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20 July 2015

A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action

Dear Commissioner,

As the leading eight associations of trade, industry and finance in Germany, we wish to bring to your attention our concerns vis-à-vis many of the elements of the Commission´s Action Plan on Corporate Taxation presented on 17 June 2015. We support the objective of the Commission to promote fair tax competition within the EU. Nevertheless we are concerned that many of the initiatives proposed by the Action Plan will lead to competitive disadvantages for European companies by setting them on an unlevelled playing field compared to companies from third countries such as the US. We urge the Commission to closely coordinate its proposals with the ongoing initiatives on the OECD/G20 level and to refrain from taking any measures that go beyond what has been agreed globally.

We would especially like to highlight our concerns with regard to two of the proposals of the Action Plan, the re-launch of the Common Consolidated Corporate Tax Base (CCCTB) and the Public Consultation on further corporate tax transparency. We might provide further comments on other aspects of the Action Plan once the individual measures take a clearer shape.

I. Re-Launch of the Common Consolidated Corporate Tax Base

The Action Plan will be the basis of Commission work in the coming years. Its main proposal is the re-launch of the CCCTB, within the next 18 months, which the Commission will use to deal with some BEPS related issues (e.g. the definition of permanent establishment). We support the original CCCTB draft directive of 2011 since it aims at removing barriers to the Single Market and making the EU a more competitive region for investment. Therefore we have supported the process thus far.

However, the new concept of the CCCTB displays two changes of major concern, which make the proposal less attractive compared to the original CCCTB draft.

First, the consolidation, formerly the core element of the CCCTB initiative, is postponed to a later stage. We have generally been in favour of the idea of consolidation as this would in principle facilitate business within in the Internal Market e.g. with regard to transfer pricing issues. To at least partly compensate for the postponement of consolidation the Action Plan raises the possibility for cross-border entities to offset profits and losses generated in different Member States. In principle, we support a loss-offsetting mechanism as a first step towards consolidation. However, the Action Plan does not describe the exact mechanism that will allow Member States to recapture foreign losses once the domestic entity is profitmaking. The uncertainty about the final concept and its possible consequences makes it difficult to welcome the new approach. For this reason the envisaged loss-offsetting mechanism has to be substantiated as soon as possible in such a way that the impact can be assessed and a final statement can be given.

Furthermore it is our understanding that the optional application of the new system is still necessary; companies that have no intention of doing cross-border business and therefore are only taxable under one tax system should not be forced to shift to a new system.

To attract our interest and our support, the CCCTB needs to meet at least the following key conditions:

- be optional for companies, i.e. not replace national corporate tax systems,
- allow for consolidation of profits and losses; for an interim period the loss-offsetting mechanism needs to be explained in such a way that its impact can be assessed,
- reduce compliance costs through a "one stop-shop", and
- leave any decision on tax rates to the Member States.

II. Public Consultation on Further Corporate Tax Transparency

As already announced in the Transparency Package of the Commission issued on 18 March 2015 the Action Plan entails a public consultation on further corporate tax transparency. With this consultation the Commission aims to find out whether requiring companies to disclose more information about the taxes they pay may help to curb tax avoidance and “aggressive tax practices” in the EU. The consultation is intended to prepare the impact assessment of possible public disclosure requirements for multinational companies, which could require them to make certain corporate tax information public (country-by-country reporting; CbCR).

Companies disclose tax relevant information to the competent tax authorities of the affected countries as a matter of course. Companies are totally transparent vis-à-vis the competent tax authorities. We believe that sharing information between the competent tax authorities should be the way forward, provided that high data protection standards and the principle of tax secrecy are met. We therefore strongly reject any further public disclosure requirements for companies (see also our letter to the Commission on the Tax Transparency Package, dated 28 April 2015).

We would also, in this context, like to draw your attention to Article 89 of the Capital Requirements Directive (CRD IV). This article has already introduced country-by-country reporting requirements for banks. In the course of implementing these requirements, however, considerable uncertainty and a number of serious questions concerning interpretation have emerged.

With this in mind, we consider it all the more important that no new EU proposals on the CbCR should be undertaken until the OECD’s recommendations in this area have been implemented by Member States´ governments. Only then it will be possible to understand how those proposals address some of the concerns and thus take the necessary conclusions. We are convinced that any deviation from the principle agreed at the OECD level risks creating an unlevelled playing field for European companies thus damping European competitiveness and undermining the EU investment strategy focused on jobs and growth creation. Therefore a multilateral and coordinated approach is essential to the principle of country-by-country reporting. The Commission must refrain from taking an even more ambitious stance than agreed globally by the OECD/G20.

For many years the Commission´s proposals and initiatives in the area of direct taxation were driven by the idea of promoting cross-border trade and investment within the internal market by improving the tax environment for businesses. The proposals of the Action Plan now seem to target into a different direction. It must be ensured that the perceivable shift of the Commission`s objectives away from facilitating business within the internal market towards fighting tax evasion will neither have a detrimental effect on EU based companies nor the Single Market respectively.

We kindly ask you to consider our concerns in the following discussions and please do not hesitate to contact us if you have any questions.

Sincerely,

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