EUROPEAN COMMISSION LAUNCHES ACTION PLAN TO REVIEW EU CORPORATE TAX FRAMEWORK AND CLOSE TAX LOOPHOLES

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The European Commission's Action Plan for Fair and Efficient Corporate Taxation in the EU sets out proposals aimed at making corporate taxation in the EU more transparent and efficient, by reforming a system which is seen as outdated and no longer fit for purpose.

Last week, the European Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, presented the long-awaited Commission's Action Plan to tackle corporate tax avoidance and aggressive tax planning in the EU. The key objectives of the plan are that: companies making profits in the EU actually pay tax there; the level of taxation is effectively linked to companies' business activities; the corporate tax environment for the EU becomes more competitive and growth-friendly; and the Single Market is protected and the EU adopts a tougher stance to external corporate tax issues.

The Action Plan contains five broad areas for action.

The first key area is the re-launch of a mandatory (for multinational companies) Common Consolidated Corporate Tax Base (CCCTB) through a step-by-step approach where cross-border consolidation of profit and losses will be initially postponed until after agreement on a common base. A new CCCTB legislative proposal is expected in 2016.

The second key area is to ensure effective taxation where profits are generated, by combating profit shifting, limiting preferential tax regimes, and improving the transfer pricing framework in the EU.
The third area relates to improving the tax environment for businesses by enabling cross-border loss offset (until CCCTB full consolidation is introduced, if agreed upon) and improving double taxation dispute resolution mechanisms.

The fourth area deals with tax transparency (beyond the proposed automatic exchange of information on tax rulings currently being discussed) and envisages the development of a common EU approach to non-cooperative jurisdictions. Here, the Commission has launched a public pan-EU list of third countries and territories most often blacklisted by EU member states. While the list represents an initial step at trying to develop a common EU stance on the identification of non-cooperative jurisdictions, EU member states use different criteria to identify the aforementioned. The Commission also launched a public consultation on corporate tax transparency, which aims to collect the views of relevant stakeholders on whether companies should have to publicly disclose certain tax information. The Commission presents a number of possible options, including country-by-country reporting (which continues to be a controversial point in the framework of discussions on the EU Shareholder Rights Directive).

The fifth area relates to actions to improve tax cooperation, for example strengthening coordination among EU member states on tax audits, and reforming the Code of Conduct for Business Taxation and the Platform on Tax Good Governance.

Some of the issues highlighted above, such as the ones relating to profit shifting and transfer pricing, can be tackled in the short-to-medium term. Others, such as the re-launched CCCTB, clearly have a medium-to-long term perspective. The Plan should also be put in a global context, as it naturally includes a number of features, including the forthcoming CCCTB proposal, which will create a framework for the EU-level integration of the OECD Base Erosion and Profit Shifting (BEPS) project's results.

EU legislative proposals on tax policy require the unanimous agreement of all 28 member states. This might slow down, or indeed block, the process as regards certain proposals - this is what happened with the original Commission's proposal for a CCCTB, which has been stuck in Council for many years. In case of failure to reach agreement among all 28 member states, a group of interested countries (at least nine) can push forward on a specific legislative proposal through the so called 'enhanced cooperation' procedure - this is what happened a couple of years ago with the EU Financial Transaction Tax currently being negotiated by eleven EU member states.

Importantly, corporates have started voicing some concerns on the proposed plans, underlining the need to make sure that the fight against tax fraud and evasion, while welcomed, does not undermine the principle of fair tax competition in the EU. The mandatory nature of the forthcoming CCCTB will also be an element of concern for European corporates.

It is unclear at this stage whether and how the proposed measures will actually be implemented in practice, and what impact they will have on corporate taxation in the EU in the coming years. However, the Action Plan represents, together with current discussions on the automatic exchange of information on tax rulings, the ongoing Commission's investigations on tax practices, and the European Parliament work on unfair tax practices and tax evasion, another significant element of the EU's busy tax agenda.

USEFUL LINKS

Action Plan for a fair and efficient corporate tax system in the European Union

Pan-EU list of third countries and territories blacklisted by EU member states

European Commission public consultation on corporate tax transparency

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