



Brussels,
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SUMMARY RECORD OF THE 3rd MEETING OF THE PLATFORM FOR TAX GOOD GOVERNANCE

held in Brussels on 6 February 2014

1. OPENING

- 1.1. The meeting was chaired by Director-General Mr Zourek.
- 1.2. The Chair welcomed all members and more specifically CESI replacing a member who had resigned. This is our first meeting out of 3 in 2014. The second one should take place before summer break. The Chair reminded members that they are not speaking in a personal capacity but as a representative of their organisation. He also reminded everyone that interventions may be quoted in substance but must not be attributed to individual members ("Chatham House Rules").

2. ADOPTION OF THE AGENDA

- 2.1. The Agenda was adopted at the beginning of the meeting without comments from the delegates.

3. SUMMARY RECORD OF THE 16 OCTOBER 2013 PLATFORM MEETING

- 3.1. The summary record had been agreed through written procedure. The Chair asked for comments. One member called for a public review of the Digital Economy Tax Expert Group, requested a list of all expert groups related to tax and an explanation of the relationships between these different groups, and reiterated concerns (expressed on 16 October) about an alleged over representation of business amongst platform members.
- 3.2. The Chair explained that the Commission Services (EC) reviewed the composition of the Platform and concluded there was no need to change the composition except to replace a member who resigned (see above). The Platform has been organised primarily to give input on the implementation of the two Recommendations, not to have a general debate on tax. No organisation currently on the reserve list specialises in a particular area not covered by the present members. The Digital Economy Tax Expert Group was established for a very specific purpose as outlined in the Commission Decision. The group report is expected by June 2014 and will be public. The Chair agreed to give a list of all EC expert groups related to tax. These groups are established to give DG TAXUD expert views on different topics.

4. RECOMMENDATION REGARDING MEASURES INTENDED TO ENCOURAGE THIRD COUNTRIES TO APPLY MINIMUM STANDARDS OF GOOD GOVERNANCE IN TAX MATTERS

- 4.1. The Chair introduced the follow up to the initial discussion on the Commission Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters. The first part of this paper clarified concepts which had raised a lot of questions during the previous meeting. Most of the definitions were taken from the OECD in order to have an internationally accepted starting point. The second part of the document focussed on possible outputs. The overall goal of the Recommendation is the promotion of minimum standards of good governance. The Recommendation suggests a mechanism to ensure consistency between the approaches of the different Member States (MS). The aim of the Recommendation is to align the criteria used by the MS to assess these 3rd countries. Therefore, MS should agree on a common set of criteria and then agree on a common set of measures. The question is: is there agreement inside the Platform that the benchmark proposed in the Recommendation is acceptable?
- 4.2. A range of views were expressed but no real consensus emerged. Several questions already raised during the previous meeting (16 October) were reiterated. Some new points were raised such as will member states identified as non-compliant by the Global forum be considered as Tax Havens, what does artificial mean, does it mean a lack of added value? Some members stated that the Platform should take into account the views of the legislators at the time of creating the legislation. For other members, giving definitions does not provide for a solution; the problem has its origin in complexity and inconsistency, if different standards, such as different GAARs and specific AARs are used, it will only add complexity, legal uncertainty and opportunities for tax avoidance; the primary objective should be to coordinate legislation; even a common GAAR definition would not lead to a common approach due to 28 different interpretations of the common definition. Some members stated that a white list would be a better approach than a blacklist. A consensus emerged between non-MS members in favour of a single EU blacklist given the difficulty in their view to achieve coherence between 28 MS blacklists, and in order to have a level playing field for all companies in all MS.
- 4.3. The Chair reminded members that definitions given in the impact assessment or in the Recommendation are not legally binding. He explained that the focus of the "Tax Haven" Recommendation is not within the EU, where the Code of Conduct and some legal instruments used by the Commission allow to deal with harmful tax practices inside the EU, but deals with 3rd countries that have not agreed yet with the content of EU rules. The EC stated that the issue of manipulations by companies is addressed by the Recommendation on ATP. The definition in the Recommendation is an operational definition aimed at recognising the existence of a problem with artificial arrangements that contradict the object of the law. The EC reminded that there is a feeling at international level that the current system does not work, and the OECD arrived at the same conclusions with BEPS; experience shows that if a group of countries says to other countries that a certain type of behaviour does not work (naming and shaming approach), it can have results, provided this group of countries has a critical mass. This is the logic behind the EU approach. Some members questioned having a lengthy discussion on definitions given the Platform's mandate to discuss the practical implementation of the two Recommendations, and questioned the added value of the EC proposal compared to

OECD work; others argued it should be binding legislation and not a Recommendation.

- 4.4. EC said that a blacklist approach is easier, since having a whitelist would require assessing the whole tax legislation of a jurisdiction. The Chair also insisted on the fact that MS tax administrations have experience in identifying problematic situations; because of problem of resources the EC cannot manage a blacklisting process. Some members argued that since EU blacklists already exist on airline companies, or terrorist's organisations, a similar approach could be followed for jurisdictions considered as Tax Havens. A non-MS member further suggested that a single EU blacklist should not focus on 3rd countries only. The Chair stated that EC was not proposing setting up a single EU list. EU blacklists exist in areas where the EU has a competence; in tax matters, unanimity is needed; moreover, not all MS have the same view of blacklisting.
- 4.5. EC reminded participants that the Code of Conduct Group identifies regimes that are problematic. At the moment, the Group is in discussions with Switzerland because regimes in the Swiss legislation have been identified as problematic. The EU tried to persuade Switzerland to agree to the Code of Conduct criteria but they refused. EC then made a list of (5) harmful regimes and started discussions to persuade Switzerland to cease behaviour that cannot be accepted. EC stressed that the Code of Conduct Group gave a mandate to the Commission to discuss with Switzerland. But it is not sure whether this would be the case in every situation. Some members stated that the work of the Code of Conduct Group remains confidential, if we want a naming and shaming approach, it cannot remain confidential. The Code of Conduct approach is already used and it works; the question is how can a process be put in place to assess 3rd country jurisdictions capitalising on the experience with the Code of Conduct? The Chair reminded participants that the decisions (approved by the ECOFIN Council) of the Code of Conduct Group are public, only the process is kept confidential. EC stated that the Code of Conduct Group has already examined over 500 tax regimes. If the EU takes decisions of the Code of Conduct Group on actual cases, it can legitimately turn towards 3rd countries in relation to similar practices in those countries.
- 4.6. Some members expressed the idea that the Platform could take a list of jurisdiction/harmful regimes to discuss and see if a consensus could be reached. They suggested that the secretariat of the Platform should come up with a couple of concrete examples that could be discussed in a further meeting. According to them, there does not seem to be a common approach between MS, it is difficult to reach an agreement on a process; concrete examples could help the Platform move forward. The opposite view was also expressed, that it is not useful to discuss a lot of examples, the Platform is there to help the Commission in building up a process; no one seems to object to the use of Code of Conduct Group criteria. According to these members, the Platform has to go on with the process; concrete examples will only delay the reaching of an agreement on a concrete output.
- 4.7. At the end of the debate the Chair concluded that given the constraints of the Platform he would ask the Chair of the Code of Conduct Group if that group had identified any particularly damaging harmful tax practices in 3rd countries. On this basis it might be possible to identify jurisdictions that Member States could concentrate on. The Chair will report to the Platform on the reaction of the Code of Conduct Group.

5. RECOMMENDATION ON AGGRESSIVE TAX PLANNING

- 5.1. The Chair introduced the Recommendation on Aggressive Tax Planning (ATP) C (2012) 8806 of 6 December 2012 (this was the first round of discussion on this Recommendation), and asked which MS had taken action. When none replied he reminded them that double non-taxation (DNT) had been raised in at least four Council meetings and wondered why there had been no action to date.
- 5.2. No MS took the floor to support the DTC clause, but a few MS expressed reservations. A MS stated that some DNT cases can be legitimate, that the clause is much too broad and does not sufficiently address unintentional DNT. Several MS and non-MS members also mentioned there are OECD actions to insert anti-abuse rules in the treaties; some MS will wait for the end of OECD work in 2014 before taking a final stance. One MS will introduce a subject to tax clause only on a case by case basis. It was also stated that since part of the problem come from legal uncertainty due to the accumulation of rules, one GAAR is the best solution. Several members support the CCCTB as part of the solution. Some members support compulsory CCCTB (proposition currently tabled: optional).
- 5.3. The EC reminded delegates that the clause in the Recommendation reads: "... *shall be precluded from taxing such item only if this item is subject to tax...*", which means that, with this clause, a MS is not forced to tax if the DNT is deemed legitimate. Without this clause, if a MS has given up its right to tax in a DTC, it cannot tax anymore, even if the situation is abusive. The Chair insisted that the object of the Recommendation is not to force MS to tax, but to allow MS to tax if it considers the situation abusive. This Recommendation is aimed at ensuring DTCs cannot prevent MS from taxing income in situations where DNT would otherwise arise, not at forcing MS to tax in situations where the DNT is considered legitimate. EC clarified that the GAAR in the Recommendation on ATP takes account of discussions inside CCCTB.

6. COUNTRY BY COUNTRY REPORTING (CBCR) PRESENTATION

- 6.1. DG Internal Market and Services started the presentation with a short history of CBCR. There already are CBCR for credit institutions and the natural resources industry. For other type of companies, it does not seem possible to go beyond a review clause. This proposal raised some concerns in the Council. Political momentum is less. There is no further legislative initiative scheduled in the near future. If a new initiative were launched, it would be preceded by a public consultation. CBCR on natural resources companies is aimed at informing citizens in developing countries on what revenue is derived from their country. CBCR on banks is aimed at promoting confidence and trust of citizens in financial institutions. Concerning the enlargement of CBCR to other big companies, there is a link with the BEPS initiative (action 13). Several groups report voluntarily on taxes paid on a CBCR basis. They do so to maintain their reputation, to show how they contribute to public finances in the countries they operate in. Generally, these groups have designed an internal code of conduct on tax behaviour.
- 6.2. One member mentioned that restoring trust is an issue, but to be meaningful data has to be organised. A business contributes to public finance in a specific country, not only with corporate income tax, but also with indirect taxes, wages paid to local workers, etc...unorganised data will only bring confusion. A MS mentioned that it

has strong reservation against the enlargement of CBCR to other types of companies, because the aim of CBCR is not clear. A member questioned why MS are against CBCR since it can be helpful to tax administrations. Another member mentioned that businesses do not want to waste their time on reporting to the public. Reporting to tax administrations is fine, because they understand the information they receive. No consensus was reached on CBCR to the public.

7. TAX PAYER'S CODE PRESENTATION

- 7.1. DG Taxation and Customs Union (TAXUD) presented the state of play of the European Taxpayer's code project. This initiative is foreseen in Action 17 of Commission's Action Plan COM (2012) 722 of 6 December 2012¹ to fight against tax fraud and tax evasion. EC recalled that a consultation process took place, consisting of meeting several business organisations and organising a public consultation, the summary of which has been published in October 2013 on DG TAXUD's website. A Fiscalis Workshop on removing the cross-border direct tax obstacles faced by EU citizens was organised and a Fiscalis Project Group was created with 12 MS to develop a draft European Taxpayers' code. The European Taxpayers' Code should be a model of behaviour for both European taxpayers and Member States' tax administrations to follow rather than a binding template. It should be a non-binding instrument. The guidelines contained in the future European Taxpayers' Code should encourage all parties to apply the general principles and best practices at national level. The European Taxpayers' Code is envisaged to apply to all kinds of tax-related interactions between taxpayers and Member States' competent authorities for tax.
- 7.2. Generally speaking, the project presented by EC was welcomed and delegates showed great interest in this project. In particular, the speed at which the Commission had managed to carry out this action, the involvement of all parties at stake and the form of the initiative (guidelines, no binding instrument) were appreciated. A non-MS participants noted that a European Taxpayers' code should only contain rights and not obligations for taxpayers. Another member asked whether the competent authority mentioned in the presentation refers only to high level officials or also to tax inspectors, expressing the view that the upcoming Code should address the relations between taxpayers and tax services. Another organisation asked whether the code could be extended beyond the EU to also encompass other jurisdictions and in particular developing countries. Some members referred to the positive correlation between tax compliance and the perceived usefulness of tax. According to them, the EU should promote transparency in public expenses in order to improve tax compliance.
- 7.3. The EC reminded delegates that the Action plan foresees that the European Taxpayers' code should contain rights and obligations both for the taxpayers and

¹ "In order to improve tax compliance, the Commission will compile good administrative practices in Member States to develop a taxpayers' code setting out best practices for enhancing cooperation, trust and confidence between tax administrations and taxpayers, ensuring greater transparency on the rights and obligations of taxpayers and encouraging a service-oriented approach.

The Commission will launch a public consultation on this at the beginning of 2013. By improving relations between taxpayers and tax administrations, enhancing transparency of tax rules, reducing the risk of mistakes with potentially severe consequences for taxpayers and encouraging tax compliance, encouraging Member States' administrations to apply a taxpayers' code will help to contribute to more effective tax collection."

tax administrations. The competent authority mentioned in the presentation refers to the auditors dealing with day to day operations in the tax administrations. Considerations on the perceived usefulness of tax by the public have underlined the work on the Taxpayer's code, but it is not the purpose of the Code to address public spending issues. The European Taxpayers' code aims at addressing the relations between taxpayers and tax administrations within the EU in first instance, but it could be used in the future for developing countries/other jurisdictions.

8. OTHER ISSUES

- 8.1 The Platform secretariat received 2 contributions from 2 different organisations, one on all issues on this meeting agenda and the other one on Double Taxation (DT) cases outside the Transfer Pricing Area. For one of these members, there was a risk after the previous meeting of thinking there are no problems left with DT. This is not the case and the situation might worsen with BEPS if outcomes are not coordinated. Confidence between taxpayers and tax administrations has to be restored. Ways to promote arbitration to resolve double taxation have been discussed and a Member mentioned he would send a document containing a proposal to introduce a new instrument to help resolving remaining cases of double taxation. Another member questioned the importance of the document on DT cases since it only concerns 13 companies while tax avoidance and tax evasion cost MS one trillion Euros collectively. Another member asked if this 1 trillion figure has been validated by the EC.
- 8.2 The Chair stated that if we talk about DTC, it is legitimate to talk about DNT. The 1 trillion figure comes from an external study; it was not calculated or reviewed by EC. It is very difficult to estimate the size of the shadow economy not least because the definition of the formal/informal economy is not consistent between MS. Moreover, the informal economy is by definition difficult to estimate. The European Semester shows that the capacity of tax administrations to collect tax effectively varies between MS. It is very difficult for the EC to find any data. There is a lot of work to be done on this issue, but even if this figure is reduced by 5 or 10%, it would still be an impressive amount of money, and so we can say there is a big issue with tax avoidance and tax evasion.

9. CONCLUSIONS AND EXPLAINING NEXT STEPS

- The Chair thanked all members for the constructive session. The EC will issue a summary of the meeting.
- The Chair will ask the Chair of the Code of Conduct Group if that group had identified any particularly damaging harmful tax practices in 3rd countries.
- The Platform had the first round of discussion on ATP and will come back to this subject on the next meeting.
- The Chair informed members that when the Taxpayer's Code is finalised, the secretariat will provide them with a copy.
- The Chair reminded members that deliberations on CBCR are due to take place in April.

- The next meeting will probably be scheduled for June 2014. If other members want information to be disseminated, they are invited to follow the example of the two organisations which sent contributions for this meeting.