



Brussels,
TAXUD/D1/AC/lc(2014)

SUMMARY RECORD OF THE 4th MEETING OF THE PLATFORM FOR TAX GOOD GOVERNANCE

held in Brussels on 10 June 2014

1. OPENING

- 1.1. The meeting was chaired by Director-General Mr Zourek in the morning and by Director Philip Kermode in the afternoon.
- 1.2. The Chair informed members that the next meeting has been scheduled for 16 October. Some members mentioned a conflict of dates with the IFA congress the same week (and the UN tax experts committee the following week). The Platform (PF) secretariat will try to find if another date is possible, given the high constraints on the availability of meeting rooms.

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 following comments received. Following a request from members arguing that the one trillion Euros estimation of tax evasion and tax avoidance was either overestimated or underestimated, the Chair agreed to put a reference to these studies on the Platform website, and made it clear that the summary record of the last meeting would not change as it reflects what was said during the meeting. The Chair informed members that EC was working with EUROSTAT to find a bottom up approach to evaluate tax evasion/avoidance although, by its nature, the black economy is difficult to estimate.
- 3.2. The Chair also agreed to a request from a non-MS member to put on the agenda of the next meeting a point on the OECD BEPS project. The Chair informed that the report of the Expert Group on Taxation of the Digital Economy had been released on 28 May and that the link to the report would be circulated. Please find here under the link to the Expert Group on Taxation of the Digital Economy webpage containing the 28 May 2014 report.

http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/digital_economy/index_en.htm

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

- 4.1. The Chair informed members that the Chair of the Code of Conduct (CoC) group reacted positively to his letter concerning the identification of harmful tax practices in 3rd countries, and that this will be put on the agenda at the next meeting of the CoC group.

The Chair introduced the discussion paper *Platform/8/2014/EN* on Recommendation C(2012)8805. The first part attempts to summarise the emerging consensus reached during previous meetings. The second part of the document focusses on issues where further discussion is needed in order to lead to possible outputs.

Emerging outputs

- 4.2. A lengthy discussion took place. One MS and several organisations questioned the merits of promoting towards third countries the principles of the CoC. On the contrary, other MS and organisations supported this element as being not controversial and consistent with established EU policy and OECD work. There was finally a consensus on the emerging output summarised under section 1 (Issues remaining for discussion) of document [*Platform/8/2014/EN*].

Issues remaining for discussion

How to ensure a consistent listing process within the EU

- 4.3. This point triggered several questions, amongst which: the suggested use of a white list instead of blacklists, but there was no support from MS; the combination of the CoC criteria (general/specific measures, low/zero rate, ring-fencing...), and the Chair reminded the group of the mandate it had received to apply them in the dialogue with Switzerland.
- 4.4. There was an agreement (although with the explicit support of only a very limited number of MS) on the Commission proposal to review Member States' blacklisting criteria and also measures (as suggested by a non-MS member) triggered by these lists. This review will use the comparative study made by PWC (covering 14 MS) as a starting point, complemented by a questionnaire to the 28 MS. On this basis, the Platform will examine how the consistency and transparency of the existing lists can be improved, how they relate to the Recommendation, and what MS can do. A MS insisted that for this approach to be successful, all MS had to answer the questionnaire. The Chair underlined this exercise was useful to business because it ensures transparency, and to MS because it will allow them to share best practices. The Chair also explained that if the same countries appeared on most MS lists, this might be a presumption that these countries are the most problematic. Some MS shared their experience in managing a blacklist with other members during the discussion.

Consistency in applying positive/negative measures

- 4.5. Several arguments were raised, such as the difficulty to apply general measures against non-compliant third countries to a big powerful jurisdiction because of the risk of countermeasures. The Commission highlighted that in international taxation there is currently a bilateral mind-set while there is a need for a move towards a

multilateral approach. One non-MS member recalled the need to strengthen EU assistance to developing countries on policy making, administrative support and capacity development.

- 4.6. At the end of the debate the Chair invited MS to respond to the questionnaire in order to enable the Platform to come to a more operational set of points on this subject for the next meeting.

5. RECOMMENDATION ON AGGRESSIVE TAX PLANNING

- 5.1. The Chair introduced the follow up to the initial discussion on the Commission Recommendation on Aggressive Tax Planning (ATP). The first part of this paper exposes an issue on which the Commission considered an agreement had been reached during previous meetings (the need for a single GAAR). The second part of the document focusses on issues where further discussion is needed in order to lead to possible outputs.
- 5.2. There was however a lengthy discussion on the GAAR issue. Several members took the view that introducing a single GAAR would, given the differences between the 28 tax systems and the type of legal system (civil law vs. common law), add legal uncertainty due to the differences of interpretation of the GAAR in the 28 MS. The Chair underlined that despite discrepancies between Tax Systems, the jurisprudence of the ECJ is nevertheless implemented in all 28 MS; do members think that 28 different GAARs is a simpler situation than a single one? One non-MS member argued that eliminating the many different existing GAAR rules in MS in favour of a common EU GAAR would probably be a step forward. One member highlighted that every GAAR, by definition, increases uncertainty for artificial arrangements. According to another member, a single GAAR could help reduce discrepancies between Civil Law Countries and Common Law countries. The Chair highlighted that multiple Anti Abuse Rules can be abused themselves and cause problems to honest business. Some MS prefer to wait for an OECD solution. The Commission explained that the GAAR in the Recommendation is to be seen as an EU-compatible minimum standard, building on the Council discussions on the GAAR proposed in the CCCTB.
- 5.3. In the absence of sufficient consensus at this stage, Platform members agreed to the Chair's proposal to request more information from MS on the GAARs currently included in national legislations. This comparative review should allow the Platform to discuss, in the light of the Recommendation and of the OECD work on GAAR and Limitation of Benefits (LOB), possible ways forward such as simplification. The Chair indicated it would circulate the questionnaire to MS.
- 5.4. On the subject to tax clause, there were some strong reservations from some MS on the scope, which by being too broad could be used by the other contracting state to tax items that the MS concerned wants to exempt; this could be prevented with a more specific (tax or jurisdiction) scope. A non-MS member asked whether tax on employment income would be covered, and it was clarified that the definition of 'tax' under the Recommendation should be understood as provided by its article 2-a)¹. It seems from the discussion that no MS intends to include it in a foreseeable

¹ Article 2-a) provides that "tax" means income tax, corporation tax and, where applicable, capital gains tax, as well as withholding tax of a nature equivalent to any of these taxes.

future. The Chair suggested to stop the debate on this subject and proposed that the Commission reflects further on the basis of the discussion before coming back to the group.

6. PRESENTATIONS ON REMAINING CASES OF DOUBLE TAXATION

- 6.1. The Chair invited Business Europe and MEDEF to present their papers on remaining cases of Double Taxation (DT) outside the transfer pricing area that had already been circulated to members. There was quite an intensive debate following these presentations. Some members fear that with the BEPS work, the number of DT cases could increase. One member insisted on the EU being perceived as one single market by MNE's which explains why DT is not acceptable. Several members think the CCCTB would be part of the solution. Another non-MS member pointed out that the Business Europe presentation did not give any estimation of the amounts concerned by remaining cases of DT, but the amount of DT should not be important compared to the amount of tax evasion/avoidance according to him. The Chair underlined that if the problem is not quantified, it is difficult for the Commission to propose a solution. A MS suggested waiting for the outcome of the OECD BEPS work (Action 14).. Platform members are invited to send written comments on the MEDEF presentation. The Chair stated that this issue would be clearer after the first round of BEPS input.
- 6.2. The Chair invited CFE to make a presentation on arbitration. According to this presentation, there are 4000 pending MAPs, with an average duration of about 25,5 months in 2012. CFE suggests the creation of an Arbitration Court in which cases would not only be country against country (like in the existing arbitration mechanisms), but a taxpayer could also request arbitration. Several questions were raised: would this be a global Court (vs EU limited)? Would developing countries be given access to this Court? How would it be financed? The Commission recalled it had been looking into the issue and stressed the need to keep solutions as simple as possible. Despite specific requests from the Chair, MS did not comment on this point.

7. CONCLUSIONS AND NEXT STEPS

The Chair thanked all members for the constructive session.

The Platform secretariat will:

- issue a summary record of the meeting that will be circulated to members and put on the Platform website once approved;
- circulate the report of the Expert group on the taxation of the digital economy (see link under point 3.2), and the press release on savings (please follow: http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/revised_directive/index_en.htm);
- look into the possibility of moving the next meeting to another week, if the availability of meeting rooms allows doing so

- publish the references sent by members on estimates of tax evasion and avoidance (subject to copyright restrictions)².

In order to prepare for a stock-taking report, the following actions will be taken:

- a) Work on non-cooperative jurisdictions
 - i) The Platform secretariat will send the questionnaire to MS on existing criteria and measures triggered, and prepare on this basis a comparison across MS;
 - ii) At its next meeting, the Platform will hold a detailed discussion and examine how the consistency and transparency of the lists can be improved, how they related to the Recommendation, what MS can do, and how the views of the Code of conduct group can be integrated;
- b) Work on aggressive tax planning
 - i) The Platform secretariat will send the questionnaire to MS on existing GAARs;
 - ii) The Platform will compare MS' GAARs with the Recommendation, consider the work achieved in the OECD (including on a LOB clause), and consider possible ways forward;
- c) Work on double taxation
 - i) Platform members are invited to send written comments to the Secretariat on the MEDEF proposals
 - ii) On this basis, the Platform secretariat will prepare a document on the state of play of DT issues in the EU (outside the Transfer Pricing Area) and in relation to the OECD BEPS project.

² Gabriel Zucman "La richesse cachée des nations" Ed Le Seuil – République des idées, Novembre 2013
ISBN-13:978-2021114317

Jeroen Lammers "How Much Weight Does €1 Trillion Carry?" in TAX NOTES INTERNATIONAL
March 31, 2014