

Tax rulings and other measures similar in nature or effect

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The European Parliament's Special Committee on Tax Rulings adopted a report by the co-rapporteurs Elisa Ferreira (S&D, PT) and Michael Theurer (ALDE, DE) on tax rulings and other measures similar in nature or effect.

To recall, the **LuxLeaks scandal**, which erupted on 5 November 2014, revealed the extent of the use of secret deals featuring complex financial structures designed to obtain drastic tax reductions. The scandal brought public and media attention to those issues, disclosing **questionable tax practices** promoted by accountancy firms in one specific Member State. Members noted the Commission's investigations and the work carried out by Parliament through its special committee had shown that this was not the only case, but that taking tax measures to reduce some large corporations' overall tax liabilities so as to artificially increase the national tax base at the expense of other countries, some of which were subject to austerity measures, was a practice that was widespread within Europe and beyond.

Bearing this mind, the Special Committee made the following recommendations:

Place of taxation: Members noted that aggressive tax planning by multinational corporations (MNCs) often result in **disconnection between where value is created and where profits are taxed**. They called on Member States to **respect the principle of profits taxation in the place they are generated**, stressing that new entrants and firms, including SMEs, that do not use aggressive tax practices are penalised as compared with multinationals, which are able to shift profits only by virtue of their size and their ability to arrange business internationally. The Special Committee noted with concern that, all other things being equal, the resulting lower tax liabilities leave multinational corporations (MNCs) with a higher post-tax profit and thereby **create an uneven playing field with their competitors on the single market**. This distortion of a level playing field in favour of multinationals contradicts the fundamental principle of the single market. The report called on the Member States to:

- put an end to harmful tax competition and fully cooperate in order to eliminate mismatches between tax systems and harmful tax measures which create the conditions for massive tax avoidance by MNCs and tax base erosion within the internal market;
- notify the Commission and other Member States about any relevant changes to their corporate taxation law that could have an impact on their effective tax rates or on any other Member State's tax revenue;
- make **new clear political commitments to taking urgent action to tackle this situation**, which can no longer be tolerated, **not least because of its impact on national budgets**, which are already subjected to fiscal consolidation measures, and on the tax contributions of other taxpayers, including SMEs and citizens. Members stressed, in this context, that it intends to play its role fully and is ready to put in place more effective.

Cooperation and coordination on advance tax rulings: the report deplored the content of the political agreement of 6 October 2015 within the Council, which falls short of the [Commission's legislative proposal](#) of March 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation. It called on the Council to stick to the Commission's proposal and take due account of the Parliament's opinion thereon, in particular as regards: (i) the scope of the directive

(all tax rulings instead of cross-border only), (ii) the retroactivity period (all tax rulings still valid should be exchanged) and (iii) the information provided to the Commission, which should have access to the tax rulings.

The Special Committee considered that the basic elements of all rulings that have an impact on other Member States should be not only shared between tax administrations and the Commission, but also presented in the country-by-country reporting by MNCs.

Transparency: Members felt that **increased transparency** regarding the activities of multinational companies is essential for ensuring that tax administrations are able to efficiently combat Base Erosion and Profit Shifting (BEPS). **All MNCs in all sectors should disclose in their financial statements**, broken down by Member State and by third country in which they have an establishment, a range of aggregate information, including their profit or loss before tax, taxes on profit or loss, number of employees, assets held, basic information about tax rulings (country-by-country reporting). This information should be made available to the public, possibly in the form of a central EU register.

Member States are asked to implement a **more extensive country-by-country reporting system** available to tax authorities, building on the OECD standard and including more detailed information, such as tax returns and intra-group transactions.

Common Consolidated Corporate Tax Base (CCCTB): whilst welcoming the [action plan proposed by the Commission](#) on 17 June 2015 to address tax avoidance, the report called on the Commission to speed up work on a compulsory EU-wide Common Consolidated Corporate Tax Base (CCCTB), which would address not only the issue of preferential regimes and mismatches between national tax systems, but also most of the issues leading to tax base erosion at European level (in particular transfer pricing issues). Pending the adoption of a full CCCTB and its full implementation at EU level, the Commission was asked, inter alia, to:

- take immediate action in order to **ensure effective taxation, reduce profit shifting (mainly through transfer pricing)**;
- prepare an interim regime offsetting cross-border profits and losses, which should be temporary in nature and with sufficient guarantees that it will not create any further opportunity for aggressive tax planning, and further introduce anti-abuse rules in all relevant directives;

The Commission should also issue clear legislation on the **definition of economic substance, value creation and permanent establishment**, with a view to tackling the issue of letterbox companies, and to develop EU criteria and legislation for the treatment of R&D.

State aid: in this regard, Members called on the Commission to:

- adopt new guidelines, at the latest by mid-2017, in the framework of its State Aid Modernisation initiative, **clarifying what constitutes tax-related state aid and ‘appropriate’ transfer pricing**, with a view to removing legal uncertainties for both compliant taxpayers and tax administrations;
- **extend its investigations to other MNCs mentioned in the LuxLeaks scandal** and to measures similar in nature or effect to transfer pricing;
- consider setting up a network of national tax administrations to exchange best practices and more consistently contribute to preventing the introduction of any tax measures that might constitute illegal state aid.

Code of Conduct on business taxation: Members called for an **urgent reform** of the Code of Conduct on business taxation and of the Group responsible for its enforcement, given that, to date it has proved to be of questionable value. The reform should aim to address both real obstacles currently in the way of effectively tackling harmful tax practices and an EU-wide coordination and cooperation on tax policy.

Protection of whistleblowers: the report called on the Commission to **propose, by June 2016, an EU legislative framework for the effective protection of whistleblowers** and the like. It stressed that it is not acceptable that citizens and journalists can be subject to prosecution rather than legal protection when, acting in the public interest, they report suspected illegal activity, in particular in cases of tax avoidance, tax evasion and money laundering. The Commission was asked to consider a range of tools for ensuring such protection against unjustified legal prosecution, economic sanctions and discrimination.