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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**on concrete ways to reinforce the fight against tax fraud and tax evasion including in
relation to third countries**

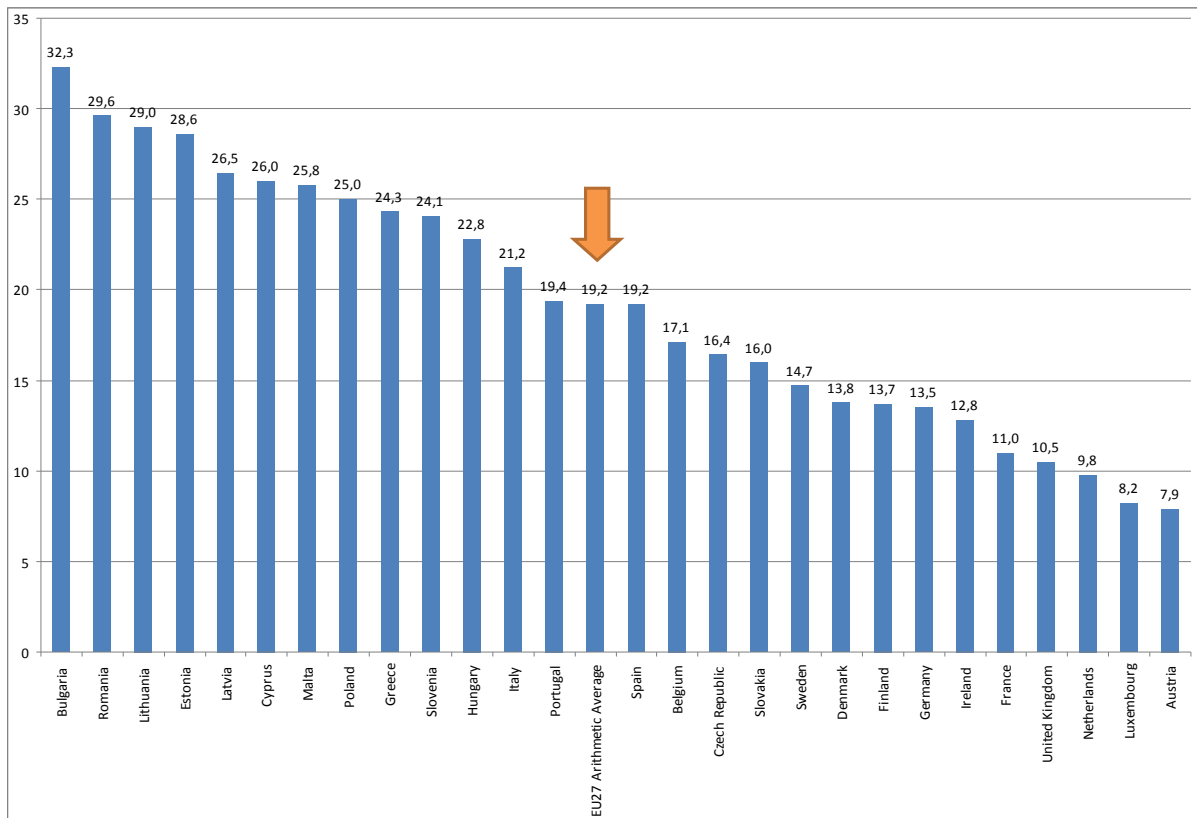
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1. INTRODUCTION

Tax fraud and tax evasion are limiting the capacity of Member States to raise revenues and to carry out their economic policy. In times of fiscal consolidation, when many Member States need to cut expenditure and increase revenues, the conduct of fiscal policy is made even more difficult by tax fraud and evasion¹. Estimates of the size of the shadow economy in the EU of nearly one fifth of GDP, gives a first indication of the extent of the problem.

Figure 1: Estimate of the size of the shadow economy in 2011 (% of GDP)²



¹ Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced. Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities.

² Source: Schneider, F. (2012), "Size and development of the Shadow Economy from 2003 to 2012: some new facts". The figures contained in this study are necessarily based on assumptions and should therefore be considered cautiously as their certainty is not demonstrated.

Also, tens of billions of euro remain offshore, often unreported and untaxed, reducing national tax revenues. Given the order of magnitude, stepping up the fight against tax fraud and evasion is not only an issue of revenue, but also of fairness. It is important to remember that the vast majority of EU taxpayers generally seek to comply with their tax obligations. Particularly in these difficult economic times, these honest taxpayers should not suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders. The focus should therefore be on tackling fraud and evasion. The present communication does not address undeclared work as such, although it may occur in conjunction with the evasion of indirect taxes; the approach to tackle undeclared work was set out in COM (2007) 628. The benefits from addressing these problems can be significant. Estimates show that recent voluntary compliance initiatives as a result of a G20 initiative alone raised 10 billion euro over 2 years for the EU Member States concerned³. By reducing fraud and evasion Member States can increase tax revenues which will also give them more leeway to restructure their tax systems in a way that better promotes growth as outlined in the 2012 Annual Growth Survey⁴.

In recent years, the challenge posed by tax fraud and evasion has increased considerably. The globalisation of the economy, technological developments, the internationalisation of fraud, and the resulting interdependence of Member States' tax authorities reveal the limits of strictly national approaches and reinforce the need for joint action.

On 2nd March 2012, the European Council therefore called on the Council and the Commission to rapidly develop concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries and to report by June 2012. In April the European Parliament adopted a resolution echoing the urgent need for action in this area.

An increase in efficiency and effectiveness of tax collection is, thus, desperately needed. The problems posed by tax fraud and evasion must be tackled at three levels: firstly, the tax collection within each Member State must be improved. Secondly, there is a need to enhance cross-border cooperation between Member States' tax administrations. Thirdly, the EU needs to have a clear and coherent policy vis-à-vis third countries in order to promote its standards at international level and ensure a level playing field. Co-operating at EU level has an added value in each of these three fields.

This Communication outlines how tax compliance can be improved and fraud and evasion reduced, through a better use of existing instruments and the adoption of pending Commission proposals. It also identifies areas where further legislative action or coordination would benefit the EU and Member States. Such action should not only target fraudulent activity and tax evasion but also aggressive tax planning. Aggressive tax planning includes the use of artificial operations or structures and the exploitation of mismatches between tax systems with the effect of undermining Member States' tax rules and exacerbating the loss of tax revenues.

³ OECD: The Era of Bank Secrecy is Over; the G20/OECD process is delivering results, 26 October 2011

⁴ Commission Communication on the Annual Growth Survey 2012 – COM(2011) 815 final of 25 November 2011 – 17229/11; Council conclusions of 16 February 2012 (6353/1/12 Rev.1)

2. MORE EFFECTIVE TAX COLLECTION WITHIN MEMBER STATES

Member States have full sovereignty over the collection of their taxes, the functioning and consistency of their tax laws and tax administrations, tax collection and the fight against tax fraud.

However, national action (or lack of action) has a direct impact on the functioning of the internal market at large, as it can distort competition among EU businesses, and on the ability of Member States to meet the commitments of the Stability and Growth Pact.

The importance of tax policy for fiscal consolidation and growth has been clearly recognised in the process of the European Semester⁵ and the Euro Plus Pact⁶. This has also been emphasised by the G20. Fair and ambitious fiscal consolidation is impaired by inefficient and ineffective tax collection.

The broad analysis carried out by the Commission in the context of the European Semester and translated into recommendations both to individual Member States and the Eurozone has revealed that for many Member States there are real and substantial problems of tax evasion sometimes linked to poor administrative capacity. Country-specific recommendations regarding these issues were addressed to 10 Member States⁷.

Reinforcing the fight against fraud and evasion as specified in some Country Specific recommendations will increase tax revenues and therefore support the necessary structural reforms. It may also help Member States to implement other growth friendly tax related recommendations, including reducing tax compliance costs for businesses.

Data on the VAT revenue ratio in Member States illustrate the extent of under-collected revenue. While VAT reduced rates and exemptions offer a partial explanation for this gap, it is also due to tax evasion that Member States collect only part of the theoretical VAT revenue.

⁵ Commission Communication on the Annual Growth Survey 2012 – COM(2011) 815 final of 25 November 2011 – 17229/11; Council conclusions of 16 February 2012 (6353/1/12 Rev.1)

⁶ Council conclusions of 16 February 2012 (6404/1/12 Rev.1)

⁷ Country-specific recommendations on these issues have been addressed to Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Italy, Lithuania, Malta, Poland, Slovakia. Note that Member States currently benefiting from financial assistance under the European Financial Stability Facility (EFSF), the European Financial Stabilisation Mechanism (EFSM) or under the provisions of Article 143 of the Treaty are recommended to implement the measures laid down in their respective Implementing Decisions and further specified in their Memorandums of Understanding and possible subsequent supplements. This concerns Greece, Ireland, Portugal and Romania

Figure 2: Actual VAT revenue in 2010 (% of theoretical revenue at standard rates)⁸

The problems which tax administrations face are also evidenced by the substantial administrative costs related to tax collection.

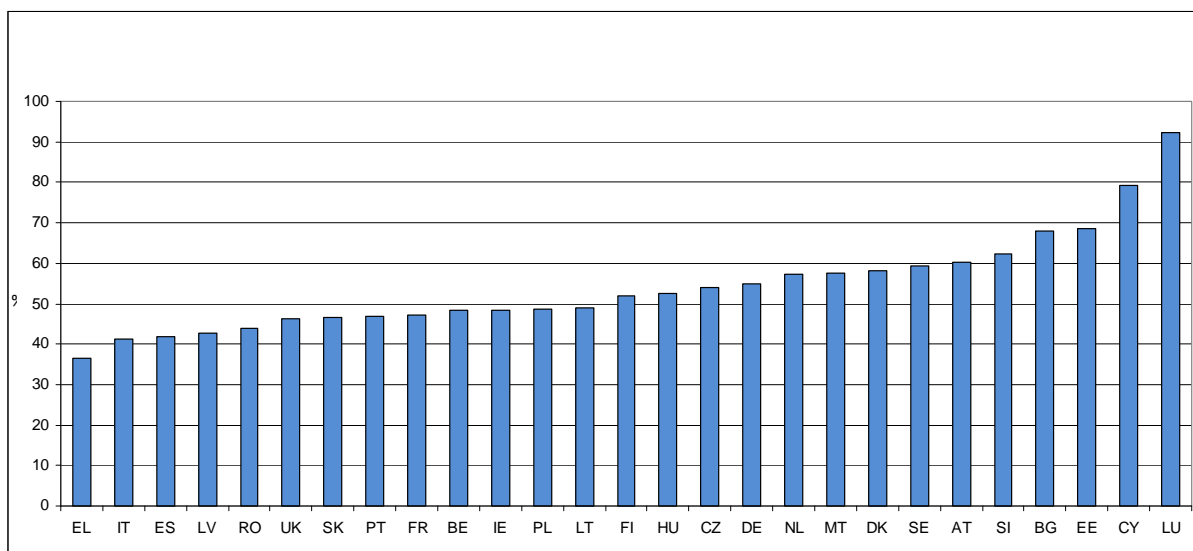
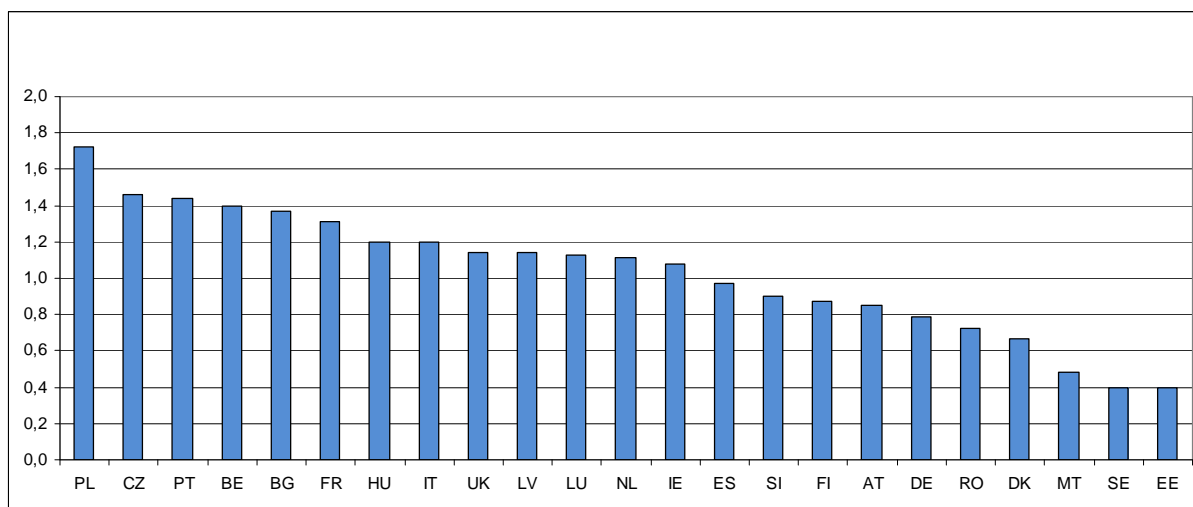


Figure 3: Administrative costs/net revenue collections in 2009 (costs in EUR per 100 EUR of revenue)⁹



In this context, specific technical assistance programmes are already available¹⁰ and the Commission invites Member States to rely on them when designing programmes to improve the functioning of their tax administrations, enhancing administrative capacity and tax compliance. For the future, there is a need for an effective successor to the FISCALIS programme, to improve the proper functioning of the taxation systems in the internal market.

⁸ Source: European Commission; “Taxation trends in the European Union”, 2012 edition.

⁹ Source: OECD. The table gives data for 23 Member States. Data for CY, EL, LT and SK are not available or under validation.

¹⁰ Decision N° 1482/2007/EC of the European Parliament and of the Council of 11 December 2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013) and repealing Decision N° 2235/2002/EC (O.J. L 330 of 15.12.2007, P. 1)

The Commission also believes it important to continue to assist Member States in identifying inherent weaknesses in their tax administrations and assist them in tackling specific problems, ensure effective exchange of best practices and also by developing benchmarking methodologies to assess the core functions of tax collection and controls.

3. BETTER CROSS-BORDER COOPERATION BETWEEN EU TAX ADMINISTRATIONS

The European integration process has led to closer integration of the economies of all Member States with high volumes of cross-border transactions and the rolling back of cross-border transaction costs and risks. This, in turn has posed additional challenges for national tax administrations in terms of co-operation and exchange of information.

3.1. Best use of existing legal instruments

Cross-border cooperation between Member States' tax administrations can only be truly effective if there is mutual trust and solidarity between Member States. Only when Member States are prepared to assist each other can they expect to reap the full benefits of cooperation. The experience of the Savings Directive¹¹ demonstrates the benefits of such cooperation. On average more than 4 million records are sent each year from source countries to residence countries representing on average 20 billion euro of savings income.

A series of important legal instruments for administrative cooperation have been adopted in recent years for both direct and indirect taxes¹². However, their effective and comprehensive use by Member States is still to be attained.

The Commission is assisting Member States in their efforts by providing them with the practical tools and instruments they need to engage in effective administrative cooperation. The Commission has already developed electronic formats for exchange of information and secure channels of communication will need to be continuously updated and extended to cover other types of income. The Commission will closely monitor the correct application by all Member States of the commonly agreed rules and procedures.

3.2. Further concrete ways to enhance cooperation

3.2.1. Strengthening existing tools

On 13 November 2008, the Commission adopted an amending proposal to the Savings Directive with a view to closing existing loopholes and better preventing tax evasion. The two major loopholes identified were the use of untaxed intermediary structures to obscure the actual beneficial ownership and the use of innovative financial instruments and other products (i.e. structured retail products and insurance wrappers) not covered by the Directive.

¹¹ Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OL L 157 of 26.6.2003, p.38)

¹² Council Directive 2010/24/EU of 16 March concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84 of 31.3.2010, P. 1); Council Regulation N° 904/2010/EU of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268 of 12.10.2010, P. 1); Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64 of 11.3.2011, P.1); Council Regulation N° 389/2012/EU of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) N° 2073/2004 (OJ L 121 of 8.5.2012, P. 1)

The second review of the Savings Directive confirmed the widespread use of untaxed offshore structures interposed between the payer and the ultimate beneficiary in order to obscure the actual beneficial ownership: 35% of the non-bank deposits in Member States (65% for deposits in Savings Agreements countries) are held by such structures located in offshore jurisdictions. The review also revealed that the market for structured financial products (EUR 767,3 billion current outstanding amount of sales) has been increasing annually at more than 30% on average in recent years. The content of the Amending Proposal is essentially agreed by Member States and it is vital that these changes are now adopted without delay. The EU must demonstrate its ability to address these problems which will also put it in a stronger position to seek equivalent improvements from other countries.

3.2.2. Enhancing exchange of information

Exchange of information gives tax administrations invaluable information on income received and assets owned by their taxpayers that can also be particularly useful for risk analysis purposes and that can serve as an incentive to voluntary compliance. The use of automatic exchange of information should be promoted where it is the most useful. The Commission has developed computerised formats for savings income and is currently developing new formats for income covered by Directive 2011/16 in order to implement secure and enhanced automatic exchange of information within the EU. The EU has a key role to play in promoting its standard of automatic exchange of information so as to give support to developing international standards of transparency and exchange of information in tax matters.

To ensure that information exchanged can be used immediately, it is essential to improve the identification of taxpayers. The experience of Member States shows that information can be far better matched when a Tax Identification Number (TIN) is communicated and used as a unique identifier. The Commission will therefore carry out an impact assessment with a view to proposing, where appropriate, a European TIN assigned to each taxpayer engaged in cross-border activity. Giving Member States' tax administrations direct access to relevant areas of each other's national data bases together with an extension of the scope of automated access in the VAT area should also be envisaged.

3.2.3. Tackling trends and schemes of tax fraud and tax evasion

It is essential to develop and share tools, systems and working methods that identify trends and schemes involving tax fraud and evasion, as well as individual cross-border fraudsters. To meet this objective, the Commission will pursue work on rapidly extending EUROFISC and its Early Warning System to the direct tax area and on enhancing Risk Management techniques. The Commission will also propose a Quick Reaction Mechanism on VAT fraud cases.

The Commission also aims to develop a strategy for tackling aggressive tax planning. It will examine ways to improve access to information on money flows, making it easier to trace significant payments made through off-shore bank accounts. Consideration should be given to the creation, within the EU, of teams of auditors dedicated to cross-border tax fraud. More regular joint audits should be promoted through extensive use of the existing legal provisions

on simultaneous controls and the presence of officials of a Member State in another Member State¹³.

3.2.4. *Ensuring high levels of taxpayers' compliance*

Improving taxpayer compliance¹⁴ is an important element of an effective strategy to combat tax fraud and evasion. To enhance compliance both in internal and cross-border situations taxpayers must be better informed about EU and Member States' tax rules. Tools such as a single TAX WEBPORTAL for all taxes and taxpayers and a one-stop shop for non-resident taxpayers in Member States would make it easier for the taxpayers concerned to meet their tax obligations. In the field of VAT the Commission is setting up a dialogue platform, the so-called "EU VAT Forum", involving Tax Authorities and business representatives. This Forum will create the conditions for a smoother functioning of the present VAT system aimed at enhancing voluntary compliance.

Taxpayers' compliance could be encouraged in various ways. One way to increase tax compliance is to decrease its costs and complexity for taxpayers. The administrative costs for business of complying with the tax code vary considerably between the Member States. As the time and costs fall disproportionately on small enterprises, decreasing administrative complexity and increasing the use of online tools would help tax collection and increase the competitiveness of many European firms.

Tax administrations should also consider complementing their control approach with a service approach. They could also develop motivational incentives in the form of voluntary disclosures programmes and encourage their taxpayers to correct their errors spontaneously. In the spirit of Corporate Social Responsibility¹⁵, the Commission will develop a taxpayers' charter.

In a globalised world where non-compliant taxpayers can weigh up their risks of being caught and punished in different jurisdictions, it is worth considering common minimum rules against tax fraudsters and evaders with regard to certain types of tax offences and including administrative or criminal sanctions. The fight against fraud is one of the priority sectors identified in the Commission Communication "Towards an EU Criminal Policy"¹⁶. The Commission will propose rules to strengthen the fight against fraud affecting the EU financial interest by means of criminal law.

3.2.5. *Enhancing tax governance*

A taxpayer committing VAT fraud will often also evade corporate or income tax and vice versa. It is therefore essential to aim for a more joined-up approach between direct and indirect taxes. Without ignoring the specificities of the different taxes, inspiration should be drawn from the different mechanisms and working methods in the respective areas to enhance the efficiency of the fight against tax fraud across all domains.

¹³ Article 7 of Directive N° 2010/24/EU; Articles 28, 29 and 30 of Regulation N° 904/2010/EU; Articles 11 and 12 of Directive N° 2011/16/EU; Articles 12 and 13 of Regulation N° 389/2012/EU

¹⁴ Tax compliance is the degree to which a taxpayer complies (or fails to comply) with the tax rules of his country, for example by declaring income, filing a return, and paying the tax due in a timely manner.

¹⁵ Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility – COM (2011) 681 final of 25.10.2011

¹⁶ COM (2011) 573 final of 20.9.2011

Greater convergence of tools and systems in the direct and indirect taxation areas should be promoted, e.g. by providing the same layout for the common parts of forms. In the medium term, the Commission will consider a single legal instrument for administrative cooperation for all types of taxes to ensure full integration and consistency of the mechanisms for cooperation.

As tax fraud is often linked with other forms of criminal activity it is important to strengthen cooperation between tax administrations and other authorities, in particular anti-money laundering, social security and judicial authorities, both at national and international level. At national level, it is necessary to ensure a satisfactory level of cooperation between all law enforcement services concerning not only tax fraud and evasion but also tax related crimes¹⁷¹⁸. Cooperation concerning tax related crimes can also be ensured through Europol¹⁹. The Commission can facilitate coordination in the areas concerned through joint use of its existing programmes and their successors.

4. COHERENT POLICY VIS-À-VIS THIRD COUNTRIES

The EU has a clear and coherent policy on good governance principles in the tax area (transparency, exchange of information and fair tax competition) but needs to ensure that this is promoted in a more consistent manner, not just within the EU but with third countries as well.

4.1. Ensuring the application of equivalent standards by third countries

The effective and smooth application of the enhanced measures on taxation of savings at EU level would benefit greatly from reinforcing the existing equivalent measures with important partners of the EU.

Well-known and marketed financial centres with strong banking secrecy laws continue to dominate the international cross-border deposits market. Cayman Islands and Switzerland alone, with a total of USD 1352 billion deposits by non-banks represent almost 20% of all worldwide deposits by non-banks.

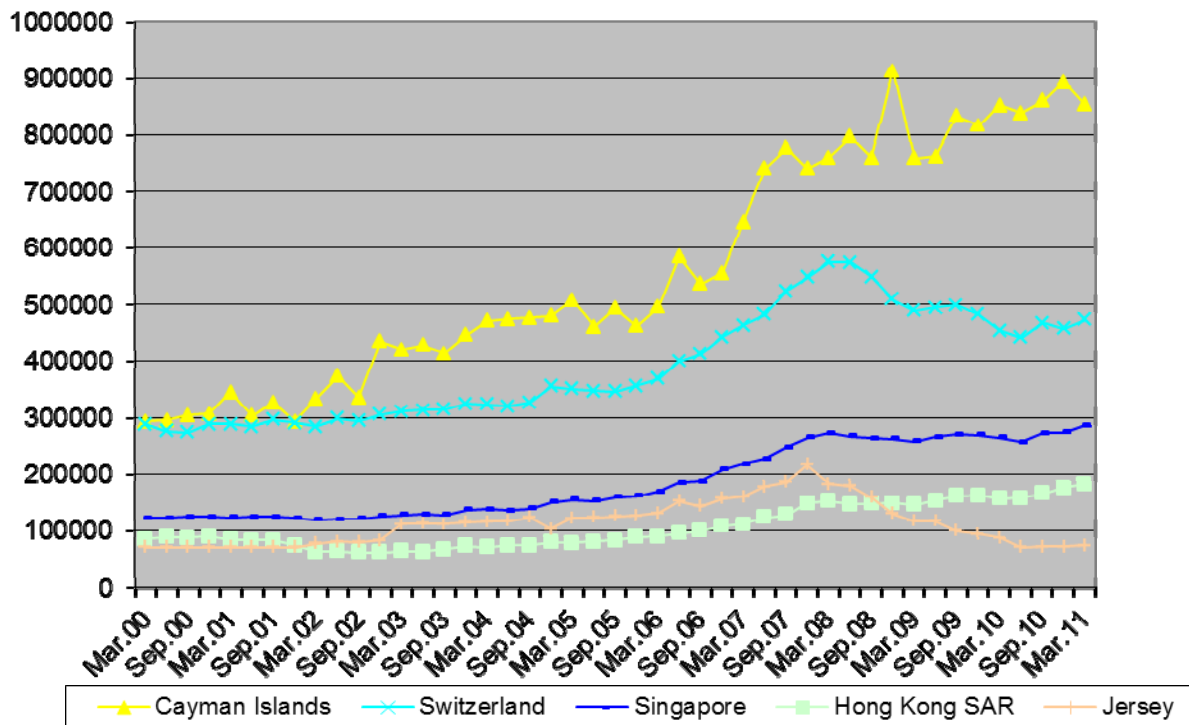
Figure 4 Trends in foreign non bank deposits with banks in major selected non EU financial centres (millions of US dollars)²⁰

¹⁷ Money laundering, terrorist financing and criminal schemes relating to Missing Trader Intra Community Frauds (MTIC), including VAT carousel fraud and criminal investment in the EU Emission Trading Scheme.

¹⁸ The revised FATF standards adopted in February 2012 added tax crime as a predicate offence to the money laundering and terrorist financing offence

¹⁹ Europol allows identifying the organisers of tax related crimes and dismantling criminal networks.

²⁰ Source: BIS public aggregate data



Accordingly, the Council should swiftly give a mandate to the Commission and provide support to it in negotiating amendments to the existing EU savings agreements with Switzerland, Andorra, Monaco, Liechtenstein and San Marino. Aligning these agreements on the new standards enforced within the EU, and resulting from the amendments to be made to the Savings Directive, should allow further progress in the development of equivalent measures with these jurisdictions. A similar step should be taken for updating the savings agreements with the relevant dependent or associated territories. Attention should be given to international developments concerning financial centres around the world.

All of these measures taken together would greatly strengthen the capacity of Member States to collect taxes on investment income of their respective residents. Recent bilateral agreements of the UK and Germany with Switzerland give an indication of untaxed assets held in Switzerland. These resulted in envisaged upfront payments of CHF 500 million for the UK and CHF 2 billion for DE. The actual regularisation payments are expected to surpass CHF1.3 billion for the UK and CHF 4 billion for DE. The UK estimates a total yield of up to GBP 4-7 billion from the regularisation payment. This estimation gives an indication of the magnitude of the problem for the EU as a whole.

The findings of the second review of the Savings Directive show that enhancement of the existing agreements in line with the proposed amendments to the Directive would make it possible to include money held in fiduciary accounts. These are accounts holding funds re-deposited by the investor's bank in its own name in another jurisdiction. In the case of Switzerland, the funds held on such fiduciary accounts represent 4.5 times the money held directly by such investors.

4.2. Promoting EU standards at international level

It is important to ensure better coherence between EU policies in general, so that EU partners under international trade and cooperation agreements will commit to good governance principles in the tax area in line with the 2008 Council conclusions²¹. These principles should continue to be included in all relevant EU-level agreements with third countries as well as promoted through development cooperation incentives as outlined in the 2009 Communication "Promoting Good Governance in Tax Matters"²² and the 2010 Communication "Tax and Development – Cooperating with Developing Countries on Promoting Good Governance in Tax Matters"²³.

The Council should also swiftly approve the draft EU/Liechtenstein agreement on anti-fraud and tax cooperation matters and should give a mandate to the Commission to open similar negotiations with Andorra, Monaco, San Marino and Switzerland. In addition, possibilities to conclude multilateral agreements for administrative cooperation in the field of indirect taxes with third countries should be explored as well as the participation of third countries in simultaneous controls.

Recent developments at international level as regards the US Foreign Account Tax Compliance Act (FATCA) open new perspectives for strengthening automatic information exchange between Member States and third countries thus improving transparency at a global level.

Finally, cooperation with other international organisations should be improved with a view to promoting common interests and avoiding overlaps and creating synergies for the benefit of financial institutions and tax administrations²⁴. Member States should be able to use a single set of tools and instruments both within the EU and in their relations with third countries. To this end, the Commission is promoting EU advanced practical tools (including electronic formats) with a view to ensuring their use by non-EU countries particularly in relations with EU Member States.

4.3. The way forward to deal with tax havens and aggressive tax planning

Tax havens, also sometimes referred to as 'non-cooperative jurisdictions' are commonly understood to be jurisdictions which are able to finance their public services with no or nominal income taxes and offer themselves as places to be used by non-residents to escape taxation in their country of residence. The OECD has identified three typical 'confirming' features of a tax haven: (i) lack of effective exchange of information, (ii) lack of transparency, and (iii) no requirement for substantial activities. In addition they often offer preferential tax treatment to non-residents in order to attract investment from other countries. Tax havens therefore compete unfairly and make it difficult for 'non' tax havens to collect a fair amount of taxation from their residents.

²¹ Conclusions of the ECOFIN Council meeting on 14 May 2008 (Press Release 8850/08)

²² COM (2009) 201 final of 28.4.2009

²³ COM (2010) 163 final of 21.4.2010

²⁴ The EU participates actively in other international forums such as the OECD, the International Organisation for Tax Administration (IOTA), the Inter American Center of Tax Administrations (CIAT), the International Tax Dialogue (ITD), the International Tax Compact (ITC), and the African Tax Administration Forum (ATAF)

Intensive work is on-going to eliminate many of the harmful features of tax havens. Important progress has been made through the almost universal adoption of strong rules on information exchange on request and transparency following the successful re-launching of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. However, although many former 'tax havens' have committed to these principles whether these commitments have been put into practice is only just being reviewed. Furthermore the Forum does not consider the question of 'fair tax competition', a principle which the EU upholds internally via the Code of Conduct for business taxation²⁵. Promoting such a concept to third countries is relevant both for the OECD and the EU.

Tax Havens continue to potentially damage the interests of Member States. The burden of additional compliance costs due to uncoordinated actions by Member States to protect their tax bases falls on all taxpayers. Similarly when tax revenues are lost as tax base has been diverted to tax havens then all tax payers suffer when tax rates are raised to make up for eroding tax bases.

Over and above specific issues linked to tax havens, the Commission's aim is to contribute to a fair and sound tax environment in the EU (for Member States, taxpayers, and investors) where erosion of tax bases is efficiently tackled (within the EU and in relation to third countries). It is important that the ensuing advantages are not undermined through action taken by third countries. Possible policy responses to achieve this are currently being evaluated with the aim of a presenting an action plan towards the end of this year. The aim is to establish a set of measures, procedures and tools for coordinated action. This could include a mixture of defensive measures or sanctions against countries which practice unfair tax competition and incentives for those countries to cease such practices. The focus will be on coordinated measures. The Communication will also address issues of aggressive tax planning.

5. CONCLUSION

There is a clear political will, as expressed by heads of state and government on 2 March 2012, to prioritise concrete actions to fight fraud and tax evasion. This now needs to be translated into concrete action. This Communication provides a first response to the European Council's request by outlining the different levels at which action is needed and by giving broad orientations on the issues which merit further consideration. The Commission hopes to advance these discussions both at Council level and through the Tax Policy Group²⁶. A swift adoption of the revision of the Savings directive, and an immediate agreement on giving the negotiating mandate to the Commission, would be a first step in this direction.

The European semester process provides an ideal opportunity to examine tax issues in the overall context of the economic development of the EU and to integrate tax policy in the push for growth. The Commission will continue its effort to support Member States' consolidation and pro-growth strategies.

²⁵ Conclusions of the ECOFIN Council meeting on 1 December 1997 concerning taxation policy (OJ C 2 of 6.1.98, P.1)

²⁶ The Tax Policy Group is a permanent high-level group, established in 1996, for strategic and comprehensive discussion on tax policy issues at a European level chaired by the Commissioner responsible for taxation matters

Before the end of 2012 the Commission intends to come forward with an action plan based on a proportionate impact assessment, which will identify specific measures which could be developed rapidly if the appropriate political priority is given. The presentation of this plan is foreseen together with the initiative on tax havens and aggressive tax planning. This action plan will set out concrete steps to enhance administrative cooperation and will support the development of the existing good governance policy, the wider issues of interaction with tax havens and of tackling aggressive tax planning and other aspects, including tax-related crimes.