

Tax rulings and other measures similar in nature or effect

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The European Parliament adopted by 508 votes to 108, with 85 abstentions a resolution 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. In many cases Luxembourg subsidiaries handling hundreds of millions of euros in business maintained little presence and conduct little economic activity in Luxembourg.

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.

Parliament considered that subjecting these practices to public scrutiny was part of democratic control.

It discussed corporate tax practices and aggressive tax planning, and noted the following:

- owing to the great diversity of the 28 tax systems in the EU, as regards both the definition of the tax base and the level of the tax rate, basic notions, such as the balance between source and residence taxation, permanent establishment and taxable entities, and the treatment of debt and equity, were not subject to any joint definition or guidelines in the EU, leaving Member States with uncoordinated tax systems. **Members stressed that it was necessary to harmonise these definitions;**
- tax avoidance by some multinational corporations (MNCs) **can result in close-to-zero effective tax rates for the profits generated in European jurisdictions**, highlighting the fact that such MNCs, while benefiting from various public goods and services where they operate, do not pay their fair share;
- the possibility of shifting profits is only available to companies undertaking cross-border activities which penalises competitors only active in one country;
- corporate tax avoidance means that some of those taxpayers with the highest ability to pay contribute significantly less than those most affected by the economic, financial and debt crisis, such as ordinary citizens and firms not using aggressive tax planning;
- research by the IMF covering 51 countries concludes that profit shifting between tax jurisdictions results in an average revenue loss of about 5 % of current corporate income tax revenue – but of almost 13 % in non-OECD countries;
- despite the significant number of legal disputes in the EU stemming from differing interpretations of the same transfer pricing principles, no efficient dispute resolution mechanism is in place at European level.

Bearing this in mind, Parliament made the following recommendations:

Tax gap: Parliament called on the Commission to more thoroughly address corporate taxation issues, including harmful tax practices and their impact, in the framework of the European Semester and for

relevant indicators, including estimates of the tax gap arising from tax evasion and tax avoidance, to be included in the macroeconomic imbalance procedure.

Cooperation and coordination on advance tax rulings: Parliament 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.

Parliament reiterated its position that MNCs in all sectors should disclose comprehensibly 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).

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). It also called on the Commission to:

- include in its proposals provisions aimed at clarifying the definition of R&D investments and of permanent establishment in line with economic substance, covering the digital economy. In this connection, Parliament stressed the problems with aggressive tax planning involving **patent boxes**, noting that the existing evidence shows that patent boxes do not help in spurring innovation and can lead to major base erosion through profit shifting;
- restore the link between taxation and economic substance and to ensure that taxes are paid in the countries where actual economic activity and value creation take place;
- consider carefully [Parliament's position on CCCBT](#) and to adopt a formula apportionment which reflects the real economic activities of companies;
- 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;
- issue clear legislation on the definition of economic substance, value creation and permanent establishment, with a view to tackling the issue of letterbox companies.

State aid: Parliament underlined the fact that some harmful tax practices may fall within the scope of tax-related state aid rules, in so far as that they can, grant 'selective' advantage and entail distortions of competition within the internal market. In this regard, it 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.

- modify the existing rules to ensure that sanctions can be adopted against the relevant countries and companies in case of breach of state aid rules.

Code of Conduct Group: Parliament deplored the fact that the work of the Code of Conduct Group on Business Taxation work seems to have lost momentum, noting that tax authorities have countered the Group's recommendations by creating new structures with the same harmful effects as those rolled back by the Group.

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: Parliament 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.

Exchange of information: Parliament found that Member States did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU on enhanced administrative cooperation in the field of taxation. Member States **did not and continue not to spontaneously exchange tax information**, even in cases where there were clear grounds, for expecting that there may be tax losses in other Member States, or that tax savings may result from artificial transfers of profits within groups. Parliament deplored the fact that the current legislative and monitoring framework for the exchange of information about tax measures is not effective, and that practically no Member State exchanges any information which may have an effect on partner countries of the EU. It took the view that, among other things, **a comprehensive, transparent and effective automatic exchange of tax information and a mandatory common consolidated corporate tax base** are essential preconditions for achieving a tax system at EU level that complies with and preserves the basic principles of the internal market. The Commission is asked to use all the tools at its disposal to foster a more coordinated approach vis-à-vis developed countries in order to promote greater reciprocity in tax matters.

Tax havens: Members discussed the shifting of profits to low- or no-tax or secrecy jurisdictions where, often, no substantial economic activity takes place, deploring the lack of a coordinated approach on the part of the Member States vis-à-vis all those jurisdictions. They called on the Commission to:

- continue its work on the development and adoption of a European definition, a common set of criteria to identify tax havens, independently of their location, and appropriate sanctions for countries cooperating with them;
- include in the European black list those territories that grant fiscal advantages to entities without requiring substantial economic activity in the country, provide significantly low effective taxation and do not guarantee automatic exchange of tax information with other jurisdictions;
- ensure that EU bodies not to cooperate with those jurisdictions deemed to be uncooperative on tax matters, nor with companies convicted of tax fraud, tax evasion or aggressive tax planning.

European Taxpayer Identification Number: lastly, Parliament called on the Commission to put forward a proposal for a European Taxpayer Identification Number (TIN) based on the outline for a European TIN in the [Commission's Action Plan on the fight against tax fraud and tax evasion of 2012](#).