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PLATFORM FOR TAX GOOD GOVERNANCE

**Discussion paper on the follow-up of the Commission
Recommendation regarding measures intended to encourage
third countries to apply minimum standards of good
governance in tax matters¹**

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¹ Commission Recommendation of 6.12.2012, C(2012) 8805 final

The purpose of this paper is to follow-up the discussion held at the Platform meeting of 16 October 2013 on the Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.

It addresses a clarification request on some definitions used in the context of the work of the Platform, and prepares the discussion for possible outputs.

1. CLARIFICATION OF SOME CONCEPTS

At the meeting on 16 October 2013, some members raised the question of the definition of ‘aggressive tax planning’ and of ‘tax havens’. The Chair indicated that there would be a clarification of various terms and expressions.

The expressions used in the work of the Platform are those provided by the two Recommendations C(2012)8805 and C(2012)8806, and in the accompanying Impact assessment report SWD(2012)403 (in particular annex 14):

- ***Aggressive tax planning** consists in taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence).*

***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 (OECD Glossary Tax Terms).*

- ***Tax avoidance** is a term 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 is usually in contradiction with the intent of the law it purports to follow (OECD Glossary Tax Terms).*
- ***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 (OECD Glossary Tax Terms).*
- The expression ‘tax havens’ is not used in Recommendation C(2012)8805, but is often used in an informal way (meetings, papers, conferences, etc.) to designate third countries not complying with the minimum standards of good governance in tax matters mentioned in point 3 of the said Recommendation.

For all other definitions used in the context of the work of the Platform, members are invited to refer to the Glossary provided in annex 14 of the above-mentioned Impact assessment report.

2. PREPARATION FOR THE DISCUSSION OF POSSIBLE OUTPUTS

The agreed work program provides that ‘*the Platform will discuss and suggest a mechanism or process to ensure consistency in the establishment and monitoring of the black lists. Where appropriate, the Platform can suggest follow-up or complementary*

steps to the current Recommendation, both regulatory and organisational, with a view to contributing to its essential goal: global promotion of the EU standards of good governance in tax matters’.

In considering the possible outputs from the Platform’s discussions, the Commission services come to the conclusion that on some issues the group is close to consensus (2.1) while some others have not been sufficiently discussed to allow a clear view of the Platform members’ opinions (2.2).

2.1. Emerging outputs

The discussion at the previous meeting on 16.10.2013 reflects, subject to the views mentioned in the summary record, a consensus on a positive approach to questions on the criteria (questions 1 to 3 of document *Platform/003/2013/EN*) and on the questions concerning EU internal and external standards (questions 4 and 5 of the document *Platform/003/2013/EN*).

These can be summarised as follows:

- The work of the Global Forum should be form part of any assessment of the Transparency and Exchange of Information criteria under the Recommendation, and Platform members foresee no major practical or administrative difficulties in applying this approach in practice;
- The Code criteria and existing Code assessments should be used as a benchmark for the purpose of applying the fair tax competition criterion of the Recommendation;
- Intra-EU tax standards and regulations are important in relation to the promotion of tax standards and regulations towards third countries, and reviewing internal standards is needed to raising the bar in the context of recent international developments.

1) Platform members are invited to comment on these first outputs

2.2. Issues remaining for discussion

Several points on which the Commission requested the opinion of the Platform members remain open and need to be further discussed during his meeting in order to clarify the opinions of Platform members. These questions are indicated below with the corresponding text of document *Platform/003/2013/EN*.

2.2.1. How to achieve a consistent listing process within the EU

On the basis of paragraph 21-23 of document *Platform/003/2013/EN*, the discussion at the meeting on 16.10.2013 was in favour of a consistent listing process within the EU, subject to the views reflected in the summary record.

However, no views were expressed on how such consistency could be best achieved.

As indicated in document *Platform/003/2013/EN*, consistency amongst Member States is critical to ensure the effectiveness of the listing process, but there is currently no institutional arrangement to this purpose. Consistency concerns both the question **which**

third countries should be reviewed for having harmful tax regimes as well as the **review process itself**. There are various possibilities to achieve this:

- Member States could discuss these issues in Council Working Parties;
- Member States could ask the Code of Conduct Group to play a role in the process;
- Member States could mandate the Commission to assist in the technical work.

- 2) What are Platform member's views on how to select the third countries to be assessed? Do Platform members have suggestions on criteria to be used for selecting these countries (i.e. volume of trade flows, geographical location, financial data...)?**
- 3) What are the Platform members' views on how a consistent listing process could best be achieved amongst the 28 Member States?**

2.2.2. Consistency in applying positive/negative measures

Next to the listing itself, also the positive and negative measures following such listing will need to be applied consistently and in a coordinated manner to ensure the effectiveness of the instrument. 28 Member States requesting a third country to renegotiate its bilateral tax treaty to exclude from treaty benefits residents that benefit from a harmful tax regime in that third country will have a much bigger impact than one or two individual Member States taking such action. Similarly, as regards third countries that are willing to comply but that need help in order to meet all requirements, some form of coordination between MS would be required as regards the organisation of such assistance the potential secondment of personnel.

- 4) Do Platform members believe that a form of coordination would be needed with respect to the negative and positive measures?**
- 5) How do Platform members believe that such coordination could best be achieved?**
