



How to cope with tax havens?

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What is a tax haven?

- A non transparent, non cooperative place?
- A zero tax place (which taxes?)
- A place using special (harmful) competitive tax measures?
- A place promoting aggressive tax planning ?

The case of personal income tax

- A place where non-resident are subject to neither withholding tax or exchange of information on income there received:
 - The case of Luxembourg, Austria, Belgium and the savings directive?
 - The case of Switzerland, Monaco, Liechtenstein, San Marino, Andorra;
 - The case of Caribbean countries, Panama, Hong Kong, Singapore and ...
- The remedies within the EU:
 - Directive on mutual assistance and administrative cooperation (77/799/EC but Art 8);
 - Savings Directive (but transitional provisions);
 - New proposal on mutual assistance COM(2009) 29 of 2nd February 2009 (as a result of the crisis?)

Savings Directive : What should be revised?

Beyond some technical improvements, the Commission proposes in its amending proposal (COM/2008/727 of 13 of November 2008):

- to improve the Directive so as to better ensure taxation of interest payments (use of anti-money laundering obligations ; include non-charitable trusts and foundations);
- to extend the scope of the Directive to some innovative financial products with capital protection (less than 5% risk coverage) and in certain life insurance products ;
- to ask the paying agent to report directly information to the tax authorities, at the request of the taxpayer (voluntary disclosure) ;
- to ensure a level playing field between all investment funds or schemes, independently of their legal form ;

Improving administrative cooperation and mutual assistance more generally

The existing Directive 77/799/EEC on mutual assistance: not enough!

On 2 February 2009 European Commission put forward proposals for Directives to allow better cooperation between tax authorities so that:

- Member States shall be obliged to provide an as wide cooperation as they have accepted in relation to any third country thus stressing the specific EU dimension;
- Assistance cannot be refused solely because information is held by a financial institution when such information relates to a taxpayer resident in the Member States that ask for such assistance in order to avoid that such restrictions can favour tax evasion within the EU.

Corporate taxation: Harmful tax competition and artificial arrangements

- Tax competition and aggressive tax planning
versus
- Low general statutory rate or special regimes
- The usual suspects (instruments):
 - Deductibility of interests;
 - Transfer pricing;
- Remedies:
 - Code of conduct;
 - Transparency

Revisiting the » Code of conduct?

- **Need for a revision** to improve the fight against harmful tax competition?
- In any case, **monitoring of standstill** is crucial.
- Elements to be considered:
 - build further on the results achieved in the past by **developing best practices?**
 - **investigate new forms of harmful tax competition** (e.g. shareholder refund regimes/expats/hybrids)?.
 - **review** of the Code of Conduct **criteria and the procedures** of the Group?
 - **promote** the adoption of the principles of the Code of Conduct on as broad a geographical basis as possible as foreseen in paragraph M of the Code?
 - relation between State aid and Code of Conduct?
- Consider what can be done **within the existing mandate?**
- **Extending the mandate?**

Strategy to prevent financial and corporate malpractice (2004)

- In the tax area, two main orientations: to improve EU internal standards, and to promote them externally
 - Improve internal EU standards: more transparency and information exchange in the company tax area so that tax systems are better able to deal with complex corporate structures.
 - *Possible improvements to the Mutual Assistance Directive (77/799/EEC), developing common definitions of tax fraud and avoidance, exchanges of experience and best practice between tax administrations, the use of new technology to improve information exchange, and, in the longer term, examining with Member States the use of a common company identification number for company tax purposes.*
 - Outside the EU: to ensure coherent EU policies concerning offshore financial centres, to encourage these jurisdictions also to move towards transparency and effective exchange of information

Promoting Good fiscal governance

- **Promoting Good Governance in Tax Matters:** The European Commission proposes actions to improve transparency, exchange of information and fair tax competition COM(2009) 201 final
 - **Within the EU:** promote improved administrative cooperation (Transparency and effective exchange of information) and removal of harmful tax measures (Code of conduct for business taxation) and amended savings directive;
 - **In the relations with third countries:** insert relevant commitments in Trade access, economic partnership and others agreements with the Community, economic and technical assistance programmes

Need for a global approach to tax havens?

- Tax havens: different situations calling for different remedies;
- A general principle: transparency and exchange of information;
- The OECD standard: an achievement or a first step?
- Do we need a world tax organisation