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PLATFORM FOR TAX GOOD GOVERNANCE

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

Meeting of 10 June 2014

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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 discussions held at the Platform meetings of 16 October 2013 and 6 February 2014 on the Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters.

It prepares the drafting and agreement on 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 on emerging outputs (1) while some others have not been sufficiently discussed to allow a clear view of the Platform members' opinions (2).

1. EMERGING OUTPUTS

The discussions at the previous meetings on 16 October 2013 and 6 February 2014 reflect a consensus amongst members who expressed themselves, mainly non-MS organisations, 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 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 confirm their agreement on these three first outputs.

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 this meeting in order to clarify the opinions of Platform members and reach an agreement on the drafting of possible output. These questions are indicated below with the corresponding text of document *Platform/003/2013/EN*.

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

a) On the basis of paragraphs 21-23 of document *Platform/003/2013/EN*, the discussion at the meeting on 16 October 2013 concluded in favour of a consistent listing process within the EU. There was however no clear consensus on how this could best be achieved. The non-MS Platform members insisted on the need to have 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.

Before looking at such a solution, which as explained at the meeting on 6 February 2014 is not currently foreseen by the Commission, the Platform is invited to look at other ways of achieving similar results, building on the experience of tax administrations and existing MS lists.

In this view, the Commission services suggest that the Platform:

- reviews Member States' lists to compare the criteria used, to identify possible inconsistencies between MS, and to discuss how they could be solved. This review could use the comparative study made by PWC as a starting point², complemented by a questionnaire to gather MS contributions (see proposed questionnaire in Annex 1) in order to deepen the primary analysis by PWC which covered only 14 MS;
- on this basis, examines how the consistency and transparency of the existing lists can be improved.

2) Do Platform members agree on this proposal of a way to ensure consistency and transparency?

b) The question which third countries should be reviewed for having harmful tax regimes as well as the review process itself would also need to be considered by the Platform, on the basis of the Code of Conduct Group reply. The Chair of the Code of conduct Group replied positively to the Chair of the Platform.

² please follow these links:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/pwc_study.pdf

http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/pwc_study_annex.pdf

2.2. Consistency in applying positive/negative measures

As already mentioned in the Discussion paper *Platform/003/2013/EN*, next to the listing itself, the positive and negative measures following such listing would 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 would 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, for instance the potential secondment of personnel.

3) Do Platform members agree that some form of coordination would increase the effectiveness of the negative and positive measures?

4) How do Platform members think that such coordination could best be achieved?

Annex 1: questionnaire for Member States

- 1) Does your MS use the following criteria in identifying non-cooperative tax jurisdictions or tax havens?
 - Effective compliance with transparency and exchange of information standards (point 3a of the Recommendation C(2012) 8805) ;
 - Absence of harmful tax measures in the area of business taxation (point 3b of the Recommendation C(2012) 8805)
- 2) Does your MS use additional criteria? If yes, could you please list and explain these additional criteria.
- 3) Which countries are on the list(s)? Is the list publicly available (please indicate the link)
- 4) How is the list updated?
 - Process put in place to review the list
 - Periodicity of the update.
 - Which legal/regulatory/administrative provision is used to update the list and put it into force?