Promoting good governance in tax matters

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PURPOSE: to encourage good governance in tax matters.

BACKGROUND: with the financial crisis, the need for national governments to safeguard their tax revenues is more acute than ever. **The need to promote international tax cooperation and common standards** has now become a regular item on the agenda of discussions, both within the EU and in international fora. Most recently, the G20 Leaders agreed at their summit in London (April 2, 2009), "to take action against non-cooperative jurisdictions, including tax havens". According to an OECD estimate at the end of 2008, the world's tax havens have attracted between $5 trillion and $7 trillionin assets, although the degree of secrecy surrounding these accounts makes it difficult to determine exactly just how much is located in these individual jurisdictions. With national budgets and, therefore, social and other policies under severe strain this is an extremely serious problem.

In the run-up to the G20 meeting, many jurisdictions reacted by indicating their willingness to apply international standards of transparency and information exchange from now on.

Accordingly, the EU and its partners have a strong common interest at this time in promoting tax cooperation and common standards on as wide a geographical basis as possible. The time is now right for Member States and third countries to work together and to encourage and support the move that has now started towards a broader acceptance of international standards of tax co-operation.

This Communication aims to identify the particular EU contribution to good governance in the area of direct taxation. It considers:

- how good governance could be improved within the EU,
- the particular tools that the European Community and EU Member States may have at their disposal to promote good governance internationally, and
- the scope for more co-ordinated action by EU Member States, so as to support, streamline and complement international action taken in other fora such as the OECD and the UN.

CONTENT: this Communication presents for consideration a series of steps to promote good governance in the tax area, entailing action both within and outside the EU and both at EU and at individual Member State levels.

1) Improve good governance within the EU: the Commission calls on the Council to adopt as soon as possible the following Commission proposals:

- a proposal to replace the current Mutual Assistance Directive. The proposal would introduce two important new elements that the Commission considers indispensable to reinforce EU action at international level against tax fraud and evasion: (i) it would introduce a most favoured nation clause whereby Member States would be obliged to provide to another Member State the level of cooperation that they have accepted in relation to a third country; (ii) the proposal would prohibit Member States from invoking bank secrecy for non residents as a reason for refusing to supply information concerning a taxpayer to his or her Member State of residence;
- another proposal to replace the existing Directive on recovery of tax claims. It aims to increase the efficiency of assistance so as to enhance tax administrations' capacity to recover unpaid taxes, and thus contribute to the fight against tax fraud;

- a proposal to amend the Savings Directive: there is a need to extend the scope of the Directive to intermediate tax-exempted structures (trust, foundations…) and to income equivalent to interest obtained through investments in some innovative financial products;
- to eliminate harmful business tax measures under the **Code of Conduct for Business Taxation**.

2) Promote good governance in the relations with third countries: the Commission proposes to improve the particular tools that the European Community and EU Member States may have at their disposal to promote good governance internationally. A few of the concrete measures are as follows:

- improve the negotiating of provisions on good governance in the tax area with **third countries within general agreements**;
- in this context, invite the Council to give the appropriate political priority to the mandate given to the Commission to include good governance principles in relevant EU agreements with third countries;
- conclude **specific agreements** in the tax area containing, if appropriate, provisions on transparency and exchange of information for tax purposes at EU level;
- promote more cooperation with third countries in the framework of the **Savings Tax Directive**;
- as regards the Code of Conduct for Business Taxation, a coherent policy of **coordinated action toward third countries engaging in harmful business tax practices** should be put in place, such as by adopting a common approach to the application of anti-abuse measures;
- improve efforts at EU level to **promote good governance in the tax area in third countries eligible for development aid** should be enhanced by the following actions: (i) monitoring, under the Mid-Term Reviews (MTR) of aid programmes, the state of play of good governance, so as to be able to take appropriate measures when relevant; (ii) reallocation of funds towards countries that are implementing satisfactorily their commitments; and, conversely, considering a cancellation of funds earmarked for those countries that did not implement their commitments; (iii) provision of the necessary technical assistance to help countries to meet their commitments on good governance in the tax area;
- consider the feasibility of introducing an additional criterion in the eligibility evaluation for the allocation of funds under the **current external instruments** of the Community that would be linked to the application by third countries of the principles of good governance in the tax area;
- discuss with Member States possible **counter-measures** towards non cooperative jurisdictions in the tax area (the OECD Secretariat has suggested a list of measures. These will need to be examined together with the Member States);
- examine the extent of coherence between the principles of good governance in the tax area and Member States' own tax policies, including bilateral tax treaties with third countries;
- improve **coordination of EU Member States' positions** in discussions at the OECD, G20 and UN on international good governance in the tax area is necessary to ensure greater leverage in dealings with non-cooperative countries.

The Commission intends to pursue constructive dialogue with all stakeholders concerned in connection with the principles and practical implementation of the measures identified in this Communication, and it will review and report on the situation in 2010.

The Commission believes that the momentum that has been generated by the G20 Leaders in pushing forward international tax cooperation needs to be maintained and declares that it is ready to assist the Member States in taking forward the appropriate instructions in the context of the policy on good governance in the tax area. It invites the Council to adopt these policy orientations and take action to ensure their swift implementation.