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EUROPEAN COMMISSION
Regulatory Scrutiny Board

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Opinion

Title **DG FISMA – Impact assessment on assessing the potential for further corporate transparency on income taxes**

(version of 26 January 2016)*

(A) Context

Multinational enterprises (MNEs) manage their profits globally, but pay their taxes locally. Differences between national tax systems can lead to inconsistencies and loopholes, which may allow base erosion and profit shifting (BEPS) for MNEs, resulting in profits not being taxed where they are made. Cases reported in the media have reduced public trust in corporate taxation of MNEs and lack of transparency has prevented an informed public debate on the issue. As a consequence, further transparency on the state and future of corporate taxation has been suggested.

Calling for a global solution to fight tax evasion and avoidance, the G20 leaders endorsed the BEPS action plan developed by the OECD in November 2015. BEPS Action 13 contains features of country-by-country reporting (CBCR) by MNEs to national tax authorities on confidential basis.

Implementation in the EU of the BEPS initiative was proposed by the Commission in its ATAP (Anti-Tax Avoidance Plan) of 27 January 2016. The ATAP proposes that MNEs shall report their tax payments on a CBCR basis and Member States share this information among tax authorities in the EU.

This impact assessment analyses whether, on top of the BEPS/ATAP initiative, and in addition to other ongoing Commission initiatives designed to combat corporate tax avoidance, further measures are warranted in order to foster public transparency of corporate CBCR reporting.

(B) Overall opinion: POSITIVE

The Board recommends that the impact assessment report should be further improved, particularly in respect to the following aspects:

(1) The report should distinguish more clearly between, on the one hand, measures designed to tackle directly the corporate tax avoidance problem and, on the other hand, the indirect benefits that are expected in this area by an increased country-by-country corporate tax transparency and facilitation of an informed public debate. In this respect, the report should more clearly set out the complementarity and additionality of the envisaged transparency measures with regards to other relevant corporate tax avoidance measures such as the BEPS/ATAP and the announced relaunch of the Common

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

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Consolidated Corporate Tax Base (CCCTB) initiative. The report should also clarify the role of public transparency in MNE and Member State behaviour on corporate taxation.

(2) The voluntary disclosure option should be further elaborated.

(3) The assessment of the impacts should be more clearly separated from the impact of other tax avoidance measures included in the baseline scenario. The assessment criteria of the options should be better aligned with the objectives and the distinction between tax avoidance and tax transparency issues.

(C) Main recommendations for improvements

(1) Better distinguish between the tax avoidance context and the tax transparency problem

The problem description should explicitly distinguish between the wider context of the problem (tax avoidance and evasion) and the specific tax transparency issue (a problem of informed democratic control of MNEs and Member States) addressed in this report, while explaining clearly how the different initiatives of the Commission's Agenda for Taxation are interlinked. In doing so, the report should put the present initiative into context with other relevant tax measures such as BEPS/ATAP and CCCTB.

The report should better explain why the problem described could not be addressed effectively through tax avoidance and transparency measures taken by Member States.

The baseline scenario should better take into account the BEPS/ATAP proposal, as well as the announced relaunch of the CCCTB initiative, and describe the extent to which these are expected to eventually offer a comprehensive solution to corporate tax avoidance. On that basis, the report should clearly present the additional benefits that the transparency initiative would provide in the meantime.

The report should better frame the tax transparency issue into the wider international context, including the US system. It should elaborate on the views of third countries, in particular non-developing countries.

The importance of reputational risks for MNEs associated to aggressive tax planning should be substantiated and the report should refer more extensively to concrete evidence and research studies on the actual or likely impacts of corporate tax transparency.

2) The voluntary option should be elaborated more

The potential option of voluntary disclosure should be elaborated further. It should better explain pros and cons for companies of voluntary country-by-country tax disclosure with regards to the reputational risk. It should outline how incentives for voluntary reporting will be affected by the BEPS/ATAP initiative and the CCCTB proposal, while taking better account of the increasing role played by corporate social responsibility and responsible reporting by MNEs.

3) Assessments of impacts should be aligned with objectives and tax transparency issues

The report should better spell out and summarise the expected results of enhanced corporate tax transparency, for instance by assessing impacts on companies' and Member

States' behaviour and analysing potential economic effects. In doing so, the additional impact of the transparency measures, as compared to direct tax avoidance initiatives, should be made clear. The report should address more specifically the impacts of the envisaged tax transparency measures on Member States' behaviour and consequences thereof. The report should also clarify whether there are risks associated with the proposed measures, if for example EU and non-EU MNEs will be subject to different treatments and reporting obligations. In this context, stakeholder views should be better reflected in the report. The report should also distinguish between impacts for different types of companies, i.e. business-to-consumer and business-to-business. The preferred option should be assessed with reference to the global context and compared more directly to the US system.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

(E) RSB scrutiny process	
Reference number	2015/FISMA+/107
External expertise used	No
Date of RSB meeting	17 February 2016