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BUSINESSEUROPE supplementary response to the Consultation on Further Corporate Tax Transparency

European business fully shares the European Commission's and Member States' objective to fight tax fraud and evasion. Such activities create competitive distortions at the expense of the vast majority of businesses who paid nearly 2 trillion Euros of taxes in the EU in 2012.

As the Commission rightly notes, in its Communication on tax transparency to fight tax evasion, any proposal intending to add extra transparency requirements "needs to be calibrated carefully [...] to determine benefits, costs [...] and to look at the likely impacts in the international competitiveness dimension".

The business community fears that European companies could be harmed by an obligation to disclose additional detailed sensitive information and place European companies at a competitive disadvantage vis-a-vis third-country companies for the following reasons:

- Additional measures for the enhancement of corporate transparency have already been agreed at the international level, in the OECD Base Erosion and Profit Shifting project, where member countries have agreed on a set of rules based on the condition of confidentiality and information sharing between tax authorities;
- Any additional and unilateral adoption of measures by the EU will create added risk and uncertainty for investment within the EU. It is important that any additional corporate transparency initiatives are taken and implemented at a global level;
- Country-by-country reporting should be a risk assessment tool for tax administrations to better understand the global context of a group and to improve their tax audits process. It is neither a reporting to justify a reassessment, nor an instrument designed to be communicated to a wider audience.

BUSINESSEUROPE agrees that companies should align taxes paid with actual profits generated and have the appropriate level of substance to deliver those profits in the country where they arise. However, the focus should be to do so through clearly formulated legislation, consistently applied by tax authorities and not by scrutiny of citizens or peer pressure.

BUSINESSEUROPE thus welcomes the setting up of the consultation since an *ex-ante* impact assessment is crucial when the international competitiveness dimension of European companies is at stake.



BEPS Action 13

The on-going BEPS project should be seen as an opportunity to improve the architecture of international taxation with the objective to promote open markets and investment across borders.

Additional measures for the enhancement of corporate transparency are already included in the OECD-BEPS Action 13, where member countries have agreed on a set of rules based on the condition of confidentiality and information sharing between tax authorities. The scope of these measures concern multinationals with consolidated revenue of more than 750 million euros (covering 90% of world group revenue).

Until BEPS Action 13 is globally applied and its costs, benefits and effects are properly assessed so as to evaluate if they are sufficient to address concerns around transparency, the EU should refrain from introducing further requirements.

Any deviations from the agreed global standard imposing more stringent obligations for EU-companies than non-EU companies will threaten the competitiveness of European companies in the global market. Reciprocity should be a pre-condition for the exchange of information between tax authorities.

Disclosure towards tax authorities or also to *the public*?

The current discussion around corporate taxation suggests that transparency towards the public would be more effective than transparency towards tax authorities'. Departing from the principle of the rule of law by suggesting that only public scrutiny would guarantee that international and European agreed rules are applied would be setting a dangerous precedent in Europe.

Tax authorities have the expertise to understand tax disclosures and use them to target audit activity and to identify lower risk corporates (the majority of enterprises). It is the role of tax authorities to assess whether enterprises are complying with international and domestic tax laws and they should be trusted to carry out that role without external pressure on complex technical issues.

The assumption that many enterprises use structures that are not known to tax administrations and/or will change their behavior if additional disclosure requirements are introduced, doesn't seem to be evidence or research based.

If the Commission wishes to pursue the option of having publicly available information, it should demonstrate, based on experience of the existing required disclosures under CRD IV and the requirements for the extractive industries, that the public has made effective use of the information and/or that, if any, change in behavior of companies would or could not have occurred through non-public reporting.

Additional effects of having public transparency

BUSINESSEUROPE believes it to be a key condition that additional country-by-country reporting measures are agreed and implemented on a global level.



Unless country-by-country reporting is implemented on a global level, we believe that the EU will face a decrease in tax revenues. Long term investment decisions involve assessing risk and reliability or stability of markets, returns and regulatory environments. Adding transparency requirements that exceed those in the OECD countries can be seen as evidence of a more risky investment environment. Such uncertainty will deter investors causing a negative impact on investment rates and economic growth.

Taxes to be paid where profits are generated

BUSINESSEUROPE agrees that companies should align taxes paid with actual profits generated and have the appropriate level of substance to deliver those profits in the country where they arise. However, the focus should be to do so through clearly formulated legislation consistently applied by tax authorities and not by scrutiny of citizens and peer pressure.

BUSINESSEUROPE supports Member States having the competence to set their own tax policies within the international rules that they have agreed to. Tax authorities should focus their efforts on targeting tax evasion or tax avoidance where there is a lack of commercial substance.

While some enterprises may feel the need to change some of their tax planning to limit a risk of reputational damage, most enterprises will rely on their compliance with existing laws in the territories in which they do business, as most enterprises would not have significant use of “tax gaps, mismatches and/or loopholes”. Transparency for some enterprises that are publicly quoted creates an uneven playing field with enterprises that are privately held and where public opinion, however misinformed, has no effect on enterprise policy or practice.

Efficient dispute resolution

There needs to be an efficient and timely dispute resolution mechanism for cases of double taxation via Mutual Agreement Procedures included in tax treaties and/or binding arbitration.

BUSINESSEUROPE supports Member States having the competence to set their own tax policies within the international rules that they have agreed to. However, double taxation, as well as unintended double non-taxation must be avoided.

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