

## Achieving a Fairer and More Efficient Corporate Tax System within the EU - Five Key Areas for Action

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By Piergiorgio Valente

On June 17, 2015, the EU Commission released a new Action Plan<sup>[1]</sup> focusing on ensuring a Fair and Efficient Corporate Taxation System in the EU.

As a result of the various EU efforts, the last few years saw an increased number of significant initiatives towards fairer taxation. Several initiatives, which have been successfully implemented since 2005, are reported herein below:

- a. In 2005, the EU pioneers automatic exchange of information for savings income;
- b. In 2012, the EU releases the first EU Action Plan to counteract Tax Fraud and Tax Evasion;
- c. In June 2013, the EU opens investigations on tax rulings;
- d. In December 2014, the EU commits to the widest extension of automatic information exchange on financial accounts;
- e. In March 2015, the EU transparency package is released, proposing automatic exchange of information on tax rulings;
- f. In June 2015, the EU releases its Action Plan on Corporate Taxation.

In order to reflect the EU's new approach to corporate taxation (within the international tax framework and the BEPS project, as well as within the internal market), the Action Plan set forth targeted areas to effectively tackle tax avoidance and evasion, while ensuring sustainable revenues to Member States and a level playing field for European companies.

Such measures aim at:

- ensuring coordination and cooperation among Member States in terms of policy and frameworks;
- streamlining tax systems in general;
- ensuring that there is an effective connection between taxation and the location in which economic activity takes place;
- guaranteeing tax transparency and protection of the Internal EU Market among Member States, and also Third-Countries (Non Cooperative Jurisdictions), along with a stronger commitment on companies to engage in fair/transparent tax practices.

Five (5) key areas were identified as being vital to reach the plan's intended purpose.

Such key areas will allow us to witness a "re-birth" of a mandatory Common Consolidated Corporate Tax Base (CCCTB).

The key changes are that the (C)CCTB will be mandatory for multinationals and implementation will be carried out through a tiered approach which does not include consolidation in the initial stage. The Legislative Proposal is expected to include an element of cross-border loss relief initially until consolidation is re-introduced at a later stage.

This re-launching of the (C)CCTB envisages:

- a. Reducing the complexities and compliance costs for cross-border companies - groups' consolidation;
- b. The designing thereof as a tool to counteract BEPS opportunities in the EU;
- c. Eliminating mismatches between/among national systems (through a common base approach) as well as the possibility of manipulating transfer pricing;
- d. Allowing transparency on the effective tax rate of each jurisdiction and a consistent implementation among Third-Countries.

Taking into consideration the differences with the previous CCCTB proposal, a new proposal is expected to be released shortly.

Ensuring effective taxation where profits are generated is another key action area. Pursuant to the EU Commission, a fully-fledged CCCTB would make a major difference in reinforcing the link between taxation and the territory in which profits are generated. Such effective taxation will also depend on/require a consistent EU implementation of the new international standards arising from the OECD BEPS project (e.g., review the definition of P.E. and improve CFC rules).

In addition, and to achieve the envisaged goal, the Commission recommends that the Code of Conduct for Business Taxation criteria be modified in order to give high priority to ensuring effective taxation; it recommends the recasting of the Interest and Royalty Directive and requires an improvement of the Transfer Pricing Framework in the European Union. Finally, such objective will be realized by linking



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preferential regimes to where value is generated (implementation of the new «modified nexus approach»).

Such additional measures aimed at an enhanced tax environment for businesses, as included in the new Action Plan, clearly emphasize that utter and across-the-board coordination among MSs on tax policy is essential. Furthermore, the Plan outlines that implementation of measures to reduce administrative burdens, compliance costs and tax obstacles in the Single Market are necessary. Until full CCCTB consolidation is established/implemented, group entities should also be able to offset profits and losses made in different MSs. The need to improve double taxation dispute resolution mechanisms is also outlined in the EU Plan (a potential extension of the Arbitration Convention scope within the EU is under discussion).

Tax Transparency is another key action area. Among some of the measures proposed by the EU, we can also find:

- a proposal for automatic exchange of information on cross-border tax rulings (implementation is foreseen by January 2016);
- the commitment to prepare an impact assessment on further options to increase transparency (to be concluded by March 2016);
- the commitment to proceed with work on corporate tax transparency, such as country-by-country reporting options;
- agreement - requiring implementation of EU recommendations C(2012)8806 and C(2012)8805 - on a common approach to non-cooperative tax jurisdictions in EU MSs.
- publication of an EU-wide list of third-country non-cooperative tax jurisdictions (NCJs) to be regularly updated, as well as further work in screening third countries for compliance with tax good governance standards to be performed; coordination on possible counter-measures towards third country NCJs.

Moreover, the EU Commission launched a consultation on further corporate tax transparency<sup>[2]</sup> (deadline to provide replies was set for September 9th) to understand whether further public disclosure obligations in regard to certain corporate tax information should be introduced. As the Consultation states in its preamble *“This consultation document sets out a number of tentative options. One of the key questions to be considered in relation to these options is whether (i) to follow up or implement the new OECD recommendation in the context of action 13 either at national or EU level which would mean to improve information exchange between tax authorities and (ii) whether to disclose certain tax information to the public, for example by extending requirements on country-by-country reporting currently in place for financial institutions to all other sectors. Respondents are encouraged to propose other relevant options if they wish. This public consultation also seeks views on the potential impact of enhanced tax transparency<sup>[3]</sup>”*.

The Action Plan also stresses the necessity to provide and strengthen EU Coordination Tools (mainly to improve MSs' tax audit coordination and reform the Code of Conduct).

In this field, the EU points out the need to:

- make better use of existing instruments/EU legislation for administrative cooperation between Member States' Tax Authorities;
- proceeding with the work of EU expert groups (such as the Code of Conduct for Business Taxation Group and the Platform for Tax Good Governance);
- improve Member States' coordination on tax audits (currently there are divergent national approaches on audits among Tax Authorities, which are making a better use of the Directive on Administrative Cooperation that provides for cooperation among Member States on tax inspections and audits);
- reform the Code of Conduct for Business Taxation and extend the Platform for Tax Good Governance's mandate (the EU Commission will be submitting a proposal to extend the mandate of the Code Group in order to change the working methods of this Group
- guidance on how to implement non-legislative EU measures against corporate tax avoidance should also be provided).

As we can see, harmonization of corporate tax rates is not part of the agenda and the Action Plan does not include specific measures/or legislative proposals. Consequently, the success and the progress in the key areas identified in the Plan will mainly depend on both the Commission and Member States.

Although significant pressure is being exerted on corporations, *“ultimately, the key to reforming corporate taxation in the EU, to make it fairer and more efficient, is in the hands of the Member States. Member States need to overcome their differences for the sake of fairness, competitiveness and efficiency. It is therefore time to move forward”* [COM(2015) 302]<sup>[4]</sup>.

[1] COM(2015) 302 See: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/fairer\\_corporate\\_taxation/com\\_2015\\_302\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf)

[2] [http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index_en.htm)

[3] [http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index_en.htm)

[4] COM(2015) 302 See: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/fairer\\_corporate\\_taxation/com\\_2015\\_302\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf)