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Fight against tax evasion in the EU

(background note for session 2)

General Context

The question of tax evasion, tax havens and corporate tax transparency at the time of "Panama Papers", "Swiss Leaks" or "LuxLeaks" is a widely discussed and controversial topic. Due to the lack of tax and accounting information from multinational corporations, as well as from various tax jurisdictions, it is extremely difficult to determine how much tax revenues are lost by which state. Analyses and studies agree that the sums are globally in the area of hundreds of billions of euros annually. After analyzing hundreds of empirical analyses, the OECD estimates the annual global losses of national budgets because of base erosion and profit shifting (i.e. BEPS) to be from \$ 100 to 240 billion per year. The IMF estimates are even higher. According to a working paper from October 2015, the lost revenues only from OECD countries represent more than \$ 400 billion annually. The estimates in the research by Professor Murphy of 2012 ("Closing the European Tax Gap") are of even higher order, losses within the Member States of the European Union are in the amount of more than € 860 billion annually. The available data show mainly two evident notions, firstly that tax evasion is a huge problem for national budgets; and secondly that it is virtually impossible to even quantify the actual size of the losses precisely without taking proactive steps towards transparency.

The fight against tax evasion and aggressive tax planning is therefore not just a European, but a global priority in recent years. On 16 December 2014, the Commission presented its Work Programme for the year 2015 called „A New Start,“ in which it stipulated its ambition to „step up efforts to combat tax evasion and tax fraud and respond to our societies' call for fairness and tax transparency.“

The first step of this effort was the **Tax Transparency Package**, presented by the Commission on 18 May 2015. The aim of the package was to „ensure that Member States are equipped with the information they need to protect their tax bases and effectively target companies that try to escape paying their fair share of taxes.“ The central component of the package was a **legislative proposal to amend Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (so called DAC 3)**, in order to improve cooperation between Member States in terms on their cross-border tax rulings, thus marking the start of a new era of tax transparency in the European Union. The directive was adopted by Council on 18 December 2015.

The package also contained a communication that outlined a series of other initiatives aimed at advancing the tax transparency agenda. These were:

- assessing possible new transparency requirements for multinationals,
- reviewing the Code of Conduct on Business Taxation,
- quantifying the scale of tax evasion and avoidance,
- repealing the Saving Tax Directive.

The Action Plan

A major development was the presentation of the **Action Plan for Fair and Efficient Corporate Taxation in the EU** („Action plan“ hereinafter) on 17 June 2015. The Action Plan sets out a series of initiatives to tackle tax avoidance, secure sustainable revenues and strengthen the Single Market for businesses. Collectively, these measures are to provide a foundation on which to build a fairer, growth-friendly corporate tax framework for EU. The proposed measures would contribute to achieving revenue stability, a stronger Single Market, greater corporate resilience and efficiency and a fair and level-playing field for businesses. The harmonisation of corporate tax rates is not part of this agenda. The aim is to coordinate Member States tax systems so that they can better combat aggressive tax planning.

The Action plan identified five key areas for action:

1. Re-launching the Common Consolidated Corporate Tax Base (CCCTB);
2. Ensuring fair and effective taxation where profits are generated;
3. Creating a better business environment;
4. Increasing transparency;
5. Improving EU coordination.

Anti-Tax Avoidance Package

Based on the Action plan, on 28 January 2016, the Commission presented its **Anti-Tax Avoidance Package (ATAP)**. The package consisted of:

- a **Chapeau Communication** and **Staff Working Document**, which explained the political and economic rationale behind the individual measures;
- the **Anti-Tax Avoidance Directive**, which aims to implement a **series of recommendations and minimum standards under the OECD BEPS and other measures against tax evasion** in the EU legislation. The Commission used some of the work already discussed at the OECD and during previous Presidencies, in the international aspects of the preparation of the CCCTB Directive to prepare the Draft Directive. The Draft Directive contains the following measures:
 - General Anti-Abuse Rule (GAAR);
 - Interest restriction/limitation;
 - Controlled Foreign Company (CFC);

- Exit taxation;
- Hybrid mismatches.
- An amendment of the Administrative Cooperation Directive (“**DAC 4**”), which aims to incorporate a minimum OECD BEPS standard for the **Country-by-Country Reporting (CbCR)** into the EU legislation. The approved compromising proposal for a directive establishes a comprehensive and effective administrative cooperation between tax administrations by modifying the obligatory automatic exchange of information between tax administrations of the Member States and **obliges multinational companies with a consolidated turnover over 750 million euros to submit the information on the financial data of individual group members by country (CbCR)**, including the amount of income, profit before tax, income tax paid and current tax income, number of employees, registered capital, retained earnings and property to the tax authorities. **The first automatic exchange will take place in the year 2018.**
- a **Recommendation on Tax Treaties**, which advises Member States how to reinforce their tax treaties against abuse by aggressive tax planners, in an EU-law compliant way;
- a **Communication on an External Strategy for Effective Taxation**, which sets out a coordinated EU approach against external risks of tax avoidance and to promote international tax good governance.

All these initiatives were approved at the level of the Council of the European Union and therefore the ATAD Directive must be implemented into the national legislation during 2017. Since the Directive only includes intra-EU rules on hybrid mismatches it paves a new Commission proposal for rules on hybrid mismatches in relation to third-countries, the so called ATAD 2. The proposal is expected in autumn 2016.

Also, at the present time, during the SK Presidency, negotiations on the common criteria for the assessment of the non-cooperative jurisdictions, the so called Blacklist, are in process.

Transparency Package

On July 5, 2016, the Commission has set out the next steps in its campaign to boost tax transparency in order to fight tax evasion and avoidance in the EU – the so called **Transparency Package**, taking into account the problems highlighted in the recent media leaks known as the Panama Papers.

The key actions include:

- **Providing tax authorities with the information they need:** In order to spot tax evaders, tax authorities must know the ultimate beneficiary behind every company, trust and fund. This legislative proposal takes the form of an amendment to the Directive on Administrative Cooperation in the field of taxation (“**DAC 5**”), the aim is to give tax authorities the possibility to access to national anti-money laundering information, particularly beneficial ownership and due diligence information.

- Extending the information available to authorities through **enhancement of the Directive against money laundering activities** (i.e. AMLD).
- **Increasing cross-border transparency on beneficial ownership** through the possible implementation of an automatic exchange of information on beneficial owners of companies.
- **Improving oversight of tax advisors' activities**, which would include a **compulsory disclosure of harmful schemes**. The Commission will examine how to shed more light on tax advisors' activities and create effective disincentives for those that promote and enable aggressive tax planning.
- **Promoting tax good governance worldwide**. As a follow-up response to the Council conclusions to the External Strategies, a process will be initiated leading to the so called **blacklist of non-cooperative jurisdictions**, which should be finalized by the end of 2017.
- **Protecting whistle-blowers**. Many cases of tax evasion and avoidance have recently come to light thanks to the actions of whistle-blowers. The Commission will assess the need for horizontal or additional sectorial measures in order to increase the protection of whistle-blowers.

A proposal to amend the Directive 2013/34 / EU with regards to the publication of information on income tax of certain enterprises and branches (i.e. **Public CbCR**) is also a subject of negotiations. **The proposed Directive requires multinational enterprises to disclose information concerning the income tax of the individual group members by country, including a description of activities, number of employees, amount of revenue, profit / loss before tax, income tax paid and current tax expense.** Detailed information will be published by Member States and by non-EU countries on a list of non-cooperating countries prepared by the Commission. For other non-EU countries, aggregate data will be published. Similar reporting requirements are in place for banking, mining and wood processing industry. The Commission does not expect any increase in the administrative burden nor the erosion of competitiveness of multinational enterprises (MNEs), since the aim of the directive is to change the behavior of the MNEs and increase their transparency.

In the opening months of the presidency, the Slovak Republic has negotiated a draft of the EU Council Conclusions on the Commission announcement to further improve transparency in tax matters, which will be presented at the October Ecofin Council. The Slovak Republic also achieved a common understanding at the technical level on the DAC 5 proposal, and thus ensured a significant progress in this field.

The aim of the Slovak Presidency of the Council of the European Union is to move the debate toward the most significant compromise, and it is important to maintain an adequate balance between the priorities of the EU, which aim to fight aggressive tax planning, and the aim not to increase the administrative burden on SMEs.