



November 28, 2014.

Mr Commissioner,

The lack of tax harmonisation in the European Union is one of the main causes allowing aggressive tax planning, base erosion and profit shifting (BEPS) to develop within the internal market. This situation may lead to uncooperative behaviours between Member States, which directly affects the establishment or functioning of the internal market and the benefits provided by the Treaty freedoms.

Our citizens and our companies expect us to cope with tax avoidance and aggressive tax planning. It is our common duty to meet their expectation by ensuring that everyone pays its fair share of tax to the State where profits are generated.

Good progress has been made, especially during the last six months, but now we need to do more. Indeed, it is obvious that a turning point has been reached in the discussion on unfair tax competition and base erosion and profit shifting within the EU, which result in undesirable effects and undermine the realization of the internal market. Since certain tax practices of countries and taxpayers have become public recently, the limits of permissible tax competition between Member States have shifted. This development is irreversible.

We fully appreciate the Commission's prompt reaction with the recent announcement of the initiative regarding tax rulings. Now, no one can deny that there is a strong need for real action and that we must collectively take necessary measures to ensure transparency and fair taxation.

In the context of the OECD/G20's final adoption of the BEPS conclusions by the end of 2015, the appropriate response by the EU is the adoption of a set of common, binding rules on corporate taxation to curb tax competition and fight aggressive tax planning.

We, Finance Ministers of France, Germany and Italy, are convinced that this can only be reached through a comprehensive anti-BEPS Directive, to be adopted by the 28 Member States before end-2015. The diagnosis is made and the solutions are already known, so we should act without any delay.

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First, the lack of transparency between tax administrations fosters aggressive tax planning, as their decisions may have an impact on the location of the tax base within the internal market. The Commission's proposal to make information exchanges on cross-border tax rulings mandatory and automatic, which should also cover decisions relating to transfer pricing, is necessary. Moreover, one should think about stricter conditions and rules for the issuance of such unilateral rulings.

In addition, we have a real opportunity to go further in this area. For instance, the EU law could do more on trusts, shell companies and other non transparent entities, by establishing registers or other mechanisms requiring that beneficial owners are identified and available for tax administrations. The directive should also include disclosure requirements for companies' intra-European cross-border restructuring and other operations.

Second, transparency is not enough. We can surely not concede that situations where Treaty freedoms are misused in order to avoid tax remain unaddressed. For this reason, the anti-BEPS Directive should set a general principle of effective taxation.

As a consequence, the exemptions provided for by the Interest-Royalties and the Parent-Subsidiary Directives should be denied if they lead to no effective taxation. On the issue of the hybrid arrangements, it is particularly crucial to prevent double non-taxation in any sort of cross border situation.

Consistently, the anti-BEPS Directive should ensure at the EU level that tax benefits are not obtained through inappropriate arrangements. Thus, our work on a common general anti-abuse provision has to be achieved and it must be incorporated into the EU law.

With respect to national provisions like Patent Boxes, we should build on the principle defined by the OECD and the Code of Conduct Group and provide for a binding framework based on common rules.

Last, the European Union needs to protect its internal market from tax avoidance through the use of tax havens. The anti-BEPS Directive will be an opportunity to fix this issue through counter-measures towards jurisdictions whose behaviour fosters non transparency and aggressive tax planning. As regards the first point, the EU could take advantage of the work performed by the Global Forum on Transparency and Exchange of Information.

This strong initiative taken by the EU, which could be proposed by the end of 2014, would give Europe the leading place that it deserves at the international level. We will be able to take advantage of it to obtain progress in the framework of the ongoing OECD/G20 discussion.

Yours sincerely,

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