert);
  – John Preston (Tax Partner PwC UK, Global leader for tax policy, external relations and regulation, Member of PwC's Global Tax Leadership Team, Member of the Council of the UK's Chartered Institute of Taxation and a member of the Tax Faculty Committee of the Institute of Chartered Accountants in England and Wales);
  – Peter Merrill (Tax Partner PwC US, Partner-in-charge of the National Economics & Statistics Group, a centre of excellence for advanced statistical and economic analysis supporting the Tax, Advisory and Audit practices);

[3] Ongoing project.

– Ine Lejeune (Global Relationship Partner for EU Services to the EU Institutions and DG TAXUD, Tax Partner, Global Relationship Partner EU Institutions, Global Indirect Taxes Policy Leader.

2.5. Timetable

15. Given the very short timescale for this Study, the following timetable was agreed upon with the Commission.

Table 1: Timetable

Step 1.1 Preparation of kick-off meeting	
Step 1.2 Kick-off meeting	16 May 2012 (at the latest)
Step 2.1 Drafting of intermediary report including the Questionnaire and completion of Belgian pilot case	17/05 – 25/05
Step 2.2 Review of intermediary report by the Quality Team	28/05 – 29/05
Step 2.3 Providing of intermediary report to the Commission	30/05
Step 2.4 Feedback on intermediary report by the Commission (including conference call with PwC)	30/05 – 1/06
Step 2.5 Amendment of the Intermediary report – more precisely the Questionnaire – following the comments of the Commission	4/06
Step 2.6 Validation of the Intermediary report by the Commission	4/06
Step 3.1 Completion of validated Questionnaire by PwC representatives of 13 MSs	5/06 – 12/06
Step 3.2 Gathering of information and drafting of final report	13/06 – 22/06
Step 3.3 Review of draft final report by the Quality Team	25/06 – 26/06
Step 3.4 Providing of draft final report to the Commission	26/06 COB
Step 3.5 Feedback of the Commission on draft final report	28/06
Step 3.6 Providing of final report to the Commission	30/06

3. Data Collection

16. In order to proceed to the data collection, a Questionnaire was sent out to the PwC member firms. The Questionnaire sent to the various territories involved in this Study was introduced as stated in the following table. The blank questionnaire is enclosed in Appendix 1.

17. The input from the various PwC member firms is enclosed in Appendix 2.

Table 2: Introduction to the Questionnaire

Goal of the Study	The Study consists in a *data collection service* combined with a *comparative analysis* based on a review of the current income tax legislation (and the related legislative work) and information available in the public domain on existing and proposed tax measures of 14 EU Member States in relation to the so-called concepts of "Aggressive Tax Planning" (hereafter ***"ATP"***) and "Non-Cooperative Jurisdiction" (hereafter ***"NCJ"***). The Study is focussed on direct taxation – income and corporate tax – (primarily business taxation plus any necessary bridge to personal taxation such as the use of NCJs to avoid taxation of savings in particular). Note that ATP and NCJ are concepts which have no EU-wide definitions. Therefore, in order to circumvent this issue in the framework of this assignment, it has been decided that: • Only Third Countries could be considered as NCJs (to the exclusion of any EU Member State); and • Only operations/arrangements with Third Countries could be considered as ATPs (solely intra-EU operations/arrangements are out of scope).
Goal of the Questionnaire	This Questionnaire aims at collecting information on the current income tax legislation (and related legislative work or publicly available documents) on existing and proposed tax measures in your country in relation to Third Countries.
Assumptions	Please take into account the following assumptions when completing the Questionnaire: • Only income/direct taxation (including capital gains and WHT, where relevant) is considered in the scope of this Questionnaire. As mentioned above (if relevant) also comments on personal taxation might need to be included in the below Questionnaire plus quantitative information if available; • The input provided should only be based on the review of the income tax legislation (including double tax treaties and other international agreements), related official legislative work and official administrative doctrine (parliamentary works, parliamentary questions, practice notes, rulings, etc. – provided these documents are available in the public domain) and case law where required. It does not need to include any review of the available literature (doctrine) or of any other document which is not to be seen as official in your local territory.

In Scope Measures	• **New Specific Measures:** The main purpose of the Questionnaire is to collect information on so called "New Specific Measures" comprising anti-abuse measures specifically relating to Third Countries <u>when such measures</u>: – Have been enacted after 1 January 2007 (new measures); – Have been substantially amended after 1 January 2007 (amended measures); or – Are currently discussed in bill of laws (possible future measures). • **Other Measures:** Nevertheless, it should also comprise a high-level description of other measures comprising: – **Other Specific Measures:** Measures specifically relating to Third Countries that have been enacted before 1 January 2007 (and not substantially amended since 1 January 2007); as well as – **Non-Specific Measures:** Anti-abuse measures which are not only applicable in relation to Third Countries (regardless whether enacted before or after 1 January 2007). Such high-level description should include a summary of the measure (including also the purpose of the measure), the legal grounds, an impact assessment (when available), evaluation of the measure (when available) and also a high-level listing of the most relevant and recent case law (final or pending) in relation to the measure. As regards the case law, the main purpose is to provide a non-exhaustive overview of the main tendencies in relation to this measure. The overview is limited to listing the fixed case law since 1 January 2007 in relation to the measure, which can be considered as useful for a full understanding of the measure and its application in a certain Member State. Also, in case of so-called “landmark” decisions prior to 1 January 2007, these should also be mentioned in a summarised manner. • **NCJ v. ATP Measures:** Besides, the Questionnaire intends to differentiate between Specific Measures targeting in particular NCJs or ATPs (regardless such measures are New or not). In broad terms, those measures could be defined as follows: – **NCJ Measures:** the focus is more on the country (almost irrespective of the transaction); whereas – **ATP Measures:** the focus is more on the operations/arrangements potentially concerned. Of course, the difference between these two types of measures can sometimes appear difficult (e.g. a measure only applicable to selected Third Countries and only relating to a specific type of transactions). In such a case the measure can be considered as both an NCJ Measure and an ATP Measure.

Structure of the Questionnaire	Based on these criteria, the Questionnaire is divided in three parts which should be completed depending on the level of information required for the in scope measures: • **Part 1: Introduction:** It includes some general introductory questions which summarize the overall situation in your country as regards the existing legislation on NCJs and ATPs. This part of the Questionnaire should only be completed once. **Part 2: General Information:** It includes a general description of each anti-abuse measure reported in the Questionnaire (regardless of whether the measures in question have to be considered as New Specific Measures, Other Specific Measures or Non-Specific Measures). Part 2 should comprise a comprehensive overview of the anti-abuse measures existing (or currently discussed) in your local territory. • **Part 3: Detailed Information:** It concerns detailed information on New Specific Measures only. This part should be completed for each and every New Specific Measure reported in Part 2. Examples (Part 2 v. Part 3): • An anti-abuse measure concerning any national or international transactions would be considered as a Non-Specific Measure. Only Part 2 should be completed; • A reporting obligation of payments made to selected Third Countries enacted in 2009 should be considered as a New Specific Measure. Part 2 and Part 3 of the Questionnaire should be completed; • A reporting obligation of payments made to selected Third Countries enacted in 2005 should be considered as an Other Specific Measure. Only Part 2 should be completed.

4. Comparative Analysis

4.1. Introduction

18. **Introduction.** This comparative analysis is based on the information collected from our PwC network as a result of the model Questionnaire as validated by the Commission in the framework of the preliminary report. As already indicated, this Questionnaire is composed of three parts:

- **Part 1: Introduction**: It includes some general introductory questions which summarise the overall situation in the respective MSs as regards the existing legislation on NCJs and ATPs.

  – **Definition of NCJ & ATP.** In this part, we have first addressed whether there is any formal definition of NCJ and ATP in the various MSs concerned by the Study.

  – **New Specific Measures v. Other Measures.** We have then addressed whether there exist so-called "New Specific Measures" which were defined, for the purpose of this Study, as anti-abuse measures *specifically relating to Third Countries* when such measures:

    - Have been enacted after 1 January 2007 (new measures);
    - Have been substantially amended after 1 January 2007 (amended measures); or
    - Are currently discussed in bill of laws (possible future measures).

    All other measures not falling within this category were qualified as being Other Measures for the purpose of this Study.

  – **Other Specific Measures v. Non-Specific Measures.** We have then asked whether the respective MSs have such Other Measures, yet differentiating between Other Specific Measures and Non-Specific Measures being defined, for the purpose of this Study, as follows:

    - **Other Specific Measures:** Measures specifically relating to Third Countries that have been enacted before 1 January 2007 (and not substantially amended since 1 January 2007); as well as
    - **Non-Specific Measures:** Anti-abuse measures which are not only applicable in relation to Third Countries (regardless of whether or not enacted before or after 1 January 2007).

  – **Legislative or Administrative Proposals.** Finally, in this first part, we requested the respective MSs whether there are currently proposals aimed at introducing new measures which could fall into the scope of the Study.

- **Part 2: General Information:** It includes a general description of each anti-abuse measure reported in the Questionnaire regardless of whether the measures in question have to be considered as New Specific Measures, Other Specific Measures or Non-Specific Measures. It comprises a comprehensive overview of the relevant anti-abuse measures existing (or currently discussed) in the respective MSs.

- **Part 3: Detailed Information:** It concerns detailed information on New Specific Measures only.

In the following sections, we propose short summaries of the various measures reported with respect to the various MSs complemented with tables comprising additional details.

4.2. Definition of NCJ

19. **NCJ v. ATP Measures.** As mentioned above, the Questionnaire intends to differentiate between Specific Measures (i.e. anti-abuse measures specifically relating to Third Countries) targeting in particular "NCJs" or "ATPs" although these concepts are not clearly defined.

For the purpose of this Study, and only with a view to being able to categorise to some extent the various measures existing in the different MSs, we have suggested in broad terms that the focus of "NCJ Measures" is more on the Third Country as such (almost irrespective of the transaction) whereas the focus of "ATP Measures" is more on the operations/arrangements potentially concerned with entities/companies/taxpayers/etc. established in such Third Country.

Of course, the difference between these two types of measures can sometimes appear difficult (e.g. a measure only applicable to selected Third Countries and only relating to a specific type of transactions). In such a case, the measure can be considered as both an NCJ Measure and an ATP Measure.

20. **Only France and Estonia have reported having a formal definition of an "NCJ".**

Although in Estonia an "NCJ" is not as such defined in tax law, the concept of a "low tax territory", which is defined in tax law, is clearly a concept which can be linked with an NCJ. According to Estonian tax law, a low tax territory is a foreign state or a territory with an independent tax jurisdiction in a foreign state, which does not impose a tax on the profits earned or distributed by a legal person or where such tax is less than one third of the income tax which would apply to the taxpayer if it were resident in Estonia. Considering the tax rate for personal income tax is flat 21%, a low tax rate territory is the territory where the applicable tax rate is below 6,93%[4]. Given all the MSs (and countries that have concluded a tax treaty with Estonia) are, as a general rule, considered as cooperative and automatically included by the Government in the "white list" of countries that are not considered as low tax rate territories, the definition of low tax territory is, in effect, limited to Third Countries.

[4] Cfr. Appendix 2, Estonia, Definition of NCJ, p86.

In France, the definition of an "NCJ" does not take into account the effective taxation regime applicable in a certain country. Indeed, a state or territory is defined as non-cooperative (Non-Cooperative State or Territory, below ***"NCST"***) if it meets the following criteria: (i) it is not a member of the European Union; (ii) its situation as regards transparency and exchange of information has been scrutinised by the OECD; (iii) it has concluded less than 12 Tax Information Exchange Agreements (below ***"TIEAs"***) before 1 January 2010; and (iv) it has not signed a TIEA with France.

21. **All other participating MSs do not report having a formal definition of an "NCJ".** However, it does not mean that these MSs do not have any anti-abuse provisions aimed at fighting against the use of schemes involving specific countries.

Indeed, many countries do report various measures which apply to e.g. "non-treaty countries" (Hungary), "countries with a low tax burden" (Belgium), "low-taxed jurisdictions" (Sweden), "countries with a tax regime that is substantially more advantageous than the local tax regime (Belgium)". However these rules generally do not provide for a formal definition of an "NCJ" and/or are generally equally applicable to MSs (including purely domestic situations) and Third Countries (cf. Table 3 below).

In addition, based on the provided input, for at least three Member States it has been reported that the reference to a "tax haven" can vary depending on the type of measure. For instance, in Belgium, the participation exemption regime does not apply in the case of dividends received from a company established in a Third Country of which the tax regime is considered as *substantially more advantageous than in Belgium*. For the purposes of this measure, the tax regime is considered as substantially more advantageous if the applicable nominal or effective tax rate is lower than 15%[5]. On the other hand, for the disclosure requirement of payments made to tax havens countries, Belgian tax law considers a low tax burden as a nominal corporate income tax rate lower than 10%[6]. Also in France, notwithstanding the fact that there is a formal definition of an NCJ, not all provisions which can be considered as relating to a "tax haven", refer to the formal definition of the "NCJ". Indeed, for purposes of the application of the anti-avoidance rule providing for the non deductibility of certain expenses paid out to a non-resident located in a low-tax-jurisdiction, a non-resident is located in a "low-tax-jurisdiction" in case it is subject to an effective taxation which is at least 50% lower than that of similar French residents[7]. Finally, also in Sweden similar discrepancies seem to be at hand. Indeed, for the purposes of the definition of a foreign corporation, i.e. a foreign legal entity subject to a taxation similar to the Swedish corporation income tax, the term similar taxation implies an effective rate of 14,5% (which corresponds to 55% of the Swedish Income Tax)[8]. However, for the application of the specific

[5] Cfr. Appendix 2, Belgium, Part 2: General Information, Measure n°6, p 32.
[6] Cfr. Appendix 2, Belgium, Part 2: General Information, Measure n°1, p 19 and Appendix 2, Belgium, Part 3: Detailed Information, Measure n°1, p 53.
[7] Cfr. Appendix 2, France, Part 2: General Information, Measure n°2, p 109.
[8] Cfr. Appendix 2, Sweden, Definition of NCJ, p 334.

interest stripping rule in Sweden, which applies in case interest income is allocated to a low tax jurisdiction, only an effective tax rate of 10% is required[9].

It is also interesting to note that anti-abuse measures in some MSs (such as Belgium, Cyprus, Estonia, Hungary, Ireland, Luxembourg, The Netherlands, Spain, Sweden and the United Kingdom) are applicable to countries where the level of taxation is considered as being not appropriate (e.g. no taxation at all, very low nominal/effective tax rate, not subject to a similar ore reasonable level of taxation) whereas in other MSs (such as Belgium, France, Germany, Malta and the United Kingdom) the decisive criteria is the level of cooperation of the countries in terms of exchange of information (which is more the OECD approach).

By way of example of this approach (besides the French example mentioned above), Germany considers a country as a Non-Cooperative Jurisdiction if (i) the respective country has not concluded an information exchange agreement with Germany that corresponds with Art. 26 of the OECD model agreement (2005) or (ii) the respective country does not provide information to an extent comparable to Art. 26 of the OECD model agreement (2005), and (iii) is unwilling to provide such information. However, Germany was not considered as having a definition of NCJ for the purpose of this Study since this rule does not only relate to Third Countries (but addresses all foreign countries). Belgium also defines a tax haven as a country which is considered by the OECD Global Forum on Transparency and Exchange of Information as a State that has not substantially and effectively applied the OECD exchange of information standard[10]. With respect to Spain, the specific concept of NCJ does not exist in tax legislation. However, similar concepts such as "tax haven" or "jurisdiction with nil taxation" are defined in Spanish tax law.

- "Tax haven" refers to a black list. In practice, the black list focuses essentially on Third Countries. Each jurisdiction will be excluded from the list if a double tax treaty with an exchange of information clause or a tax information exchange agreement is applicable between Spain and this country.
- "Jurisdiction with nil taxation" is defined in a law providing for measures to prevent tax fraud. It is more particularly defined as a jurisdiction that does not apply a similar or analogous tax to the Spanish personal income tax, corporate income tax or non-resident income tax. A similar or analogous tax is a tax whose main purpose is the taxation of income, even partially, regardless of whether the taxable event is the income, the profits or a similar element. This requirement is deemed to be met if the jurisdiction has signed a DTT with Spain.

In the United Kingdom, the legislation relates to lower levels of tax:

[9] Cfr. Appendix 2, Sweden, Part 2: General Information, Measure n° 1, p 337.
[10] This definition is not yet effective though as the work of the Peer Review Group is still ongoing.

- The current Controlled Foreign Company (below ***"CFC"***) rules only apply where a company is subject to a lower level of tax (s747(1)(c) ICTA 1988). Whether or not a company is subject to a lower level of tax is determined by reference to section 750 ICTA 1988;
- In the new CFC rules, sections 371MA - 371ME describe the "tax exemption", whereby a company is exempted from the CFC charge if the local tax is at least 75% of the corresponding tax.

The main consequences of the different approaches will be outlined below when commenting on the various measures referring to these notions.

Table 3: Definition of NCJ

BELGIUM	No	However, in Belgian tax law several notions or terms occur that could be linked to the notion of NCJ (e.g. "tax regime that is substantially more advantageous", "tax regime which is different than the common tax regime, country which "is considered by the OECD Global Forum on Transparency and Exchange of Information as a State that has not substantially and effectively applied the OECD exchange of information standard").
CYPRUS	No	Although in the Cyprus tax legislation there are references which may be linked to the concept of NCJ ("substantially lower tax burden that Cyprus tax burden")
DENMARK	No	Several of the anti-abuse measures are only targeted to jurisdictions outside the EU/EEA with which Denmark has not concluded a tax treaty.
ESTONIA	Yes	The Estonian tax legislation defines the concept of "Low Tax Territory" (i.e. territory with no taxation or a substantially lower taxation than in Estonia Considering the tax rate for personal income tax is flat 21%, a low tax rate territory is the territory where the applicable tax rate is below 6,93%[11]). Note that: • a country can be partially considered as "Low Tax Territory" if taxation regimes differ from one entity to another; • a company can be deemed not to be located in a "Low Tax Territory" if 50% of its annual income is derived from an actual economic activity (the latter concept is not defined in Estonian tax law); • a white list exists.
FRANCE	Yes	A state or territory is defined as non-cooperative if it meets several criteria (i.e. (i) if it is not a member of the European Union, (ii) if its situation as regards transparency and exchange of information has been scrutinised by the OECD, (iii) if it has concluded less than 12 Tax Information Exchange Agreements before 1 January 2010 and (iv) if it has not signed such agreement with France)[12] . A list of non-cooperative states/territories ("NCST") exists and is subject to strict rules (e.g. adding to or withdrawal from the list).
GERMANY	No	Some measures with regard to entities resident in a list of uncooperative countries/non-cooperative jurisdictions that do not adhere to the OECD standards on tax information exchange were introduced in 2009 by way of a tax act aimed at combating "tax evasion and harmful tax practices". Measures can only be applied if the country has been black-listed by the federal Ministry of Finance (i.e. no single country for the moment).
HUNGARY	No	A similar concept is however approached through the CFC regime (i.e. the requirement of the Hungarian private person ownership or income from Hungary was recently – in 2010 – incorporated in the CFC definition, resulting in the fact that it practically refers to Hungarian capital located in offshore territories).
IRELAND	No	There are however particular provisions in Irish tax law that provide for the tax benefits in relation to payments to and from Ireland on the basis that the income is subject to tax in the recipient foreign territory.
LUXEMBOURG	No	However, the concept of NCJ could be indirectly derived from several provisions of Luxembourg income tax law ("LITL"). Indeed, various provisions of the LITL are applicable to joint stock companies resident in Third Countries (i.e. non-MSs) to the extent that "[these companies] are fully liable in ([their] state of residence) to a tax corresponding to Luxembourg corporate income tax".

[11] Cfr. Appendix 2, Estonia, Definition of NCJ, p 86.
[12] Cfr. Appendix 2, France, Definition of NCJ, p 102.

MALTA	No	The only approach of this concept can be found in the "other jurisdictions exchanging information" regime (e.g. Malta does not exchange information with countries which do not enter in an agreement).
NETHERLANDS	No	Several notions could however be linked to the concept of NCJ, in particular the notion of "profit or income tax that is reasonable according to Dutch standards" provided in several dispositions.
SPAIN	No	However, similar concepts such as "tax havens" or "jurisdictions with nil taxation" are defined in Spanish tax law.
SWEDEN	No	Indirect effect of the definition of the term "foreign corporation" (i.e. "entity subject to taxation similar to Swedish corporation income tax")
UK	No	None

22. **White, Grey & Black Lists.** Half of the MSs (Belgium, Estonia, France, Germany, Spain, Sweden and the United Kingdom) refer to a limited "territorial" scope of application of certain measures, mentioning that they are only applicable when dealing with very specific countries. These MSs use lists to differentiate between "white", "black" and even "grey" countries.

- Black lists: In Belgium, the reporting obligation currently only applies in the case of payments to tax haven countries which are specifically listed in a Royal Decree[13]; Another list applies in the framework of the participation exemption regime to qualify countries "where the common tax regime is deemed to be substantially more advantageous than in Belgium". For Spain, the qualification as a tax haven pursuant to a list entails the application of various Specific Measures, such as the measure in relation to the tax residence of entities located in a tax haven[14], the measure providing for the non-deductibility of expenses paid to tax havens[15], the measure providing for the limitation on transfer of rights to use intangible assets in case of tax havens[16], the measure providing for the limitation of the specific ETVE regime in case of tax havens[17], the measure in relation to the valuation of transactions with tax havens[18], the measure in relation to the information of transactions with tax havens[19] and the measure providing for the non-application of withholding tax exemptions of income obtained through tax havens[20]. In Germany, the measures on Non-Cooperative Jurisdictions can only be applied, if the respective country has been listed by the Federal Ministry of Finance, however until today no single country has actually been listed.
- Grey lists: In Sweden, the list used in the framework of the CFC legislation is divided into black, white and grey-listed countries, whereby certain countries are entirely black-listed (i.e. CFC

[13] Cfr. Appendix 2, Belgium, Part 2: General Information, Measure n°1, p 19 and Appendix 2, Belgium, Part 3: Detailed Information, Measure n°1, p 54.
[14] Cfr. Appendix 2, Spain, Part 2: General Information, Measure n°1, p 306.
[15] Cfr. Appendix 2, Spain, Part 2: General Information, Measure n°2, p 307.
[16] Cfr. Appendix 2, Spain, Part 2: General Information, Measure n°8, p 314.
[17] Cfr Appendix 2, Spain, Part 2: General Information, Measure n°11, p 319.
[18] Cfr. Appendix 2, Spain, Part 2: General Information, Measure n°13, p 321.
[19] Cfr. Appendix 2, Spain, Part 2: General Information, Measure n°15, p 324.
[20] Cfr. Appendix 2, Spain, Part 2: General Information, Measure n° 17, p 306.

taxation will take place), others are entirely white-listed (i.e. no CFC taxation will take place) and finally some are grey-listed (certain operations in a country may be black or white-listed).

- A country mentioned on the OECD's "white list" will automatically be removed from the French list of NCSTs. Estonia also makes reference to a white list of territories which are not regarded as low tax rate territories and thus with respect of which many Specific Measures are not applicable. The United Kingdom (white list) also uses a list in the framework of its CFC legislation to define countries to which the CFC legislation does not apply.

23. Generally, in case a Member State is using a black list, transactions with counterparties located in a country which occurs on a black list will generally fall in scope of a particular measure. Whereas when dealing with countries included on a white list, this will generally imply that certain measures are not applicable. Only Sweden has referred to a so-called "grey list" which includes countries which are as such not black listed, but for which certain operations or certain taxpayers (e.g. which can benefit within their country of residence from a specific tax regime) are black or white listed[21].**Comparison of Lists.** On specific request of the Commission, we provide in Table 4 below a high level comparison of the different territories listed on the lists provided.

It should be pointed out that, as a rule, the black and grey lists used by the MSs in scope of the Study do not comprise other MSs[22]. As regards Countries of the European Economic Area (below ***"EEA"***) only Liechtenstein appears on black lists. The table below therefore only comprises Third Countries (including Liechtenstein).

The starting point of the comparison is the negative cases (i.e. territories fully or partially considered as blacklisted). Territories mentioned on white lists are thus only mentioned insofar as they are also mentioned on other lists.

Legend:

- To ease the reading, territories listed on black lists (left part of the table) by,
  - two MSs are highlighted as follows: X
  - three MSs are highlighted as follows: X
  - more than three are highlighted as follows: X
- Territories listed on the right part of the table are territories mentioned on existing white lists and mentioned on other MSs' black or grey lists.

[21] Cfr Appendix 2, Sweden, Part 2: General Information, Measure n°3, p 340.
[22] With the exception of Sweden but only in specific cases (concerns Belgium, Bulgaria, Cyprus, Estonia, Hungary, Ireland, Luxembourg, Netherlands), Spain (concerns Cyprus, with divergent interpretations though) and the United Kingdom but only in specific cases (concerns Belgium, Greece, Hungary, Italy, Luxembourg, Malta, Netherlands, Portugal, Spain)

We would like to draw the attention to the fact that this comparison only takes into account the lists as they are currently available as per 31 May 2012. This comparison could of course evolve in the future and is therefore to be understood as indicative, especially the work done for the moment by the OECD Global Forum on Transparency and Exchange of Information, which could influence the future composition of the said lists.

Table 4: Comparison of Existing Lists

Abu Dhabi		X							
Afghanistan	X								
Ajman		X							
Alderney	X								
Andorra		X				X			
Anguilla		X	X		X				
Antigua and Barbuda					X				
Argentina							X[28]		
Aruba			X						
Australia						X[29]			X
Bahamas		X							
Bahrain		X			X	X			
Belize	X					X[30]			
Bermuda		X	X		X				
Bosnia - Herzegovina	X								
Botswana				X					X
British Virgin Islands	X	X	X		X				
Brunei				X	X	X[31]	X[32]		
Burundi	X								
Canada						X[33]			X
Cap Green	X								

23 That is to say a nominal or effective tax rate below 15%.
24 That is to say a nominal tax rate below 10%.
25 In case of countries not belonging to, or being excluded ("excepted") from the "white list", there is a burden on the taxpayers to prove that the entities there are not considered to be located on the "low tax rate territory" (i.e. taxpayer has to prove that the tax rate there is higher than 1/3 of the tax applicable to individuals in Estonia, more than 50% of the income of the entity there is derived from actual economic activity, etc.).
26 That is to say a an effective tax rate on the income below 14.5%.
27 It should be noticed that the UK CFC legislation is currently undergoing reform and the list might be amended in a near future.
28 Companies obtaining exemption from tax on income from transactions, activities or operations carried on in, or from goods located in, tax free areas in accordance with Law 19640 of 16th May 1972.
29 Only for income from banking operations that are not taxed under the ordinary income tax regime.
30 Only for income not taxed under the ordinary income tax regime.
31 Only for income not taxed under the ordinary income tax regime.
32 Companies qualifying as "pioneer companies" under the Investment Incentives Enactment 1975.
33 Only for income from banking operations that are not taxed under the ordinary income tax regime.

Cayman Islands		X	X		X				
Central African Republic	X								
Chile							X[34]		
Comoros	X								
Cook Islands	X				X				
Costa Rica						X[35]			
Cuba	X								
Djibouti						X			
Dominican Republic	X				X				X
Dubai		X							
Dutch Antilles			X						
Egypt							X[36]		
Equatorial Guinea	X								
Falkland Islands					X				X
Faroe Islands							X[37]		
Federation of Micronesia	X	X							
Fiji					X				X
Fujairah		X							
Gibraltar	X		X		X	X			
Grenada	X				X				
Guatemala				X					
Guernsey	X	X	X		X	X			
Guinea - Bissau	X								
Haiti	X								
Herm Island	X								
Hong Kong			X			X[38]	X[39]		
Iran	X								
Iraq	X								

[34] Companies obtaining exemption from tax under Law 16,441 of 1st March 1966 on income from property located in the Department of Isla da Pascua or from activities developed in that Department.
[35] Only for income considered to arise in another territory and not subject to tax.
[36] Companies which do not fall within the scope of Article 111, Book 2 of Law 157 of 1981 because they do not operate in Egypt.
[37] Companies deriving interest from Faroese financial institutions from which tax is deducted at source under Law 4 of 26th March 1953.
[38] Only for income considered to arise in another territory and not subject to tax.
[39] Companies deriving income in or from the Hong Kong Special Administrative Region and submitting tax returns to the authorities of that Region.

Isle of Man	X	X			X	X		X	
Jersey	X	X	X		X	X		X	
Jethou		X							
Jordan					X				
Kenya							X[40]		
Kiribati	X								
Laos	X								
Lebanon					X	X[41]			
Liberia	X				X	X			
Liechtenstein (EEA)	X				X	X			
Macau	X		X		X	X	X[42]		
Malaysia							X[43]		
Maldives	X	X				X			
Mariana Islands					X				
Marshall Islands	X		X	X					
Mauritius					X				
Mayotte	X								
Moldavia		X						X	
Monaco	X	X			X	X			
Montenegro		X				X[44]			
Montserrat	X		X	X	X				
Morocco						X[45]	X[46]		
Namibia	X								
Nauru		X		X	X				
Niue	X			X					
North Korea	X								
Oman	X				X				
Pakistan							X[47]		

[40] Companies having income exempted from tax under paragraph 11 of Schedule 1 to the Income Tax Act 1973.
[41] Only for income from banking and finance, other financial and insurance services.
[42] From 20th December 1999, companies deriving income in or from the Macao Special Administrative Region and submitting tax returns to the authorities of that Region.
[43] (1) Companies exempt from tax in accordance with section 54A of the Income Tax Act 1967 (shipping). (2) Companies subject to tax at 5 per cent in accordance with sections 60A and 60B of the Income Tax Act 1967 (inward reinsurance and offshore insurance). (3) Companies deriving dividends from a company or companies deriving income from one or more of the activities referred to in paragraphs (1) and (2) above. (4) Companies obtaining a tax benefit under the Offshore Companies Act (Island of Labuan) 1990.
[44] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[45] Only for income from banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime as well as income from coordination centres.
[46] Companies receiving a tax benefit under Law 58–90 of 1992 (offshore financial centres).
[47] Companies deriving royalties, commissions or fees which are exempt from tax under paragraph 139 in Part I of the second Schedule to the Income Tax Ordinance 1979.

Palau		X							
Panama	X					X[48]			
Philippines				X			X[49]		
Puerto Rico							X[50]		
Ras al Khaimah		X							
Saint - Vincent and the Grenadines	X				X				
Saint Christopher and Nevis	X								
Saint Lucia	X				X				
Saint-Barthélemy		X							
Saint-Pierre-et-Miquelon	X								
Samoa	X								
San Marino						X[51]			
Sao Tome and Principe	X								
Sark		X							
Seychelles	X				X	X			
Sharjah		X							
Singapore						X[52]	X[53]	X	
Solomon Islands					X				X
Somalia	X								
Sri Lanka							X[54]		

[48] Only for income considered to arise in another territory and not subject to tax.
[49] (1) Companies authorised under Presidential Decree 1034 of 30th September 1976, or under Presidential Decree 1035 of 30th September 1976, to operate an offshore Banking Unit or a Foreign Currency Deposit Unit as defined in those Decrees. (2) Companies receiving interest on deposits with a Foreign Currency Deposit Unit, or other interest subject to the reduced rates of tax under section 27(D) of the National Internal Revenue Code 1997.
[50] (1) Companies obtaining a tax benefit under section 2(o) of the Industrial Incentive Act 1978 (designated service industries). (2) Companies obtaining a tax benefit under section 25 of the International Banking Centre Regulatory Act 1989 (International Banking Entities).
[51] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[52] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[53] (1) Any company obtaining tax concessions under Ministry of Finance Regulations pursuant to section 43A, and sections 43C to 43K, of the Income Tax Act. (2) Companies obtaining exemption from tax on the income of a shipping enterprise in accordance with section 13A of the Income Tax Act. (3) Companies obtaining relief from tax in accordance with sections 45 to 55 (international trade incentives), and sections 75 to 84 (warehouse and service incentives), of the Economic Expansion Incentives (Relief from Income Tax) Act. (4) Companies deriving dividends from a company or companies deriving income from one or more of the activities falling within paragraphs (1) to (3) above.

Switzerland						X[55]		X	
Tanzania							X[56]		
Thailand						X[57]	X[58]		
Tunisia							X[59]		
Turkey						X[60]		X	X
Turks and Caicos Islands		X	X		X				
Tuvalu	X								
Umm al Qaiwain		X							
United Arab Emirates						X			
USA							X[61]		
US Samoa	X								
US Virgin Islands			X		X				
Uzbekistan	X								
Vanuatu		X			X				
Virgin Islands	X								
Wallis and Futuna		X							

[54] Companies obtaining relief or exemption from income tax under any of the following provisions of the Inland Revenue Act 1979– (a) section 8(c)(iv) (foreign currency banking units); (b) sections 10(d) and 15(b) (income derived from approved bank accounts); (c) section 10(e) (interest of newly resident companies); (d) section 15(cc) (services rendered outside Sri Lanka); (e) section 15(p) (re-export of approved products).
[55] Only for income from banking and finance, other financial and insurance services
[56] Companies relieved or exempted from income tax under section 15(1) or (1A) of the Income Tax Act 1973.
[57] Only for income from banking operations that are not taxed under the ordinary income tax regime.
[58] Companies obtaining a tax benefit under Royal Decree 280 of 22nd September 1992 (offshore banking units).
[59] Companies obtaining exemption from, or reduction of, tax under Law 76/63 of 12th July 1976 (financial and banking institutions dealing with non-residents).
[60] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[61] Domestic International Sales Corporations as defined in section 992(a) of the Internal Revenue Code 1954.

4.3. Definition of ATP

24. **No ATP Definition.** As mentioned above, the focus of "ATP Measures" is more on the operations/arrangements potentially concerned with entities/companies/taxpayers/etc. established in Third Countries (and in Third Countries *only*).

It appears from the information received that none of the concerned MSs reported having ATP Measures.

The reason for this is essentially to be found in the fact that only a few MSs reported Specific Measures (i.e. anti-abuse measures specifically relating to Third Countries)[62]. Considering ATP Measures are only a subdivision of the Specific Measures, the number of ATP Measures is logically even more limited.

25. **Non-Specific Measures.** Nevertheless, most of the MSs concerned have anti-abuse measures aimed at fighting against potentially harmful transactions/arrangements (see also section 4.6.7 below). These measures generally apply equally to MSs (including purely domestic situations) and Third Countries.

[62] Regardless of whether these measures are to be considered as New Specific Measures or Other Specific Measures.

Table 5: Definition of ATP

BELGIUM	No	There is a general anti-abuse rule in Belgium which refers to the notion of "tax abuse" and which is equally applicable to all taxpayers irrespective of the country of residence of the counterparty (thus not specifically targeted to transactions with NCJs).
CYPRUS	No	There is a general anti-abuse provision in Cyprus which gives the right to the tax authorities to disregard transactions which are suspected to be fictitious or not genuine and are carried out with an aim to reduce the taxable base. This provision applies to all taxpayers irrespective of the country of residence of the counterparty.
DENMARK	No	A number of cases suggest a "substance-over-form" principle, where a transaction can be reclassified or set aside in certain circumstances. However, it is not backed by legislation and is not a clear doctrine.
ESTONIA	No	Instead, some provisions of Estonian tax law are based on the principles of "abuse of law" and "substance over form".
FRANCE	No	There is a general anti-abuse rule which refers to the notion of "abuse of right" and which is equally applicable to all taxpayers irrespective of the country of residence of the counterparty (thus not specifically targeted to transactions with NCJs).
GERMANY	No	The concept of "abuse of legal arrangements" exists in German law and is embodied in a general anti-abuse provision. Based on the jurisprudence, a legal arrangement is considered to be abusive, if it is inappropriate or inadequate compared to the economic intention, that is aimed at achieving a tax reduction and that cannot be justified by economic or other relevant non-tax reasons. However, this concept covers all countries (even 100% German situations).
HUNGARY	No	The concept is however approached by different anti-avoidance provisions: substance-over-form principle; exercise of rights within their meaning and intent, which cannot be the intent to obviate the provisions of tax law; non-tax deductibility of costs and expenses of a transaction entered into for the sole purpose of reducing tax.
IRELAND	No	The concept is however approached by different tax provisions (e.g. general anti-avoidance rule and mandatory disclosure reporting obligation).
LUXEMBOURG	No	The concept is however approached by the anti-avoidance provisions of "simulation" and "abuse of law".
MALTA	No	However, any scheme which reduces the amount of tax payable by any person is disregarded when it is artificial or fictitious or it is not, in fact, given effect to.
NETHERLANDS	No	However, various concepts in anti-abuse provisions may be invoked by the Dutch tax authorities to prevent undesirable types of ATP (e.g. "abuse of law" concept, thin capitalisation provision and anti-dividend stripping measure).
SPAIN	No	But Spanish tax law uses similar concepts as "conflict in the application of tax law" (formerly "tax law abuse") and "simulation".
SWEDEN	No	However, general anti-abuses rules can also be used against tax planning's put in place with third countries (e.g. a legal action that significantly lowers the taxable base in Sweden, and the effect contradicts the general purpose of the legislation, can be overlooked in specific circumstances (Swedish Tax Avoidance Act))
UK	No	However, there are several pieces of anti-avoidance legislation which are not applicable unless the main purpose of the scheme – or one of the main purposes of the scheme – is to achieve a UK tax advantage (e.g. the current Controlled Foreign Companies rules and the Anti-Arbitrage rules).

4.4. General Overview of Available Measures

26. **Number of Anti-Abuse Measures.** 165 measures were reported across the various MSs. More than half of the MSs have reported 10 or more anti-abuse measures, being Belgium, Denmark, France, Germany, Ireland, the Netherlands, Spain and the United Kingdom.

However, as already mentioned above, since there is no definition of ATP and NCJ, and even no definition of what anti-abuse provisions consist of, it is likely that some legal provisions have not been reported as anti-abuse measures in scope of this Study.

27. **Transfer Pricing.** For instance, it appears that in the Netherlands and Hungary, Transfer Pricing provisions are not regarded as "anti-abuse provisions" but merely as part of the general principles of the tax systems and apply both domestically and cross-border.

28. **Exit Taxation.** Another good example is the exit taxation provisions, the perception of which can vary across countries. Indeed, the German tax law, for instance, also comprises measures providing an exit taxation when either taxpayers or assets are relocated abroad. More in particular,

- If an individual ceases to be resident in Germany, according to Section 6 Foreign Tax Act, all qualifying shareholdings (at least 1 percent) are deemed to have been sold at fair market value;
- For assets belonging to a German business, any loss or restriction of the right to tax built-in gains upon the transfer of the asset will trigger an exit tax, either because the asset is deemed to have been withdrawn from the business (which has to be recorded at fair market value and is thus realizing built-in gains) in the case of businesses run by individuals and partnerships (Art. 4 Sec. 1 sent. 3 Income Tax Act) or because the asset is deemed to have been sold at fair market value in case of corporations (Art. 12 sec. 1 Corporate Income Tax Act). This loss or restriction of the German right to tax might be (i) a result of the relocation of the asset itself or (ii) of the transfer of the seat of a corporation (and (iii) – but much debated – in case a double tax treaty with Germany enters into force that limits or excludes the German right to tax such capital gains).

However, these provisions should not be considered as anti avoidance provision in the meaning of the Study that aims at ATP or NCJs. These provisions merely aim at securing German tax claims as it otherwise could not be monitored by the German tax authorities, whether the built-in gains are realized sometime in the future, when the underlying assets are sold.

In intra EU/EEA cases, the resulting exit tax will be deferred without any interest accruing and without the need to provide a collateral for the deferred tax liability until actual realization or a similar triggering event occurs (however it has been recently discussed in literature, whether the latest decision in the CJEU's case "National Grid Indus" could be interpreted in a way allowing such interest and collateral).

Similar to transfer pricing, the exit tax provisions in the Netherlands ensure that the Netherlands is able to effectuate its taxing right regarding profits accrued on its territory (principle of territoriality). Characterising the Dutch exit tax rules as anti-abuse rules thus seems to go further than what these rules actually are: rules protecting/determining the Dutch taxable base. It even seems that neither the Dutch legislator nor Dutch Courts regards the exit tax provisions as anti-abuse provisions.

Other countries share the same vision, Belgium, Spain and Sweden for instance.

29. **Withholding Tax.** We have noticed that the same kind of concerns can also arise with respect to withholding tax (below ***"WHT"***) on outbound payments since some Member States, such as Denmark, Ireland, Luxembourg, Spain and Sweden, consider the WHT (or a higher rate of WHT towards some countries) as an anti-abuse measure. Other countries which have not reported such measures might consider the fact that a reduced WHT rate or a WHT exemption is not available as the mere result of the application of the normal tax legislation (considering in particular the interactions between double tax treaties and local tax legislation: the higher WHT rate apply, by default, in the absence of an applicable double tax treaty, and not the opposite).

As an example, it should be mentioned that Sweden levies 30 % WHT on dividends abroad, although there are several exemptions available. Sweden also deems a foreign recipient of a royalty to have a permanent establishment in Sweden (which makes the recipient liable to tax here), but this is waived due to the provisions of a double tax treaty with Sweden allowing only the recipient company to tax the royalty income.

30. Contrary to the above, France has reported a distinct WHT rate of 50% that will be applied in case of outbound payments (dividends, interest and payments in consideration of the supply of any kind of services) to beneficiaries located in an NCJ[63]. **Advance Tax Rulings/Advance Opinions.** Upon request from the Commission, we have checked whether advance tax rulings mechanisms exist in the concerned MSs. This is indeed the case in many MSs, e.g. in Belgium, Estonia, France, Germany, Hungary, Ireland, Luxembourg, the Netherlands, Spain, the United Kingdom. However, for none of these countries these tax ruling mechanisms have been reported spontaneously in the answers to the questionnaire. This is due to the fact that the advance tax rulings mechanisms are not regarded as being anti-abuse provisions or being used to get clearance on particular tax plannings. Indeed, the purpose of advance rulings mechanisms is generally to offer taxpayers / investors in a given country the legal certainty so as to get a sufficient level of comfort in understanding the tax consequences of a contemplated transaction / operation.

As an example, with respect to the United Kingdom, previously, companies could write to HMRC (the UK tax authorities) to apply for advance clearance on transactions under HMRC's "Code of Practice 10".

[63] Appendix 2, France, Part 2: General Information, Measure n°12, p 125.

Code Of Practice 10 now only applies to non-business customers (i.e. mainly individuals) and companies are covered by the non statutory business clearance procedure. However it should be noted that HMRC will not consider a clearance application which overtly involves tax planning/avoidance. Providing that is not the case, a company can get clearance. Similarly, in Estonia, the Taxation Act establishes that tax authorities have the right to refuse issuing an advance ruling the aim of the transaction is tax avoidance.

In the Netherlands, article 4 of the Administrative Circular "Besluit Fiscaal Bestuursrecht" of 5 July 2011 establishes that no advance clearance will be given if a taxpayer presents a fact pattern that qualifies under the criteria of abuse of law. If, in that case, the taxpayer tries by slightly modifying the facts to arrive at a situation that can just not be qualified as abuse of law, this is characterised as finding the fiscally acceptable border ("fiscale grensverkenning") and no advance clearance will be given for such cases.

In Belgium, an advance decision may not be granted in the area of income taxes where at the time the application is filed, essential elements of the operation or transaction described are linked to a tax haven that does not cooperate with the OECD.

31. **Number of Measure not Relevant as Such.** As a result, we cannot draw conclusions on the sole basis of the number of anti-abuse measures reported in each MS.

32. **Specific Measures v. Non-Specific Measures.** Although we have tried to categorise various types of measures according to the scope of application, i.e. only applicable to Third Countries (Specific) or not (Non-Specific), it appears from the information collected that it is not always easy to make that distinction for various reasons. Indeed, in some cases, the text of the law is not always clear, or the text of the law is applicable to all types of countries but in practice only applies to selected countries (including or not Third Countries only). In addition, the case law of the Court of Justice of the European Union (below ***"CJEU"***) may also impact the applicability of some measures within the EU (and by extension the EEA).

Moreover, nothing precludes Non-Specific Measures from efficiently tackling particular situations involving foreign countries (Third Countries or not) so that the distinction between Specific Measures and Non-Specific Measures may not be an appropriate criterion to measure the efficiency of a given measure. In other words, even if only few Specific Measures were reported for a given MS, it does not *per se* mean that such MS is less efficient in fighting against ATP involving Third Countries.

33. **Specific Measures.** From the data collection, it appears that 49 Specific Measures exist across the various MSs concerned, out of which 18 are New Specific Measures and 31 are Other Specific Measures.

Amongst these Specific Measures, 1 is reported as an ATP Measure (being an Other Specific Measure), 43 are NCJ Measures (17 New and 26 Other) and 5 are considered as both ATP and NCJ Measures (1 New and 4 Other).

We mention these measures according to their type in section 4.5 below (which are then further detailed in Appendix 2).

34. **Non-Specific Measures.** 116 Non-Specific Measures were reported to exist in the various MSs (including purely domestic situations) of which most are generally equally applicable to MSs and Third Countries.

We describe in more details some of these measures according to their type in section 4.6 below.

35. **Table.** The table below gives an overview of the available measures per category (New Specific Measures, Other Specific Measures, and Non-Specific Measures) and per MS (being the 14 MSs selected by the Commission).

Table 6: General Overview of Available Measures

BELGIUM	0	1	0	1	0	2	0	0	13	not exclusively	16	Yes
CYPRUS	0	0	0	0	0	0	0	0	5	Yes	5	No
DENMARK	0	0	0	0	0	0	0	0	10	not exclusively	10	No
ESTONIA	0	0	0	0	0	5	0	5	2	Yes	7	No
FRANCE	0	8	0	8	0	0	0	0	7	Yes	15	No
GERMANY	0	0	0	0	0	0	0	0	11	not exclusively	11	No
HUNGARY	0	3	0	3	0	0	0	0	5	Yes	8	No
IRELAND	0	2	0	2	0	7	2	9	6	Yes	17	No
LUXEMBOURG	0	1	0	1	0	0	2	2	5	Yes	8	Yes
MALTA	0	0	0	0	0	0	0	0	9	Yes	9	No
NETHERLANDS	0	0	0	0	0	0	0	0	14	Yes	14	Yes
SPAIN	0	1	0	1	0	10	0	10	9	not exclusively	20	Yes
SWEDEN	0	0	1	1	1	1	0	2	3	not exclusively	6	Yes
UK	0	1	0	1	0	1	0	1	17	Yes	19	Yes
# TOTAL	0	17	1	18	1	26	4	31	116		165	

** Are those measures generally equally applicable to MSs (including purely domestic situations) and Third Countries?*

4.5. New Specific Measures

36. **Definition of NCJ v. Specific Measures.** As explained above, there are 18 New Specific Measures (none of them relating to ATP) out of which 8 concern France, which has recently defined the concept of NCJ in its tax legislation.

Section 238 O-A of the French Tax Code provides for a definition of an NCJ which is based on the exchange of information of a specific state or territory (with France in particular). Based on this new definition introduced in the French Tax Code, a number of recent measures have been adopted specifically aimed at NCJs.

Apart from France, the number of New Specific Measures per country is rather limited. Only Belgium, France, Hungary, Ireland, Luxembourg, Spain, Sweden and the United Kingdom have reported New Specific Measures.

In addition, all New Specific Measures are very specific and well-defined measures. It thus mostly concerns well-scoped measures aimed at preventing certain specific forms of tax avoidance. Based on the input received, we have for instance not found any reference to a general measure prohibiting or preventing any type of transaction or connection with Third Countries.

37. **New Specific Measures.** The New Specific Measures reported are listed below and further detailed in Appendix 2:

- Belgium
  - Reporting obligation for payments to tax havens
- France
  - Anti-avoidance rule regarding the payments made to non-residents located in a NCST
  - CFC regime strengthened for income from entities located in a NCST
  - Exclusion from participation exemption regime for dividends paid by a NCST
  - Transfer pricing documentation requirements for operations or transactions realised by French companies with foreign entities located in a NCST
  - Exclusion from exemption regime for capital gains on the sale of participations held in companies located in a NCST
  - 50% WHT on outbound payments to entities located in a NCST
  - 50% taxation on real estate capital gains realised in France by entities located in a NCST
  - 50% taxation on the capital gains resulting from the sales of shares in French companies realised by entities located in a NCST

- Hungary
  - Non-tax deductibility of payments made to a CFC and documentation requirements
  - Restrictions relating to the reported shareholdings
  - Restrictions related to participation in a CFC
- Ireland
  - Specific cash-pooling interest relief
  - Exemption from Irish WHT for payments of royalties to non-resident companies
- Luxembourg
  - Exchange of information provisions in DTTs with dozens of Third Countries
- Spain
  - Limitation on Transfers of Right of Use Intangible Assets to Tax Havens (Patent Box)
- Sweden
  - Interest stripping rules
- The United Kingdom
  - TIEAs with offshore financing centres

38. **Increased Burden for Third Countries.** Some measures, whether general or with a focus on specific schemes, are more severe in the case of dealings with an NCJ. For instance, additional documentation requirements, additional conditions to be complied with when dealing with an NCJ or increased tax liability when dealing with an NCJ could apply.

In France, for instance,

- In the case of deduction of expenses resulting from transactions with NCJs the general proof requirements are strengthened. Complementary proof is thus needed to be able to deduct said expenses, as opposed to when dealing with non-NCJs[64].
- In the case of operations or transactions realised by French companies with foreign entities located in an NCJ, the French taxpayer is obliged to provide additional Transfer Pricing documentation (as opposed to the general information on the affiliated companies or specific information on the audited company which needs to be provided in any event). In such a situation, the French taxpayer will be obliged to provide all tax documentation in relation to the company located in an NCJ,

[64] Cfr Appendix 2, France, Part 2: General Information, Measure n°2, p 109.

which is required by the French tax authorities for French companies (e.g. annual balance sheet, profit-and-loss account, form DADS 1)[65];

- The general applicable tax rate for real estate capital gains realised in France by a non-resident amounts to 33.33%. However, this rate is increased to 50% if the capital gains are realised by an entity located in an NCJ.

4.6. Other Measures

39. **Introduction.** In this section, we describe both the Other Specific Measures and Non-Specific Measures reported by the various MSs. We present these measures according to their purpose and characteristics instead of on the basis of their territorial scope (Third Countries only or not). This eases the comparison of the various existing measures in each MS.

On that basis, we have divided the existing measures according to the following categories:

- CFC regulations
- Transfer Pricing measures
- Deductibility of expenses
- Measures on outbound income
- Measures on inbound income
- Disclosure Requirements
- General anti-abuse provisions
- Various Measures

4.6.1. CFC Regulations

40. **Introduction.** A general overview of all measures reported with respect to the selected MSs which can be qualified as measures in relation to the taxation of income of foreign entities that qualify as Controlled Foreign Companies is provided at the end of this section. This section thus relates to measures that generally organise the taxation at the level of the parent company of all or part of the income from its CFCs. The purpose of the CFC-legislation, as described by most Member States (i.e. Denmark [66], Sweden [67]and the United Kingdom [68]), is clearly to avoid or prevent tax planning via low tax jurisdictions whilst eroding the national tax base.

41. **Eight MSs with CFC Rules**. These Member States are Denmark, Estonia, France, Germany, Hungary, Spain, Sweden and the United Kingdom. The level of complexity of these regimes varies from

[65] Cfr Appendix 2, France, Part 2: General information, Measure n°10, p 123.
[66] Cfr Appendix 2, Denmark, Part 2: General information, Measure n°4, p 75.
[67] Cfr Appendix 2, Sweden, Part 2: General information, Measure n°3, 340.
[68] Cfr Appendix 2, The United Kingdom, Part 2: General information, n°2, p 364.

country to country but all of them provide that the controlling entity would be taxed on all or part of the income from its CFCs. The elements which determine the complexity of these rules include (i) the various conditions in order for a foreign entity to be considered as a "CFC" (i.e. notion of the CFC, see below for more comments), (ii) the determination of the income which will be subject to the CFC rules, (iii) the possibility to deduct cost from the "CFC-income" and (iv) the possibility to provide for the counterproof in certain circumstances. The main elements of these regimes are detailed below.

42. **Notion of CFC.** In essence, the term "Controlled Foreign Company" makes an explicit reference to the link between two entities; one entity controlling, directly or indirectly, another entity. However, some CFC regimes use other criteria, not specifically concerning the notion of "control", to define their scope of application. Therefore, in addition to the link between two entities (shareholding, voting rights, assets, etc.), the other main elements that will be taken into account to identify CFCs will be, in the hands of the "controlled" entity, the nature of its activities (taxable basis composition, assets composition, "effective trading or manufacturing activity", "real economic activity", etc.), its location (country with "privileged tax regime", location in a "low tax rate territory", etc.) or the taxation regime of all or part of its income ("low-taxed" income, etc.). Apart from Denmark, all other Member States which have reported the CFC-regulation refer to a specific level of taxation which is required in order to assess whether or not the foreign entity is located in a tax haven:

- In Estonia, the CFC-regulation refers to entities located in low tax territories. As mentioned above, this concept is defined in the Estonian tax legislation as a foreign state or a territory with an independent tax jurisdiction in a foreign state, which does not impose a tax on the profits earned or distributed by a legal person or where such tax is less than one third of the income tax which would apply to the taxpayer if it were resident in Estonia. Considering the tax rate for personal income tax is flat 21%, a low tax rate territory is the territory where the applicable tax rate is below 6,93%[69];
- The CFC-regulation of France details that it is only applicable in case a foreign legal entity is located in a country with a privileged tax regime. A privileged tax regime is a tax regime providing for a taxation of a foreign entity of less than 50% of the income tax liability which the foreign entity would incur in France, should the activity have been performed in France[70];
- In Germany, the CFC-regulation refers to "low taxed income" in the hands of the foreign entity. Low taxed income is income which is taxed below 25%[71];
- For Hungary, it is required that the effective tax rate is below 10% or that the non-resident company did not pay any tax equivalent to corporate tax in order for the CFC-regulation to apply[72];In Spain and the United Kingdom, the taxpayers are subject to a CFC-regulation in case the

[69] Cfr. Appendix 2, Estonia, Definition of NCJ, p86.
[70] Cfr Appendix 2, France, Part 2: General Information, Measure n°1, p 106.
[71] Cfr Appendix 2, Germany, Part 2: General Information, Measure n°4, p 163.
[72] Cfr Appendix 2, Hungary, Definition of NCJ, p 177.

tax paid by the foreign company is less than 75% of the amount that would have been paid in Spain or the United Kingdom on such income[73,74];

- Sweden refers to a an effective tax rate applicable in the hands of the foreign legal entity of below 14,5% (which corresponds to 55% of the Swedish corporate income tax)[75].

In Denmark, the Danish CFC regulation also applies in case of a foreign subsidiary which is located in a low tax jurisdiction. However, in Denmark no reference is made to a specific tax rate in this respect. It is also mentioned that no black or white lists are applicable in this respect[76].

Finally, Sweden and the United Kingdom have also reported to dispose of a "white list" or "excluded territories exemption" following which, even if the foreign entity is located in a tax haven according to the respective principles as mentioned above, the CFC-regulation will nonetheless not be applicable in case the foreign entity is located in a jurisdiction included on the white list in Sweden [77], or considered as an excluded jurisdiction for UK purposes[78].

Based on this, the eight CFC regimes cumulate, in a more or less pronounced way, several criteria to define their scope of application. For instance, the French CFC rules combine the "link" criterion ("more than 50% directly or indirectly owned foreign subsidiaries and branches") with the location (country with a "privileged tax regime") and the activities criteria ("effective trading or manufacturing activity"). To the contrary, Estonian CFC rules are limited to a location criterion (entities located in a "low tax rate territory") and based on a concept of "control" that is defined by law.

Interestingly, in Estonia, profits of the entities located in low tax rate territories are included in the taxable income of the Estonian resident individuals controlling such entity, notwithstanding whether the entity has distributed any dividends or not. CFC income is not included in the taxable income of Estonian resident companies (as Estonian resident companies are not subject to corporate tax on retained earnings, it would be useless to attribute income to resident companies).

43. **Income concerned**. We have seen two different approaches. On the one hand, some CFC regimes lead to the taxation of all of the CFCs' income in the hands of the controlling entity (France, Hungary, Sweden,Denmark and the UK) while, on the other hand, other regimes lead to a taxation of certain income depending on their nature (e.g. "passive income" in Spain or Germany) or their tax regime (e.g. "low-taxed" passive income in Germany).

[73] Cfr Appendix 2, Spain, Part 2: General Information, Measure n°10, p 316.
[74] Cfr Appendix 2, The United Kingdom, Part 2: General Information, Measure n°2, p 365.
[75] Cfr Appendix 2, Sweden, Part 2: General Information, Measure n°3, p 340.
[76] Cfr Appendix 2, Denmark, Part 2: General Information, Measure n°4, p 75-76.
[77] Cfr Appendix 2, Sweden, Part 2: General Information, Measure n°3, p 342-344.
[78] Cfr Appendix 2, The United Kingdom, Part 2: General Information, Measure n°2, p 365-366.

44. **Impact of the EU freedoms**. The EU freedoms potentially have an important role to play in defining the limits of the CFC rules. This became concrete in Germany, where, following the Cadbury-Schweppes decision of the CJEU, the CFC rules were adapted and no longer apply to subsidiaries located in the European Union (or the European Economic Area) when it is proved that a real economic activity is performed in their state of residence. In addition, several jurisprudence decisions (including the Cadbury-Schweppes decision but also national jurisprudence) have clearly focused the debate on the compatibility of the United Kingdom's CFC rules with the EU freedoms, namely on the fact that an arrangement must be considered as artificial or not, leading to a reform of the United Kingdom's CFC rules that will apply for accounting periods beginning on or after 1 January 2013.

45. **Impact of the Double Tax Treaties**. Two countries have pointed out compatibility issues existing between their CFC rules and the Double Tax Treaties they concluded, the solutions retained in the domestic law and jurisprudence being radically different. Indeed, Sweden has reported two decisions of the Supreme Administrative Court where the Swedish CFC rules were applied over the applicable Double Tax Treaty (treaty override). But after severe criticism, the Supreme Administrative Court took a step back and affirmed that the relevant Double Tax Treaty should generally be applied over the CFC rules. To the contrary, without mentioning landmark decisions on this specific topic, Germany reported a treaty override measure according to which any Double Tax Treaty has to be disregarded for the application of the German CFC rules.

Table 7: CFC Regulations

DENMARK	Sec. 32, CTA		The income of a foreign subsidiary may be taxed in the hands of its Danish parent company if the subsidiary constitutes a CFC. A foreign subsidiary is considered as a CFC provided that certain conditions relating to its shareholding/voting rights (>50% held by a Danish parent company), its taxable basis (>50% CFC income) and the nature of its assets (>10% CFC assets) are met.	CFC definition focused on subsidiary's characteristics No black or white list exists	
ESTONIA	Sec. 21, EITA		Profits of the entities located in "low tax rate territories" (i.e. absence of taxation or taxation lower than 1/3 of the taxation of Estonian resident individuals – cf. Sec. 10, EITA) are included in the taxable income of the Estonian resident individuals controlling such entity, notwithstanding whether the entity has distributed any dividends or not.	CFC definition focused on subsidiary's location (low tax rate territory or not) A white list exists	
FRANCE	Sec. 209 B, FTC (Sec. 104, L. 2004-1484, 30 Dec. 2004) Decree 2006-1309, 25 Oct. 2006 (Sec. 102 SA-102 ZB Appendix II, FTC)	Tax guidelines 4 H-1-07, 16 Jan. 2007	French corporations are required to include in their taxable income profits made by their more than 50% (or, under certain circumstances, 5%) directly or indirectly owned foreign subsidiaries and branches located in a country with a privileged tax regime (taxation <50% than taxation that would been incurred in France) unless it proves that the foreign entity carries an effective trading or manufacturing activity.	CFC definition focused on subsidiary's characteristics and location In principle, not applicable to subsidiaries (or branches) located in another EU country unless artificial arrangement set up to circumvent French tax law (burden of proof = French tax authorities)	Two decisions ("SIFA" and "Compagnie des Glénans" cases) providing useful information on the methods for evaluating the "preferential tax regime" were reported.

	Sec. 209 B III *bis*, FTC Sec. 22, I-0 of L. 2009-1674, 30 Dec. 2009	Tax guidelines 14 A-5-12, 10 May 2012 (§25 et seq.)	Specific measures regarding NCST: • Regarding the general "real activity" safeguard clause for taxation of benefits in France, if the foreign company is located in a NCST, the burden of proof is shifted from the tax authorities to the French company. Accordingly, the taxpayer must demonstrate that (i) the foreign entity or permanent establishment is principally engaged in commercial or industrial activities and that (ii) the passive income and remuneration ratios derives from the foreign entity or permanent establishment do not exceed the thresholds provided by section 209 B III of the FTC (less than 50% of the revenues are not with affiliates and if less than 20% of its income is "passive"). • Regarding the foreign tax paid on passive income received by the CFC entity, such tax is in principle credited against the corresponding French tax, provided that the foreign tax is comparable to French corporate tax. The tax credit is however excluded for WHTes on passive income received by the foreign entity and levied by NCSTs.	CFC definition focused on the subsidiary's taxation regime (comparable or not) and/or location (NCST or not) A white list of NCSTs exists (regularly updated)	
GERMANY	Art. 7-14, Foreign Tax Act (Außensteuergesetz (AStG))		Any corporate entity not subject to taxation in Germany is classified as a CFC (i) if more than 50% of the voting rights or shares are held by one or more German taxpayers unlimitedly subject to tax (individual and/or corporate) and (ii) if the foreign entity earns low-taxed passive income (taxation <25%). Only the low-taxed passive income is considered as a deemed dividend ("transactional approach"). CFC rules do no longer apply to EU/EEA subsidiaries proving that they are engaged in real economic activity in their state of residence.	CFC definition focused on the subsidiary's characteristics Taxation limited to "low-taxed" passive income	No domestic landmark decisions reported but the Cadbury-Schweppes CJEU decision had an impact on the CFC regime (real economic activity test for EU/EEA subsidiaries)
	Art. 20, sec. 1, Foreign Tax Act (Außensteuergesetz (AStG))		Bearing in mind that German CFC rules are in many cases in conflict with tax treaties, the German legislator has ensured the applicability of these rules by including an explicit unilateral treaty override with respect to the CFC rules according to which any tax treaties on the avoidance of double taxation have to be disregarded for the application of the German CFC rules.		

	Art. 20, sec. 2, Foreign Tax Act (Außensteuergesetz (AStG))		If a German resident has a permanent establishment abroad which earns profits that are subject to the exemption method (under the applicable treaty) but would have been subject to the German CFC rules had they been derived through a CFC, Germany will not grant the exemption method but, instead, will grant the credit method for foreign taxes paid.	Transactional approach and treaty override apply (see above)	
HUNGARY	Sec. 7 (1) g) and gy), CITA Sec. 8 (1) m), CITA		In the case of a dividend income received from a CFC or a gain received from retirement in the shareholding in a CFC, this income may be deducted from the taxpayer's corporate income tax base only if the taxpayer applied a "tax base adjustment" (corporate income tax base of the taxpayer increased by non-distributed year-end profits of the CFC) either in the previous years or in the current year.	Burden of proof in the hands of the taxpayer Highly connected with deductibility measures	
SPAIN	Art. 107, CITA		A taxpayer must include in its taxable basis certain "passive income" (i.e. income subject to a taxation that is less than 75% of the taxation that would have been due in Spain) obtained from a foreign "linked" company (i.e. holding >50% in the share capital, equity, results or voting rights).	Measure focused on the link with the subsidiary and its taxation on its "passive income" Taxation condition presumed for subsidiaries residing in a tax haven	
SWEDEN	Chap. 39 a, Swedish Income Tax act (*Sw: Inkomstskattelagen (1999:1229)*)		A person taxable in Sweden with a certain participation (>25% of share capital or voting rights) in a foreign legal person may become subject to tax on the income of that person if it is considered as "low-taxed" (deemed "low-taxed" if the effective tax rate is below 14.5%). However, based on three lists (a white one, a black one and a grey one), certain jurisdictions (or certain operations in these jurisdictions) could not be concerned by the CFC rules.	Measure focused on the subsidiary's nature (CFC or not) and taxation ("low-taxed" or not) A white, a black and a grey list exist	Three decisions of the Supreme Administrative Court on the compatibility between the CFC rules and the Double Tax Treaties were reported. Finally, the SAC affirmed that the DTT should prevail over CFC rules.
UK	Sec. 747-756, ICTA 1988 Schedules 24-26		If a foreign company is controlled in the UK and subject to a "lower level of taxation" (i.e. less than 75% of the comparable UK rate) then the company is a CFC and, if none of the exemptions apply (e.g. "low profit exemption", "exempt activities" and "excluded territories") its profits will be apportioned to and taxed in the UK.		Several decisions (both at national and European level) have questioned the EU compatibility of the CFC rules so that a new CFC regime will soon be applicable (cf. below).

	Schedule 20, Finance Bill, 2012 (future measure) – will be inserted as Part 9A, TIOPA, 2010		Under the new (draft) legislation, a non-UK resident company will constitute a CFC if it is controlled by a UK resident person (or persons). If none of the entity level exemptions apply (e.g. “low profit exemption”, “low profit margin exemption”, “tax exemption” and “excluded territories exemption”), only the profits of the CFC that are attributable to the UK will be apportioned to and taxed in the UK (legislation sets out several factors to attribute the profits).	This measure is expected to be applicable for accounting period beginning on/after 1 Jan. 2013 The list of the “excluded territories” is included in the draft law (thus subject to amendments). It should include most EU territories and many Third Countries	

4.6.2. Transfer Pricing Measures

46. **Introduction.** A general overview of all measures reported with respect to the selected MSs which can be qualified as anti-abuse measures in relation to Transfer Pricing is provided at the end of this section.

As a preliminary remark, as already mentioned (see paragraph 27 above), we would like to recall that it appears that in the Netherlands and Hungary , Transfer Pricing provisions are not regarded as "anti-abuse provisions" but merely as part of the general principles of the tax systems and apply both domestically and cross-border. Therefore, it does not mean that MSs with respect to which no Transfer Pricing anti-abuse measures have been reported do not have Transfer Pricing provisions in their direct tax legislation.

47. **All participating MSs have Measures in relation to Transfer Pricing**. Belgium, Cyprus, Denmark, Estonia, France, Germany, Ireland, Luxembourg, Malta, Spain, Sweden and the United-Kingdom, have reported specific measures in relation to the arm's-length requirement of transactions.

48. **Almost all reported measures provide for an adjustment of the taxable income**. The measures reported provide for an adjustment of the taxable basis if the arm's-length condition is not fulfilled.

In France**,** a documentation requirement included in tax law obliges large companies to provide their Transfer Pricing documentation to the tax authorities upon the request of the latter. The documents need to be provided within 30 days following the request and should include general information on the affiliated transaction and specific information on the audited company. Besides, additional information requirements apply in the case of transactions with an "NCJ" as defined under French tax law.

49. **Certain measures are only applicable in the case of transactions with an "NCJ" or tax haven**. In Belgium, France, Spain and the United Kingdom the reported Transfer Pricing measures specifically relate to transactions with entities located in an "NCJ" or tax haven.

In Belgium, abnormal or benevolent advantages granted are always added back to the taxable basis of the Belgian grantor when the beneficiary is located in a country where it is not subject to tax or subject to a tax regime which is notably more advantageous than the tax of the company established in Belgium. In such a case, the rule applies irrespective of whether it concerns related entities or not.

As mentioned above, in France, additional documentation requirements apply in the case of transactions with an "NCJ" as defined under French tax law.

Spain provides that transactions with entities located in tax havens are valued at fair market value, provided that this value does not result in a taxation in Spain which is lesser than the one that would have been applicable based on the agreed value or deferral of taxation. Additionally, it is compulsory to prepare Transfer Pricing documentation if the Spanish taxpayer has transactions with tax havens (even if the amount thresholds, which exempt from the preparation of Transfer Pricing documentation, are not exceeded). This rule would not apply to EU tax havens if the taxpayer proves that the incorporation and operations have a sound business purpose and the entity executes business transactions. As mentioned above, in Spain there is no definition of a tax haven but a list of jurisdiction which are considered as tax havens. This list also includes states or territories within Europe and/or the European Union (such as Cyprus)[79].Finally, in the United Kingdom, under the Transfer Pricing basic rule, where a transaction occurs with non-arm's length terms then the profits and losses of a potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision. However, there is an exemption to this rule for small and medium companies (Section 166), unless an exception in Section 167 applies[80]. One such exception is that the other affected person or a party to a relevant transaction is a resident of a non-qualifying territory, where a qualifying territory is defined as one with double taxation agreements in place including a non-discrimination provision (or a territory defined as a qualifying territory in the regulations). Therefore, a small/medium sized company may be subject to the Transfer Pricing requirement explained above (where it may otherwise have been excluded from these requirements) if it is resident in a territory which does not have a double taxation agreement in place with the United Kingdom which contains a non-discrimination provision. The United Kingdom has Double Tax Treaties in place with all the EU Member States which contain a non-discrimination provision. Therefore it is expected that only Third Countries will be affected by this rule.

[79] Cfr Appendix 2, Spain, Definition of NCJ, p 301.
[80] Cfr Appendix 2, The United Kingdom, Part 2: General Information, Measure n°6, p 371-372.

Table 8: Transfer Pricing Measures

BELGIUM	X		Art. 26 of the BITC	Any "abnormal or benevolent" advantage granted by an enterprise established in Belgium should be added back to its taxable basis, unless such advantage is taken into account in the hands of the beneficiary. Such advantage should be added to the taxable basis in any event if it is granted to a foreign related entity or if it is granted to a foreign entity which is not subject to tax or subject to a tax regime notably more advantageous than the tax regime of the company established in Belgium. Abnormal or benevolent advantages comprise all the non-arm's-length transactions.	This article is in principle not applicable in the case of Belgian beneficiaries. In addition, the burden of proof lies with the tax authorities
	X		Art. 79 and 207 of the BITC	If a Belgian resident receives an abnormal or benevolent advantage from a related entity, it cannot offset its taxable basis resulting from these abnormal or benevolent advantages received using current year losses, etc. Abnormal or benevolent advantages comprise all the non-arm's-length transactions.	The burden of proof lies with the tax authorities
CYPRUS	X		Section 33 of the Income Tax Law N118(I)/2002	If transactions between related parties are carried under terms and conditions that are different to those that would have applied on similar transactions between unrelated parties, the tax authorities have the power to adjust the taxable income so as to compensate for lost tax revenue.	
DENMARK	X	X	The Danish Tax at Source Act, Section 2, and the Danish Tax Control Act, Section 3 B	Danish transfer pricing rules apply to transactions between related parties (e.g. intergroup transactions) whether the transactions are made between residents or non-residents. The rules apply when a company or person directly or indirectly owns at least 50% of the share capital or 50% of the voting rights in another company.	Companies are obliged to disclose in the annual tax return certain information regarding type and volume of intra-group transactions. Companies also are obliged to maintain detailed and extensive transfer pricing documentation to substantiate that intra-group transactions are conducted in accordance with arm's-length principles. A company is subject to fines for failure to comply with the documentation rules.
ESTONIA	X	X	Article 18 of Regulation No. 53	As a general rule, all Estonian group companies and permanent establishments are obliged to prepare transfer pricing documentation to prove arm's length nature of the intercompany transactions.	An exemption applies to small and medium-size enterprises (SME) unless they have conducted transactions with entities located in low-tax territories.

FRANCE	X	X	Sec. L 13 AB LPF	Upon request of the tax authorities, large companies must provide further documentation on their Transfer Pricing policy. This information includes general information on the affiliated companies and specific information on the audited company. As from 1 January 2011, complementary disclosure requirements apply to transactions undertaken with companies located in an NCJ jurisdiction as defined under French tax law.	If the taxpayer cannot provide the required information, fines of EUR 10,000.00 or 5% of the adjusted profits, whichever is higher, can be imposed.
GERMANY	X		Art. 1 FTA	Any transaction between a German company and related parties which is not in line with the arm's-length principle can be considered as a hidden distribution or contribution. This entails the adjustment of the income of the company as well as a dividend WHT becoming due.	
IRELAND	X		sections 835A-835H Taxes Consolidation Act 1997	The Transfer Pricing rules apply to all trading transactions between related party group companies and the requirement is for the pricing to be at arm's length and be supported by sufficient documentation. If the pricing is found not to be at arm's length, the rules provide for one way adjustments to increase the taxable profit in Ireland either through imputation of taxable income (where income is understated) or restricting a tax deduction (where expense is overstated).	
LUXEMBOURG	X		Art. 56 and 164 LTL	In the case of a transfer of profits to a related company – resident, MS or third country – (directly or indirectly related) which cannot be justified, the profits of the resident company may be reassessed by the tax authorities. This entails that the hidden profits should be reintegrated in the taxable income of the resident company.	
MALTA	X		Art 5 (6) & (7) of the ITMA	In the case of transactions between a resident and a related non-resident person which have as an effect that the resident person has no profit or less than the ordinary profits that might be expected to rise from the business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person.	
SPAIN	X		Art. 16 of the CITA	The tax authorities can review whether transactions between related parties have been executed at fair market value and, if not, make the relevant valuations and tax adjustments	

	X		Art. 17.2 of the CITA	Transactions with entities located in tax havens are valued at fair market value, provided that this value does not result in a taxation in Spain which is lesser to the one that would have corresponded to the agreed value or deferral of the taxation.	The transactions should be documented according to Spanish Transfer Pricing rules
SWEDEN	X		Par. 10-20, Chapter 14 of the SITA	Agreements between related parties can be overlooked for the part they depart from what would have been agreed upon between unrelated parties.	
UK	X		Sec. 166 and 167 of TIOPA 2010	Small and medium-sized companies can benefit from an exemption of the basic Transfer Pricing rule that all transactions should occur at arm's length. However, this exemption is not available in the case of transactions with residents located in a non-qualifying territory (i.e. countries with which the UK has not concluded any Double Tax Treaty or a Double Tax Treaty without a non-discrimination article).	

4.6.3. Deductibility of Expenses

50. **Introduction.** A general overview of all measures reported with respect to the selected MSs which can be qualified as linked to the deductibility of expenses is provided at the end of this section.

This section only relates to measures which in first instance limit or deny the deductibility of certain expenses. We have thus not commented on general Transfer Pricing measures, which were already commented above.

51. **Measures in relation to the deduction of interest expenses were reported with respect to all MSs**. All participating MSs have reported measures in relation to the deductibility of interest expenses. Apart from Hungary and Malta, all participating MSs also have specific rules in relation to interest deductibility.

Indeed, in Hungary and Malta the deductibility of interest is included in a broader provision also relating to other types of expenses, which are classified as "costs and expenses" for Hungary and also include discounts and premiums paid for Malta.

In Hungary, costs and expenses are not deductible in case:

- They relate to transactions entered into for the sole purpose of reducing tax[81]; or
- In case they are paid out to an NCJ as defined under Hungarian tax law. In this case the taxpayer can however still deduct the given costs and expenses provided he can prove that the costs and expenses were incurred for the benefit of its economic operations[82].

Both measures in Hungary are aimed at protecting the corporate income tax base.

In Malta, the scope of application of the reported measure is more restrictive as it only applies to interest, discount or premiums paid which relate to immovable income located in Malta and which are paid out by a Maltese resident to a related person. The purpose of this measure is to avoid that such income which is tax exempt in Malta, as it is paid out to non-resident Maltese and related person, is also deductible in the hands of the paying entity[83]. Again the purpose of such measure can be described as protecting the tax base in Malta.

52. **Six thin capitalisation rules reported.** Within the framework of the current Study Belgium, Denmark, Hungary, Luxembourg, the Netherlands and the United Kingdom have reported a thin capitalisation rule.

[81] Cfr Appendix 2, Hungary, Part 2: General Information, Measure n°3, p 185.
[82] Cfr Appendix 2, Hungary, Part 3: Detailed Information, Measure n°1, p 191.
[83] Cfr Appendix 2, Malta, Part 2: General Information, Measure n°6, p 270.

There is no uniform debt-to-equity ratio in these different MSs. Belgium has reported a ratio of 7/1. This ratio however is amended to a 5/1 ratio (applicable as from 1 July 2012). In Denmark the overall ratio is set at 4/1, whereas Luxembourg has reported a 85/15 ratio. In the United Kingdom, there is no debt-equity ratio but the thin capitalisation rules apply the Transfer Pricing rules to loan relationships between connected parties. Therefore the aim of the thin capitalisation legislation is to prevent groups granting excessive loans to UK companies (who would not be able to borrow this amount/borrow on these terms on an arm's-length basis) in order to obtain a deduction for UK tax purposes. In the Netherlands according to the thin capitalisation provision the taxpayer is under-capitalised if one of the following two ratios is exceeded: (i) debt-equity ratio of 3:1 or (i) the average concern ratio (the taxpayer may choose the more beneficial ratio).

Both Belgium and Denmark have reported a general thin capitalisation rule in the case of interest paid to related entities. In Luxembourg the thin capitalisation rule only applies on the intra-group financing of participations.

Apart from the thin capitalisation rule for intra-group financing, the thin capitalisation rule in Belgium is also applicable in the case of interest payments made to beneficiaries which are not subject to an ordinary income tax or which, as far as the interest income is concerned, can benefit from a regime which is significantly more advantageous than the Belgian tax regime.

53. **Three countries have measures which provide for a limitation of deductibility based on an "Earnings Before Income Tax (Depreciation and Amortisation)" approach**. Denmark, Germany and Spain have specific rules limiting the deductibility of interest expenses based on the EBIT (Denmark) or the EBITDA (Germany and Spain). In Denmark, the deduction of interest is limited to 80% of the EBIT income of the company. In both Germany and Spain interest expenses are not deductible if they exceed 30% of the EBITDA. All three countries have a minimum threshold in order for this rule to apply. The threshold is different for each country: DKK 21.3 million (Denmark), EUR 3 million (Germany) and EUR 1 million (Spain).

54. **Measures specifically aimed at payments to "NCJ" or tax haven countries**. Belgium, Estonia, France, Hungary, Ireland and Spain have measures which are specifically aimed at costs or expenses incurred in relation to beneficiaries (i) which are not subject to an ordinary income tax or which, as far as the interest income is concerned, can benefit from a regime which is significantly more advantageous than the Belgian tax regime (Belgium); (ii) which are located in low tax rate territory (Estonia); (iii) which are subject to an effective taxation of less than 50% than that of similar French tax residents; (iv) which are located in an NCJ jurisdiction as defined under domestic tax law (France, Hungary and Spain) or (v) which are resident in a non-tax territory (Ireland).

Between the different Member States as referred to above, disposing of measures specifically aimed at payments to "NCJ" or tax haven countries, only Spain disposes of a list of tax haven countries which is also applicable for the purposes of this measure. The given list of tax haven companies is included above (cfr Table 4, Comparison of existing lists).

Apart from Ireland, the given measures (in Belgium, Estonia, France, Hungary and Spain) apply irrespective of whether the payment is performed between related companies.

In addition, these rules apply in all countries, with the exclusion of Ireland, to any type of expense or cost paid out. Only Ireland has limited the scope of this deductibility rule as it only applies to payments of short interest to a related group company.

55. **Three countries have reported measures in relation to hybrid mismatch arrangements**. Denmark, Ireland and the United Kingdom have reported certain measures in relation to hybrid mismatch arrangements. Apart from certain specific measures for Denmark, both Denmark and Ireland have a measure which restricts the deductibility of interest if the interest income is not taxed in the hands of the beneficiary due to the fact that it is considered as equity income in the hands of the beneficiary. Ireland refers in this respect specifically to the figure of the "Profit Participating Loan", nevertheless, it also limits the scope of application mainly to interest payments to beneficiaries located in Third Countries with which Ireland has not concluded a Tax Treaty. The United Kingdom also a measure against hybrid mismatch arrangements, the purpose of which is to "tackle arbitrage, where companies seek to gain a tax advantage by exploiting differences within and between tax codes and excessive claims for double taxation relief"[84].

56. **Nearly all measures are included in local tax law**. Apart from Luxembourg, all measures which have been reported in relation to the deductibility of expenses are included in local tax law.

Only Luxembourg has commented on a measure which results from the administrative practice and which provides for a thin capitalisation rule in the case of intra-group financing of participations.

[84] Cfr Appendix 2, The United Kingdom, Part 2: General Information, Measure n°5, p 370.

Table 9: Deductibility of Expenses

BELGIUM	Business expenses (including interest expenses)	Business expenses (including interest expenses)	Art.54 of the BITC	Certain types of business expenses (interest expenses, license retributions, etc.) are not deductible when paid out to beneficiary who is not subject to tax on such income or if the applicable tax regime for such income is substantially more favourable than the one applicable to such income in Belgium.	Possibility for counterproof (payment corresponds to real and sincere transactions and does not exceed normal limits)
	Interest expenses		Art. 55 of the BITC	Interest expenses are not deductible if the amount is not corresponding to the applicable market rate bearing in mind the specific facts and circumstances.	Non-applicability of the rule for interest paid out to financial entities (National Bank, etc.)
	Interest expenses		Art. 198, 11° of the BITC	In the case of interest paid to a beneficiary who is part of a group to which the Belgian debtor also belongs, a 5/1 thin capitalisation rule is applied.	This rule has been adopted, but has not yet entered into force. If no Royal Decree is published the rule will be applicable as from 1 July 2012
	Interest expenses		Art. 198, 11° of the BITC	In the case of interest paid to a beneficiary who is not subject to an ordinary income tax regime or who, as far as the interest income is concerned, is subject to a taxation system which is significantly more advantageous than the Belgian tax regime, a 7/1 thin capitalisation rule is applied. A new rule has been adopted to amend said thin capitalisation ratio to 5/1. This rule has however not yet entered into force.	This rule has been adopted, but has not yet entered into force. If no Royal Decree is published the rule will be applicable as from 1 July 2012
CYPRUS	Interest expenses		Art. 11 of the ITL	Interest expense which relates or is deemed to relate to the acquisition of assets not used in the business is not deductible for tax purposes.	The rule also applies if a loan exists but cannot specifically match with the acquisition of assets used for business purposes
		All types of expenses	Art. 9 of the ITL	Business expenses which are not supported by underlying documentation are not deductible.	
DENMARK		All types of expenses	Sec. 5G of the TAA and Sec. 31.2 of the CTA	The measure aims at avoiding multiple deduction of expenses.	Measure in relation to hybrid mismatch arrangements
		Payments done by Danish transparent companies		Under certain circumstances both Danish companies (as well as a PEs of foreign companies) can be considered as transparent companies. In such a case payments done by these companies to their foreign parent company (or head office) are not deductible as they are deemed to occur within the same legal entity.	Measure in relation to hybrid mismatch arrangements

	Payments qualified as interest under Danish tax law		Sec. 2B of the DCTA	In the case of a hybrid financial instrument which is considered as debt under Danish tax law, but as equity under the tax legislation of the country of residence of the counterparty, the instrument will nonetheless be treated as equity for Danish income tax purposes. This entails no deduction of interest expenses or capital loss and application of a WHT on the "deemed dividend payment".	Measure in relation to hybrid mismatch arrangements
		Distributions by a Danish fiscally transparent entity	Sec. 2C of the DCTA	In the case of en entity which is considered as fiscally transparent for Danish tax purposes, but as a separate taxable entity for foreign tax purposes, the entity will be subject to the same tax treatment as Danish resident companies (i.e. distributions will be considered as dividend distributions also subject to WHT).	Measure in relation to hybrid mismatch arrangements
	Interest payments		Sec. 11 of the CTA	The deduction of gross interest and related party debt is disallowed to the extent that the overall debt to equity ratio exceeds 4/1.	Thin capitalisation rule
	Financing costs (interest, losses on debts, receivables, losses on shares, etc.)	Financing costs (interest, losses on debts, receivables, losses on shares, etc.)	Sec. 11B of the CTA	According to the asset-based rule if financing costs paid by a Danish company exceed an amount of DKK 21.3 million (on a stand-alone basis or if part of a joint tax group), the deduction of these costs is limited to 4.5% of the tax basis of certain assets.	
	Interest payments		Sec. 11C of the CTA	The interest deduction is limited to 80% of the EBIT (earnings before interest and tax) income of a Danish company, with a minimum deduction of DKK 21.3 million.	
ESTONIA	Different types of payments, including interest payments	Different types of payments (interest payments, payments of fines, advances, etc.)	Art. 52 of the EITA	Certain payments performed to entities located in a low tax rate territory are not considered as business expenses and are therefore not deductible and subject to a 21/79 corporate income tax (similar as hidden profit distributions).	
	Interest payments		Art. 29(7) of the EITA	If interest payments done by an Estonian taxpayer exceed the arm's-length rate, the interest exceeding the arm's-length amount is subject to 21% WHT on gross amount.	
FRANCE		Different types of expenses (remuneration, fees and similar payments)	Sec. 238 A of the FTC	Expenses resulting from transactions undertaken by French companies with non-residents which are subject to an effective taxation which is less than 50% than that of similar French residents, are non-deductible.	Possibility of counterproof (payment related to an effective operation and not related to an "abnormal" act of management)

		Financing costs for the acquisition of shares	Sec. 40 of the FFA	The deduction of financing costs for the acquisition of shares (of which the acquisition value exceeds EUR 1 million) is limited based on a specific ratio if the French acquiring company is not able to demonstrate that it takes the decisions relating to these shares and that it actually exercises the control and influence over the acquired company.	The limited deductibility only applies as from the year of acquisition until the eighth anniversary of the acquisition. The counterproof can only be provided in the year of acquisition
	Interest payments		Sec. 223 B al. 7 of the FTC	The deduction of interest is limited within a tax group when a company is purchased from a related party and joins the tax group afterwards. This rule applies even if there is no intra-group debt.	The limited deductibility of interest only applies during 8 years following the purchase of the company from a related party
		Different types of payments (remuneration, fees and similar payments)	Sec. 238A paragraph 3 of the FTC	There is a general interdiction of the deduction of expenses resulting from transactions with non-resident entities located in a non-cooperative jurisdiction as defined in the FTC.	Possibility for counterproof (the main purpose and effect of the transaction is not to shift income outside France and also a reporting requirement on a detailed tax return)
GERMANY	Interest payments		Art. 4h ITA and Art. 8a CITA	If the net interest payments exceed a threshold of EUR 3 million, interest expenses are non-deductible to the extent that net interest payments exceed 30% of the EBITDA (earnings before interest, taxes, depreciations and amortisations). Exceptions are available and related to the "stand-alone exception"(is the German business part of an affiliated group?) and "equity-test" (comparison of the equity ratio of the company as opposed to the equity ratio of the group).	Interest which cannot be deducted as a result of this measure can be carried forward in time subject to certain conditions
HUNGARY		Different types of payments	Sec. 1(2) of the CITA	If the sole purpose of a transaction is the reduction of Hungarian tax, any tax reduction, benefit or tax relieving provision may not be applied.	
		Different types of payments	Sec. 8 (1) d) and Point A) 9 of Annex 3 of CITA	Costs and expenses incurred in relation to a CFC (as determined under Hungarian tax law, notion of "NCJ") do not qualify as business expenses and cannot be deducted from a tax perspective.	Possibility of counterproof (prepare specific documentation for each transaction)
	Interest payments		Paragraphs (1) j) and (5) of Section 8 of CITA.	According to the Act LXXXI of 1996 on corporate tax and dividend tax, the total of the interest expense and the tax base decreasing transfer pricing adjustment, relating to certain amount of liabilities exceeding three times the equity is not deductible from the company's corporate income tax base.	
IRELAND	Interest payments		Sec. 110 TCA 1997	Interest deduction on profit participating loans is restricted if it is not paid to a qualifying company (including mainly companies located in third countries with which Ireland has not concluded a DTT). Generally, the purpose of the measure is to avoid a reduction of the Irish tax base, where the interest income is not being taxed in the hands of the beneficiary.	Measure in relation to hybrid mismatch arrangements

	Interest payments		Sec. 452A TCA 1997	Payments of short interest (interest on loans of less than 1 year) to a 75% related party group company resident in a non-tax territory are reclassified as non-deductible distributions. In the case of interest payments performed by a qualifying company the interest will nonetheless be partially or entirely deductible depending on the effective tax rate applied in the non-treaty jurisdiction.	
	Interest payments		Sec. 130(2B) TCA 1997	In the case of interest paid as a result of funds borrowed for non-trade purposes (i.e. interest on funds borrowed to buy shares in a company) from a non-treaty resident 75% group company, the interest is reclassified as a non-deductible distribution.	
	Interest payments		Sec. 817C TCA 1997	The amount of interest deductible as trading expense is limited. This measure attempts to match the timing of the interest deduction in the Irish trading company with the timing of the taxation in the hands of the beneficiary.	
LUXEMBOURG	Interest payments		(Administrative practice)	Thin capitalisation rules are applied based on an administrative practice. In the case of intra-group financing of participations, a 85/15 debt-to-equity ratio applies. If the investment is financed with less than 15% equity, the surplus will be recharacterised as a hidden distribution of profits. This entails that the surplus will not be deductible and will be subject to a WHT of 15%.	
MALTA	Different types of payments including interest	Different types of payments (interest, discount or premium paid)	Art. 26 (h) of the ITA	Certain payments of interest are not tax deductible in the hands of the debtor if it relates to immovable property situated in Malta and the interest is exempted as it is paid to a non-resident Maltese person which is also a related person.	
NETHERLANDS	Interest payments		Art. 15ad CITA 1969	The deduction of interest on acquisition debt will be restricted if a Dutch company is acquired by a Dutch holding company with which it subsequently joins in a fiscal unity. The restriction applies to interest (including costs) related to third and related party debt with which the acquisition is financed. Based on this measure it is no longer possible to offset interest costs incurred by the parent company on acquisition debt against profits generated by the acquired company.	
	Interest payments		Art. 13l CITA 1969 (proposed)	The interest deduction limitation will apply to excessive interest expenses on debt relating to participations ("participation debt"). A mechanical formulaic rule determines the participation debt amount. The non-deductible interest expenses will equal the fraction (average participation debt/average total debt) multiplied by the total interest expenses of the Dutch taxpayer.	

	Interest payments		Article 10d CITA 1969	According to the thin capitalisation provision the taxpayer is under-capitalised if one of the following two ratios is exceeded: (i) debt-equity ratio of 3:1 or (i) the average concern ratio. In this case, interest deduction on inter-company loans is restricted.	
	Interest payments		Art. 10a CITA 1969	Interest deduction is restricted if certain transactions take place (tainted transactions, e.g. a dividend distribution or a capital contribution).	Interest deduction is nevertheless secured if both (i) the loan and (ii) the "tainted" transaction were carried out for predominantly sound business purposes Interest deductible if subject at the level of the creditor to a profit or income tax that is reasonable according to Dutch standards
SPAIN		Different types of expenses	Art 14.1.g) of the CITA	Expenses derived from transactions executed, directly or indirectly, with entities resident in tax havens or paid through entities resident in tax havens are not tax deductible.	Possibility of counterproof (transactions have been effectively carried out)
	Interest expenses		Art. 14.1.h CITA	Interest expenses paid to related parties and relating to the acquisition of shareholdings or contributions to the capital of group companies are not tax deductible.	Possibility of counterproof (transactions have sound business purposes)
	Interest expenses		Art. 20 of the CITA	Interest deduction is only available for net interest expenses up to 30% of the EBITDA (including some adjustments) provided the net interest expense exceeds EUR 1 million (the first EUR 1 million being deductible, even though it exceeds the 30% of the EBITDA). This rule does not apply to credit institutions or a taxpayer which is part of a group of companies.	Interest deduction which cannot be applied can be carried forward up to maximum 18 years. If the net interest expense is less than the 30% EBITDA, the difference would be used to increase the limit -30% EBITDA- in the 5 following years
SWEDEN	Interest expenses		Paragraph 10a-e, Chapter 24 of the SITA	Interest expenses due to a related party, used to finance the acquisition of shares from a related party, are non-deductible.	Possibility of counterproof (the interest income is subject to an effective tax rate of at least 10% and there are sound business reasons for both the debt and the acquisition)
UK	Interest expenses		Part 4 of TIOPA 2010	Interest payments to related entities are not deductible if they can be considered as not being at arm's length. Only the portion of the interest expense which meets the arm's-length condition is deductible.	
		Different types of expenses	Part 6 TIOPA 2010	The purpose of this measure is to "tackle arbitrage, where companies seek to gain a tax advantage by exploiting differences within and between tax codes and excessive claims for double taxation relief"	

4.6.4. Measures on Outbound Income

57. **Introduction.** A general overview of all measures reported with respect to the selected MSs which can be qualified as linked to outbound income is provided at the end of this section.

As a preliminary remark, as already mentioned (see paragraph 29 above), some countries consider the WHT (or a higher rate of WHT towards some countries) as an anti-abuse measure, as it concerns measures which generally foresee in a (higher) WHT rate which will be applied in case of payments to beneficiaries located in countries with which the Source State has for instance not concluded a double tax treaty. Whereas for other countries, they consider that it is just the result of the application of their normal tax legislation (based on the interactions between double tax treaties and local tax legislation: the higher WHT rate will be applied by default, in the absence of an applicable double tax treaty, and not the opposite).

58. **Nine MSs have reported measures in relation to outbound income**. Belgium, Denmark, Estonia, France, Ireland, Luxembourg, the Netherlands, Spain and the United Kingdom have specific measures in the case of income paid by a resident entity to a non-resident entity. The types of outbound income included in these measures are dividends (Belgium, Denmark, France, Ireland, Luxembourg and Spain), interest (Belgium, Denmark, France, Ireland and the United Kingdom), royalties (Denmark and Ireland), capital gains on shares (France and Spain), capital gains on real estate (France) and payments in consideration of the supply of services (Estonia and France). The implications of these measures will be outlined in the below paragraphs.

59. **Most measures imply the outbound income to have been paid to an "NCJ" or tax haven country.** All measures on outbound income which have been listed by the MSs are only applicable if the outbound income is paid out to beneficiaries located (i) in countries with which no "Tax Information Exchange Agreement" has been concluded (Denmark), (ii) in non-tax treaty jurisdictions (Belgium, Denmark, Ireland, Luxembourg and the United Kingdom) (iii) in low tax territories (Estonia), (iv) in "NCJs" as defined under domestic tax law (France) and in (v) tax havens (Spain).

60. **Almost all measures refer to a reduction or exemption of (withholding) tax which is not available for these outbound payments**. Apart from 2 measures in Estonia and Ireland, all other measures (reported by Belgium, Denmark, France, Ireland, Luxembourg, the Netherlands, Spain and the United Kingdom) refer to the non-applicability of an internal reduced tax rate or exemption if these outbound payments are performed to entities as define above.

In Estonia, services provided by non-resident entities located in a tax haven are considered to be provided on Estonian territory and therefore a WHT of 21% is imposed. In addition, Ireland provides for the possibility of a residual charge to Irish income tax in the case of interest paid to non-residents located in a non-treaty territory.

Table 10: Treatment of Outbound Income

BELGIUM	X	X			Art. 107, §2, 10°, and 106, §5, RD/BITC	Belgian tax law provides, under certain conditions, for some WHT exemption in case of payment of Belgian source movable income (interest and dividends) paid to non-resident taxpayers. Some anti-abuse measures apply in specific circumstances.	
DENMARK	X				Section 65 DTSA	For dividends paid out on portfolio shares to a foreign shareholder, a reduced WHT rate of 15% is only applicable (instead of the general rate of 28%) if the beneficiary is located in a country with which Denmark has concluded a "Tax Information Exchange Agreement".	
		X			Section 65 D DTSA	Provided no specific exemptions apply (for instance in relation to the CFC legislation), the general WHT exemption on interest is not available for interest paid to a foreign group member company that is tax resident outside the European Union and outside any of the states with which Denmark has concluded a tax treaty. A WHT of 25% is levied.	
			X		Section 65 C DTSA	Royalties are subject to a 25% WHT in Denmark. Based on the Double Tax Treaties concluded by Denmark and the EU Interest & Royalty Directive, an exemption is generally available. However, such exemption does thus generally not apply for beneficiaries located outside the European Union with which Denmark has not concluded a Double Tax Treaty.	
ESTONIA				X	Art. 29 (3), Ar. 41 p 11 and Art. 43 (1) (1) of the EITA	Services provided to an Estonian resident by an entity located in a low tax rate territory are considered to be provided on the Estonian territory. As a result hereof the payments in relation to the services are subject to a 21% WHT on the gross amount.	
FRANCE	X	X		X	Sec. 125 A, 125-0 A, 119 bis, 182 A bis, 182B 39 duodecies and 219 of the FTC	For outbound payments (i.e. dividends, interest and payments in consideration of the supply of any kind or services), a 50% WHT is applicable to these payments if the beneficiary is located in a "NCJ" jurisdiction as defined under French tax law.	There is a possibility of counterproof (in the case of *bona fide* commercial reasons)
				X	Sec. 244bis, Sec. 244bis A of the FTC	Real estate capital gains realised in France by a non-tax resident are taxed at a 33, 1/3% tax rate. If the beneficiary is located in a "NCJ" jurisdiction as defined under French tax law, the WHT rate is increased to 50%.	
				X	Sec. 244bis B of the FTC	Capital gains realised in France upon the sale of shares of a French company by a non-tax resident are taxed at 19%. If the beneficiary is located in an "NCJ" jurisdiction as defined under French tax law, the WHT rate is increased to 50%.	
IRELAND			X		Sec. 242A of the TCA 1997	Payments of patent royalties by a company resident in Ireland to a non-resident company may be liable to an Irish WHT of 20%. An exemption is generally available upon certain conditions and provided that the beneficiary of the payments is located in an MS or a country with which Ireland has concluded a Double Tax Treaty which imposes a tax that generally applies to interest receivable in that territory. In the case of payments to non-treaty territories a WHT exemption is generally not available.	

		X			Sec. 246 (3) (h) TCA 1997	Payments of interest made by a company resident in Ireland to a non-resident company may be liable to an Irish WHT of 20%. An exemption is generally available upon certain conditions and provided that the beneficiary of the payments is located in an MS or a country with which Ireland has concluded a Double Tax Treaty which imposes a tax that generally applies to royalties receivable in that territory. In the case of payments to non-treaty territories, a WHT exemption is generally not available.	
		X			Sec. 198 TCA 1997	Payments of interest by a company resident in Ireland to a non-resident company may be liable to a residual charge to Irish income tax chargeable on the non-resident company. An exemption from this residual charge is generally available upon certain conditions and provided that the beneficiary of the payments is located in an MS or a country with which Ireland has concluded a Double Tax Treaty which imposes a tax that generally applies to interest receivable in that territory. In the case of payments to non-treaty territories, a WHT exemption is generally not available.	
	X				Sec. 172D TCA 1997	Dividends paid by a company resident in Ireland to a non-resident company may be liable to an Irish WHT of 20%. Different exemptions are available based on the EU Parent Subsidiary Directive, or in the case of dividends paid to a beneficiary which is located in an MS or a country with which Ireland has concluded a Double Tax Treaty, etc. Apart from some specific exemptions that may apply, there is no general exemption in the case of dividend payments to non-treaty resident companies.	
LUXEMBOURG	X				Art. 147 LITL	Dividends paid by a company resident in Luxemburg to a non-resident company may be liable to a WHT of 15%. Different exemptions are available based on the EU Parent Subsidiary Directive, or in the case of dividends paid to a beneficiary which is located in an MS or a country with which Luxembourg has concluded a Double Tax Treaty, etc. Apart from some specific exemptions that may apply, there is no general exemption in the case of dividend payments to non-treaty resident companies.	
NETHERLANDS	X				Art. 4 of the DDWTA	If the receiver of the dividend is not the beneficial owner, there is no WHT exemption on dividends available.	The purpose of this measure is to avoid dividend stripping
	X				Art. 1(7) of the DDWTA	This measure introduces a dividend WHT liability for a Dutch Coop (cooperative society) if a Coop is inserted in a corporate structure with the aim of avoiding (foreign) WHT.	
SPAIN	X			X	Art. 118 of the CITA	Generally dividends paid by a ETVE to a non-resident entity or capital gains realised upon the disposal of an ETVE are considered as non-Spanish sourced income and thus fall outside the scope of Spanish (withholding) taxation. This non-subjection is however not applicable if the beneficiary is located in a tax haven jurisdiction.	

	X				Art. 14.1.h. of the NRITA	Dividends paid by a company resident in Spain to a non-resident company may be liable to a Spanish WHT. Specific exemptions are available based on the EU Parent Subsidiary Directive. These exemptions are not available for beneficiaries located in a tax haven.	
	X	X			Art. 14.2 of the NRITA	Certain exemptions from WHT applicable to non-resident entities without a permanent establishment in Spain are not applicable if the income has been obtained through a tax haven.	
UK		X			(Pending proposal)	Currently WHT is only levied on yearly interest but not on interest relating to loans of less than one year. In addition, many WHT exemptions are available in the case of interest payments to a beneficiary located in a tax treaty jurisdiction. A possible change has been suggested to also levy a WHT on interest relating to loans of less than a year. This would severely impact interest payments to non-treaty jurisdictions.	

4.6.5. Measures on Inbound Income

61. **Introduction.** A general overview of all measures reported with respect to the selected MSs which can be qualified as linked to inbound income is provided at the end of this section.

62. **Three MSs have reported specific anti-channelling measures in the case of a Foreign Tax Credit (below *"FTC"*).** In the case of foreign movable income for which an FTC is available, in Belgium, tax law provides that the FTC is not creditable in the case of channelling. Channelling entails that the lender in reality has acted on behalf of a third party who has provided the necessary funds for the transaction and who assumes the credit risk of the operation. Also in Cyprus and Malta a similar rule exists to avoid companies to be used as vehicles set up for the benefit of the FTC.

63. **In the case of a participation exemption regime, the regime generally provides for subject-to-tax conditions.** When a participation exemption regime is provided so as to exempt dividends or capital gains in the hands of a local taxpayer, the regime generally requires certain conditions to be complied with. All countries who have referred to this regime mention that one of the conditions for the participation exemption regime to apply is that the distributing company complies with a "subject-to-tax condition".

Again the interpretation of the "subject-to-tax" condition between the various countries is different. In Belgium, Luxembourg and Spain, reference is made to the local tax regime to assess whether the "subject-to-tax" condition is met in the hands of the distributing company. In order for the condition to be complied with in these countries, the company distributing the dividend (or which is underlying the capital gain on shares) should be subject to a foreign tax which is similar to the local tax regime or not substantially more advantages than the local tax regime. In Belgium, tax law specifies that this requires a nominal or effective tax rate of at least 15%. In Luxembourg, it is specified that the distributing company should be subject to an effective tax rate of at least 50% of the official rate of Luxembourg corporate income tax. In Spain, the non-resident entity must be subject to a tax which is similar as the Spanish corporate income tax.

In order for the subject-to-tax condition to be complied with in France, the distributing company may not be located in an "NCJ" as defined under French tax law whereas in Estonia, dividends received from subsidiaries located in "low tax rate territories" do not qualify for the participation exemption regime.

In Denmark, there is a rule specifically addressing hybrid mismatch arrangements according to which dividends received are no longer tax exempt if the subsidiary is able to claim a tax deduction for the dividends. The rule does not apply if the dividends are covered by the EC Parent-Subsidiary Directive.

Finally, Ireland does not exempt capital gains on shares relating to a company which is not located in an EU Member State or in a state with which Ireland has concluded a Double Tax Treaty.

Table 11: Treatment of Inbound Income

BELGIUM			X	FTC	Art. 37 and Art. 285-289 of the BITC	In the case of foreign movable income (such as interest or royalties) an FTC is available upon certain conditions. An FTC is not creditable in the case of channelling. Channelling entails that the lender in reality has acted on behalf of a third party who has provided him with the necessary funds and who assumes the credit risk of the operation.	
	X			Participation exemption regime	Art. 202 and 203 of the BITC	A Belgian company can benefit from a participation exemption regime for dividends it receives provided certain quantitative and qualitative or "subject to tax" conditions are met. One of these conditions requires that the company distributing the dividend is subject to a foreign tax similar to the Belgian corporate income tax or is not located in a country where the common tax regime is substantially more advantageous than in Belgium.	A tax regime is considered substantially more advantageous if the nominal or effective tax rate is below 15%. MSs are considered not to have a tax regime which is substantially more advantageous.
		X		Other (capital gain exemption)	Art. 192 of the BITC	In the case of a capital gain realised on shares by a Belgian company, the capital gain can be exempted from Belgian corporate income tax provided certain conditions are met. These conditions also include the qualitative or "subject to tax" conditions as applicable for dividends received.	
CYPRUS			X	FTC	Art. 35 and 36 of the ITL	In order to avoid Cypriot companies to be used as vehicles set up for the benefit of the FTC, the FTC is computed on a source-by-source basis.	
	X			Participation exemption regime	Article 3 of the SDC Law	No exemption is granted for dividends derived from substantially passive and low-taxed source.	Low-taxed is interpreted to mean below 5%.
DENMARK	X			Participation exemption regime	Section 13 CTA	This is a rule specifically addressing hybrid mismatch arrangements. Dividends received by a Danish parent company are no longer tax exempt if the subsidiary is able to claim a tax deduction for the dividends. The rule does not apply if the dividends are covered by the EC Parent-Subsidiary Directive.	As from 2011, the rule also applies if the deduction has been made in a lower tier subsidiary and the dividend has not been taxed in a subsidiary inserted between the subsidiary claiming the deduction and the Danish parent company.
ESTONIA	X			Participation exemption regime	Art. 50 (1) of the EITA	Dividends received from subsidiaries located in low tax rate territories do not qualify for the participation exemption regime.	
FRANCE	X			Participation exemption regime	Sec. 145, paragraph 6-j of the FTC	As from 1 July 2011, dividends received from subsidiaries located in "NCJ" as defined under French tax law cannot benefit from the participation exemption regime.	

		X		Other (capital gain exemption)	Sec. 39 duodecies and 219 of the FTC	As from 1 July 2011, the exemption regime for capital gains on shares is not applicable for capital gains realised on shares from subsidiaries located in "NCJ" as defined under French tax law .	
HUNGARY	X	X		Participation exemption regime and Other (capital gain exemption)	Sec. 7 (1) g) and gy), CITA Sec. 8 (1) m), CITA	100% of the dividend income and gain (as defined in Hungarian legislation) may be deducted from the corporate income tax base, except for dividend received from CFCs and gain related to shareholdings in CFCs.	
IRELAND	X			Other	Sec. 129 A of the TCA 1997	In the case of dividends paid from one Irish tax resident company to another Irish tax resident company, no exemption from Irish tax is available if the dividend results from profits which have been earned by an Irish resident paying company before it become an Irish tax resident. This measure aims at avoiding repatriation of profits from a foreign subsidiary through migration of residence into Ireland followed by a dividends distribution.	
		X		Other (capital gain exemption)	Sec. 626 B and Sec. 626 C of the TCA 1997	Capital gains on shares made by an Irish resident company upon the disposal of qualifying shareholdings cannot benefit from a tax exemption if the company being disposed of is not located in an EU Member State or in a country with which Ireland has not concluded a Double Tax Treaty.	
		X		Other (capital gain exemption)	Sec. 616 of the TCA 1997	Transfer of chargeable assets between companies in the same Irish capital gains tax group are deemed to take place at no gain/no loss. As non-EU resident companies cannot participate in such a capital gains tax group, they cannot benefit from the said exemption.	
LUXEMBOURG	X			Participation exemption regime	Art. 166 of the LTL	A company can benefit from a participation exemption regime for dividends it receives provided certain conditions are met. One of these conditions requires that the company distributing the dividend is subject to a foreign tax similar to the Luxembourg corporate income tax.	This equivalent taxation rule requires that the distributing company in the country of residence is subject to an effective tax rate of 50% of the official rate of Luxembourg corporate income tax
MALTA			X	FTC	Art. 95 of the ITA	In the case of a series of transactions which are affected with the sole or main purpose of reducing the amount of tax payable by any person in Malta by use of the FTC, the taxpayer can be assessed as if the provisions of the tax credit did not apply.	

NETHERLANDS	X			Participation exemption regime	Art. 13 and 13a CITA 1969	The participation exemption does not apply to participations held as a portfolio investment (intention test). The provision contains an “escape” to ensure that the Dutch participation exemption does apply to a subsidiary, although it is “held as a portfolio investment”. This “escape” applies if the subsidiary is subject to a profit tax resulting in a degree of taxation that is reasonable according to Dutch standards (subject to tax test) or if it has sufficient “active” assets (asset test).	
			X	FTC (income PE)	15g CITA 1969	Generally, income from a foreign permanent establishment (“PE”) is exempt at the level of the Dutch head office (the exemption, a so-called “object exemption”, applies to both profits and losses of the foreign PE. Under certain conditions, a (less favourable) tax credit instead of a tax exemption applies (art. 15g CITA 1969). This is the case, generally speaking, where: (i) the activities of the PE consist of “passive” financing activities and (ii) the PE’s profits are not subject to a tax that is reasonable according to Dutch standards.	
SPAIN	X	X		Participation exemption regime	Art. 21 of the CITA	A participation exemption regime is available for dividends and capital gains from non-resident entities provided that certain conditions are met. One of these conditions requires that the non-resident entity must be subject to a tax which is similar to Spanish corporate income tax. This rule is not met (the subject to tax condition) in the case of income obtained from subsidiaries resident in a tax haven jurisdiction.	In the case of an EU tax haven jurisdiction the taxpayer can provide the counterproof (sound business purpose)
			X	Other (income PE)	Art 22 of the CITA	Income resulting from foreign branches is only tax exempt provided certain conditions are met. One of the conditions is that the branch has been subject to a tax which is similar to Spanish corporate income tax and the branch is thus not located in a tax haven.	

4.6.6. Disclosure Requirements

64. **Introduction.** A general overview of all measures reported with respect to the selected MSs which can be qualified as linked to disclosure requirements is provided at the end of this section.

This section only relates to measures which impose a mandatory reporting requirement of certain transaction or payments. We have thus not commented in this section any general obligation which may apply for instance as regards documentation requirements from a Transfer Pricing perspective (cf. section 4.6.2 above).

65. **Six MSs reported specific disclosure requirements**. Belgium, France, Hungary, Ireland, Spain and the United Kingdom reported specific disclosure requirements which need to be complied with.

66. **Four of the eight measures only apply in the case of transactions with an "NCJ" or tax haven country**. Most measures which apply in the hands of taxpayer claiming a tax relief, deduction, etc. are only applicable if the transaction underlying the tax relief, deduction, etc. occurs with and "NCJ" or tax haven.

Belgium, France, Hungary and Spain all provide that in the case of expenses or costs as a result of transactions with entities located in a tax haven (Belgium and Spain) or an "NCJ" as defined under local tax law (France and Hungary), the taxpayer should comply with a specific disclosure requirement.

67. **The disclosure requirement generally applies to the taxpayer involved in a transaction**. Generally the disclosure requirement applies in the case of effective payments as a result of transactions with entities located in an "NCJ" as referred to above. Only Spain, Ireland and the United Kingdom provide a disclosure requirement which does not refer to a deduction of costs or effective benefit of a tax relief. In Spain a general disclosure requirement is currently suggested to disclose foreign bank accounts or securities held abroad[85]. Also Ireland and the United Kingdom require promoters which have assisted in a scheme which exceeds a certain value or has certain hallmarks to report this to a central body[86,87].

68. **Most recent measures (as opposed to other measures reported in the Study)**. Based on the information collected, it appears that the disclosure requirements included in the Study can all be considered as fairly recent measures. Indeed from the six countries which have reported to have specific disclosure requirements, these measures have only been enacted as from 2004 in five of the six countries (Belgium, France, Hungary, Ireland and the United Kingdom).

[85] Cfr Appendix 2, Spain, Part 2: General Information, Measure n°16, p 325.
[86] Cfr Appendix 2, Ireland, Part 2: General Information, Measure n°16, 225.
[87] Cfr Appendix 2, The United Kingdom, Part 2: General Information, Measure n°15, p 384.

69. **Penalties if reporting obligation is not complied with**. Generally, all countries provide that if the taxpayer has not complied with the provided disclosure requirement, the tax relief or deduction will be denied (Belgium, France and Hungary). In Hungary also additional penalties might become due if the disclosure requirement is not complied with.

70. **Protective and proactive purpose**. Most countries have adopted such measures in order to protect the national tax base (France and Hungary). Nevertheless other countries have also specifically mentioned a more proactive purpose for the disclosure requirements.

Belgium has stated that according to the Parliamentary Works, the disclosure requirement should enhance the efficiency of the tax audits performed by the tax authorities. In Ireland and the United Kingdom, the disclosure requirement which applies to the promoters of certain tax-related transactions are intended to gather details of particular transactions with a view of legislating against schemes that can be viewed as aggressive.

In Ireland and the United Kingdom the specified transactions which should be reported are described as transactions which:

- Involve the confidentiality of the promoter or person implementing the transaction;
- Result in a premium fee for the promoter;
- Is intended to have standardised or substantially standardised documentation;
- Involves loss schemes (both in case of individuals or companies), employment or pension schemes, income into capital schemes and income into gift schemes[88,89].

[88] Cfr Appendix 2, Ireland, Part 2: General Information, Measure n°16, p 226-227.
[89] Cfr Appendix 2, The United Kingdom, Part 2: General Information, Measure n°15, p 385.

Table 12: Disclosure Requirements

BELGIUM	Direct or indirect payments to recipients located in tax haven	Companies subject to Belgian corporate income tax or Belgian non-resident income tax	Art. 198, 10° and Art. 307 of the BITC	Since 1 January 2010, companies subject to Belgian corporate income tax are obliged to declare direct or indirect payments which exceed EUR 100,000 during the taxable period and which are paid to recipients established in so-called tax havens. For the purposes of this measure a specific list has been established listing the different tax haven countries.	If the payments are not reported, the payments are not deductible. The purpose of the measure is to enhance the efficiency of the tax audits performed by the Belgian tax authorities. If the Belgian tax authorities question certain payments upon a tax audit, the taxpayer should prove that the payments have been performed in the framework of real and sincere transactions and with persons other than artificial constructions
FRANCE	Different types of payments (remuneration, fees and similar payments)	French companies incurring expenses charged out by entities located in NCJ (as defined under French tax law)	Sec. 238A paragraph 3 of the FTC	Expenses resulting from transactions undertaken by French companies with non-residents located in an NCJ (as defined under French tax law) are only deductible provided certain conditions are met. Since 1 January 2011 the French paying company claiming the deduction should also record the expense on a detailed tax return.	If the reporting obligation is not complied with, the expenses are not deductible. The purpose of the measure is to avoid the shifting of profits to countries with a preferential tax regime
HUNGARY	Costs and expenses incurred in connection to payments performed to a CFC	Hungarian entities and foreign entities qualifying as taxpayers according to the CITA	Sec. 8 (1) d) and Point A of Annex 3 of CITA	In order for costs and expenses paid to a CFC to be tax deductible, the Hungarian taxpayer must prepare a specific documentation per agreement supporting the business purpose of the payments to CFCs including amongst others, the name of beneficiary, the registered seat of beneficiary, the tax number of beneficiary, etc.	If the reporting obligation is not complied with, the expenses are not deductible. Moreover in the case of lack of documentation, the Hungarian tax authorities may asses a penalty of HUF 2 million per missing documentation, which may also be increased in the case of repeated default. The purpose of the measure is to defend the Hungarian corporate income tax base
IRELAND	Specified transactions that may result in benefitting from a tax relief	Promoters of certain tax related transactions. Only in very limited circumstances, the users of the transactions are required to provide details	Sec. 817D-817R TCA 1997	The Finance Act of 2010 introduced a new mandatory disclosure obligation on promoters of certain tax-related transactions to give details of those transactions to the Revenue Commissioners shortly after they are marketed or made available for use. The reporting obligations apply to transactions irrespective of the country of residence of the counterparty.	The purpose of the reporting obligation is to gather details of particular transactions with a view to legislate against schemes that are viewed as aggressive

SPAIN	Transactions with entities in tax havens or shares in entities located in tax havens	Spanish taxpayers	(Included in the instructions of the corporate income tax return)	Transactions with entities located in tax havens or shares in entities located in tax havens should be reported in the corporate income tax return.	
	Bank accounts and securities held abroad	Spanish taxpayers	Draft bill against tax fraud	The Draft bill of measures against tax fraud includes a provision according to which taxpayers must inform if they have foreign bank accounts or hold securities abroad.	If the taxpayers do not comply with this reporting obligation, they face a (minimum) penalty of EUR 10,000. In addition, the income which has not been declared will not be prescribed. The Draft has been approved on April 13, 2012
UK	Transactions such as the issue/transfer of shares/debentures exceeding £100 million unless certain specific conditions are complied with	Reporting body	Schedule 17 of the Finance Act 2009	Under the International Movement of Capital rules, the reporting body must report a "reportable transaction" to an officer of Revenue and Customs within 6 months of the transaction.	The purpose of this rule is to gather information. Through these rules, information is obtained in relation to major international transactions of UK groups
	A scheme should be reported if it meets the required "Hallmarks", such as where the promoter strives to keep the scheme confidential, etc. It generally concerns arrangements which enable a person to obtain a tax advantage or where the main benefit that might be expected to arise is a tax advantage.	Promoters marketing certain tax avoidance schemes and arrangements	Part 7 of the Finance Act 2004	The tax avoidance disclosure regime includes a mandatory disclosure obligation on promoters of certain tax-related transactions to give details of those transactions to the HMRC.	

4.6.7. General Anti-Abuse Rules

71. **Introduction: GAARs.** A general overview of all measures reported with respect to the selected MSs which can be qualified as general anti-abuse rules (below "GAARs") is provided at the end of this section. In a nutshell, GAARs can be summarised as rules applied generally that prevent taxpayers from entering into abusive transactions/planning, generally for the sole (or main) purpose of avoiding or reducing a tax charge.

72. **All the countries have reported one or more GAARs.** A total of 22 measures have been reported by 14 countries. Except Denmark, Cyprus, Germany and the Netherlands, all the reporting countries have two or more rules.

The measures are generally laid down in primary law. Of the 22 measures, only four are based on case law or derived from tax-administration practices (Denmark, France, the Netherlands and Sweden). In particular, the reported measures have generally been part of the legal system for a while. Only one reported measure has not yet been enacted (the United Kingdom) and another has been significantly amended very recently (Belgium).

73. **Types of GAARs.** In a nutshell, the reported measures can be categorised according to the following concepts/principles:

- abuse of law: the law is formally complied with but in a way that is not compatible with its spirit;
- the substance-over-form principle: the law is formally complied with but there is a lack of substance supporting the transaction/restructuring so that the tax authorities can disregard its form;
- the simulation/sham concept: a transaction is entered into by parties but not adhered to by them because another transaction, which is adhered to, alters or negates the first transaction.

The GAARs reported in the Study are briefly summarised in the following table.

Table 13: General Anti-Abuse Rules

BELGIUM		X	X	Art. 344, §1, BITC	The administration is not bound to recognise legal acts or series of legal acts effecting one and the same transaction if it establishes by means of presumptions or by other means of proof and on the basis of objective circumstances that tax abuse results.	Possibility of counter-evidence; the "Purposes" of some provisions could be unclear; "Other reasons" broader than legitimate economic or financial reasons Related concept: Simulation ("sham") doctrine	Many decisions concerning the former provision led to its being reformulated Provision too recent: no decision currently available
CYPRUS	X			Art. 33, ACTL L.4/78	Where a Cypriot tax-resident company or individual enters into any transaction which the Director of Inland Revenue considers to be "artificial" or "fictitious", this may be disregarded and taxable income may be adjusted accordingly.		
ESTONIA			X	Art. 83(4), ETA	Based on the Estonian "abuse of law" principle, fictitious transactions will not be taken into account for tax purposes (i.e. if a fictitious transaction is entered into in order to conceal another transaction) so that provisions concerning the concealed transaction apply to determine tax liability.	These two provisions are equally applicable to all taxpayers irrespective of the country of residence of the counterparty	One decision by the Supreme Court (3-3-1-42-11, 26 Sept. 2011) seems to have set a new trend in developments regarding these two provisions by attributing profits of a non-resident company to an Estonian resident, leading to taxation of these profits in the hands of the Estonian resident (hidden profit distributions)
	X			Art. 84, ETA	The Estonian "substance-over-form" principle means that, if it is evident from the terms of a transaction or act that it is performed for the purposes of tax evasion, conditions corresponding to the actual economic effect of the transaction or act apply for tax purposes.		

FRANCE			X	Art. L 64, French Proceedings Code	The abuse of law procedure enables the FTA to disregard transactions or acts carried out by a taxpayer if such transactions or acts are fictitious or if they have as their sole purpose the avoidance of French taxes that the taxpayer should have borne in the normal course of its activity and when the tax benefit of the transaction is contrary to the intent of the legislator. If the abuse of law is proved, the FTA are entitled to reassess avoided tax and to add a penalty of 40% to that tax (increased to 80% if the taxpayer is the principal investigator or beneficiary).		The Supreme Administrative Tax Court fixed the limits of the abuse of law principle in its Janfin decision
			("Normal act of management")	(Case law concept)	According to French tax case law, a company engages in an abnormal act of management if it bears an expense or deprives itself of a profit without being able to show that it is in its own interests to do so.	Burden of the proof on the FTA	Many court cases but solutions generally depend on the facts Interesting case by the Versailles Administrative Court of Appeal concerning a share buy-back deal
GERMANY			X	Art. 42, General Fiscal Code (Abgabenordnung (AO))	The purpose of this measure is to avoid non-taxation or a reduced tax charge by "abuse of legal arrangements" contrary to the spirit (if not the wording) of the tax law. In such cases, the tax is due as if an arrangement considered appropriate had been chosen by the taxpayer.	Provision amended by the Legal Tax Act of 2008; now legally defining abusive transactions (a notion developed by the courts) and avoiding incompatibility issues between this general provision and the special anti-avoidance rules	
HUNGARY	X			Sec. 1 (7), Act on Rules of Taxation	This principle requires arrangements to be classified according to their commercial substance, though it does not specify any further detail. It gives the tax authority the right to recharacterise transactions if their substance differs from their declared legal classification.	Burden of proof on the taxpayer Recharacterisation is not considered unconstitutional Limited established court practice regarding interpretation	Two Resolutions of the Supreme Court have been reported (BH2002.509 and BH2002.702); it should be borne in mind that, in Hungary, Supreme Court decisions are not binding on the tax authority
			X	Sec. 2 (1), Act on Rules of Taxation	This provision gives the tax authority the right to recharacterise transactions if a taxpayer has not executed its rights within their meaning and intent	Recharacterisation not considered unconstitutional Limited established court practice regarding interpretation	Two Resolutions of the Supreme Court have been reported (BH2005.332 and BH2011.327); it should be borne in mind that, in Hungary, Supreme Court decisions are not binding on the tax authority

IRELAND	X		X	Sec. 811, Taxes Consolidation Act 1997	This measure is designed to counteract transactions which lack commercial reality and are put in place with a view to reducing or avoiding a charge to Irish tax, i.e. the so-called "tax avoidance transaction" or "tax avoidance scheme". If the transaction is found to be a "tax avoidance scheme", the Irish tax benefit arising from it will be denied and this will result in a tax liability together with interest and penalties owed on the underpayment of tax.		Only one case (Revenue Commissioners v. O'Flynn Construction) confirming the Revenue's ability to look at the purpose for which tax relief was introduced in determining whether a transaction is a "tax avoidance scheme"
LUXEMBOURG		X		§5, Steueranpassungs-Gesetz ("StAnpG")	Where the agreement is found to be a "sham" (put in place to conceal another agreement), the tax authorities will tax the outcome of the "real" transaction that should have occurred without simulation.		
	X		X	§6, Steueranpassungs-Gesetz ("StAnpG")	This measure applies when the route chosen to carry out a transaction is one which would not usually be taken – and there is a lack of other (non-tax) reasons justifying this choice – leading to tax liability being circumvented. In that case, the fiscal consequences that the taxpayer wanted to circumvent are applied.		In its decision no. 18971 (11 May 2005), the Administrative Court took a more "substance-over-form" approach to this measure in a case concerning tax residence
MALTA	X			Art. 51(1), ITA	Any scheme which reduces the amount of tax payable by any person is disregarded when it is artificial or fictitious or it is not, in fact, given effect to. The relevant person is assessable accordingly.		A landmark decision (Enterprises' Limited v. Frank Bowers) specified that there is nothing wrong if a person legitimately makes use of the methods available in the law to reduce his ultimate tax liability, provided, naturally, that any planning falls within the parameters allowed by law
			X	Art. 51(2), ITA	This measure allows the Maltese tax authorities to nullify or modify schemes and connected advantages obtained as a direct or indirect result of any scheme whose sole or main purpose was to obtain any advantage which has the effect of avoiding, reducing or postponing liability to tax, or to obtain any refund or set-off of tax.		

			X	Art. 42, ITA	Arrangements including a series of transactions effected with the sole or main purpose of reducing the amount of tax payable by a person by reason of operation of the investment income provisions (which broadly allow for a lower tax rate of 15%) are disregarded. In such cases, the person is assessable as if the aforesaid provisions did not apply.		
			X	Art. 51(4) and (5), ITA	Specific deductions are allowed on income resulting from a scheme or a change in the shareholding of a company only if it has not been put in place or performed solely or mainly for the purpose of obtaining the benefit of any loss or of any capital allowances so as to avoid liability to tax.		Much case law, but on a case-by-case analysis so that it is difficult to provide a summary of the main case law.
NETHERLANDS			X	(Case law concept)	On the basis of the *fraus legis* concept, the tax authority has an instrument to challenge transactions (or sets of transactions) by taxpayers that are contrary to the purpose of the law.	If *fraus legis* is applied successfully, transactions are eliminated / substituted to arrive at an outcome that is in line with the object and purpose of the law.	Since this is a case law concept, the courts are decisive on applying this measure (e.g. HR, 26 May 1926 – first application of the concept – and HR, 21 Nov. 1984 – development of the main criteria of the concept)
SPAIN		X		Art. 16, SGTA	In the event of sham or simulation, the taxable event will be the transaction actually carried out by the parties. This can be a partial (another transaction is executed) or a full (no transaction is executed) simulation.		
			X	Art. 15, SGTA	When a taxable event is wholly or partially avoided or when taxable income is reduced by acts or means where the following circumstances are met (i) the acts, whether individually or jointly, are contrived or unsuitable for the result attained; or (ii) as a result of the acts, there are no significant legal or economic consequences beyond tax savings. If a tax assessment is made under this rule, the tax is imposed on those acts or businesses that are avoided.	On an annual basis, the Spanish Tax Authorities publish a set of tax collection and audit objectives which are used as guidance and focused on in their tax audits. These guidelines explain which transactions are going to be challenged by the tax authorities. The guidelines specifically state that the fight against tax fraud is a priority.	

SWEDEN			X	Tax Avoidance Act (Sw: Skatteflyktslagen (1995:575))	A legal act undertaken by a taxpayer may be disregarded if it results in a significant tax benefit for the taxpayer and the tax benefit has been the main reason for it; the final, decisive criterion is that taxing the situation as presented would be contrary to the purpose of the legislation.	Measure only applied in court cases, i.e. the Tax Agency may not apply it in levying tax without a court ruling and, thus, it has to request the court to apply the law.	Many cases, but on a case-by-case analysis so that it is difficult to provide a summary of main case law. However, most recently (HFD 2012 ref 6), the Supreme Administrative Court refused to apply the GAAR in a case relating to interest deductions where it was clear that the interest-stripping rules were not applicable
	X			(Administrative practice/case law concept)	Where an agreement or transaction is incorrectly labelled, the Tax Agency or Administrative Court may tax the agreement or transaction according to its true meaning, by applying the ordinary interpretive methods of civil law.	The measure may not be used to recharacterise the agreement itself (e.g. characterising debt as equity); the legal form of an agreement is thus generally upheld for tax purposes.	In two cases (no. RÅ 2004 ref. 27 and RÅ 2008 not. 169), the Supreme Administrative Court rejected the “true meaning” approach taken by the Swedish Tax Agency
UK			“reasonable tax planning”	Consultation document released on 12 June 2012	This future measure will target business and individuals that do not undertake “sensible and responsible tax planning”, i.e. tax planning that “*can [not] reasonably be regarded as a reasonable exercise of choices afforded by the provisions of the Acts*".	Could lead to additional corporation tax revenue of £2.1 bn a year	n/a (future measure)
			X	Interest: Sec 441 and 442, CTA 2009 Manufactured payments: Sec. 799 and 800, CTA 2010	A company is not entitled to any relevant tax relief so far as this is in respect of interest or a manufactured payment where the payment is attributable to the unallowable purpose, i.e. one of the reasons why the company is party to them is not among the business/commercial purposes of the business.		First Tier Tribunal - A.H. Field (Holdings) Limited vs. HMRC (March 2012) in favour of HMRC: FTT determined that tax avoidance was a main purpose of entering into the loan note and therefore that the borrowing costs were not deductible for tax purposes.

4.6.8. Various Measures

74. **Introduction.** The purpose of this section is to give a non-exhaustive overview of other reported anti-abuse measures that do not fit in the aforementioned categories of measures but are nevertheless not sufficiently representative so as to constitute a separate category of measures.

75. **Measures in relation to the use of tax losses.** Certain countries have reported some specific measures in relation to the use of tax losses which fall in scope of the current Study. In most cases the measures prevent or limit the use of losses in the case of a change of control of company as a result of change in shareholders due to a sale of shares or as a result of a restructuring. This is for instance the case in Belgium, Germany, Spain and the UK. The purpose of such measures in the given countries is to avoid the trading of loss-making companies by another company to reduce the tax liability of the latter.

Again, we cannot exclude that some countries have decided not to report this kind of measures, like for exit taxation, Transfer Pricing rules, etc. (cf. above), these rules being probably not be considered as anti-abuse provisions in every cases.

76. **Anti-treaty shopping provision**. Germany has adopted an anti-treaty shopping provision which prevents that a treaty or a directive is applied with the sole purpose of reducing the German WHT. As a result of this provision a foreign entity is not entitled to the benefit from a treaty or a directive if, amongst other things, its shareholders would not be entitled to this benefit in their own name and there are no commercial or other significant non-tax reasons for interposing the foreign entity. The burden of proof in this respect lies with the foreign company. It should demonstrate that there are economic or sufficient non-tax reasons, etc.

77. **Exit charge on migration of a company**. Ireland has an exit charge provision if a company moves its tax residence outside Ireland. Exceptions to this rule apply for instance if the Irish company is controlled by a company located in a country with which Ireland has concluded a Double Tax Treaty. Therefore, if the Irish company is controlled by a non-treaty resident, this exclusion does not apply. Similarly, the United Kingdom also that there is a deemed disposal of assets on company ceasing to be resident in the United Kingdom.

For the remaining, we refer to our previous comment made under paragraph 28 above.

78. **Specific provisions included in Double Tax Treaties**. The Netherlands have reported to have included specific anti-abuse provisions in certain Double Tax Treaties. For instance the Treaties with Hong Kong and Japan contain a specific limitation of benefits clause.

Luxembourg has reported that it has signed a significant number of Double Tax Treaties with Third Countries (for instance with Liechtenstein, Monaco, San Marino, etc.) which include the "exchange of information provision" as included in the OECD Model Tax Convention.

79. **Rules in relation to the residency**. In Spain, the tax authorities could presume that entities located in tax havens or countries with a low taxation have their tax residency in Spain provided certain conditions are met.

4.7. Pending Proposals or Future Measures

80. **Pending proposals or future measures**. Based on the input provided in the Questionnaire, some countries have reported pending proposals or future developments regarding anti-abuses measures. We list below the most relevant ones.

In Sweden, a reinforcement has been proposed for the current interest stripping rules. This amendment should enter into force as from 1 January 2013. As a result of this reinforcement the scope of application of the interest stripping rules would be extended to all intra-group loans, instead of merely loans granted for the purpose of acquiring a related party.

Also Spain has mentioned that a new measure is being proposed that obliges taxpayers to inform the tax authorities if they have bank accounts and securities held abroad. This obligation has been included in the Draft bill of measures against tax fraud, which has been approved on April 13, 2012.

With respect to Belgium, the thin capitalisation rule has been amended by the Programme Act of 2012, which replaces the former 7/1 debt-equity ratio with a new rule introducing a (general) 5/1 debt-equity ratio. This new thin capitalisation rule has not yet entered into force. Indeed the new Programme Act states that the entry into force would be determined by a Royal Decree, which has not yet been published, and in any case on 1 July 2012 at the latest.

In Germany, the Government published a white paper on 14 February 2012 suggesting different wide-ranging provisions aiming on tax planning like e.g.

- Exclusion of losses of foreign permanent establishments
- Extended anti-loss trafficking rules/net operating losses forfeiture in the case of mergers
- Limitation of "leveraged buyouts" (debt-pushdown structures) by way of limitation of interest expense deduction
- Avoidance of double-dip benefit through hybrid financing structures
- Treatment of cross-border investments in partnerships

However, the Government's draft bill of the Annual Tax Act 2013 presented on 23 May 2012 does not contain any of those proposed provisions. Thus, currently there are no official proposals available, aiming at introducing new measures which could fall in the scope of this Study. Furthermore, the measures indicated in the white paper do no specifically aim at Third Countries.

In the Netherlands, Art. 13l CITA 1969 was proposed in June 2012 as a measure to reduce the *Bosal* gap. In the *Bosal* judgment (C-168/01), the CJEU held that the Netherlands should allow the deduction of interest expenses at the level of a Dutch parent company if these interest expenses were used to finance the acquisition of/fund a non-resident, EU subsidiary. As the interest expenses are (generally) deductible, and the income is (generally) exempt, this had significant budgetary consequences. Consequently, the Dutch Government has now announced a measure to limit the deduction of interest expenses on a loan that was used to acquired/fund a subsidiary.

Finally, in the United Kingdom, the rules regarding CFC are being amended for accounting periods beginning on or after 1 January 2013 and there are proposed changes to taxation of interest, which include removing the distinction between yearly interest and interest that is not yearly, such that all interest would be subject to WHT. This would mean that interest to territories without a Double Tax Treaty would be subject to WHT (and therefore this would apply only to third countries without a Double Tax Treaty). In addition, there is the draft GAAR proposal.

4.8. Impact Assessments and Evaluation

81. **Limited Information Available**. It appears from the Study that very few information was available with respect to (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues) and with respect to the evaluation made by the concerned MSs of the effectiveness and sufficiency of such measures. This could most probably be explained by the absence of quantitative assessment, by the fact that most of the measures are relatively old, following which the quantitative assessment which might have been performed initially (if any) is no longer representative or usefull today, or because such information is considered as confidential. Another element which can entail that there is no relevant quantification available in relation to a measure, is the fact that a measure has been implemented in a Law containing various measures or together with other measures. In such a case any impact assessment or evaluation will generally be a global assessment not linked to a specific measure included in the Law, therefore no relevant figures for the purposes of the current Study will be available.

Some information is nevertheless available for the following countries:

For Germany, the quantitative effect of the specific measure in relation to the use of tax losses (anti-loss trafficking rule) is estimated at EUR 1.475 mio per year.

Prior to the entry into force of the interest stripping rules in Sweden**,** the Swedish Tax Agency released a survey in which they estimated that the deductions for the deemed artificial party debt reduced the

Swedish tax income with SEK 7 billion. Post enactment of the interest stripping rules, the Swedish Tax Agency mentioned in its latest report that the total interest reductions were back at the level of 2003-2006, meaning again an increase of the interest deductions. As Sweden has adopted an amendment to this rule, extending the scope to all intra-group loans (instead of loans granted for the purpose of acquiring a related party), a new assessment is made providing for an estimated increase of the Swedish tax income with SEK 6.29 billion.

In the Netherlands, quantitative impact assessments were mentioned with respect to two Non-Specific Measures, being the restriction on the deduction of interest on acquisition debt (EUR 31 mio. (2012), EUR 62 mio. (2013), EUR 93 mio. (2014), EUR 124 mio. (2015), and EUR 155 mio. (after 2015) and the restriction on the deduction of interest on participation debt (EUR 150 mio).

In the United Kingdom, the 2011 budget report sets out the expected cost of the full reform to the CFC rules (£210m in 2012-13, £540m in 2013-14, £770m in 2014-15 and £840m in 2015-16). With respect to the upcoming General Anti-Avoidance Rule, the Liberal Democrats had initially estimated that it could raise £2.1bn per year in corporation tax. However, this figure is likely to be smaller if the scope of the GAAR is narrowed (as suggested in Graham Aaronson's report). With respect to the anti-arbitrage measures, the Budget 2005 report sets out the expected Exchequer yield as a result of this policy to £130m in 2005-6, £200m in 2006-7, and £200m in 2007-8 (indexed figures).

France also reports some quantitative information with respect to its thin capitalisation rule.

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5. Conclusion

82. **Context**. The European Commission is currently drafting a Communication on good governance in the tax area in relation to the so-called concepts of Non-Cooperative Jurisdictions (NCJs) and Aggressive Tax Planning. In order to contribute to the assessment it is currently carrying out, the Commission is looking for additional input and information on existing anti-abuse measures applying, exclusively or otherwise, to Third Countries (i.e. non-EU/EEA countries).

83. **Scope**. In this framework, data has been collected and analysed with respect to 14 European Union Member States (Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Spain, Sweden and the United Kingdom).

84. **Classification**. Given the specific scope of the Study, the reported anti-abuse measures existing in the selected Member States (MSs) have been divided into two main categories: those specifically applicable to transactions with Third Countries ("Specific Measures"), and other measures ("Non-Specific Measures").

Moreover, the Study provides additional insight into the most recent Specific Measures reported in the various Member States ("New specific measures", defined as measures enacted after 1 January 2007 or substantially amended after that date, as well as possible future measures).

85. **Definitions**. Based on the data collected, it appears that few of the 14 Member States in scope of the Study have a clear definition of the terms "Non-Cooperative Jurisdictions" and "Aggressive Tax Planning" to the extent of their (i) only relating to Third Countries but (ii) only where those countries present specific characteristics (being non-cooperative in one way or another).

On the other hand, many countries did report having various concepts that are akin to these definitions. In this respect, it is interesting to note that anti-abuse measures in some Member States apply to countries where the level of taxation is considered as inappropriate (e.g. no taxation at all or a very low nominal/effective tax rate), whereas, in other Member States, the decisive criterion is the level to which they cooperate in terms of exchange of information (which is more like the OECD approach). However, those countries are not always Third Countries. The concepts are sometimes crystallized in black, grey or white 'lists'.

86. **Specific Measures**. The Study also finds that there are not many Specific Measures, i.e. measures specifically dedicated to tackling abuse or aggressive tax planning in relation to Third Countries. However, that does not mean that Member States do not have measures to fight what they consider abusive transactions in relation to Third Countries. Indeed, many anti-abuse provisions do apply to Third Countries, even if they usually also apply in purely domestic situations or within the European Union.

Moreover, we cannot rule out the possibility that some of these measures are, in practice, applied more often in transactions/arrangements with Third Countries than in purely domestic situations or within the European Union. Some Member States even lay down more stringent rules for entities/taxpayers established/resident in countries with which they have no double tax treaty (or no double tax treaty with an exchange of information clause). Given the available network of double tax treaties within the European Union (and also Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC), the chance that these rules might apply within the EU is much lower compared to Third Countries, so that *de facto* these rules might essentially apply to Third Countries. The case law of the Court of Justice of the European Union also restricts the scope of application of the existing anti-abuse measures within the EU.

87. **Significant Number of Anti-Abuse Measures**. Notwithstanding the absence of a precise definition of "abuse", we can conclude that many Member States have a significant number of anti-abuse provisions in their legislation, covering many different forms of potentially abusive behaviour (according to local tax legislation or administrative practice/case law), such as shifting profits to low tax jurisdictions, erosion of the tax base through excessive debt financing, etc.

88. **GAAR.** Plus, all Member States report having at least one general anti-abuse rule ("GAAR"), which can take various forms. The foundations of these GAARs range from the "abuse of law" principle, to the "sham" transaction theory, to the "substance over form" principle. Generally, none of these measures applies only to Third Countries (let alone to NCJs); on the contrary, they are often equally applicable regardless the territorial scope of a given transaction (i.e. purely domestic situations, transactions within the European Union and transactions outside the European Union).

89. **Quantification**. Finally, based on the information collected, it is difficult to assess whether the anti-abuse provisions listed in the Study can be considered as effective in combating what the Member States consider as abusive: most did not report any (actual or predicted) quantitative impact of the identified abuses or of the anti-abuse measures (i.e. in terms of tax revenues) or make any evaluation of the effectiveness and sufficiency of the measures. A limited number of countries did nonetheless cite figures reflecting the expected budgetary impact of some measures.

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Appendices:

1. Blank questionnaire
2. Questionnaires filled in for the 14 Member States

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
{SWD(2012) 404 final}

EN EN

Annex 8 - Tax Treaties signed between EU MS and Third Countries

	BE	BG	CZ	DK	DE	EE	IE
Albania	14/11/2002	9/12/1998	22/06/1995		6/04/2010	5/04/2010	16/10/2009
Algeria	15/12/1991	25/10/1998			12/11/2007		
Antigua & Barbuda							
Argentina	12/06/1996			12/12/1995	13/07/1978		
Armenia	7/06/2001	10/04/1995	6/07/2008	21/10/1986	24/11/1981	13/04/2001	
Aruba							
Australia	13/10/1977		28/03/1995	1/04/1981	24/10/1972		31/05/1983
Azerbaijan	18/05/2004	12/11/2007	24/11/2005		25/08/2004	30/10/2007	
Bahamas							
Bahrain		26/06/2009	24/05/2011				29/10/2009
Bangladesh	18/10/1990			16/07/1996	29/05/1990		
Barbados			26/10/2011				
Belarus	7/03/1995	8/12/1996	14/10/1996	21/10/1986	30/09/2005	21/01/1997	3/11/2009
Belize							
Benin							
Bermuda				16/04/2009			
Bolivia					30/09/1992		
Bosnia & Herzegovina	21/11/1980		20/11/2007	19/03/1981	26/03/1987		3/11/2009
Botswana							
Brazil	23/06/1972		26/08/1980	27/08/1974			
UK Virgin Islands				18/05/2009			
Brunei							
Burkina Faso							
Cameroon							
Canada	23/05/2002	3/03/1999	25/05/2001	17/09/1997	19/04/2001	2/06/1995	8/10/2003
Cape Verde							
Cayman Islands				17/06/2009			
Central African Rep							
Chile	6/12/2007			20/09/2002			2/06/2005
China	18/04/1985	6/11/1989	28/08/2009	26/03/1986	10/06/1985	12/05/1998	19/04/2000
Colombia							
Congo (Dem. Rep.)	23/05/2007						
Congo (Rep.)							
Costa Rica							
Croatia	31/10/2001	15/07/1997	22/01/1999	14/09/2007	6/02/2006	3/04/2002	21/06/2002
Cuba							
Curaçao							
Dominica							
Dominican Republic							
Ecuador	18/12/1996				7/12/1982		
Egypt	3/01/1991	5/06/2003	19/01/1995	9/02/1989	8/12/1987		
El Salvador							
Ethiopia			25/07/2007				
Falkland Islands							
Faroe Islands				23/09/1996			
Fiji							
French Polynesia							
Gabon	14/01/1993						
Gambia							
Georgia	14/12/2000	26/11/1998	23/05/2006	10/10/2007	1/06/2006	18/12/2006	20/11/2008
Ghana	22/06/2005				12/08/2004		
Greenland				18/10/1979			
Grenada							
Guernsey				28/10/2008			26/03/2009
Guinea							
Guyana							

	BE	BG	CZ	DK	DE	EE	IE
Hong Kong	10/12/2003		6/06/2011				22/06/2010
Iceland	23/05/2000		18/01/2000	23/09/1996	18/03/1971	16/06/1994	17/12/2003
India	26/04/1993	26/05/1994	1/10/1998	8/03/1989	19/06/1995	19/09/2011	6/11/2000
Indonesia	16/09/1997	11/01/1991	4/10/1994	28/12/1985	30/10/1990		
Iran		28/04/2004			20/12/1968		
Isle of Man				30/10/2007		8/05/2009	24/04/2008
Israel	13/07/1972	18/01/2000	8/12/1993	9/11/2009	9/07/1962	29/06/2009	20/11/1995
Ivory Coast	25/11/1977				3/07/1979		
Jamaica				16/08/1990	8/10/1974		
Japan	28/03/1968	7/03/1991	11/10/1977	3/02/1968	22/04/1966		18/01/1974
Jersey				28/10/2008	4/07/2008	21/12/2010	26/03/2009
Jordan		9/11/2006	10/04/2006				
Kazakhstan	16/04/1998	13/11/1997	9/04/1998		26/11/1997	1/03/1999	
Kenya				13/12/1972	17/05/1977		
North Korea		16/06/1999	2/03/2005				
South Korea	29/08/1977	11/03/1994	27/04/1992	11/12/1977	10/03/2000	23/09/2009	18/07/1990
Kosovo							
Kuwait	10/03/1990	29/10/2002	5/06/2001		18/05/1999		
Kyrgyzstan	17/12/1987			21/10/1986	1/12/2005		
Lebanon		1/06/1999	28/08/1997				
Lesotho							
Liberia					25/11/1970		
Libya							
Liechtenstein							
Macau							
Macedonia (FYR)	21/11/1980	22/02/1999	21/06/2001	20/03/2000	13/07/2006	20/11/2008	14/04/2008
Madagascar							
Malawi							
Malaysia	24/10/1973		8/03/1996	4/12/1970	23/02/2010		28/11/1998
Mali							
Mauritania							
Mauritius	4/07/1995				15/03/1978		
Mayotte							
Mexico	24/11/1992		4/04/2002	11/06/1997	9/07/2008		22/10/1998
Moldova	17/12/1987	15/09/1998	12/05/1999		24/11/1981	23/02/1998	28/05/2009
Monaco							
Mongolia	26/09/1995	28/02/2000	27/02/1997		22/08/1994		
Montenegro	21/11/1980	14/12/1998	11/11/2004		26/03/1987		7/10/2010
Montserrat							
Morocco	31/05/2006	22/05/1996	11/06/2001	8/05/1984	7/06/1972		
Mozambique							
Myanmar							
Namibia					2/12/1993		
Nepal							
New Caledonia							
New Zealand	15/09/1981		26/10/2007	10/10/1980	20/10/1978		19/09/1986
Niger							
Nigeria	20/11/1989		31/08/1989				
Norway	14/04/1988	1/03/1988	19/10/2004	23/09/1996	4/10/1991	14/05/1993	
Oman							
Pakistan	17/03/1980			22/10/1987	14/07/1994		13/04/1973
Panama							
Papua New Guinea							
Philippines	2/10/1976		13/11/2000	30/06/1995	22/07/1983		
Qatar		22/03/2010					
Quebec							
Russia	16/06/1995	8/06/1993	17/11/1995	8/02/1996	29/05/1996		29/04/1994
Rwanda	16/04/2007						

	BE	BG	CZ	DK	DE	EE	IE
San Marino	21/12/2005						
Saudi Arabia							
Senegal	29/09/1987						
Serbia	21/11/1980	14/12/1998	11/11/2004	15/05/2009	26/03/1987	24/09/2009	23/09/2009
Seychelles							
Sierra Leone							
Singapore	6/11/2006	13/12/1996	21/11/1997	3/07/2000	28/06/2004	18/09/2006	28/10/2010
Solomon Islands							
South Africa	1/02/1995	29/04/2004	11/10/1996	21/06/1995	25/01/1973		7/10/1997
Sri Lanka	3/02/1983		26/07/1978	22/12/1981	13/09/1979		
St Kitts and Nevis							
St Maarten							
St Martin							
St Pierre and Miquelon							
Sudan							
Suriname							
Swaziland							
Syria		20/03/2001	18/05/2008		17/02/2010		
Switzerland	28/08/1978	28/10/1991	4/12/1995	23/11/1973	11/08/1971	11/06/2002	8/11/1966
Taiwan	13/10/2004			30/08/2005			
Tajikistan	17/12/1987		7/11/2006		27/03/2003		
Tanzania				6/05/1976			
Thailand	16/10/1978	16/06/2000	12/02/1994	23/02/1998	10/07/1967		
Togo							
Trinidad & Tobago				20/06/1969	4/04/1973		
Tunisia	7/10/2004		14/03/1990	5/02/1981	23/12/1975		
Turkey	2/06/1987	7/07/1994	12/11/1999	30/05/1991	19/09/2011	25/08/2003	24/10/2008
Turkmenistan	17/12/1987			21/10/1986	24/11/1981		
Tuvalu							
Uganda				14/01/2000			
Ukraine	20/05/1996	20/11/1995	30/06/1997	5/03/1996	3/07/1995	10/05/1996	
U.A.E.	30/09/1996	26/06/2007	30/09/1996		1/07/2010	20/04/2011	1/07/2010
United States	27/11/2006	23/02/2007	16/09/1993	19/08/1999	29/08/1989	15/01/1998	28/07/1997
Uruguay					9/03/2010		
Uzbekistan	14/11/1996	24/11/2003	2/03/2000		7/09/1999		
Venezuela	22/04/1993		26/04/1996	3/12/1998	8/02/1995		
Vietnam	28/02/1996	24/05/1996	23/05/1997	31/05/1995	16/11/1995		10/03/2008
Zambia				13/09/1973	30/05/1973		29/03/1971
Zimbabwe		12/10/1988			22/04/1988		
Total	65	43	55	57	67	25	36

	EL	ES	FR	IT	CY	LV	LT
Albania	14/07/1995	2/07/2010	24/12/2002	12/12/1994		21/02/2008	
Algeria		7/10/2002	1/10/1980	3/02/1991			
Antigua & Barbuda							
Argentina		21/07/1992	4/04/1979	15/11/1979			
Armenia	12/05/1999	16/12/2010	9/12/1997	14/06/2002	29/10/1982	15/03/2000	13/03/2000
Aruba							
Australia		24/03/1992	20/06/2006	14/12/1982			
Azerbaijan	16/10/2009		20/12/2001	21/07/2004	29/10/1982	3/10/2005	2/04/2004
Bahamas							
Bahrain			10/05/1993				
Bangladesh			9/03/1987	20/03/1990			
Barbados		1/12/2010					
Belarus		1/03/1985	4/10/1985	11/08/2005	29/05/1998	7/09/1995	18/07/1995
Belize							
Benin			27/02/1975				
Bermuda							
Bolivia		30/06/1997	15/12/1994				
Bosnia & Herzegovina	23/07/2007	5/12/2008	28/03/1974	24/02/1982	29/06/1985		
Botswana			15/04/1999				
Brazil		14/11/1974	10/09/1971	3/10/1978			
UK Virgin Islands							
Brunei							
Burkina Faso			11/08/1965				
Cameroon			21/10/1976				
Canada	29/06/2009	10/11/1986	2/05/1975	3/06/2002	2/05/1984	26/04/1995	29/08/1996
Cape Verde							
Cayman Islands							
Central African Rep			13/12/1969				
Chile		7/07/2003	7/06/2004				
China	3/06/2002	22/11/1990	30/05/1984	31/10/1986	25/10/1990	7/06/1996	3/06/1996
Colombia		31/03/2005					
Congo (Dem. Rep.)							
Congo (Rep.)			27/11/1987				
Costa Rica		4/03/2004					
Croatia	18/10/1996	19/05/2005	19/06/2003	28/10/1999		19/05/2000	4/05/2000
Cuba		3/02/1999					
Curaçao							
Dominica							
Dominican Republic		1/07/2004					
Ecuador		20/05/1991	16/03/1989	23/05/1984			
Egypt	27/11/2004	10/06/2005	19/06/1980	7/05/1979	18/12/1993		
El Salvador		10/03/1997					
Ethiopia			15/06/2006	8/04/1997			
Falkland Islands							
Faroe Islands							
Fiji							
French Polynesia			28/03/1957				
Gabon			20/09/1995				
Gambia							
Georgia	10/05/1999	7/06/2010	7/03/2007	31/10/2000		13/10/2004	11/09/2003
Ghana			5/04/1993	19/02/2004			
Greenland							
Grenada							
Guernsey							
Guinea			15/02/1999				
Guyana							

	EL	ES	FR	IT	CY	LV	LT
Hong Kong		1/04/2011	21/10/2010				
Iceland	7/07/2006	22/01/2002	29/08/1990	10/09/2002		19/10/1994	13/06/1998
India	11/02/1965	8/02/1993	29/09/1992	19/02/1993	13/06/1994		26/07/2011
Indonesia		30/05/1995	14/09/1979	18/02/1990			
Iran		19/07/2003	7/11/1973				
Isle of Man							
Israel	24/10/1995	30/11/1999	31/07/1995	8/09/1995		20/02/2006	11/05/2006
Ivory Coast			6/04/1966	30/07/1982			
Jamaica		8/07/2008	9/08/1995				
Japan		13/02/1974	3/03/1995	20/03/1969			
Jersey			28/05/1984				
Jordan				16/03/2004			
Kazakhstan		2/07/2009	3/02/1998	22/09/1994		6/09/2001	7/03/1997
Kenya			4/12/2007				
North Korea							
South Korea	20/03/1995	17/01/1994	19/06/1979	10/01/1989		15/06/2008	20/04/2006
Kosovo							
Kuwait	2/03/2003		7/02/1982	17/12/1987	15/12/1984		
Kyrgyzstan		1/03/1985	4/10/1985		29/10/1982	7/12/2006	
Lebanon			24/07/1962	22/11/2000	18/02/2003		
Lesotho							
Liberia							
Libya			22/12/2005				
Liechtenstein							
Macau							
Macedonia (FYR)		20/06/2005	10/02/1999	20/12/1996	29/06/1985	8/12/2006	29/08/2007
Madagascar			22/07/1983				
Malawi			5/11/1963				
Malaysia		24/05/2006	24/04/1975	28/01/1984			
Mali			22/09/1972				
Mauritania			15/11/1967				
Mauritius			11/12/1980	9/03/1990	21/01/2000		
Mayotte			27/03/1970				
Mexico	13/04/2004	24/07/1992	7/11/1991	8/07/1991			
Moldova	29/03/2004	8/10/2007	4/10/1985	3/07/2002	28/01/2008	25/02/1998	18/02/1998
Monaco			18/05/1963				
Mongolia			18/04/1996				
Montenegro	25/06/1997		28/03/1974	24/02/1982	29/06/1985	22/11/2005	
Montserrat							
Morocco	20/03/2007	10/07/1978	29/05/1970	7/06/1972		24/07/2008	
Mozambique				14/12/1998			
Myanmar							
Namibia			29/05/1996				
Nepal							
New Caledonia			31/03/1983				
New Zealand		28/07/2005	30/11/1979	6/12/1979			
Niger			1/01/1965				
Nigeria			27/02/1990				
Norway	27/04/1988	6/10/1999	19/12/1980	17/06/1985	18/05/1955	19/07/1993	27/04/1993
Oman			1/06/1989	6/05/1998			
Pakistan		2/06/2010	15/06/1994	22/06/1984			
Panama		7/10/2010	30/06/2011				
Papua New Guinea							
Philippines		14/03/1989	9/01/1976	5/12/1980			
Qatar	26/10/2008		4/12/1990	15/10/2002	11/11/2008		
Quebec			1/09/1987				
Russia	26/06/2000	16/12/1998	26/11/1996	9/04/1996	5/12/1998		29/06/1999
Rwanda							

	EL	ES	FR	IT	CY	LV	LT
San Marino					27/04/2007		
Saudi Arabia	19/06/2008	19/06/2007	18/02/1982	13/01/2007			
Senegal			29/03/1974	20/07/1998			
Serbia	25/06/1997	9/03/2009	28/03/1974	24/02/1982	29/06/1985	22/11/2005	28/08/2007
Seychelles					28/06/2006		
Sierra Leone							
Singapore		13/04/2011	9/09/1974	29/01/1977	24/11/2000	6/10/1999	18/11/2003
Solomon Islands							
South Africa	19/11/1998	23/06/2006	8/11/1993	16/11/1995	26/11/1997		
Sri Lanka			17/09/1981	28/03/1984			
St Kitts and Nevis							
St Maarten							
St Martin			21/12/2010				
St Pierre and Miquelon			30/05/1988				
Sudan							
Suriname							
Swaziland							
Syria			17/07/1998	23/11/2000	15/03/1992		
Switzerland	16/06/1983	26/04/1966	9/09/1966	9/03/1976		31/01/2002	27/05/2002
Taiwan			24/12/2010				
Tajikistan		1/03/1985	4/10/1985		29/10/1982	9/02/2009	
Tanzania				7/03/1973			
Thailand		14/10/1997	27/12/1974	22/12/1977	27/10/1998		
Togo			24/11/1971				
Trinidad & Tobago		17/02/2009	5/08/1987	26/03/1971			
Tunisia	31/10/1992	26/02/2001	28/05/1973	16/05/1979			
Turkey	3/12/2003	5/07/2002	18/02/1987	27/07/1990		3/06/1999	24/11/1998
Turkmenistan		1/03/1985	4/10/1985	26/02/1985	29/10/1982		
Tuvalu							
Uganda				6/10/2000			
Ukraine	6/11/2000	1/03/1985	31/01/1997	26/02/1997	29/10/1982	21/11/1995	23/09/1996
U.A.E.		5/03/2006	19/07/1989	22/01/1995			
United States	20/02/1950	22/02/1990	31/08/1994	25/08/1999	19/03/1984	15/01/1998	15/01/1998
Uruguay		9/10/2009					
Uzbekistan	1/04/1997		22/04/1996	21/11/2000	29/10/1982	3/07/1998	18/02/2002
Venezuela		8/04/2003	7/05/1992	5/06/1990			
Vietnam		7/03/2005	10/02/1993	26/11/1996			
Zambia			5/11/1963	27/10/1972			
Zimbabwe			15/12/1993				
Total	**30**	**61**	**100**	**66**	**30**	**26**	**23**

	LU	HU	MT	NL	AT	PL	PT
Albania	14/01/2009	14/11/1992	2/05/2000	22/07/2004	14/12/2007	5/03/1993	
Algeria					17/06/2003		2/12/2003
Antigua & Barbuda							
Argentina				27/12/1996			
Armenia	23/06/2009	9/11/2009		31/10/2001	27/02/2002	14/07/1999	
Aruba				28/10/1964			
Australia		29/11/1990	9/05/1984	17/03/1976	1/04/1992	7/05/1991	
Azerbaijan	16/06/2006	18/02/2008		22/09/2008	4/07/2000	26/08/1997	
Bahamas							
Bahrain	6/05/2009		12/04/2010	16/04/2008	2/07/2009		
Bangladesh				13/07/1993		8/07/1997	
Barbados	1/12/2009		5/12/2001	28/11/2006	27/02/2006		
Belarus		19/02/2002		26/03/1996	16/05/2001	18/11/1992	
Belize					8/05/2002		
Benin							
Bermuda				8/06/2009			
Bolivia							
Bosnia & Herzegovina		17/10/1985		22/02/1982	16/12/2010	10/01/1985	
Botswana							
Brazil	8/11/1978	20/06/1986		8/03/1990	24/05/1975		16/05/2000
UK Virgin Islands							
Brunei							
Burkina Faso							
Cameroon							
Canada	10/09/1999	15/04/1992	25/07/1986	27/05/1986	9/12/1976	4/05/1987	14/06/1999
Cape Verde							22/03/1999
Cayman Islands							
Central African Rep							
Chile						10/03/2000	7/07/2005
China	12/03/1994	17/06/1992	23/10/2010	13/05/1987	10/04/1991	7/06/1988	21/04/1998
Colombia							
Congo (Dem. Rep.)							
Congo (Rep.)							
Costa Rica							
Croatia		30/08/1996	21/10/1998	23/05/2000	21/09/2000	19/10/1994	
Cuba					26/06/2002		30/10/2000
Curaçao				28/10/1964			
Dominica							
Dominican Republic							
Ecuador							
Egypt		5/11/1991	20/02/1999	21/04/1999	16/10/1962	24/06/1996	
El Salvador							
Ethiopia							
Falkland Islands							
Faroe Islands					11/07/1967		
Fiji							
French Polynesia							
Gabon							
Gambia							
Georgia	15/10/2007	16/02/2012	23/10/2009	21/03/2002	11/04/2005	5/11/1999	
Ghana				10/03/2008			
Greenland							
Grenada							
Guernsey							
Guinea							
Guyana							

	LU	HU	MT	NL	AT	PL	PT
Hong Kong	2/11/2007	12/05/2010	8/11/2011	22/03/2010	25/05/2010		22/03/2011
Iceland	4/10/1999	23/11/2005	23/09/2004	25/09/1997		19/06/1998	2/08/1999
India	2/06/2008	3/11/2003	28/09/1994	30/07/1988	8/11/1999	21/06/1989	11/09/1998
Indonesia	14/01/1993	19/10/1989		29/01/2002	24/07/1986	6/10/1992	9/07/2003
Iran					11/03/2002	2/10/1998	
Isle of Man			23/10/2009			7/03/2011	
Israel	13/12/2004	14/05/1991		2/07/1973	29/01/1970	22/05/1991	26/09/2006
Ivory Coast							
Jamaica							
Japan	5/03/1992	13/02/1980		25/08/2010	20/12/1961	20/02/1980	
Jersey			25/01/2010				
Jordan			16/04/2009	31/10/2006		4/10/1997	
Kazakhstan		7/12/1994		24/04/1996	10/09/2004	21/09/1994	
Kenya							
North Korea							
South Korea	7/11/1984	29/03/1989	25/03/1997	25/10/1978	8/10/1985	21/06/1991	26/01/1996
Kosovo				22/02/1982			
Kuwait		17/01/1994	24/07/2002	29/05/2001	13/06/2002	16/11/1996	
Kyrgyzstan					18/09/2001	19/11/1998	
Lebanon			23/02/1999			26/07/1999	
Lesotho							
Liberia							
Libya			28/12/2008				
Liechtenstein	26/08/2009				5/11/1969		
Macau							28/09/1999
Macedonia (FYR)		13/04/2001		11/09/1998	10/09/2007	28/11/1996	
Madagascar							
Malawi				7/06/1969			
Malaysia	21/11/2002	22/05/1989	3/10/1995	7/03/1988	20/09/1989	16/09/1977	
Mali							
Mauritania							
Mauritius	15/02/1995						
Mayotte							
Mexico	7/02/2001	24/06/2011		27/09/1993	13/04/2004	30/11/1998	11/11/1999
Moldova	11/07/2007	19/04/1995		3/07/2000	5/09/2011	16/11/1994	11/02/2009
Monaco	27/07/2009						
Mongolia	5/06/1998	13/09/1994		8/03/2002	3/07/2003	18/04/1997	
Montenegro		20/06/2001	4/11/2008	22/02/1982	1/06/2010	12/06/1997	
Montserrat							
Morocco	19/12/1980	12/12/1991	26/10/2001	12/08/1977	27/02/2002	24/10/1994	29/10/1997
Mozambique							21/03/1991
Myanmar							
Namibia							
Nepal					15/12/2000		
New Caledonia							
New Zealand				15/10/1980	21/09/2006	21/04/2005	
Niger							
Nigeria				11/12/1991			
Norway	6/05/1983	21/10/1980	2/06/1975	12/01/1990	28/11/1995	9/09/2009	10/03/2011
Oman				5/10/2009			
Pakistan		24/02/1992	8/10/1975	24/03/1982	4/08/2005	25/10/1974	23/06/2000
Panama	7/10/2010			6/10/2010			27/08/2010
Papua New Guinea							
Philippines	3/07/2009	13/06/1997		24/04/2008	9/04/1981	9/09/1992	
Qatar		18/01/2012	26/08/2009	9/03/1989	30/12/2010	18/11/2008	
Quebec							
Russia	28/06/1993	1/04/1994		1/09/1996	13/04/2000	22/05/1992	29/05/2000
Rwanda							

	LU	HU	MT	NL	AT	PL	PT
San Marino	27/03/2006	15/09/2009	3/05/2005		24/11/2004		
Saudi Arabia				13/10/2008	19/03/2006	22/02/2011	
Senegal							
Serbia		20/06/2001	9/09/2009	22/02/1982	7/05/2010	12/06/1997	
Seychelles							
Sierra Leone				17/11/1982			
Singapore	6/03/1993	17/04/1997	21/03/2006	19/02/1971	30/11/2001	23/04/1993	6/09/1999
Solomon Islands							
South Africa	23/11/1998	4/03/1994	16/05/1997	10/10/2005	4/03/1996	10/11/1993	13/11/2006
Sri Lanka						25/04/1980	
St Kitts and Nevis							
St Maarten				28/10/1964			
St Martin							
St Pierre and Miquelon							
Sudan							
Suriname				25/11/1975			
Swaziland							
Syria			22/02/1999			15/08/2001	
Switzerland	21/01/1993	9/04/1981	25/02/2011	26/10/2010	30/01/1974	2/09/1991	26/09/1974
Taiwan		19/04/2010		27/02/2001			
Tajikistan				21/11/1986	7/06/2011	27/05/2003	
Tanzania							
Thailand	6/05/1996	18/05/1989		11/09/1975	8/05/1985	8/12/1978	
Togo							
Trinidad & Tobago	7/05/2001						
Tunisia	27/03/1996	22/10/1992	31/05/2000	16/05/1995	23/06/1977	30/03/1993	24/02/1999
Turkey	9/06/2003	10/03/1993		27/03/1986	28/10/1999	3/11/1993	11/05/2005
Turkmenistan					10/04/1981		
Tuvalu							
Uganda				31/08/2004			
Ukraine		19/05/1995		24/10/1995	16/10/1997	12/01/1993	9/02/2000
U.A.E.	20/11/2005		13/03/2006	8/05/2007	22/09/2003	31/01/1993	17/01/2011
United States	3/04/1996	12/02/1979	8/08/2008	18/12/1992	21/06/1982	8/10/1974	6/09/1994
Uruguay		25/10/1988					
Uzbekistan	2/07/1997	17/04/2008		18/10/2001	14/06/2000	11/01/1995	
Venezuela				29/05/1991	12/05/2006		23/04/1996
Vietnam	4/03/1996	26/08/1994		24/01/1995	2/06/2008	31/08/1994	
Zambia				19/12/1977			
Zimbabwe				18/05/1989		9/07/1993	
Total	**40**	**47**	**34**	**70**	**60**	**56**	**31**

	RO	SI	SK	FI	SE	UK	Total
Albania	11/05/1994	27/02/2008	27/02/2008		26/03/1998		**21**
Algeria	28/06/1994						**9**
Antigua & Barbuda						19/12/1947	**1**
Argentina				13/12/1994	31/05/1995	3/01/1996	**10**
Armenia	25/03/1996			16/10/2006	13/10/1981	13/07/2011	**22**
Aruba							**1**
Australia	2/10/2000		24/08/1999	20/11/2006	14/01/1981	21/08/2003	**18**
Azerbaijan	29/10/2002			29/09/2005		23/02/1994	**19**
Bahamas						29/10/2009	**1**
Bahrain							**8**
Bangladesh	13/03/1987				3/05/1982	8/08/1979	**10**
Barbados				15/06/1989	1/07/1991	26/03/1970	**9**
Belarus	22/07/1997	6/10/2010	12/07/1999	18/12/2007	10/03/1994	31/07/1985	**23**
Belize						19/12/1947	**2**
Benin							**1**
Bermuda				16/04/2009	16/04/2009		**4**
Bolivia					14/01/1994	3/12/1994	**5**
Bosnia & Herzegovina	28/04/1986	16/05/2006	2/11/1981	8/05/1986	18/06/1980	6/11/1981	**20**
Botswana					19/10/1992	9/09/2005	**3**
Brazil			26/08/1986	2/04/1986	25/04/1975		**14**
UK Virgin Islands				18/05/2009	18/05/2009	29/10/2008	**4**
Brunei						8/12/1950	**1**
Burkina Faso							**1**
Cameroon						22/04/1982	**2**
Canada	8/04/2004	15/09/2000	22/05/2001	20/07/2006	27/08/1996	8/09/1978	**27**
Cape Verde							**1**
Cayman Islands				17/06/2009	17/06/2009	15/06/2009	**4**
Central African Rep							**1**
Chile					4/06/2004	12/07/2003	**9**
China	16/01/1981	13/02/1995	11/06/1987	25/05/2010	16/05/1986	26/07/1984	**27**
Colombia							**1**
Congo (Dem. Rep.)							**1**
Congo (Rep.)							**1**
Costa Rica							**1**
Croatia	25/01/1996	10/06/2005	12/02/1996	8/05/1986	18/06/1980	6/11/1981	**24**
Cuba							**3**
Curaçao							**1**
Dominica						31/03/2010	**1**
Dominican Republic							**1**
Ecuador	24/04/1992						**6**
Egypt	13/07/1979			1/04/1965	26/12/1994	25/04/1977	**19**
El Salvador							**1**
Ethiopia	6/11/2003						**4**
Fakland Islands						17/12/1997	**1**
Faroe Islands				23/09/1996	23/09/1996	20/06/2007	**5**
Fiji						21/11/1975	**1**
French Polynesia							**1**
Gabon							**2**
Gambia					8/12/1993	20/05/1980	**2**
Georgia	11/12/1997		27/10/2011	11/10/2007		13/07/2004	**23**
Ghana						20/01/1993	**6**
Greenland							**1**
Grenada						4/03/1949	**1**
Guernsey				28/10/2008	28/10/2008		**4**
Guinea							**1**
Guyana						31/08/1992	**1**

	RO	SI	SK	FI	SE	UK	Total
Hong Kong						25/10/2000	**12**
Iceland	19/09/2007		15/04/2002	23/09/1996	23/09/1996	30/09/1991	**23**
India		13/01/2003	27/01/1986	15/01/2010	24/06/1997	25/01/1993	**25**
Indonesia	3/07/1996		12/10/2000	15/10/1987	28/02/1989	5/04/1993	**19**
Iran	3/10/2001						**7**
Isle of Man				30/10/2007	30/10/2007	29/07/1955	**8**
Israel	15/06/1997	31/01/2007	8/09/1999	8/01/1997	22/12/1959	26/09/1962	**25**
Ivory Coast						26/06/1985	**5**
Jamaica					13/03/1985	16/03/1973	**6**
Japan	12/02/1976		11/10/1977	29/02/1972	21/01/1983	2/02/2006	**19**
Jersey				28/10/2008	28/10/2008	24/06/1952	**9**
Jordan	10/10/1983					22/07/2001	**8**
Kazakhstan	21/09/1998		21/03/2007	24/03/2009	19/03/1997	21/03/1994	**19**
Kenya					28/06/1973	31/07/1973	**5**
North Korea	23/01/1998						**3**
South Korea	11/10/1993	25/04/2005	27/08/2001	8/02/1979	27/05/1981		**25**
Kosovo							**1**
Kuwait	26/07/1992					23/02/1999	**15**
Kyrgyzstan				3/04/2003			**10**
Lebanon	28/06/1995						**8**
Lesotho						29/01/1997	**1**
Liberia							**1**
Libya			20/02/2009			17/11/2008	**4**
Liechtenstein							**2**
Macau							**1**
Macedonia (FYR)	12/06/2000	15/05/1998	5/10/2009	25/01/2001	17/02/1998	8/11/2006	**23**
Madagascar							**1**
Malawi						25/11/1955	**3**
Malaysia	26/11/1982			28/03/1984	12/03/2002	10/12/1996	**18**
Mali							**1**
Mauritania							**1**
Mauritius					23/04/1992	11/07/1981	**8**
Mayotte							**1**
Mexico	20/07/2000		13/05/2006	12/02/1997	21/09/1992	2/06/1994	**20**
Moldova	21/02/1995	31/05/2006	25/11/2003	16/04/2008		8/11/2007	**24**
Monaco							**2**
Mongolia						23/04/1996	**11**
Montenegro	16/05/1996	11/06/2003	26/02/2001	8/05/1986	18/06/1980	6/11/1981	**21**
Montserrat						19/12/1947	**1**
Morocco	2/07/2003					8/09/1981	**19**
Mozambique							**2**
Myanmar						13/03/1950	**1**
Namibia	25/02/1998				16/07/1993	8/08/1962	**5**
Nepal							**1**
New Caledonia							**1**
New Zealand				12/03/1982	21/02/1979	4/08/1983	**14**
Niger							**1**
Nigeria	21/07/1992		31/08/1989			9/06/1987	**7**
Norway	14/11/1980	18/02/2008	27/06/1979	23/09/1996	23/09/1996	12/10/2000	**26**
Oman						23/02/1998	**4**
Pakistan	27/07/1999			30/12/1994	22/12/1985	24/11/1986	**17**
Panama							**5**
Papua New Guinea						17/09/1981	**1**
Philippines	18/05/1994			13/10/1978	24/06/1998	10/06/1976	**16**
Qatar	24/10/1999	10/01/2010				25/06/2009	**13**
Quebec					20/09/1986		**2**
Russia	27/09/1993	29/09/1995	24/06/1994	4/05/1996	14/06/1993	15/02/1994	**24**
Rwanda							**1**

	RO	SI	SK	FI	SE	UK	Total
San Marino	23/05/2007						**7**
Saudi Arabia	26/04/2011				24/05/1995	31/10/2007	**10**
Senegal							**3**
Serbia	16/05/1996	11/06/2003	26/02/2001	8/05/1986	18/06/1980	6/11/1981	**25**
Seychelles							**1**
Sierra Leone						19/12/1947	**2**
Singapore	21/02/2002	8/01/2010	9/05/2005	7/06/2002	17/06/1968	12/02/1997	**26**
Solomon Islands						10/05/1950	**1**
South Africa	12/11/1993		28/05/1998	26/05/2005	24/05/1995	31/07/1978	**23**
Sri Lanka	19/10/1984		26/07/1978	18/05/1982	23/02/1983	21/05/1979	**12**
St Kitts and Nevis						19/12/1947	**1**
St Maarten							**1**
St Martin							**1**
St Pierre and Miquelon							**1**
Sudan	31/05/2007					8/03/1975	**2**
Suriname							**1**
Swaziland						26/11/1968	**1**
Syria	24/06/2008		18/02/2009				**10**
Switzerland	25/10/1993	12/06/1996	14/02/1997	16/12/1991	7/05/1965	8/12/1977	**26**
Taiwan			10/08/2011		8/06/2001	8/04/2002	**8**
Tajikistan	6/12/2007						**11**
Tanzania					2/05/1976		**3**
Thailand	26/06/1996	11/07/2003		25/04/1985	19/10/1988	18/02/1981	**19**
Togo							**1**
Trinidad & Tobago					17/02/1984	31/12/1982	**8**
Tunisia	23/09/1987		14/03/1990		7/05/1981	15/12/1982	**19**
Turkey	1/07/1986	19/04/2001	2/04/1997	6/10/2009	21/01/1988	19/12/1986	**25**
Turkmenistan	16/07/2008		26/03/1996		13/10/1981	31/07/1985	**12**
Tuvalu						10/05/1950	**1**
Uganda						23/12/1992	**4**
Ukraine	29/03/1996	23/04/2003	23/01/1996	14/10/1994	14/08/1995	10/02/1993	**24**
U.A.E.	11/04/1993			12/03/1986			**17**
United States	4/12/1973	21/06/1999	8/10/1993	21/09/1989	1/09/1994	24/07/2001	**27**
Uruguay							**3**
Uzbekistan	6/06/1996		6/03/2003	9/04/1998			**18**
Venezuela					8/09/1993	11/03/1996	**12**
Vietnam	8/07/1995		27/10/2008	21/11/2001	24/03/1994	9/04/1994	**19**
Zambia	21/07/1983			3/11/1978	18/03/1974	23/02/1972	**10**
Zimbabwe					10/03/1989	19/10/1982	**7**
Total	**59**	**22**	**38**	**51**	**64**	**93**	**1349**

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ANNEX 9- Tables extracted from the Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non- cooperative jurisdictions and aggressive tax planning

- **Table 1: definition of non-cooperative juridictions in the 14 MS reviewed by the PWC study**

MS	YES/NO	REMARKS
BELGIUM	No	However, in Belgian tax law several notions or terms occur that could be linked to the notion of NCJ (e.g. "tax regime that is substantially more advantageous", "tax regime which is different than the common tax regime, country which "is considered by the OECD Global Forum on Transparency and Exchange of Information as a State that has not substantially and effectively applied the OECD exchange of information standard").
CYPRUS	No	Although in the Cyprus tax legislation there are references which may be linked to the concept of NCJ ("substantially lower tax burden that Cyprus tax burden")
DENMARK	No	Several of the anti-abuse measures are only targeted to jurisdictions outside the EU/EEA with which Denmark has not concluded a tax treaty.
ESTONIA	Yes	The Estonian tax legislation defines the concept of "Low Tax Territory" (i.e. territory with no taxation or a substantially lower taxation than in Estonia Considering the tax rate for personal income tax is flat 21%, a low tax rate territory is the territory where the applicable tax rate is below 6,93%[11]). Note that: • a country can be partially considered as "Low Tax Territory" if taxation regimes differ from one entity to another; • a company can be deemed not to be located in a "Low Tax Territory" if 50% of its annual income is derived from an actual economic activity (the latter concept is not defined in Estonian tax law); • a white list exists.
FRANCE	Yes	A state or territory is defined as non-cooperative if it meets several criteria (i.e. (i) if it is not a member of the European Union, (ii) if its situation as regards transparency and exchange of information has been scrutinised by the OECD, (iii) if it has concluded less than 12 Tax Information Exchange Agreements before 1 January 2010 and (iv) if it has not signed such agreement with France)[12] . A list of non-cooperative states/territories ("NCST") exists and is subject to strict rules (e.g. adding to or withdrawal from the list).
GERMANY	No	Some measures with regard to entities resident in a list of uncooperative countries/non-cooperative jurisdictions that do not adhere to the OECD standards on tax information exchange were introduced in 2009 by way of a tax act aimed at combating "tax evasion and harmful tax practices". Measures can only be applied if the country has been black-listed by the federal Ministry of Finance (i.e. no single country for the moment).
HUNGARY	No	A similar concept is however approached through the CFC regime (i.e. the requirement of the Hungarian private person ownership or income from Hungary was recently – in 2010 – incorporated in the CFC definition, resulting in the fact that it practically refers to Hungarian capital located in offshore territories).
IRELAND	No	There are however particular provisions in Irish tax law that provide for the tax benefits in relation to payments to and from Ireland on the basis that the income is subject to tax in the recipient foreign territory.
LUXEMBOURG	No	However, the concept of NCJ could be indirectly derived from several provisions of Luxembourg income tax law ("LITL"). Indeed, various provisions of the LITL are applicable to joint stock companies resident in Third Countries (i.e. non-MSs) to the extent that "[these companies] are fully liable in ([their] state of residence) to a tax corresponding to Luxembourg corporate income tax".
MALTA	No	The only approach of this concept can be found in the "other jurisdictions exchanging information" regime (e.g. Malta does not exchange information with countries which do not enter in an agreement).
NETHERLANDS	No	Several notions could however be linked to the concept of NCJ, in particular the notion of "profit or income tax that is reasonable according to Dutch standards" provided in several dispositions.
SPAIN	No	However, similar concepts such as "tax havens" or "jurisdictions with nil taxation" are defined in Spanish tax law.
SWEDEN	No	Indirect effect of the definition of the term "foreign corporation" (i.e. "entity subject to taxation similar to Swedish corporation income tax")
UK	No	None

[11] Cfr. Appendix 2, Estonia, Definition of NCJ, p 86.
[12] Cfr. Appendix 2, France, Definition of NCJ, p 102.

Table 2: Comparison of existing lists

Third Countries	Black (and Grey) Lists: Belgium – Common tax regime substantially more advantageous[23]	Belgium – No or low tax burden[24]	Estonia – Low Tax Rate Territories (white list exclusions)[25]	France – NCSTs	Spain – Tax Havens	Sweden – Low-taxed persons[26]	United Kingdom – CFC apportionment (qualified countries)[27]	White Lists: Estonia – Low Tax Rate Territories (white list)	United Kingdom – CFC apportionment exemptions[27]
Abu Dhabi		X							
Afghanistan	X								
Ajman		X							
Alderney	X								
Andorra		X				X			
Anguilla		X	X		X				
Antigua and Barbuda					X				
Argentina							X[28]		
Aruba			X						
Australia						X[29]			X
Bahamas		X							
Bahrain		X			X	X			
Belize	X					X[30]			
Bermuda		X	X		X				
Bosnia - Herzegovina	X								
Botswana				X					X
British Virgin Islands	X	X	X		X				
Brunei				X	X	X[31]	X[32]		
Burundi	X								
Canada						X[33]			X
Cap Green	X								

[23] That is to say a nominal or effective tax rate below 15%.
[24] That is to say a nominal tax rate below 10%.
[25] In case of countries not belonging to, or being excluded ("excepted") from the "white list", there is a burden on the taxpayers to prove that the entities there are not considered to be located on the "low tax rate territory" (i.e. taxpayer has to prove that the tax rate there is higher than 1/3 of the tax applicable to individuals in Estonia, more than 50% of the income of the entity there is derived from actual economic activity, etc.).
[26] That is to say a an effective tax rate on the income below 14.5%.
[27] It should be noticed that the UK CFC legislation is currently undergoing reform and the list might be amended in a near future.
[28] Companies obtaining exemption from tax on income from transactions, activities or operations carried on in, or from goods located in, tax free areas in accordance with Law 19640 of 16th May 1972.
[29] Only for income from banking operations that are not taxed under the ordinary income tax regime.
[30] Only for income not taxed under the ordinary income tax regime.
[31] Only for income not taxed under the ordinary income tax regime.
[32] Companies qualifying as "pioneer companies" under the Investment Incentives Enactment 1975.
[33] Only for income from banking operations that are not taxed under the ordinary income tax regime.

Legend:

- To ease the reading, territories listed on black lists (left part of the table) by,
  - two MSs are highlighted as follows: X
  - three MSs are highlighted as follows: X
  - more than three are highlighted as follows: X
- Territories listed on the right part of the table are territories mentioned on existing white lists and mentioned on other MSs' black or grey lists.

Third Countries	Black (and Grey) Lists							White Lists	
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous[23]	No or low tax burden[24]	Low Tax Rate Territories (white list exclusions)[25]	NCSTs	Tax Havens	Low-taxed persons[26]	CFC apportionment (qualified countries)[27]	Low Tax Rate Territories (white list)	CFC apportionment exemptions[27]
Cayman Islands		X	X		X				
Central African Republic	X								
Chile							X[34]		
Comoros	X								
Cook Islands	X				X				
Costa Rica						X[35]			
Cuba	X								
Djibouti						X			
Dominican Republic	X				X				X
Dubai		X							
Dutch Antilles			X						
Egypt							X[36]		
Equatorial Guinea	X								
Falkland Islands					X				X
Faroe Islands							X[37]		
Federation of Micronesia	X	X							
Fiji					X				X
Fujairah		X							
Gibraltar	X		X		X	X			
Grenada	X				X				
Guatemala				X					
Guernsey	X	X	X		X	X			
Guinea - Bissau	X								
Haiti	X								
Herm Island	X								
Hong Kong			X			X[38]	X[39]		
Iran	X								
Iraq	X								

[34] Companies obtaining exemption from tax under Law 16,441 of 1st March 1966 on income from property located in the Department of Isla da Pascua or from activities developed in that Department.
[35] Only for income considered to arise in another territory and not subject to tax.
[36] Companies which do not fall within the scope of Article 111, Book 2 of Law 157 of 1981 because they do not operate in Egypt.
[37] Companies deriving interest from Faroese financial institutions from which tax is deducted at source under Law 4 of 26th March 1953.
[38] Only for income considered to arise in another territory and not subject to tax.
[39] Companies deriving income in or from the Hong Kong Special Administrative Region and submitting tax returns to the authorities of that Region.

Third Countries	Black (and Grey) Lists							White Lists	
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous[23]	No or low tax burden[24]	Low Tax Rate Territories (white list exclusions)[25]	NCSTs	Tax Havens	Low-taxed persons[26]	CFC apportionment (qualified countries)[27]	Low Tax Rate Territories (white list)	CFC apportionment exemptions[27]
Isle of Man	X	X			X	X		X	
Jersey	X	X	X		X	X		X	
Jethou		X							
Jordan					X				
Kenya							X[40]		
Kiribati	X								
Laos	X								
Lebanon					X	X[41]			
Liberia	X				X	X			
Liechtenstein (EEA)	X				X	X			
Macau	X		X		X	X	X[42]		
Malaysia							X[43]		
Maldives	X	X				X			
Mariana Islands					X				
Marshall Islands	X		X	X					
Mauritius					X				
Mayotte	X								
Moldavia		X						X	
Monaco	X	X			X	X			
Montenegro		X				X[44]			
Montserrat	X		X	X	X				
Morocco						X[45]	X[46]		
Namibia	X								
Nauru		X		X	X				
Niue	X			X					
North Korea	X								
Oman	X				X				
Pakistan							X[47]		

[40] Companies having income exempted from tax under paragraph 11 of Schedule 1 to the Income Tax Act 1973.
[41] Only for income from banking and finance, other financial and insurance services.
[42] From 20th December 1999, companies deriving income in or from the Macao Special Administrative Region and submitting tax returns to the authorities of that Region.
[43] (1) Companies exempt from tax in accordance with section 54A of the Income Tax Act 1967 (shipping). (2) Companies subject to tax at 5 per cent in accordance with sections 60A and 60B of the Income Tax Act 1967 (inward reinsurance and offshore insurance). (3) Companies deriving dividends from a company or companies deriving income from one or more of the activities referred to in paragraphs (1) and (2) above. (4) Companies obtaining a tax benefit under the Offshore Companies Act (Island of Labuan) 1990.
[44] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[45] Only for income from banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime as well as income from coordination centres.
[46] Companies receiving a tax benefit under Law 58–90 of 1992 (offshore financial centres).
[47] Companies deriving royalties, commissions or fees which are exempt from tax under paragraph 139 in Part I of the second Schedule to the Income Tax Ordinance 1979.

Third Countries	Black (and Grey) Lists: Belgium – Common tax regime substantially more advantageous[23]	Black (and Grey) Lists: Belgium – No or low tax burden[24]	Black (and Grey) Lists: Estonia – Low Tax Rate Territories (white list exclusions)[25]	Black (and Grey) Lists: France – NCSTs	Black (and Grey) Lists: Spain – Tax Havens	Black (and Grey) Lists: Sweden – Low-taxed persons[26]	Black (and Grey) Lists: United Kingdom – CFC apportionment (qualified countries)[27]	White Lists: Estonia – Low Tax Rate Territories (white list)	White Lists: United Kingdom – CFC apportionment exemptions[27]
Palau		X							
Panama	X					X[48]			
Philippines				X			X[49]		
Puerto Rico							X[50]		
Ras al Khaimah		X							
Saint - Vincent and the Grenadines	X				X				
Saint Christopher and Nevis	X								
Saint Lucia	X				X				
Saint-Barthélemy		X							
Saint-Pierre-et-Miquelon	X								
Samoa	X								
San Marino						X[51]			
Sao Tome and Principe	X								
Sark		X							
Seychelles	X				X	X			
Sharjah		X							
Singapore						X[52]	X[53]	X	
Solomon Islands					X				X
Somalia	X								
Sri Lanka							X[54]		

[48] Only for income considered to arise in another territory and not subject to tax.
[49] (1) Companies authorised under Presidential Decree 1034 of 30th September 1976, or under Presidential Decree 1035 of 30th September 1976, to operate an offshore Banking Unit or a Foreign Currency Deposit Unit as defined in those Decrees. (2) Companies receiving interest on deposits with a Foreign Currency Deposit Unit, or other interest subject to the reduced rates of tax under section 27(D) of the National Internal Revenue Code 1997.
[50] (1) Companies obtaining a tax benefit under section 2(o) of the Industrial Incentive Act 1978 (designated service industries). (2) Companies obtaining a tax benefit under section 25 of the International Banking Centre Regulatory Act 1989 (International Banking Entities).
[51] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[52] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[53] (1) Any company obtaining tax concessions under Ministry of Finance Regulations pursuant to section 43A, and sections 43C to 43K, of the Income Tax Act. (2) Companies obtaining exemption from tax on the income of a shipping enterprise in accordance with section 13A of the Income Tax Act. (3) Companies obtaining relief from tax in accordance with sections 45 to 55 (international trade incentives), and sections 75 to 84 (warehouse and service incentives), of the Economic Expansion Incentives (Relief from Income Tax) Act. (4) Companies deriving dividends from a company or companies deriving income from one or more of the activities falling within paragraphs (1) to (3) above.

Third Countries	Black (and Grey) Lists: Belgium – Common tax regime substantially more advantageous[23]	Black (and Grey) Lists: Belgium – No or low tax burden[24]	Black (and Grey) Lists: Estonia – Low Tax Rate Territories (white list exclusions)[25]	Black (and Grey) Lists: France – NCSTs	Black (and Grey) Lists: Spain – Tax Havens	Black (and Grey) Lists: Sweden – Low-taxed persons[26]	Black (and Grey) Lists: United Kingdom – CFC apportionment (qualified countries)[27]	White Lists: Estonia – Low Tax Rate Territories (white list)	White Lists: United Kingdom – CFC apportionment exemptions[27]
Switzerland						X[55]		X	
Tanzania							X[56]		
Thailand						X[57]	X[58]		
Tunisia							X[59]		
Turkey						X[60]		X	X
Turks and Caicos Islands		X	X		X				
Tuvalu	X								
Umm al Qaiwain		X							
United Arab Emirates						X			
USA							X[61]		
US Samoa	X								
US Virgin Islands			X		X				
Uzbekistan	X								
Vanuatu		X			X				
Virgin Islands	X								
Wallis and Futuna		X							

[54] Companies obtaining relief or exemption from income tax under any of the following provisions of the Inland Revenue Act 1979– (a) section 8(c)(iv) (foreign currency banking units); (b) sections 10(d) and 15(b) (income derived from approved bank accounts); (c) section 10(e) (interest of newly resident companies); (d) section 15(cc) (services rendered outside Sri Lanka); (e) section 15(p) (re-export of approved products).
[55] Only for income from banking and finance, other financial and insurance services
[56] Companies relieved or exempted from income tax under section 15(1) or (1A) of the Income Tax Act 1973.
[57] Only for income from banking operations that are not taxed under the ordinary income tax regime.
[58] Companies obtaining a tax benefit under Royal Decree 280 of 22nd September 1992 (offshore banking units).
[59] Companies obtaining exemption from, or reduction of, tax under Law 76/63 of 12th July 1976 (financial and banking institutions dealing with non-residents).
[60] Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.
[61] Domestic International Sales Corporations as defined in section 992(a) of the Internal Revenue Code 1954.

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Annex 10 - Extracts from PWC Study

The issue of quantification

The Commission services encountered significant difficulties in gathering information on how EU MS' revenues were impacted by aggressive tax planning, tax havens and non-cooperative jurisdictions, as well as by anti-abuse measures[1].

Although the Commission had requested to include the quantitative impact of the identified problems and of the measures taken against non-cooperative jurisdictions (NCJ) and aggressive tax planning (ATP) for the concerned MSs, in order to be able to better quantify, on the basis of publicly available information, the current revenue losses in MS stemming from the use of non-cooperative jurisdictions and aggressive tax planning, and the potential impact of possible remedies, in this respect the outcome of the Study was quite limited due to lack of publicly available information.

The contractor explained why limited quantitative information was available on tax measures in relation to non-cooperative jurisdictions and aggressive tax planning:

'*It appears from the Study that very few information was available with respect to (expected) quantitative impact of the identified problems and of the measure (i.e. tax revenues) and with respect to the evaluation made by the concerned MSs of the effectiveness and sufficiency of such measures. This could most probably be explained by the absence of quantitative assessment, by the fact that most of the measures are relatively old [10-20 years ago], following which the quantitative assessment which might have been performed initially (if any) is no longer representative or useful today, or because such information is considered as confidential. Another element which can entail that there is no relevant quantification available in relation to a measure, is the fact that a measure has been implemented in a Law containing various measures or together with other measures. In such a case any impact assessment or evaluation will generally be a global assessment not linked to a specific measure included in the Law, therefore no relevant figures for the purposes of the current Study will be available.*'

Against this background, the quantitative information available for some countries is the following:

For **Denmark**, in general the quantitative impact of a measure is estimated in the Preparatory Works of a Bill. The Bills typically comprise more than one measure and the estimated effect is often estimated for the entire Bill as a whole.

For the older measures (measures introduced before 2000) information of the estimated quantitative impact of the measures is not easily available. Subsequent adjustments to the measures have primarily been corrections

[1] See also under point 2.2.3.2 how MS responded to the Commission services

of un-intended effects of the measures and to align with EU legislation, etc.

For the recent measures the following estimations of tax revenue were provided:

• Section 2A to the Danish Corporate Tax Act: the Act as a whole is estimated to be revenue neutral.

• Section 2C to the Danish Corporate Tax Act: the measure is estimated to secure un-intended loss of tax revenue.

• Section § 11B+§ 11 C to the Danish Corporate Tax Act: the estimated lasting tax revenue from the two measures is estimated to be EUR 13 million.

• Section § 65 D to the Danish Tax at Source Act: the Act as a whole is estimated to result in a limited loss of revenue.

In **Estonia**, there is no public information available about the quantitative impact of the measures using reasonable efforts. Any estimates accompanying bills are too general to be relevant. Although this was clearly out of scope of the assignment, the contractor has also contacted the Minister of Finance, where its contact person confirmed that as far as they are aware, no such assessments are available;

For **France,** the contractor confirmed that Parliamentary debate and official information does not give any further quantification information on the impact assessment or evaluation of the reported measures. Also they refer to an official Paper, "Evaluations préalables des articles du projet de loi de finances rectificative pour 2009", in which it is expressly mentioned that the budgetary consequences of the measures relating to ETNC cannot be estimated. However, it is indeed possible that the financial impact of the measures on the budget of the given year are estimated, but this information generally refers to the global impact for the entire set of rules relating to the corporate income tax modifications, or other proposed modifications. Such information does thus not give detailed information about the ATP/NCJ measures as such. France also reports some quantitative information with respect to its thin capitalization rule (Art. 212 du code général des impots), EUR 136 mio. (1999), EUR 125 mio. (2000), EUR 106 (2001), EUR 115 (2002), EUR 98 mio. (2003)[2].

For **Germany**, the quantitative effect of the specific measure in relation to the use of tax losses (anti-loss trafficking rule) is estimated at EUR 1.475 mio per year;

In the **Netherlands**, quantitative impact assessments were mentioned with respect to two Non-Specific Measures, being the restriction on the deduction of interest on acquisition debt EUR 31 mio (2012), EUR 62 mio. (2013), EUR 93 mio.

[2] La concurrence fiscale et l´entreprise, vingt- deuxième rapport du Président de la République, Conseil des impots, 2004.

(2014), EUR 124 mio. (2015), and EUR 155 mio. (after 2015) and the restriction on the deduction of interest on participation debt (EUR 150 mio);

In **Sweden,** prior to the entry into force of the interest stripping rules, the Swedish Tax Agency released a survey in which they estimated that the deductions for the deemed artificial party debt reduced the Swedish tax income with SEK 7 billion. Post enactment of the interest stripping rules, the Swedish Tax Agency mentioned in its latest report that the total interest reductions were back at the level of 2003-2006, meaning again an increase of the interest deductions. As Sweden has adopted an amendment to this rule, extending the scope to all intra-group loans (instead of loans granted for the purpose of acquiring a related party), a new assessment is made providing for an estimated increase of the Swedish tax income with SEK 6.29 billion (7.49 billion € on 3.09.2012);

In **Spain**, in theory, there is an obligation to prepare an economic explanation (with the quantitative impact) of the amendments and submitted it within the Draft Bills. However, in practical terms, it is difficult to obtain these economic explanations. Based on the contractor's review of the available documentation, no information was found in the explanations on the reported measures. Also, the economic explanation (the quantitative impact) is not included in the Law that approves the measures. Moreover, the economic explanations of the amendments are not easily accessible (if and when available).

In the **United Kingdom**, the information which is publicly available regarding the quantitative impact of new measures is included in the "red books", which are published along with each Budget and set out the estimated expected financial impact of material new measures. As time goes on, this information for previous budgets becomes difficult to find. Also, in some cases, the only figures available on the quantitative impact of a new measure are aggregated with several other measures and therefore not relevant for the purposes of this study. The only relevant information which was found in this respect, has is the following: the 2011 budget report sets out the expected cost of the full reform to the CFC rules (£210m in 2012-13, £540m in 2013-14, £770m in 2014-15 and £840m in 2015-16). With respect to the upcoming General Anti-Avoidance Rule, the Liberal Democrats had initially estimated that it could raise £2.1bn per year in corporation tax. However, this figure is likely to be smaller if the scope of the GAAR is narrowed (as suggested in Graham Aaronson's report). With respect to the anti-arbitrage measures, the Budget 2005 report sets out the expected Exchequer yield as a result of this policy to £130m in 2005-6, £200m in 2006-7, and £200m in 2007-8 (indexed figures);

For **Luxembourg**, the contractor confirmed on the basis of a high-level check to retrieve the information requested, that together with their experience, it considered that information regarding the quantitative assessment and evaluation which can be of any significance was not available;

Range of Anti-abuse Measures

For instance, amongst the 14 MS reviewed by the PWC study [n° 26 sq.], 165 anti-abuse measures were adopted and 8 MS had adopted at least 10 anti-abuse measures each. Many MSs have a significant number of anti-abuse provisions in their legislation, covering many different forms of potentially abusive behaviour (according to the local tax legislation or administrative practice/case law), such as shifting profits to low tax jurisdictions, erosion of the tax base through excessive debt financing, etc.

The anti-abuse measures applied by the 14 Member States covered by the PWC study can be divided in several categories:

- CFC regulations
- Transfer Pricing Measures
- Deductibility of expenses
- Measures on outbound income
- Measures on inbound income
- Disclosure Requirements
- General anti-abuse provisions
- Various measures

All Member States have at least one general anti-abuse rule ("GAAR"), except the United Kingdom, where adoption of a general anti-abuse rule is nevertheless being discussed. In particular, the foundations for these GAARs can take various forms; ranging from the "abuse of law" principle, a "simulation" or "sham" theory to the "substance over form" principle. None of these measures applies to Third Countries only. On the contrary, they are often equally applicable regardless of the territorial scope of a given transaction (i.e. purely domestic situations, transactions within the European Union and transactions outside the European Union).

With regard to the **countries targeted** at by these measures, table 4 ('Comparison of lists') of the PWC study shows that as a result of these various criteria used by MS, there is little or no overall consistency amongst the EU MS in their respective 'black or grey' lists (see tables in appendix 11).

During the consultation process it was broadly recognised by MS that these individual or specific actions often had limited effectiveness given the international scope of the problem, and that this was also due to the absence of common definitions of NCJ or ATP between EU MS: any joint action pre-requires a common understanding of the situations considered as problematic. During the Fiscalis seminar on 17/7/2012, several MS and stakeholders suggested, as a prerequisite for efficient joint action, to agree on common definitions of NCJ and ATP.

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ANNEX 11

IMPACT ON SME (SME-TEST)

Consultation with SME representatives	See section 2.2. The public consultation on double non-taxation was opened to all taxpayers, including SME. SME representatives ‘UEAPME) were invited the seminar held on 17th July 2012 on non-cooperative jurisdictions aggressive tax planning, tax fraud and evasion.
Preliminary assessment of businesses likely to be affected	The measures assessed are primarily directed to MS. They might indirectly affect businesses and individuals, since they are taxpayers. Those taxpayers currently "using" fraud and evasion schemes or sophisticated tax planning are currently paying less tax than those fully complying with MS’s tax rules. As a result of the measures envisaged, non-compliant taxpayers will in the future pay more taxes than they do currently. This should conversely result in fairer tax systems and possibly a reduction in tax rates if the full amount of tax due is collected. There is no indication that SME would be specifically affected by the measures, since such elaborated schemes based on international schemas are less likely to involve SME than large enterprises. SME should, therefore, be among those taxpayers that are more likely to

	benefit indirectly from fairer tax systems. Simpler common EU approaches should reduce compliance costs for all companies, including SMEs.
Measurement of the impact on SMEs	At this stage of the assessment, it is difficult to assess the quantitative impact of the initiative on economic operators. However, a qualitative assessment suggests, for the reasons outlined above, that SMEs will "suffer" less from the increase in tax as they are less likely to use such schemes, but benefit more from any reduction in compliance cost due to simplification. Work in the Joint Transfer Pricing Forum on SMEs confirms that SMEs tend to have fewer complex problems but suffer disproportionately from excessively complex compliance procedures.
Assess alternative options and mitigating measures	The conclusion of the impact assessment contains no indication that the selected options might result in a disproportionate burden for SMEs as compared to the current situation. Therefore, there is no need for SME specific measures.

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IMPACT ASSESSMENT

Accompanying the document

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
{SWD(2012) 404 final}

Annex 12- Impact of Policy Options

Impact of the Policy Option for protecting MS tax systems against abuses

(Policy option A)

Objective 1 – Enhance tax co-operation, tax administration, tax enforcement and tax collection for cross border operations

Policy option A: Action plan to enhance tax administration, tax enforcement and tax collection in case of cross- border transaction

Baseline scenario: no EU action

Effectiveness in achieving policy objective	--: Low negative impact: In the field of direct taxation, if the loopholes of the existing savings taxation directive are not closed, beneficial owners will continue to invest in products or through structures allowing the avoidance of effective taxation of savings or similar income. The absence of automatic exchange of information for more categories than the mere savings interests will furthemore deprive Member States from the invaluable information on other income received and assets owned by their taxpayers in another Member State, thereby preventing effective taxation but also hindering risk analysis by tax administrations and not encouraging voluntary compliance by taxpayers. Finally, the difficult identification of taxpayers engaged in cross-border transactions will continue to generate important problems in the tax administration and collection, which the onging cuts in expenditure for tax control will in turn reinforce, thereby generating a vicious circle as more and more taxpayers may be tempted by cross-border transactions to reduce their visible taxable basis. In the field of VAT Member States will continue to be targeted by massive frauds and the only recourse available will be a lengthy procedure for requesting a derogation to the existing EU VAT legislation from Council. Also, if no action is taken to solve the problems in intra-community operations through dialogue and raise awareness and education, the tax morale and thus the tax compliance will deteriorate as fewer taxpayers will accept the burden put on their shoulders while others incur no penalty for their non-compliance.
Fundamental rights	≈: No impact
Economic impact	--: Low negative impact: Even if the no action option would avoid in principle any new costs for tax administrations and economic operators, the absence of enhanced administrative cooperation will remain a problem as it will

	continue to provide taxpayers with incentives to act in a way that prevents or hinders effective tax administration, enforcement and collection and thereby undermines fair competition in the industry at EU level and with third countries, which in turn leads to market distortions.
Social impact	--: Low negative impact: Indirectly, the continued existence of loopholes and problems in the administrative cooperation in the case of cross-border operations will maintain a negative impact in terms of fiscal pressure on diligent taxpayers and on taxpayers whose identification is easy and main income is therefore subject to closer controls (i.e. labour income).
Impact on taxpayers	≈: No impact
Impact on tax administrations	≈: No impact
Impact on EU budget	≈: No impact
Impact on other parties	≈: No impact

Policy option A1: Presenting an action plan including prioritising specific measures

Effectiveness in achieving policy objective	+++: Very high positive impact: By foreseeing and prioritising concrete measures, the action plan will allow achieving to a very large extent the policy objective of improving administrative cooperation and in particular: – Closing loopholes in the existing savings taxation Directive; – Reaping the invaluable benefits of the automatic exchange of information; – Enhancing the efficiency and effectiveness of tax collection in the case of cross-border transactions through a better identification of taxpayers; – Providing a mechanism allowing Member States to react promptly against sudden and massive VAT frauds resulting in considerable loss for the treasuries;

	– Setting up a platform where traders and tax administrations can discuss VAT problems in relation to cross-border business; – Raising awareness and education of VAT taxpayers in order to ease compliance.
Fundamental rights	-: Very low negative impact: The policy option might affect the right to the protection of personal data, recognized in Article 8 of the charter of Fundamental Rights of the EU, as the action plan may result in more personal data being exchanged in the interest of public finance. Any personal data exchange should comply with the existing EU rules.
Economic impact	+: Low positive impact: Although the introduction of additional measures may trigger modifications in the behaviour of taxpayers as a consequence of the resulting enhanced identification of taxpayers, the functioning of the internal market will at the same time be improved through the elimination of various bias introduced by enhanced tax administration, enforcement and collection.
Social impact	+++: Very high positive impact: By improving the administrative cooperation, this policy option will increase the effectiveness and timeliness of tax administration, enforcement and collection in the case of cross-border transactions; the option will also result in a deterrent effect, encouraging taxpayers to report all relevant tax information and thus increasing voluntarily tax compliance on a go-forward basis; the actual existence of a level-playing field of all taxpayers and fair and equal treatment between them will also increase tax morale in the society.
Impact on taxpayers	++: Medium positive impact: Through a better administrative cooperation in cross-border operations, there will be a simplification of formalities for taxpayers engaged in these transactions as well as indirectly a positive effect on the horizontal equity between the various categories of income and capital and all taxpayers.
Impact on tax administrations	++: Medium positive impact: Although the action plan may require the setting up of new systems and thereby entail administrative costs and change management actions for tax administrations, it will foremost improve the breadth of information available to them, thus

	improving their possibilities to collect tax.
Impact on EU budget	--: Low negative impact: Further to the adoption of an action plan, the Commission services will have to study and potentially implement various concrete actions, requiring additional human and budgetary resources.
Impact on other parties	≈: Differentiated impacts: At this stage of the assessment of the action plan and in the absence of decision on the concrete actions to be carried out, it is difficult to assess the impact of the initiative on economic operators. These impacts will be analysed on a case-by-case basis in the (proportionate) impact assessments to be made for the specific initiatives.

Objective 2 - Close loopholes and potential for abuse in MS' direct tax systems (national legislation and double tax conventions)

Policy option B2: close loopholes stemming from double tax conventions

Baseline scenario: No EU Action

Effectiveness in achieving policy objective	No impact
Fundamental rights	No impact
Economic impact	Negative impact on EU MS revenues. Double non-taxation would continue to occur on the basis of mismatches between tax systems of the two contracted parties, and be used in schemes involving ATP and jurisdictions not complying with minimum standards of good governance.
Social impact	No impact
Impact on taxpayers/tax administrations	Negative impact. This option will continue to enable some taxpayers to reduce their tax cost by using ATP schemes and jurisdictions not complying with minimum standards of good governance , while other taxpayers will bear the additional compliance costs implied by anti-abuse measures implemented by MS. Tax administrations will continue to support the costs of additional work to tackle double non-

	taxation, by costly and time intensive audits.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option B2: Recommendation to prevent double non taxation in double tax conventions

Effectiveness in achieving policy objective	Positive impact, in bilateral situations covering two EU MS or one MS and a third country. This option will bring to completion the specific policy objective of closing loopholes stemming from double tax conventions provided that MS implement the recommendation. This will have however no impact on situations involving more than 2 countries.
Fundamental rights	No impact
Economic impact	Low positive impact. This option will contribute to reduce the scope of double non-taxation, and to improve accordingly the tax revenues of EU MS.
Social impact	No impact
Impact on taxpayers/tax administrations	Positive impact. By reducing the scope for double non-taxation this option would also reduce the opportunities for a small number of taxpayers to reduce their tax costs. However this could lead to reduce pressure on tax administrations and reduce compliance requirements for taxpayers.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option C1: to adopt EU compliant and effective anti-abuse measures in MS

Baseline scenario: no EU action

Effectiveness in achieving policy objective	No impact
Impact on the four freedoms	Negative impact. Some MS would continue to adopt national anti-abuse measures that would not comply with EU law. Within the EU, this could impact the four freedoms. Towards third countries, only free movement of capital would be concerned. These measures would be implemented as long as the Commission has not yet engaged in infringement procedures.
Economic impact	Negative impact. This would affect essentially companies having cross-border activities within the EU (including SMEs) and in relation to third countries. The compliance costs (see below) resulting from multiple requirements could negatively affect the competitiveness of EU companies as compared to third countries having lower tax compliance costs and fewer tax regulation authorities. This could, together with other factors, contribute to relocation of economic activities outside the EU. In addition, this option could affect trade and investment flows between third countries that would be considered as non-cooperative jurisdiction by one or several MS and not by others, thereby leading to potential inconsistent approach between MS. However preferential trade arrangements between the EU and the third countries concerned should not, as such, be affected since these arrangements contain a tax carve-out provision protecting the possibility for the parties to adopt measures aimed at either adopting or enforcing national tax rules designed to combat avoidance or evasion of taxes. Moreover, this option might involve adjustment costs for developing countries, unless these countries have concluded with the EU MS concerned a double tax convention containing specific provisions on anti-abuse rules. There is also the possibility that national anti-abuse measures cover triangular situations involving indirectly a developing country, such as the misuse of a DTC between an EU MS and

	a developing country.
Social impact	No impact
Impact on taxpayers/tax administrations	Negative impact. The compliance burden on taxpayers will increase as a result of anti-abuse measures implemented by several MS that may be inconsistent between them and create double taxation situations, in particular in triangular situations not covered by DTC. Tax administrations are likely to increase the number of audits in order to ensure that the anti-abuse measures have been correctly implemented. This could result in additional claims and judicial appeals, which a costly for both taxpayers and tax administrations.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option C1: Recommendation of an EU- wide general anti abuse rule as standard of the EU

Effectiveness in achieving policy objective	Positive impact. However the effectiveness of this option will depend on EU MS' willingness to implement it at their level.
Fundamental rights	No impact
Impact on the four freedoms	Positive impact. This option would ensure that the anti-abuse measures adopted and implemented by EU MS on the basis of this template would raise no EU compliance issue.
Economic impact	Positive impact. This would affect essentially companies having cross-border activities within the EU (including SMEs) and in relation to third countries. It would reduce the compliance costs (see below) of EU companies resulting from anti-abuse requirements and could positively affect the competitiveness of EU companies by bringing their compliance costs closer to those of third countries. This could, together with other factors, contribute to reducing the motivation for relocating economic activities outside the EU. This option could positively affect trade and investment flows between third countries by reducing inconsistencies in regulations implemented by MS towards these countries.

	Preferential trade arrangements between the EU and the third countries concerned should not, as such, be affected since these arrangements contain a tax carve-out provision protecting the possibility for the parties to adopt measures aimed at either adopting or enforcing national tax rules designed to combat avoidance or evasion of taxes. Moreover, since national anti-abuse measures of MS would be more consistent in their design, this option could reduce the adjustment costs for developing countries not having concluded with the EU MS concerned a double tax convention containing specific provisions on anti-abuse rules.
Social impact	No impact
Impact on taxpayers/tax administrations	Positive impact. The most positive impact would be for companies having cross-border activities in several MS, since the implementation of EU MS's comparable anti-abuse rules would reduce the compliance costs for taxpayers. This option could is likely to have little impact on the number of audits made by tax administrations, but the consistent design of anti-abuse measures across EU MS is likely to reduce the number of potential ligations for U companies operating in several MS, thereby having a positive impact on MS' administrative costs.
Impact on EU budget	No impact.
Impact on other parties	No impact.

Policy option D1: improve coordination towards third countries by elaborating a list of jurisdictions not complying with minimum standards of good governance

Baseline scenario: no EU action

Effectiveness in achieving policy objective	No impact
Fundamental rights	No impact
Economic impact	Negative impact: in the course of current economic and financial crisis it is likely that the lack of an EU action will not improve the current situation and even can lead to further

	losses in the MS budgets.
Social impact	Negative impact: the lack of EU definition of jurisdictions not complying with minimum standards of good governance is most likely to impact on small and medium-sized enterprises as the larger ones are likely to have tax advisers to help with using jurisdictions not complying with minimum standards of good governance.
Impact on taxpayers/tax administrations	Negative impact: No EU definition of jurisdictions not complying with minimum standards of good governance can lead to higher costs at level of tax payers and tax administrations since using individual MS definitions of jurisdictions not complying with minimum standards of good governance is more complicated to follow them.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option D1: Recommended EU definition on jurisdictions not complying with minimum standards of good governance (to be used by EU institutions and MS) based on the implementation of principles of good governance in the tax area

Effectiveness in achieving policy objective	Positive impact
Fundamental rights	No impact
Economic impact	Positive impact: If the EU definition of jurisdiction not complying with minimum standards of good governance is commonly applied in all MS then the impact on a particular third country which is considered as a jurisdiction not complying with minimum standards of good governance by 27 MS is substantially different than if such a country is considered as a jurisdiction not complying with minimum standards of good governance by one MS only. This country can be then more forced to implement the principles of good governance in the tax area, i.e. to establish a transparent tax system, to exchange tax information and not to introduce harmful tax practices. This could shift profits and income

	from jurisdictions not complying with minimum standards of good governance back to MS limit and thus bring additional revenues to MS budget.
Social impact	Positive impact: The ability of larger companies to reduce their taxes could be limited and thus affecting public confidence in the fairness of the tax system.
Impact on taxpayers/tax administrations	Positive impact: a common understanding of the EU definition and a common identification which is applied in all MS can reduce costs to tax administrations since such a definition can be more easily followed in all MS.
Impact on EU budget	No impact
Impact on other parties	Negative impact: from the perspective of developing countries the possible shifting of profits and income from jurisdictions not complying with minimum standards of good governance back into MS could have a negative impact on their economies since some of these economies are fully depended on a worldwide recognition of being a capital market centre.

- **Policy option D2 : toolbox of incentive and defensive measures to improve leverage towards third**
- **Baseline scenario: No EU action**

Effectiveness in achieving policy objective	No impact:
Fundamental rights	No impact
Economic impact	Negative impact: In the course of current economic and financial crisis no coordinated measures at EU level can lead to further losses in the MS budgets.
Social impact	Negative impact: the lack of EU coordinated countermeasures towards jurisdictions not complying with minimum standards of good governance is most likely to impact on small and medium-sized enterprises as the larger ones are likely to have tax advisers to help with tax planning and using jurisdictions not complying with minimum standards of good governance.

Impact on taxpayers/tax administrations	Negative impact: No EU toolbox of countermeasures can lead to higher costs at both level, tax payers and tax administrations, since structures using jurisdictions not complying with minimum standards of good governance and ATP are getting more complicated and thus requesting additional financial as well as human resources to follow them.
Impact on EU budget	No impact
Impact on other parties	No impact

Policy option D2: Recommendation on a Toolbox of measures (from incentives to defensives at national level) that could be applied towards jurisdictions not complying with minimum standards of good governance in a tailor made approach

Effectiveness in achieving policy objective	Positive impact:
Fundamental freedoms	No impact
Economic impact	Positive impact: The suggested option can strengthen the integrity and fairness of tax structures and courage compliance by all taxpayers. It is also expected to bring additional revenues to MS budget.
Social impact	Positive impact: The ability of larger companies to reduce their taxes could be limited and thus affecting public confidence in the fairness of the tax system.
Impact on taxpayers/tax administrations	Positive impact: A toolbox of coordinated measures is expected to eliminate a using of jurisdictions not complying with minimum standards of good governance and ATP and thus to decrease costs of tax payers and tax administration which otherwise have to spend their financial and human resources to follow them in order to use them or to fight against them. The compliance burdens on tax authorities and tax payers can be also decreased. This can also eliminate or decrease undesired shifts of part of the tax burden to less mobile tax bases, such as labour, property and consumption.
Impact on EU budget	No impact
Impact on other parties	Negative impact: from the perspective of developing countries the possible shifting of profits and income from jurisdictions not complying with minimum standards of good governance back into

	MS could have a negative impact on their economies since some of these economies are fully depended on a worldwide recognition of being a capital market centre.

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ANNEX 13: LIST OF ACTIONS CONSIDERED IN THE COMMUNICATION OF 27 JUNE 2012

1. INTRODUCTION

The Communication of 27 June 2012 identified 26 concrete actions aimed at reinforcing the fight against tax fraud and tax evasion including in relation to third countries.

This Annex provides first an overview of these 26 concrete actions and then detailed explanations on those actions which have been considered as priorities.

2. COMPLETE LIST OF 26 CONCRETE ACTIONS

<table>
<tr><th>Measures to be executed by the Commission</th><th colspan="3">Priority</th></tr>
<tr><td><u>1. Development of computerised formats for secure and enhanced automatic exchange of information</u>
See point 2 in part 2 here below.</td><td>1</td><td></td><td></td></tr>
<tr><td><u>2. EU Tax Identification Number (TIN) for cross border operations</u>
See point 3 in part 2 here below.</td><td>1</td><td></td><td></td></tr>
<tr><td><u>3. Mutual Direct access to national data bases, extension of automated access for VAT</u>
The purpose of this action is to permit a direct access by all Member States to relevant (parts of) the national databases in the field of direct taxation and to extend this access in the area of direct taxation.
Given the (mainly technical) complexity of such a project, the vast majority of Member States expressed major reserves on the opportunity for an immediate implementation of this possible concrete action, especially as regards direct taxation.</td><td></td><td></td><td>3</td></tr>
<tr><td><u>4. Extending EUROFISC to direct tax</u>
The EUROFISC network in the VAT domain, in which all member states participate, enables targeted and swift action to be taken in order to combat new and specific types of fraud. It involves a multilateral early warning mechanism and the coordination of both data exchange and work of liaison officials in acting upon warnings received. The idea would be to extend the scope of EUROFISC mechanisms to direct taxation.
The Member States welcomed the initiative but invited to draw first the conclusions of the experience in the VAT sector before extending it to other revenues.</td><td></td><td>2</td><td></td></tr>
<tr><td><u>5. Quick Reaction Mechanism on VAT fraud</u></td><td>1</td><td></td><td></td></tr>
</table>

Measures to be executed by the Commission	**Priority**		
See point 4 in part 2 here below.			
<u>6. Teams of auditors dedicated to cross-border tax fraud</u> The initiative would entail creating pools of auditors from Member States that could be appointed to undertake specific missions for tackling cross border tax fraud on a case by case basis. These auditors would remain attached to their national tax administrations but could be called on to take part in specific missions. The operational costs could be covered by the future FISCALIS programme and the rules on simultaneous controls and presences in offices abroad could apply, especially in terms of supervision. In a nutshell, all legal provisions are there to facilitate the setting up of pools of international auditors and there would only need to be an agreement on a methodology. While Member States expressed the willingness to better use the existing tools and instruments, business stakeholders supported strongly such an initiative which would reduce the burden of controls for cross-border players. Guidance could be issued in a first instance.		2	
<u>7. Single TAX WEBPORTAL for all taxes and taxpayers building on the VAT web portal under development</u> See point 5 in part 2 here below.	1		
<u>8. One-stop shop for non-resident taxpayers in Member States</u> To enhance compliance both in internal and cross-border situations taxpayers must be better informed about EU and Member States' tax rules. A one-stop shop for non-resident taxpayers in Member States would make it easier for the taxpayers concerned to meet their tax obligations. The Member States generally recognised this action as a top priority but recommended to limit its scope in a first instance to the VAT domain where legislation is harmonised and such one-stop shop would deliver results in an efficient manner for both tax administrations and taxpayers.		2	
<u>9. "EU VAT Forum"</u> See point 5 in part 2 here below.	1		
<u>10. Taxpayers' charter</u> Tax administrations would consider complementing their control approach with a more service-oriented approach. In the spirit of Corporate Social Responsibility[1], the Commission could develop a taxpayers' charter. This would not only rules with regards to relationships between tax administrations and taxpayers but also a code of good behaviour by taxpayers. Even though not considered as a critical priority, this initiative was		2	

[1] Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility – COM (2011) 681 final of 25.10.2011

Measures to be executed by the Commission	Priority		
welcome by both tax administrations and stakeholders. Several representatives of the latter offered to contribute.			
11. Common minimum administrative or criminal sanctions In a globalised world where non-compliant taxpayers can weigh up their risks of being caught and punished in different jurisdictions, it is worth considering common minimum rules against tax fraudsters and evaders with regard to certain types of tax offences and including administrative or criminal sanctions. The fight against fraud is one of the priority sectors identified in the Commission Communication "Towards an EU Criminal Policy"[2]. The Commission would propose rules to strengthen the fight against fraud affecting the EU financial interest by means of criminal law. Foreseeing common definitions of infringements and minimum administrative and criminal sanctions was supported neither by Member States not stakeholders. They consider the benefits of such harmonisation not so clear and the legal constraints and costs fairly important. Any action should anyway also be duly coordinated with Ministries of Justice and anti-fraud authorities.			3
12. Single legal instrument for administrative cooperation The Commission could consider a single legal instrument for administrative cooperation for all types of taxes to ensure full integration and consistency of the mechanisms for cooperation. Replacing the existing legal instruments[3] by one single act applicable to all tax areas and based on identical definitions and principles received an extremely low support as these acts were only adopted recently and the sole priority should be ensuring that they deliver their promises and improve effective tax administration, enforcement and collection.			3
13. Multilateral agreements for administrative cooperation in the field of indirect taxes with third countries In addition to the negotiation and conclusion of agreements on anti-fraud and tax cooperation matters (see action 26), possibilities to conclude multilateral agreements for administrative cooperation in the field of indirect taxes with third countries should be explored as well as the participation of third countries in simultaneous controls. Despite the length of the negotiation of such agreements, the Member States stressed the importance of this action which would allow reaping benefits in indirect taxation similar to those being progressively gained in direct taxation.		2	

[2] COM (2011) 573 final of 20.9.2011

[3] Directive N° 2010/24/EU, Regulation N° 904/2010/EU, Directive N° 2011/16/EU and Regulation N° 389/2012/EU

Measures to be executed by the Commission	**Priority**		
14. Promotion of EU advanced practical tools (including electronic formats) with a view to ensuring their use by non-EU countries particularly in relations with EU Member States The Commission developed over the last years together with the involvement of Member States a full range of advanced practical tools. Cooperation with other international organisations should be improved with a view to avoiding overlaps and creating synergies for the benefit of tax administrations. In fact, Member States should be able to use a single set of tools and instruments both within the EU and in their relations with third countries. To this end, the Commission is promoting EU advanced practical tools (including electronic formats) with a view to ensuring their use by non-EU countries particularly in relations with EU Member States. This action is already under way with interventions of Commission officials in various fora[4] and the constant backing of Member States. Member States renewed their total support to this action as it drastically improves the functioning of their service and ensures a smoother and more efficient administrative cooperation.		2	
15. Promotion of automatic exchange of information standard globally (through OECD) In its recitals of Directive 2011/16/EU, the Council recognised that "the mandatory exchange of information without pre-conditions is the most effective means of enhancing the correct assessment of taxes in cross-border situations and of fighting fraud". Automatic exchange of information indeed gives tax administrations invaluable information on income received and assets owned by their taxpayers that can also be particularly useful for risk analysis purposes and that can serve as an incentive to voluntary compliance. The EU has a key role to play in promoting its standard of automatic exchange of information so as to give support to developing international standards of transparency and exchange of information in tax matters. Almost all Member States and stakeholders supported the action.	1		

[4] The EU participates actively in other international forums such as the OECD, the International Organisation for Tax Administration (IOTA), the Inter American Center of Tax Administrations (CIAT), the International Tax Dialogue (ITD), the International Tax Compact (ITC), and the African Tax Administration Forum (ATAF).

Measures to be executed by the Commission	**Priority**		
16. Promotion of fair tax competition standards globally (also with OECD) Continued promotion of good governance principles in the tax area under international trade and cooperation agreements is the utmost importance for a fair and effective tax administration, enforcement and collection for MS. The other objectives of the impact assessment are specifically addressing these questions and we refer to this detailed analysis for more information.		2	
17. Announcement of coordinated defensive measures or sanctions against tax havens The other objectives of the impact assessment are specifically addressing these questions and we refer to this detailed analysis for more information.	1		

Measures to be executed by the Commission together with the Member States	**Priority**		
18. Examine ways to improve access to information on money flows, building on national experiences Access to information on money flows is critical to trace significant payments made through off-shore bank accounts. Several Member States have developed a large experience with a complete set of procedures and principles. The return on investment achieved by Member States applying such measures demonstrates that actions in this field are not only effective but very efficient and that establishing and sharing best practices in this field would benefit not only Member States budgets but more generally tax morale in Europe.		2	
19. Better cooperation between all law enforcement services (including between, direct and indirect taxation areas), not only on tax fraud and evasion but also on tax related crimes (e.g. through Europol) As tax fraud is often linked with other forms of criminal activity it is important to strengthen cooperation between tax administrations and other authorities, in particular anti-money laundering, social security and judicial authorities, both at national and international level. At national level, it is necessary to ensure a satisfactory level of cooperation between all law enforcement services concerning not only tax fraud and evasion but also tax related crimes[5-6]. Cooperation		2	

5 Money laundering, terrorist financing and criminal schemes relating to Missing Trader Intra Community Frauds (MTIC), including VAT carousel fraud and criminal investment in the EU Emission Trading Scheme.

6 The revised FATF standards adopted in February 2012 added tax crime as a predicate offence to the money laundering and terrorist financing offence.

Measures to be executed by the Commission together with the Member States	Priority		
concerning tax related crimes can also be ensured through Europol[7]. The Commission can facilitate coordination in the areas concerned through joint use of its existing programmes and their successors. Both Member States and stakeholders backed the idea of creating bridges between the various departments and thereby reaping the benefits of a multiplier effect beyond the limits of each domain. On top of the exchange of information, such an action would allow exchanging best practices between departments in charge and improve working methodologies, thereby increasing further the benefits in each individual domain.			

Measures to be initiated by the Member States	Priority		
<u>20. More effective use of practical IT tools on mutual assistance and administrative cooperation between EU tax administrations</u> The Commission is assisting Member States in their efforts by providing them with the practical tools and instruments they need to engage in effective administrative cooperation. The Commission will closely monitor the correct application by all Member States of the commonly agreed rules and procedures. Member States fully supported this proposal as it allows gaining time as well as money through the redeployment of human resources to "productive" activities instead of administrative ones.	1		
<u>21. Joint audits with presence of officials of a Member State in another Member State</u> More regular joint audits should be promoted through extensive use of the existing legal provisions on simultaneous controls and the presence of officials of a Member State in another Member State[8]. Member States did not support the development of new initiatives in this area but were of the opinion the best use should be made first of the existing provisions to streamline and rationalise audits. The stakeholders as well supported the idea of increased action in this domain.		2	
<u>22. Decrease costs and complexity of tax systems for taxpayers</u> Taxpayers' compliance could be encouraged in various ways. One way to increase tax compliance is to decrease its costs and complexity for taxpayers. The administrative costs for business of complying with the tax code vary considerably between the Member States. As the time and costs fall disproportionally on small enterprises, decreasing		2	

[7] Europol allows identifying the organisers of tax related crimes and dismantling criminal networks.

[8] Article 7 of Directive N° 2010/24/EU; Articles 28, 29 and 30 of Regulation N° 904/2010/EU; Articles 11 and 12 of Directive N° 2011/16/EU; Articles 12 and 13 of Regulation N° 389/2012/EU

Measures to be initiated by the Member States	Priority		
administrative complexity (e.g. by increasing the use of online tools) would help tax collection and increase the competitiveness of many European firms. Member States agreed with the position that all rules and systems to be put in place should be proportionate to the needs and that this principle should be recognised as a kind of red line. Stakeholders and the business in particular backed the principle as well and recalled its importance for an increased voluntary compliance by taxpayers.			
<u>23. Motivational incentives to enhance tax compliance including voluntary disclosure programmes</u> Tax administrations could also develop motivational incentives in the form of voluntary disclosures programmes. Whereas some Member States consider that tax compliance should the standard and should not need motivational incentives, others pointed out to the good and efficient results achieved by applying such an approach, stressing the enhanced tax morale, awareness and deterrent effect that such measures can have.		2	

Measures to be initiated by the Council	Priority		
<u>24. Adoption of amended Savings Directive</u> See point 1 in part 2 here below.	1		
<u>25. Adoption of proposed negotiating mandate to amend existing EU savings agreements with Switzerland, Andorra, Monaco, Liechtenstein and San Marino</u> See point 1 in part 2 here below.	1		
<u>26.Approval of the draft EU/Liechtenstein agreement on anti-fraud and tax cooperation matters and adoption of proposed mandate to open similar negotiations with Andorra, Monaco, San Marino and Switzerland</u> See point 1 in part 2 here below.	1		

3. ORIENTATIONS WITH REGARDS TO THE MAIN PRIORITY ACTIONS

The consultation of Member States and stakeholders carried out by DG TAXUD revealed that, in order to enhance administrative cooperation, any action plan should focus among others on the following priority actions among the 26 suggested by the Commission in its Communication of 27 June 2012:

3.1. Strengthening existing tools for ensuring more effective tax collection of savings or similar income in Member States by Council action to amend the existing savings taxation directive on the basis of the Commission's

proposal – Amending existing EU savings agreements with other countries – Concluding anti-fraud and tax cooperation agreements with other European non-EU countries

Capital income is one of the most mobile tax bases, and tax competition is rife in this area. In order to ensure the proper functioning of the internal market and tackle the problem of tax evasion the Savings Tax Directive 2003/48/EC was adopted in June 2003. The Directive applies to interest paid to individuals resident in an EU Member State other than the one where the interest is paid. The Directive has been applicable since 1 July 2005.

Pursuant to Article 18, the Commission issued a first report on the operation of the Directive on the subject on 15 September 2008. Following this first review, the European Commission adopted on 13 November 2008 an amending proposal to the Savings Taxation Directive, with a view to closing existing loopholes and better preventing tax evasion. The Commission proposal seeks to improve the Directive, so as to better ensure the taxation of interest payments which are channelled through intermediate tax-exempted structures. It is also proposed to extend the scope of the Directive to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurance products. The second report of 2 March 2012 confirmed the widespread use of offshore jurisdictions for intermediary entities (35% of the non-bank deposits in Member States, 65% for deposits in Savings Agreements countries).

If the proposal currently on the Council's table is not swiftly adopted by Member States at unanimity, the smooth functioning of the internal market and efficient tax collection by Member States will continue to be adversely affected by the multiple and easy ways for individuals to circumvent the rules by using interposed legal persons or arrangements (like certain foundations or trusts) which are not taxed on their income or untaxed innovative financial vehicles rather than taxed classical savings products. On the contrary, adopting the proposal will permit not only the closing of existing loopholes and the elimination of opportunities for tax evasion but will also ensure a consistent application of the new principles across the EU and facilitate agreements on similar or equivalent measures with Member States' dependent or associated territories and third countries.

In the same context, the Council should ensure that the savings agreements in place with a series of other states and dependencies and territories are reviewed in order to ensure that the loopholes closed by the amending directive are closed as well in the case of interest or similar income received from instruments owned there.

The negotiations on the content of anti-fraud agreement with Liechtenstein can be considered as finalised. However, the main obstacle to the signature and conclusion remains the political reservations by Austria and Luxembourg regarding the link with the EU savings directive. The Council should take immediate action in order to ensure that the agreements can be adopted and consider as well the need to negotiate similar agreements with other third states.

The European Council has repeatedly underlined the necessity to adopt these proposals, agreements and mandates without delay.

3.2. Ensuring more effective tax administration and enforcement in the case of cross border transactions by analysing the scope for reviewing the conditions of the automatic exchange of information

Automatic exchange of information gives tax administrations invaluable information on income received and assets owned by their taxpayers in other countries and thus contributes to effective and efficient tax administration and enforcement in the country of residence. The information received can also be particularly useful for risk analysis purposes and can serve as an incentive to voluntary compliance. The experience in the context of the savings directive demonstrates the benefits of such cooperation on a pan-European level: on average more than 4 million records are sent each year from source countries to residence countries representing on average 20 billion euro of savings income.

The new directive 2011/16/EU on administrative cooperation adopted on 15 February 2011 substantially expands the scope of automatic exchange of information and invites the Commission to develop new systems and formats for five other categories of income and capital: income from employment, director's fees, pensions, life insurance products not covered by another EU law on administrative cooperation, ownership of and income from immovable property. The implementation and entry into application of this new legislative instrument will already constitute an important step forward in the area of direct taxation and will significantly enhance effective taxation and the fight against tax fraud in relation to EU cross-border transactions.

However, as Directive 2011/16/EU only focuses on 5 categories of income and capital, there is scope for extending automatic exchange of information on a voluntary basis to other categories such as income from employment other than dependent employment, royalties, dividends or capital gains.. Such an extension would not only allow MS to draw even greater benefits from the mechanisms provided for by Directive 2011/16/EU but would also:

- provide concrete follow-up to the statement at the time of the adoption of Directive 2011/16/EU that "in order to promote a level-playing field in the realm of automatic exchange of information, Member States commit themselves to improve the availability of information on all categories enumerated in Article 8(1) to the greatest extent possible" and

- pave the way for to further strengthening the automatic exchange of information in a pro-active and non-coercive manner and raising the standard thereof , as the Council has already committed to assess in 2017 .

3.3. Ensuring more effective tax administration and enforcement in the case of cross border transactions by examining the possibility of introducing an EU TIN as a unique identifier for taxpayers engaged in cross-border transactions

The easy, correct and unambiguous identification of taxpayers is key in ensuring an effective and efficient tax administration, enforcement and collection. This is particularly true in the case of cross-border transactions where tax authorities do not have the same level of access to information on taxpayers or operators located abroad and where in the absence of proper identification the international exchanges of information (whether on request, spontaneous or automatic) may be very complex. The concrete experience of Member States in this area shows that information can be far better matched when a Tax Identification Number (TIN) is communicated and used as a unique identifier: whereas the automatic matching of information is very low in the absence of TINs with a rate usually lower than 40%, it basically exceeds the 80-90% range when a TIN is provided as part of the information exchanged.

Despite the initiatives of the European Commission to facilitate access to information on TINs in the case of cross-border transactions, major obstacles remain: economic operators are only required to record and report the identification of their counterparts in a limited number of instances, mainly further to Directive 2003/48/EC on taxation of savings and in accordance with specific national obligations; TINs are not necessarily mentioned on identification documents and can accordingly not be recorded at the time of a transaction; each Member State has its own TIN with its specific structure, syntax and semantic and its own rules on when and how it must be recorded by economic operators; certain Member States may use several different TINs whereas others have no TIN at all and base the identification of taxpayers on other more ambiguous elements such as the date of birth, the postal code…

The action plan could thus suggest enhancing tax administration, enforcement and collection by analysing concrete ways for a better use of TINs, for example through improved use of existing TINs, the introduction of an EU TIN as a unique identifier for all taxpayers engaged in cross-border transactions, whether a natural, a legal or another person, or even a unique EU TIN in replacement of national TINs. Before an initiative is proposed further to the action plan, this concrete action would of course be subject to a specific impact assessment.

3.4. Tackling trends and schemes of tax fraud and tax evasion in the field of VAT, by setting up a quick reaction mechanism

Member States will continue to be targeted by new and massive VAT fraud as the possibility for them to seek derogation from the EU VAT legislation to counter such fraud takes too long and does not allow them to take rapid action. Therefore, the Commission has adopted a proposal for setting up a Quick reaction mechanism in the field of VAT allowing Member States to react promptly against sudden and massive fraud resulting in considerable VAT loss for the Treasury. The action plan could emphasise the necessity for the Council to swiftly adopt the Commission's proposal.

3.5. Ensuring high levels of taxpayer compliance in the field of VAT

With a view to enhancing the relationship between tax administrations and business and improving the governance of VAT at EU level stakeholders have advocated the setting up of a forum at EU level where traders and tax administrations can discuss problems related to doing business across borders in the EU in order to look for possible solutions. All stakeholders should be encouraged to contribute to the development and working of this forum.

The lack of reliable information for business on their obligations in other Member States when doing business in those countries continues to be a hurdle for doing business across borders and thus prevents business from exploiting the full benefits of the internal market. When setting up a web portal at EU level the Commission could invite Member States to put on to the EU web portal useful information for traders wanting to do business on their territory. This would provide accurate and up to date information to the traders and would help to raise awareness and educate taxpayers. A feasibility study has been launched recently.

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

the Communication from the Commission to the European Parliament and the Council - An Action Plan to strengthen the fight against tax fraud and tax evasion

the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
{SWD(2012) 404 final}

Annex 14

Glossary

abuse of law	The law is formally complied with but in a way that is not compatible with its spirit;
anti-abuse measures	Term used in the context of measures intended to combat the avoidance of tax. Such measures may be of general application, e.g. in the form of a general anti-avoidance rule, or aimed at specific transactions or situations, e.g. exit tax on emigration, or in a value added tax context. They may be based on unwritten legal principles, legislation, or tax treaties.
base erosion and profit shifting	Erosion of tax base
beneficial ownership	The term beneficial ownership is often used in contrast to legal ownership, where ownership rights are split, the latter referring to the more formal attributes, such as registration, etc. While the concept may be compared with similar concepts in civil law countries based on economic ownership, the latter may be distinguished in that the related rights are typically contractual in nature while a beneficial owner may, in general, also enforce his rights against third parties. Beneficial ownership is often used in conjunction with the term equitable ownership. While the two expressions appear to have similar meanings, it is not clear that they may always be used interchangeably. In an international context the term is most commonly encountered in tax treaties as one of the preconditions to treaty entitlement in respect of, e.g. dividends, interest and royalties. For example, it has been argued that a conduit company cannot be a beneficial owner. It has also been suggested that beneficial ownership implies control over the capital from which the

	income is derived and/or control over the disposition of the income itself. Another view focuses on whether the payment is received for the recipient's own benefit. In a wider sense it has been suggested that the term should be interpreted in accordance with its function of excluding entities interposed solely for the purpose of enjoying treaty benefits that would otherwise not have been available.
Common Consolidate Corporate Tax Base (CCCTB)	The European Commission on 16 March 2011 proposed a common system for calculating the tax base of businesses operating in the EU. The proposed Common Consolidated Corporate Tax Base (CCCTB), would mean that companies would benefit from a "one-stop-shop" system for filing their tax returns and would be able to consolidate all the profits and losses they incur across the EU. Member States would maintain their full sovereign right to set their own corporate tax rate.
clause on good governance in the tax area	A clause on good tax governance (promoting transparency, exchange of information and transparency) introduced in relevant agreements between the EU and third countries
clauses on limitation of benefits	Provision that may be included in a tax treaty to prevent treaty shopping, e.g. through the use of a conduit company. Such provisions may limit benefits to companies that have a certain minimum level of local ownership ("look through approach"), deny benefits to companies that benefit from a privileged tax regime ("exclusion approach") or that are not subject to tax in respect of the income in question ("subject-to-tax approach"), or that pay on more than a certain proportion of the income in tax-deductible form ("channel approach" or "base erosion rule").
compliance burdens	Costs caused by the procedural and administrative actions needed to satisfy a taxpayer‘s obligations under the applicable

	tax rules.
conduit companies	A “conduit company” may be defined as a company that is entitled to the benefits of a tax treaty in respect of income arising in a foreign country, the economic benefit of which income accrues to persons in another country who would not have been entitled to such treaty benefits had they received the income directly. This may be achieved by, e.g. the conduit company lending the income to those persons, reinvestment of the income for their ultimate benefit, or distribution by way of a (tax-exempt) dividend. A conduit company is generally subject to no or minimal taxation under its domestic laws or by reason of the income being on-paid in a tax-deductible form (typically leaving a small taxable “spread” in the conduit company). Tax treaties increasingly contain a limitation on benefits provision that is specifically aimed at preventing their improper use through conduit companies.
corporate tax	Tax on the income of companies. In many countries, income of companies for these purposes includes capital gains.
direct taxation	A direct tax is one imposed upon an individual person (juristic or natural) or on property, as distinct from a tax imposed upon a transaction (indirect taxation).
double non taxation	It occurs when cross-border companies escape paying taxes. Thus double non-taxation deprives States of significant revenues and creates unfair competition between businesses.
double tax conventions	Term generally used to denote an agreement between two (or more) countries for the avoidance of double taxation. In fact there are various types of tax treaty of which the most common are treaties for the avoidance of double taxation of income and capital (usually known as a comprehensive income tax treaty). Such treaties are also commonly expressed to be aimed at the prevention of fiscal evasion. In avoiding double taxation, such treaties also provide for the distribution between

	the treaty partners of the rights to tax, which rights may either be exclusive or shared between the treaty partners. Measures in such treaties to prevent tax evasion typically include exchange of information provisions and other forms of mutual assistance. Such treaties are generally entered into in order to facilitate international commerce and investment.
double taxation	Double taxation is traditionally divided into two kinds, juridical double taxation and economic double taxation. Juridical double taxation may be described as the imposition of comparable taxes by two (or more) tax jurisdictions on the same taxpayer in respect of the same taxable income or capital. Economic double taxation may be described as the imposition of comparable taxes by two (or more) tax jurisdictions on different taxpayers in respect of the same taxable income. Double taxation may be domestic, i.e. where taxes are imposed within a sovereign state by different taxing authorities (e.g. by different members of a federation), or international, i.e. where taxes are imposed by different sovereign states.
EU Code of Conduct Group	The Code of Conduct for business taxation was set out in the conclusions of the Council of Economics and Finance Ministers (ECOFIN) of 1 December 1997. The Code is not a legally binding instrument but it clearly does have political force. By adopting this Code, the Member States have undertaken to roll back existing tax measures that constitute harmful tax competition and refrain from introducing any such measures in the future ("standstill"). The EU's Finance Ministers established the Code of Conduct Group (Business Taxation) at a Council meeting on 9 March 1998 to assess the tax measures that may fall within the scope of the Code of Conduct for business taxation.

Tax Identification Number	Most countries use a Tax Identification Number (TIN) to identify taxpayers and facilitate the administration of their national tax affairs. TINs are also useful for identifying taxpayers who invest in other EU countries and are more reliable than other identifiers such as name and address.
EU Tax Identification Number	In order to facilitate the work of all stakeholders and ensure an effective and efficient tax administration, enforcement and collection, the European Commission suggests studying the possibility to coming forward with a EU TIN (see Tax Identification Number) allocated to all taxpayers (both individuals and companies or assimilated legal structures) engaged in cross-border operations. This EU TIN would be ruled by common rules with regards to its issuance, use and reporting.
EUROFISC	EUROFISC is a mechanism provided for Member States to enhance their administrative cooperation in combating organised VAT fraud and especially carousel fraud. EUROFISC allows for quick and targeted sharing of information between all Member States on fraudulent activities.
fair tax competition	Is the contrary of harmful tax competition Harmful tax competition generally takes the form of special tax regimes or incentives offered by countries in order to maintain an internationally competitive business environment. The phenomenon may be considered harmful insofar as it distorts the location of business and trade, erodes the tax base of other countries (also referred to as contributing to the "race to the bottom") and undermines the fairness, neutrality and broad social acceptance of tax systems generally.
general anti-abuse rule (GAAR)	An anti-abuse measure, generally statute based, provide criteria of general application, i.e. not aimed at specific taxpayers or transactions, to combat situations of perceived tax avoidance.
good governance in the tax area	The EU has an established policy on good governance in tax matters (greater

	transparency of tax systems, exchange of information and fair tax competition) aimed at tackling harmful tax competition and tax evasion (COM (2009) 201, 28/04/2009 and COM (2010) 163, 21/04/2010). It is not limited "tax havens" per se, but aims at improving good governance in the tax area in all countries. This policy has been implemented both by legislation (e.g. the Directive on Administrative Cooperation or the Savings Taxation Directive) and by soft law (e.g. the Code of Conduct for Business Taxation). Beyond the EU, the Commission introduces clause on good tax governance (promoting transparency, exchange of information and transparency) in relevant agreements between the EU and third countries.
hybrid mismatch arrangements	Instrument with economic characteristics that are inconsistent, in whole or in part, with the classification implied by their legal form. Hybrid financial arrangement normally contains elements from equity, debt and/or derivatives, the advantages of which they seek to combine in the same instrument. In a cross-border situation, this normally creates a mismatch in the tax characterization and treatment of the income by the various tax jurisdictions involved.
indirect tax	Commonly accepted (if not comprehensive) distinction may be made on the basis of whether the tax is a tax on income (including capital gains and net worth) (direct) or on consumption (indirect). Indirect taxes are considered to be one of the oldest sources of government revenue. Examples of taxes generally regarded as indirect include value added tax, sales tax, excise duties, stamp duty, services tax, registration duty and transaction tax.
Interest and Royalty Directive	Way of referring to Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (26 June 2003), which aims to eliminate double taxation of cross-

	border flows of interest and royalties within the internal market between associated companies, as well as cross-border interest and royalty payments made to or by permanent establishments.
international agreed standards of transparency and information exchange	The Global Forum on transparency and exchange of information has been instrumental in, inter alia, the development of standards of transparency and exchange of information through the publication of the Model Agreement on Exchange of Information for Tax Purposes in 2002.
hybrid entities	Generally, an entity that is characterized as transparent for tax purposes (e.g. as a partnership) in one jurisdiction and non-transparent (e.g. as a corporation) in another jurisdiction. In some cases, an entity is a hybrid when it is treated from the point of view of a particular jurisdiction as transparent in that jurisdiction and as non-transparent in the other jurisdiction. This is sometimes referred to as a regular hybrid. In contrast, an entity is a reverse hybrid when it is treated from the point of view of a particular jurisdiction as non-transparent and as transparent in the other. A hybrid entity is therefore also always a reverse hybrid, the difference depending on whether the classification is being made from the point of view of the jurisdiction treating the entity as transparent (hybrid) or non-transparent (reverse hybrid).A loan the return on which (typically interest) is dependent on the profits of the borrower. This loan with economic characteristics that are inconsistent, in whole or in part, with the classification implied by their legal form. This loan contains elements from equity, debt and/or derivatives, the advantages of which they seek to combine in the same instrument. In a cross-border situation, this normally creates a mismatch in the tax characterization and treatment of the income by the various tax jurisdictions involved.
hybrid, profit participating loan	A loan the return on which (typically interest) is dependent on the profits of the borrower. It normally contains elements from equity and debt. In a cross-border

	situation, this normally creates a mismatch in the tax characterization and treatment of the income by the various tax jurisdictions involved.
non-resident	Tax laws tend to define the concept of residence, leaving a non-resident to be defined by implication as one who does not satisfy the criteria for residence. Residence refers to a person's legal status in relation to a particular country such as in general to justify subjecting that person to taxation on their worldwide income. In the case of individuals such status is generally determined on the basis of facts and circumstances, in particular by reference to the degree of personal attachment with the country concerned, e.g. the number of days spent in the country, the existence of personal or economic ties with the country, etc. In the case of persons other than individuals there are two common approaches, one based on formal criteria, such as the place of incorporation or registration, and the other on substantive criteria, such as the location of the place of management, central management and control, central administration, place of effective management, head office, or principal place of business. Many countries apply both approaches so that, e.g. a company will be resident if it is either incorporated or effectively managed in the country concerned. Residence as used in double taxation conventions is typically based on the domestic concept of residence as used by the contracting states, at least insofar as this gives rise to comprehensive taxation (or "full liability to tax") and is based on criteria such as domicile, residence, place of management, etc.
OECD Forum on Harmful Tax Practices	Following a report in 1998 ("Harmful Tax Competition: An Emerging Global Issue") the OECD (Organisation for Economic Cooperation and Development) created a special forum, "Forum on Harmful Tax Practices". To end harmful tax practices the work of the Forum has focussed on three areas: Harmful tax practices in Member Countries, Tax havens, Involving non-

	OECD economies. The Forum has produced three progress reports. Furthermore, together with cooperative tax havens the Forum has produced a "Model Tax Agreement on Exchange of Information in Tax Matters".
OECD Global Forum on transparency and information exchange	The Global Forum has been the multilateral framework within which work in the area transparency and exchange of information has been carried out by both OECD and non-OECD economies since 2000. The Global Forum has been instrumental in, inter alia, the development of standards of transparency and exchange of information through the publication of the Model Agreement on Exchange of Information for Tax Purposes in 2002. The Global Forum has, since 2006, produced an annual assessment of the legal and administrative framework for transparency and exchange of information in over 80 jurisdictions.
Parent & Subsidiary Directive	Popular way of referring to the 1990 EU Directive (90/435/EEC) that aims to provide a common system of taxation between parent and subsidiary companies within the European Union. The overriding objective is to remove restrictions, distortions, etc., which would interfere with the establishment and effective functioning of the common market. The Directive provides for (in general) a zero withholding tax on cross-border dividend distributions between EU subsidiaries and their EU parents, and an exemption or indirect tax credit in respect of the receipt of such dividends.
Savings Taxation Directive	Popular way of referring to the 2003 EC Directive (2003/48/EC), which aims to enable savings income in the form of interest payments made in one Member State to individuals resident in another Member State to be made subject to effective taxation in the latter state. This aim is to be achieved by a system of information exchange with a transitional period during which certain Member States

	can opt for withholding tax.
shifting of profits and income into other jurisdictions	Popular expression referring to the practice of the deliberate manipulation of prices charged between related parties based in different jurisdictions or between the head office of a company and a foreign permanent establishment with a view to allocating an excessive part of the combined profits in the jurisdiction or jurisdictions having the lowest effective tax rates. Transfer pricing principles may be applied to counteract the desired results
simulation/sham concept	A transaction is entered into by parties but not adhered to by them because another transaction, which is adhered to, alters or negates the first transaction.
single taxation	Being taxed at least once in one country
substance-over-form principle	The law is formally complied with but there is a lack of substance supporting the transaction/restructuring so that the tax authorities can disregard its form;
Swedish interest rules	Existing interest deduction limitation rules in Swedish tax law as a measure aimed at further protecting the Swedish tax base.
tax avoidance	A term that is difficult to define but which is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow. (OECD Glossary of Tax Terms)
tax carve-out provision	In general a tax carve-out refers to a provision in an agreement that specifically excludes application of the agreement or part thereof to tax matters. Such clauses are typically found in international agreements, for example in the context of most-favoured-nation treatment that is thus limited to non-tax matters.
tax compliance	The procedural and administrative actions needed to satisfy a taxpayer‘s obligations

	under the applicable tax rules.
tax evasion	Generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities.
tax fraud	A form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced.
tax havens, also sometimes referred to as 'non-cooperative jurisdictions'	Commonly understood to be jurisdictions which are able to finance their public services with no or nominal income taxes and offer themselves as places to be used by non-residents to escape taxation in their country of residence. The OECD has identified three typical 'confirming' features of a tax haven: (i) lack of effective exchange of information, (ii) lack of transparency, and (iii) no requirement for substantial activities. In addition they often offer preferential tax treatment to non-residents in order to attract investment from other countries. Tax havens therefore compete unfairly and make it difficult for 'non' tax havens to collect a fair amount of taxation from their residents.
tax loss restrictions	A restriction placed round certain losses in order to isolate them for tax purposes. For example, losses arising in one category may be ring fenced from profits in another and accordingly cannot be set off against those profits.
tax structures	The tax structure of a country refers to the relative importance of the taxes levied in that country in terms of their incidence and revenue produced. For example, a country that levies a large number of commodity and sales taxes, and that has an income tax with thresholds that exempt the vast majority of the population, has a predominantly indirect tax structure.

taxpayer charter	Document established by national authorities and detailing both (i) the rights of taxpayers (e.g. rights to assistance, equality of treatment, privacy and confidentiality, appeal, independent review of disputes with the tax authorities…) and (ii) their obligations with regards to taxation and tax authorities
theoretical VAT liability	The net amount of VAT that the tax authority of a territory should collect in given year, calculated as the product of final consumption expenditure and the applicable VAT rate. Adjustments are applied e.g. for cross-border shopping. Theoretical VAT liability takes into account exemptions, reduced rates etc.
thin capitalisation rules	A company said to be thinly capitalised when its capital is made up of a much greater proportion of debt than equity, i.e. its gearing, or leverage, is too high. Some tax systems simply disallow interest deductions above a certain level from all sources when the company is considered to be too highly geared under applicable tax regulations.
transfer pricing	Transfer pricing is the area of tax law and economics that is concerned with ensuring that prices charged between associated enterprises for the transfer of goods, services and intangible property accord with the arm’s length principle. Transfer pricing principles may also be applied in the context of transactions – or dealings – between different parts of a single enterprise, e.g. between a head office and permanent establishment or between different permanent establishments of the same enterprise. Rules and procedures applicable to transfer pricing are often found in the domestic law of many countries. In many cases these reflect the OECD Transfer Pricing Guidelines.
transparency	The term transparency is used to describe certain features of a tax system, in particular with regard to its administrative practices. It has been said to include two

	elements: clear publication of the applicable rules such that they may be invoked by taxpayers against the tax authorities, and the availability to tax authorities of other countries of details of their application in practice. A lack of transparency may manifest itself by, e.g. a general domestic fiscal environment such that the laws are not enforced in line with domestic law.
triangular cases	Term used most commonly in the context of relieving double taxation where more than two (typically three) states are involved. For example, a resident of one state (State R) has a permanent establishment in another state (State P), which in turn derives income in the form of dividends, interest or royalties from a third state (State S), thus raising the issue (if double taxation treaties have been concluded between the states) which tax treaty should be applied to relieve double taxation in State S. Triangular cases also arise in the context of imputation systems where shareholders from one country receive dividends from a company resident in another country where the company derives income from the shareholder's country of residence (e.g. through a permanent establishment or a subsidiary). Various tax planning arrangements have been devised for overcoming problems relating to the granting of imputation credits in such cases, and various techniques are also available to governments wishing to provide relief (sometimes referred to as triangular tax relief).
VAT gap	Amount of VAT not collected due to fraud, legitimate avoidance, errors, bankruptcies
VAT quick reaction mechanism	A proposal for a Quick Reaction Mechanism (QRM) was adopted by the Commission on 31st of July 2012. Under the QRM, a Member State faced with a serious case of sudden and massive VAT fraud would be able to implement certain emergency measures, in a way which they are currently not allowed to under VAT legislation. In this context, the proposal

	provides that Member States would be able to apply, within the space of a month, a "reverse charge mechanism" which makes the recipient rather than the supplier of the goods or services liable for VAT. This would significantly improve their chances of effectively tackling complex fraud schemes, such as carrousel fraud, and of reducing otherwise irreparable financial losses. In order to deal with possible new forms of fraud in the future, it is also foreseen that other anti-fraud measures could be authorised and established under the QRM.

