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IMPACT ASSESSMENT

Accompanying the document

**the Communication from the Commission to the European Parliament and the Council -
An Action Plan to strengthen the fight against tax fraud and tax evasion**

**the Commission Recommendation regarding measures intended to encourage third
countries to apply minimum standards of good governance in tax matters**

the Commission Recommendation on aggressive tax planning

{ COM(2012) 722 final}
{ SWD(2012) 404 final}

ANNEX 13: LIST OF ACTIONS CONSIDERED IN THE COMMUNICATION OF 27 JUNE 2012

1. INTRODUCTION

The Communication of 27 June 2012 identified 26 concrete actions aimed at reinforcing the fight against tax fraud and tax evasion including in relation to third countries.

This Annex provides first an overview of these 26 concrete actions and then detailed explanations on those actions which have been considered as priorities.

2. COMPLETE LIST OF 26 CONCRETE ACTIONS

Measures to be executed by the Commission	Priority		
<u>1. Development of computerised formats for secure and enhanced automatic exchange of information</u> See point 2 in part 2 here below.	1		
<u>2. EU Tax Identification Number (TIN) for cross border operations</u> See point 3 in part 2 here below.	1		
<u>3. Mutual Direct access to national data bases, extension of automated access for VAT</u> The purpose of this action is to permit a direct access by all Member States to relevant (parts of) the national databases in the field of direct taxation and to extend this access in the area of direct taxation. Given the (mainly technical) complexity of such a project, the vast majority of Member States expressed major reserves on the opportunity for an immediate implementation of this possible concrete action, especially as regards direct taxation.			3
<u>4. Extending EUROFISC to direct tax</u> The EUROFISC network in the VAT domain, in which all member states participate, enables targeted and swift action to be taken in order to combat new and specific types of fraud. It involves a multilateral early warning mechanism and the coordination of both data exchange and work of liaison officials in acting upon warnings received. The idea would be to extend the scope of EUROFISC mechanisms to direct taxation. The Member States welcomed the initiative but invited to draw first the conclusions of the experience in the VAT sector before extending it to other revenues.		2	
<u>5. Quick Reaction Mechanism on VAT fraud</u>	1		

Measures to be executed by the Commission	Priority		
See point 4 in part 2 here below.			
<u>6. Teams of auditors dedicated to cross-border tax fraud</u> The initiative would entail creating pools of auditors from Member States that could be appointed to undertake specific missions for tackling cross border tax fraud on a case by case basis. These auditors would remain attached to their national tax administrations but could be called on to take part in specific missions. The operational costs could be covered by the future FISCALIS programme and the rules on simultaneous controls and presences in offices abroad could apply, especially in terms of supervision. In a nutshell, all legal provisions are there to facilitate the setting up of pools of international auditors and there would only need to be an agreement on a methodology. While Member States expressed the willingness to better use the existing tools and instruments, business stakeholders supported strongly such an initiative which would reduce the burden of controls for cross-border players. Guidance could be issued in a first instance.		2	
<u>7. Single TAX WEBPORTAL for all taxes and taxpayers building on the VAT web portal under development</u> See point 5 in part 2 here below.	1		
<u>8. One-stop shop for non-resident taxpayers in Member States</u> To enhance compliance both in internal and cross-border situations taxpayers must be better informed about EU and Member States' tax rules. A one-stop shop for non-resident taxpayers in Member States would make it easier for the taxpayers concerned to meet their tax obligations. The Member States generally recognised this action as a top priority but recommended to limit its scope in a first instance to the VAT domain where legislation is harmonised and such one-stop shop would deliver results in an efficient manner for both tax administrations and taxpayers.		2	
<u>9. "EU VAT Forum"</u> See point 5 in part 2 here below.	1		
<u>10. Taxpayers' charter</u> Tax administrations would consider complementing their control approach with a more service-oriented approach. In the spirit of Corporate Social Responsibility¹, the Commission could develop a taxpayers' charter. This would not only rules with regards to relationships between tax administrations and taxpayers but also a code of good behaviour by taxpayers. Even though not considered as a critical priority, this initiative was		2	

¹ Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility – COM (2011) 681 final of 25.10.2011

Measures to be executed by the Commission	Priority		
welcome by both tax administrations and stakeholders. Several representatives of the latter offered to contribute.			
<u>11. Common minimum administrative or criminal sanctions</u> In a globalised world where non-compliant taxpayers can weigh up their risks of being caught and punished in different jurisdictions, it is worth considering common minimum rules against tax fraudsters and evaders with regard to certain types of tax offences and including administrative or criminal sanctions. The fight against fraud is one of the priority sectors identified in the Commission Communication “Towards an EU Criminal Policy”². The Commission would propose rules to strengthen the fight against fraud affecting the EU financial interest by means of criminal law. Foreseeing common definitions of infringements and minimum administrative and criminal sanctions was supported neither by Member States nor stakeholders. They consider the benefits of such harmonisation not so clear and the legal constraints and costs fairly important. Any action should anyway also be duly coordinated with Ministries of Justice and anti-fraud authorities.			3
<u>12. Single legal instrument for administrative cooperation</u> The Commission could consider a single legal instrument for administrative cooperation for all types of taxes to ensure full integration and consistency of the mechanisms for cooperation. Replacing the existing legal instruments³ by one single act applicable to all tax areas and based on identical definitions and principles received an extremely low support as these acts were only adopted recently and the sole priority should be ensuring that they deliver their promises and improve effective tax administration, enforcement and collection.			3
<u>13. Multilateral agreements for administrative cooperation in the field of indirect taxes with third countries</u> In addition to the negotiation and conclusion of agreements on anti-fraud and tax cooperation matters (see action 26), possibilities to conclude multilateral agreements for administrative cooperation in the field of indirect taxes with third countries should be explored as well as the participation of third countries in simultaneous controls. Despite the length of the negotiation of such agreements, the Member States stressed the importance of this action which would allow reaping benefits in indirect taxation similar to those being progressively gained in direct taxation.		2	

² COM (2011) 573 final of 20.9.2011

³ Directive N° 2010/24/EU, Regulation N° 904/2010/EU, Directive N° 2011/16/EU and Regulation N° 389/2012/EU

Measures to be executed by the Commission	Priority		
<u>14. Promotion of EU advanced practical tools (including electronic formats) with a view to ensuring their use by non-EU countries particularly in relations with EU Member States</u> The Commission developed over the last years together with the involvement of Member States a full range of advanced practical tools. Cooperation with other international organisations should be improved with a view to avoiding overlaps and creating synergies for the benefit of tax administrations. In fact, Member States should be able to use a single set of tools and instruments both within the EU and in their relations with third countries. To this end, the Commission is promoting EU advanced practical tools (including electronic formats) with a view to ensuring their use by non-EU countries particularly in relations with EU Member States. This action is already under way with interventions of Commission officials in various fora⁴ and the constant backing of Member States. Member States renewed their total support to this action as it drastically improves the functioning of their service and ensures a smoother and more efficient administrative cooperation.		2	
<u>15. Promotion of automatic exchange of information standard globally (through OECD)</u> In its recitals of Directive 2011/16/EU, the Council recognised that "the mandatory exchange of information without pre-conditions is the most effective means of enhancing the correct assessment of taxes in cross-border situations and of fighting fraud". Automatic exchange of information indeed gives tax administrations invaluable information on income received and assets owned by their taxpayers that can also be particularly useful for risk analysis purposes and that can serve as an incentive to voluntary compliance. The EU has a key role to play in promoting its standard of automatic exchange of information so as to give support to developing international standards of transparency and exchange of information in tax matters. Almost all Member States and stakeholders supported the action.		1	

⁴ The EU participates actively in other international forums such as the OECD, the International Organisation for Tax Administration (IOTA), the Inter American Center of Tax Administrations (CIAT), the International Tax Dialogue (ITD), the International Tax Compact (ITC), and the African Tax Administration Forum (ATAF).

Measures to be executed by the Commission	Priority		
<u>16. Promotion of fair tax competition standards globally (also with OECD)</u> Continued promotion of good governance principles in the tax area under international trade and cooperation agreements is the utmost importance for a fair and effective tax administration, enforcement and collection for MS. The other objectives of the impact assessment are specifically addressing these questions and we refer to this detailed analysis for more information.		2	
<u>17. Announcement of coordinated defensive measures or sanctions against tax havens</u> The other objectives of the impact assessment are specifically addressing these questions and we refer to this detailed analysis for more information.	1		

Measures to be executed by the Commission together with the Member States	Priority		
<u>18. Examine ways to improve access to information on money flows, building on national experiences</u> Access to information on money flows is critical to trace significant payments made through off-shore bank accounts. Several Member States have developed a large experience with a complete set of procedures and principles. The return on investment achieved by Member States applying such measures demonstrates that actions in this field are not only effective but very efficient and that establishing and sharing best practices in this field would benefit not only Member States budgets but more generally tax morale in Europe.		2	
<u>19. Better cooperation between all law enforcement services (including between, direct and indirect taxation areas), not only on tax fraud and evasion but also on tax related crimes (e.g. through Europol)</u> As tax fraud is often linked with other forms of criminal activity it is important to strengthen cooperation between tax administrations and other authorities, in particular anti-money laundering, social security and judicial authorities, both at national and international level. At national level, it is necessary to ensure a satisfactory level of cooperation between all law enforcement services concerning not only tax fraud and evasion but also tax related crimes⁵⁻⁶. Cooperation		2	

⁵ Money laundering, terrorist financing and criminal schemes relating to Missing Trader Intra Community Frauds (MTIC), including VAT carousel fraud and criminal investment in the EU Emission Trading Scheme.

⁶ The revised FATF standards adopted in February 2012 added tax crime as a predicate offence to the money laundering and terrorist financing offence.

Measures to be executed by the Commission together with the Member States	Priority		
concerning tax related crimes can also be ensured through Europol⁷. The Commission can facilitate coordination in the areas concerned through joint use of its existing programmes and their successors. Both Member States and stakeholders backed the idea of creating bridges between the various departments and thereby reaping the benefits of a multiplier effect beyond the limits of each domain. On top of the exchange of information, such an action would allow exchanging best practices between departments in charge and improve working methodologies, thereby increasing further the benefits in each individual domain.			

Measures to be initiated by the Member States	Priority		
<u>20. More effective use of practical IT tools on mutual assistance and administrative cooperation between EU tax administrations</u> The Commission is assisting Member States in their efforts by providing them with the practical tools and instruments they need to engage in effective administrative cooperation. The Commission will closely monitor the correct application by all Member States of the commonly agreed rules and procedures. Member States fully supported this proposal as it allows gaining time as well as money through the redeployment of human resources to "productive" activities instead of administrative ones.	1		
<u>21. Joint audits with presence of officials of a Member State in another Member State</u> More regular joint audits should be promoted through extensive use of the existing legal provisions on simultaneous controls and the presence of officials of a Member State in another Member State⁸. Member States did not support the development of new initiatives in this area but were of the opinion the best use should be made first of the existing provisions to streamline and rationalise audits. The stakeholders as well supported the idea of increased action in this domain.		2	
<u>22. Decrease costs and complexity of tax systems for taxpayers</u> Taxpayers' compliance could be encouraged in various ways. One way to increase tax compliance is to decrease its costs and complexity for taxpayers. The administrative costs for business of complying with the tax code vary considerably between the Member States. As the time and costs fall disproportionately on small enterprises, decreasing		2	

⁷ Europol allows identifying the organisers of tax related crimes and dismantling criminal networks.

⁸ Article 7 of Directive N° 2010/24/EU; Articles 28, 29 and 30 of Regulation N° 904/2010/EU; Articles 11 and 12 of Directive N° 2011/16/EU; Articles 12 and 13 of Regulation N° 389/2012/EU

Measures to be initiated by the Member States	Priority		
administrative complexity (e.g. by increasing the use of online tools) would help tax collection and increase the competitiveness of many European firms. Member States agreed with the position that all rules and systems to be put in place should be proportionate to the needs and that this principle should be recognised as a kind of red line. Stakeholders and the business in particular backed the principle as well and recalled its importance for an increased voluntary compliance by taxpayers.			
<u>23. Motivational incentives to enhance tax compliance including voluntary disclosure programmes</u> Tax administrations could also develop motivational incentives in the form of voluntary disclosures programmes. Whereas some Member States consider that tax compliance should be the standard and should not need motivational incentives, others pointed out to the good and efficient results achieved by applying such an approach, stressing the enhanced tax morale, awareness and deterrent effect that such measures can have.		2	

Measures to be initiated by the Council	Priority		
<u>24. Adoption of amended Savings Directive</u> See point 1 in part 2 here below.	1		
<u>25. Adoption of proposed negotiating mandate to amend existing EU savings agreements with Switzerland, Andorra, Monaco, Liechtenstein and San Marino</u> See point 1 in part 2 here below.	1		
<u>26. Approval of the draft EU/Liechtenstein agreement on anti-fraud and tax cooperation matters and adoption of proposed mandate to open similar negotiations with Andorra, Monaco, San Marino and Switzerland</u> See point 1 in part 2 here below.	1		

3. ORIENTATIONS WITH REGARDS TO THE MAIN PRIORITY ACTIONS

The consultation of Member States and stakeholders carried out by DG TAXUD revealed that, in order to enhance administrative cooperation, any action plan should focus among others on the following priority actions among the 26 suggested by the Commission in its Communication of 27 June 2012:

3.1. Strengthening existing tools for ensuring more effective tax collection of savings or similar income in Member States by Council action to amend the existing savings taxation directive on the basis of the Commission's

proposal – Amending existing EU savings agreements with other countries – Concluding anti-fraud and tax cooperation agreements with other European non-EU countries

Capital income is one of the most mobile tax bases, and tax competition is rife in this area. In order to ensure the proper functioning of the internal market and tackle the problem of tax evasion the Savings Tax Directive 2003/48/EC was adopted in June 2003. The Directive applies to interest paid to individuals resident in an EU Member State other than the one where the interest is paid. The Directive has been applicable since 1 July 2005.

Pursuant to Article 18, the Commission issued a first report on the operation of the Directive on the subject on 15 September 2008. Following this first review, the European Commission adopted on 13 November 2008 an amending proposal to the Savings Taxation Directive, with a view to closing existing loopholes and better preventing tax evasion. The Commission proposal seeks to improve the Directive, so as to better ensure the taxation of interest payments which are channelled through intermediate tax-exempted structures. It is also proposed to extend the scope of the Directive to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurance products. The second report of 2 March 2012 confirmed the widespread use of offshore jurisdictions for intermediary entities (35% of the non-bank deposits in Member States, 65% for deposits in Savings Agreements countries).

If the proposal currently on the Council's table is not swiftly adopted by Member States at unanimity, the smooth functioning of the internal market and efficient tax collection by Member States will continue to be adversely affected by the multiple and easy ways for individuals to circumvent the rules by using interposed legal persons or arrangements (like certain foundations or trusts) which are not taxed on their income or untaxed innovative financial vehicles rather than taxed classical savings products. On the contrary, adopting the proposal will permit not only the closing of existing loopholes and the elimination of opportunities for tax evasion but will also ensure a consistent application of the new principles across the EU and facilitate agreements on similar or equivalent measures with Member States' dependent or associated territories and third countries.

In the same context, the Council should ensure that the savings agreements in place with a series of other states and dependencies and territories are reviewed in order to ensure that the loopholes closed by the amending directive are closed as well in the case of interest or similar income received from instruments owned there.

The negotiations on the content of anti-fraud agreement with Liechtenstein can be considered as finalised. However, the main obstacle to the signature and conclusion remains the political reservations by Austria and Luxembourg regarding the link with the EU savings directive. The Council should take immediate action in order to ensure that the agreements can be adopted and consider as well the need to negotiate similar agreements with other third states.

The European Council has repeatedly underlined the necessity to adopt these proposals, agreements and mandates without delay.

3.2. Ensuring more effective tax administration and enforcement in the case of cross border transactions by analysing the scope for reviewing the conditions of the automatic exchange of information

Automatic exchange of information gives tax administrations invaluable information on income received and assets owned by their taxpayers in other countries and thus contributes to effective and efficient tax administration and enforcement in the country of residence. The information received can also be particularly useful for risk analysis purposes and can serve as an incentive to voluntary compliance. The experience in the context of the savings directive demonstrates the benefits of such cooperation on a pan-European level: on average more than 4 million records are sent each year from source countries to residence countries representing on average 20 billion euro of savings income.

The new directive 2011/16/EU on administrative cooperation adopted on 15 February 2011 substantially expands the scope of automatic exchange of information and invites the Commission to develop new systems and formats for five other categories of income and capital: income from employment, director's fees, pensions, life insurance products not covered by another EU law on administrative cooperation, ownership of and income from immovable property. The implementation and entry into application of this new legislative instrument will already constitute an important step forward in the area of direct taxation and will significantly enhance effective taxation and the fight against tax fraud in relation to EU cross-border transactions.

However, as Directive 2011/16/EU only focuses on 5 categories of income and capital, there is scope for extending automatic exchange of information on a voluntary basis to other categories such as income from employment other than dependent employment, royalties, dividends or capital gains.. Such an extension would not only allow MS to draw even greater benefits from the mechanisms provided for by Directive 2011/16/EU but would also:

- provide concrete follow-up to the statement at the time of the adoption of Directive 2011/16/EU that "in order to promote a level-playing field in the realm of automatic exchange of information, Member States commit themselves to improve the availability of information on all categories enumerated in Article 8(1) to the greatest extent possible" and
- pave the way for to further strengthening the automatic exchange of information in a pro-active and non-coercive manner and raising the standard thereof , as the Council has already committed to assess in 2017 .

3.3. Ensuring more effective tax administration and enforcement in the case of cross border transactions by examining the possibility of introducing an EU TIN as a unique identifier for taxpayers engaged in cross-border transactions

The easy, correct and unambiguous identification of taxpayers is key in ensuring an effective and efficient tax administration, enforcement and

collection. This is particularly true in the case of cross-border transactions where tax authorities do not have the same level of access to information on taxpayers or operators located abroad and where in the absence of proper identification the international exchanges of information (whether on request, spontaneous or automatic) may be very complex. The concrete experience of Member States in this area shows that information can be far better matched when a Tax Identification Number (TIN) is communicated and used as a unique identifier: whereas the automatic matching of information is very low in the absence of TINs with a rate usually lower than 40%, it basically exceeds the 80-90% range when a TIN is provided as part of the information exchanged.

Despite the initiatives of the European Commission to facilitate access to information on TINs in the case of cross-border transactions, major obstacles remain: economic operators are only required to record and report the identification of their counterparts in a limited number of instances, mainly further to Directive 2003/48/EC on taxation of savings and in accordance with specific national obligations; TINs are not necessarily mentioned on identification documents and can accordingly not be recorded at the time of a transaction; each Member State has its own TIN with its specific structure, syntax and semantic and its own rules on when and how it must be recorded by economic operators; certain Member States may use several different TINs whereas others have no TIN at all and base the identification of taxpayers on other more ambiguous elements such as the date of birth, the postal code...

The action plan could thus suggest enhancing tax administration, enforcement and collection by analysing concrete ways for a better use of TINs, for example through improved use of existing TINs, the introduction of an EU TIN as a unique identifier for all taxpayers engaged in cross-border transactions, whether a natural, a legal or another person, or even a unique EU TIN in replacement of national TINs. Before an initiative is proposed further to the action plan, this concrete action would of course be subject to a specific impact assessment.

3.4. Tackling trends and schemes of tax fraud and tax evasion in the field of VAT, by setting up a quick reaction mechanism

Member States will continue to be targeted by new and massive VAT fraud as the possibility for them to seek derogation from the EU VAT legislation to counter such fraud takes too long and does not allow them to take rapid action. Therefore, the Commission has adopted a proposal for setting up a Quick reaction mechanism in the field of VAT allowing Member States to react promptly against sudden and massive fraud resulting in considerable VAT loss for the Treasury. The action plan could emphasise the necessity for the Council to swiftly adopt the Commission's proposal.

3.5. Ensuring high levels of taxpayer compliance in the field of VAT

With a view to enhancing the relationship between tax administrations and business and improving the governance of VAT at EU level stakeholders have advocated the setting up of a forum at EU level where traders and tax administrations can discuss problems related to doing business across borders

in the EU in order to look for possible solutions. All stakeholders should be encouraged to contribute to the development and working of this forum.

The lack of reliable information for business on their obligations in other Member States when doing business in those countries continues to be a hurdle for doing business across borders and thus prevents business from exploiting the full benefits of the internal market. When setting up a web portal at EU level the Commission could invite Member States to put on to the EU web portal useful information for traders wanting to do business on their territory. This would provide accurate and up to date information to the traders and would help to raise awareness and educate taxpayers. A feasibility study has been launched recently.