

MEASURES TO REDUCE TAX EVASION AT EUROPEAN LEVEL

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Abstract: *Fraud and tax evasion have a significant cross-border dimension. Member States cannot effectively solve the problem unless they cooperate. Improving administrative cooperation between tax administrations of the Member States is therefore a key objective of the European Commission’s strategy in this field / domain.*

Detection of cross-border VAT fraud in the European Union depends to a large extent on information relating to intra-Community transactions. Economic agents are those that provide such information, and Member States will exchange them under agreements concluded since 1993. It is necessary to improve synchronization, the information available, the target, the quality and processing of information, in order to fight effectively against fraud from current business environment.

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The main solutions for the reduction of tax evasion at European level

I. Eliminate gaps on taxation of savings income

Adoption of the amendments proposed by the Commission regarding the Savings Taxation Directive⁹ will allow the elimination of shortcomings in the directives and therefore will improve the effectiveness of this tool. This will help Member States to better ensure effective taxation of cross-border savings income. It is now the responsibility of the EU Council to adopt this proposal and to give the Commission a mandate for negotiation with a view to the adoption of the corresponding amendments to existing agreements with third countries on taxation of savings income.

II. Draft agreement on cooperation and tax fraud

Similarly, the Commission invites the Council to sign and conclude the draft agreement on tax cooperation and against fraud between the EU and its Member States and Liechtenstein, which they presented to the Council in 2009¹⁰ and to adopt the draft mandate for opening similar negotiations with four other neighboring third countries. This will enable the Commission to negotiate agreements guaranteeing that the same tools to fight fraud and the same high standards of transparency and exchange of information shall be made available to all Member States.

⁹ COM(2008) 727 final, 13.11.2008

¹⁰ COM(2009) 644 final from 23.11.2009 and COM(2009) 648 final from 23.11.2009

III. Rapid Reaction Mechanism against VAT fraud

On July 31st, 2012 the Commission presented a proposal for a Rapid Reaction Mechanism against VAT fraud¹¹. If adopted, this proposal would allow the Commission to rapidly authorize a Member State to take temporarily derogating measures, to find solutions to cases of sudden and massive fraud with major financial impact.

IV. Optional application of the reverse charge mechanism for VAT

The Commission presented in 2009 a proposal for an optional application of a reverse charge mechanism for VAT for delivery of certain goods and services susceptible to fraud¹². Only part of this proposal, concerning the certificates of greenhouse gas emissions, was adopted in March 2010¹³. The adoption of other part of the proposal would allow all Member States to apply the reverse charge mechanism under the same conditions in those sectors where it is the most effective tool against fraud “carousel”, instead of adopting individual derogations from the VAT Directive, which could have a negative effect on the fight against fraud in other Member States.

V. EU VAT Forum

Both enterprises and tax authorities confirmed that the current VAT system is unmanageable and vulnerable to fraud. In order to improve VAT governance at EU level, the Commission decided to create an EU VAT Forum¹⁴. Within this platform for dialogue, representatives of large enterprises, small and medium-sized enterprises and tax authorities can exchange views on the subject of concrete cross-border aspects of VAT administration and also can identify and discuss best practices that could help rationalize management of the VAT system, aimed at reducing compliance costs while guaranteeing VAT revenue.

VI. Legislative proposal for combating tax evasion in the intra-Community transactions: reduction of time limits

In accordance with the ECOFIN Council’s conclusions of June 5th, 2007, the Commission has already presented in March 2008 a legislative proposal designed to reduce both the reporting deadlines for intra-Community transactions by economic agents and those of the information exchange between tax administrations¹⁵. The purpose of this proposal is to ensure that the tax authorities of the destination Member States are informed much quicker than today about acquisitions taking place on their territory and have the opportunity to act earlier. The purpose of this proposal is to ensure that the tax authorities of the destination Member States shall be informed more quickly than at present in connection with acquisitions occurring on their territory and thus having the opportunity to act earlier.

VII. Exemption from VAT on imports

Fraudulent use of VAT exemption on imports when it is followed by a provision or an intra-Community transfer has been identified as a weakness of the current rules of the detected VAT fraud

¹¹ COM(2012) 428 final, 31.7.2012

¹² COM(2009) 511 final, 29.9.2009

¹³ Directive 2010/23/EU of March 16th, 2010 amending Directive 2006/112/EC on the common system of value added tax, with regard to optional and temporary application of the reverse charge mechanism to provide certain services susceptible to fraud (JO L 72 of 20.3.2010, p.1).

¹⁴ Commission Decision (2012/C 198/05) from July 3rd, 2012 on the establishment of an EU Forum on VAT.

¹⁵ COM (2008) 147 final, 17.3.2008

systems. Indeed, neither the information to be exchanged by the customs and tax administrations of the importing country are organized properly, nor relevant information is transmitted effectively to the following Member State. Therefore, the Commission will propose harmonized rules at Community level for the application of this exemption.

VIII. Strengthening cooperation between Member States

Periodic reporting of the functioning of administrative cooperation in the VAT field will focus on the new elements introduced with a view to improving administrative cooperation. Wherever certain information is of primary importance for an effective control in another Member State, they must be replaced automatically, this representing a primary goal of the Regulation since 2004. The mentioned report provides the opportunity to review these items and, if necessary, to modify them in order to enhance their effectiveness.

In addition, there were more actions undertaken in the framework of the FISCALIS programme in order to ensure an exchange of best practices and cooperation in the field of control. In the field of audit, the European Commission is working on the development and improvement of the electronic audit tools. At the same time it encourages Member States to use more multilateral controls, with the assistance of a guide designed to assist auditors and coordinators who are using this tool. In addition, project groups have been set up to examine topics concerning the quality of information exchanged between Member States, the exchange of best practices in the field of risk analysis and management (with the help of a manual) and of misuse of the cash registers. There were organized seminars and workshops to enable Member States to exchange experience and knowledge in the field of combating VAT fraud. Administrative cooperation is, indeed, a key element of the current VAT system, which cannot be managed separately by the Member States. The European Commission recognises that such cooperation requires human resources and, therefore, should be drawn up methods and good practices involving the fewest resources.

IX. Guidelines for traceability of financial flows

Taking into account the experience of Member States in this area and the financial intelligence units (FIUs) that already exist, the Commission will develop a common methodology and guidelines to improve tax administrations' access to information on financial flows, for example through credit cards and bank accounts established in the EU/*offshore*, thus facilitating significant transaction traceability. A first step has already been achieved with a thorough experience exchange within the framework of FISCALIS workshop that took place on this subject in October 2012.

X. Improved risk management techniques and, in particular, the management of risks related to compliance with the obligations

Risk management platform established in 2007 in the context of the FISCALIS programme is currently developing a strategic plan for managing risks associated with compliance. The main objective of the strategic plan is to ensure that all Member States will reach a higher level of compliance with the obligations of contributors, to facilitate cross-border risks and remedy fraud and to stimulate and strengthen cooperation between Member States. For a successful implementation of the strategic plan, it will be necessary for all Member States to declare their commitment. Structured exchanges of information between tax administrations and customs relating to strategies for the identification of non-compliance with the obligations could improve the knowledge of all these authorities, to ensure the coordinated risks assessments and would be integrated into the strategic plan.

XI. Automated access to data

Due to the fact that requests for basic information about the businesses established in other Member States shall be sent to the competent authorities of the Member States concerned, and this process takes time, we proposed the establishment of a solid legal framework, enabling a competent authority of a Member State to have automated access to the specific data available in the database of another Member State which are related to the identification and activities of a taxpayer. It is expected that, on the one hand, this automated access to reduce the number of requests and, as a result, the need for human resources, making, on the other hand, the exchange of information to be faster. Obviously, access to the database may not include sensitive information, such as those relating to the pricing policy etc.

XII. EUROFISC

The creation of a European network called Eurofisc, for a closer operational cooperation between Member States in combating fraud in the field of VAT is another promising approach. The main tasks of Eurofisc will be to provide a multilateral early warning mechanism for combating fraud in the field of VAT. It is hoped that this mechanism will result in a common way of risk assessment concerning intra-Community transactions and the exchange of information and of the activities carried out by the participating Member States in response to the warnings received, as was in the case of Eurocanet network created by the Belgian tax administration and supported by the Commission/European Anti-Fraud Office.

XIII. Promoting conduct simultaneous controls and the presence of foreign officials for audits

In the short term, in order to facilitate tax audits and to pave the way for possible future joint audits, it is essential that Member States to use existing legal provisions as widely as possible in order to organize simultaneous controls and to facilitate the presence of foreign officials in the offices of tax administrations and during administrative investigations. The analysis carried out in the framework of EUROFISC should contribute to strengthening the use of these tools.

XIV. Extending EUROFISC to direct taxation

This relatively new system could be extended to fulfill a similar function in the field of direct taxation, particularly for detecting and rapid dissemination of information regarding the recurrent fraud schemes, trends and aggressive tax planning. To this end, the Commission shall collect and assess the first results of EUROFISC for VAT purposes and will also continue the work related to the expansion of EUROFISC and of the early warning system to matters of direct taxation.

XV. Sanctions to taxpayers who do not submit their tax returns on time

Receiving declarations submitted by taxpayers is one of the most important activities in the tax administration process. A high level of voluntary compliance to declaration means a high level of discipline among taxpayers. Although the process of self-taxation powered by contributors do not automatically lead to the collection of tax revenue, the start of the subsequent enforcement procedures in order to collect tax revenues is conditional on the existence of a debt instrument or a tax return. In order to increase the level of voluntary compliance with the declaration, the legislature has provided penalties for failure to submit each type of tax statement, so that under the current regulatory framework every delay in reporting must lead automatically to a penalty (warning, fine).

Even though the activity of receiving the statements has recorded a major progress in the last period (since 2011, the vast majority of tax returns are submitted by electronic means, directly over the Internet), the application of sanctions for late submissions still has a high level of subjectivism. Although there is a database, there are no automatic means of issuing minutes of finding and sanctioning contraventions in the case of economic agents who do not fulfill their declaratory obligations in

accordance with the legal provisions. Specifically, currently a sanction is applied manually by inspectors from managing the taxpayers register and receiving the tax return. To individualize the sanction (choice between a warning and a fine, namely the amount of the fine) there are no tools/information on taxpayer's record/criminal record in terms of sanctions for failure to submit or late submission of tax returns. In these conditions it is possible that some contributors to be punished repeatedly only with a warning while other economic agents are severely punished by the first contravention. There is no guide/procedure on the NAFA (National Agency for Fiscal Administration) level to ensure a coherent framework to individualize the administrative sanctions, so that this process is carried out only according to the judgment and good faith of the public officials.

XVI. Standard forms for exchange of information on tax matters

The Directive 2011/16/EU adopted on February 15th, 2011 provides the adoption of standard forms for information exchange on request, spontaneous information exchange, notification and feedback. The Commission adopted a regulation implementing such standard forms designed to increase the effectiveness and efficiency of information exchange. The Commission has also developed a computer application for these standard forms, in all EU languages, application that has already been made available to Member States and was released from January 1st, 2013.

XVII. "TIN EUROPE" Portal

It is a new practical tool for improving administrative cooperation in the field of direct taxation. Correct identification of taxpayers is essential for an efficient exchange of information between tax authorities of the Member States. This application provides samples of official identity documents containing national TINs (tax identification numbers). Thus it allows any third party, especially private financial institutions to identify and record quickly, easily and accurately the TINs in cross-border relations. In addition, an online control system similar to the VIES system (VAT Information Exchange System) makes possible to verify the correctness of the structure or algorithm of a particular TIN. This new application could be a first step towards a more coherent approach to TINs at EU level and will help improve the effectiveness of the automatic exchange of information.

XVIII. European Taxpayer's Code

The Commission launched a public consultation on this issue in early 2013. Improving relations between taxpayers and tax administrations, enhancing the transparency of tax rules, reducing the risk of errors that could have serious consequences for taxpayers and encouraging tax compliance, as well as encouraging Member States' administrations to apply a Taxpayer's Code will contribute to a more efficient collection of taxes.

XIX. Strengthening the fiscal governance

Inter-agency cooperation is essential to ensure an effective fight against tax fraud, tax evasion and tax-related crimes. Europol can play an important role in intensifying the information exchange, contributing to identify and dismantle the criminal networks/groups. In the context of preparing its legislative proposal for a review of the Third Money Laundering Directive (2005/60/EC) (MLD3 or 3MLD), the Commission is considering whether to explicitly mention tax offenses as major offenses of money laundering in accordance with the 2012 Financial Action Task Force (FATF) recommendations. This will facilitate cooperation between fiscal and judicial authorities and financial supervisory authorities to tackle serious violations of tax laws. Strengthening the anti-money laundering procedures with regard to due diligence towards clients, as well as a greater transparency of information on actual beneficiaries collected to combat money laundering in the MLD3 review could also facilitate the use of relevant data for tax purposes, i.e., to improve the effectiveness of the treatment of *offshore* investment

structures in accordance with the EU Directive on taxation of savings income. In addition, cooperation could be further facilitated by harmonization at EU level of the crime of money laundering, establishing a definition for it and the setting of appropriate sanctions. In this respect, it was proposed in 2013, in addition to reviewing the third MLD, a specific Directive on combating money laundering (MLD4).

Conclusions

Romania does not have the ability to have a modern tax system. We say this based on the concept that a tax system is not only an amount of taxes induced by legislation. That is why fiscal reform needs to be pursued on the basis of multiple and complex analyzes including calculations for quantifying the various influences, so that the tax system to better meet the requirements of fiscal policy at national and international level.

Sistemele fiscale occidentale sunt, în cea mai mare parte a lor, rezultatul unei evoluții și a unor acumulări treptate și îndelung analizate până la consfințirea lor prin legi fiscale. Cu toate acestea, și aici se mai caută optimul reformei fiscale pentru a constitui un sprijin mai eficace în aplicarea politicilor fiscale ale statelor respective. Cu atât mai mult este necesară reformarea fiscală în țara noastră, care trebuie să rezolve problemele privind asigurarea mijloacelor financiare pentru acoperirea cheltuielilor publice, utilizând impozitul ca pârghie fiscală la nivel macroeconomic și alinierea la cerințele unui sistem fiscal modern.

Most of the Western tax systems are the result of a gradual and long-term evolution and accumulation until they have been sanctioned by tax laws. However, here they also seek the optimum tax reform, in order to provide more effective support in the application of the financial policies of those States. The fiscal reform in our country is even more necessary, which has to solve the problems regarding the provision of the financial means to cover the public expenses, using tax as leverage at macroeconomic level and aligning to the requirements of a modern tax system.

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