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Tax Transparency: Tax rulings are essential for companies to invest in Europe

KEY MESSAGES

- 1 BUSINESSSEUROPE fully supports fair tax competition and the objective to fight fraud and evasion as it creates strong competitive distortions at the expense of the vast majority of businesses who pay their taxes in full.
- 2 Tax authorities should apply tax rules in a consistent and non-discriminatory way. BUSINESSSEUROPE supports the enforcement of state aid rules to ensure a level playing field within the Single Market and to prevent market distortions.
- 3 The current discussion on tax rulings should not undermine the practice of businesses undertaking a dialogue with Member States' tax administrations regarding the tax treatment of economic activities, which plays an important role in increasing investment confidence and contributes for greater compliance.
- 4 BUSINESSSEUROPE supports automatic exchanges of information amongst tax authorities. However, commercially sensitive information that companies provide must be protected.
- 5 BUSINESSSEUROPE supports the need to have an efficient dispute resolution mechanism for cases of double taxation
- 6 The current discussion should not undermine the essential role that companies play in generating growth, creating jobs and foster prosperity for our citizens. Paying taxes is only a fraction of companies' contribution to society and corporation tax is just a small part of the overall tax paid by businesses.

KEY FACTS AND FIGURES

In 2012 businesses paid nearly € 2 trillion of taxes in the EU

The overall tax burden in the EU is over 50% higher than in the US and over 25% higher than in Japan.

The EU's share of worldwide Foreign Direct Investment in flows fell from over 40% in 2000 to 17% in 2013.



Tax Transparency: Tax rulings are essential for companies to invest in Europe

BUSINESSEUROPE welcomes the launch of the Tax Transparency Package and shares the objective to strengthen tax transparency, provided it doesn't undermine the EU investment environment.

BUSINESSEUROPE supports the European Parliament decision to set up a special committee to analyse and examine the application of EU state aid rules and taxation law in relation to tax rulings and other administrative practices by Member States.

BUSINESSEUROPE calls upon the European Parliament and the European Commission to consider possible measures vis-à-vis tax rulings very carefully and to take note of possible ramifications on the competitiveness and investment climate of the EU. Possible measures would need to guarantee legal certainty without creating too big of an administrative burden for all parties involved, specifically for SMEs that operate in a multi-national environment.

1. FAIR TAX COMPETITION

BUSINESSEUROPE fully shares the objective to fight fraud and evasion as it creates strong competitive distortions at the expense of the vast majority of businesses who pay their taxes in full.

BUSINESSEUROPE supports a fair tax competition in Europe and believes that Member States must have the competence to set their own tax policies, which are in line with the international rules that Member States have agreed to. Double taxation, as well as unintended double non-taxation must be avoided.

2. ENFORCEMENT OF STATE AID RULES

BUSINESSEUROPE supports the enforcement of state aid rules to ensure a level playing field within the Single Market and to prevent market distortions.

National tax rules, as well as the application of tax rulings or other administrative practices, should not selectively favour an individual taxpayer over another. Therefore, the European Commission should challenge any rules where there is an indication of a de facto aid scheme contrary to EU state aid rules.

In assessing whether the treatment of an individual taxpayer deviates from the national tax rules, the European Commission should take these national rules as the reference framework.



BUSINESSEUROPE is concerned that in recent opening decisions on state aid cases¹ the European Commission has imposed its own standard, the Prudent Independent Market Operator Test (PIMOT), for comparing intra-group transactions with transactions between independent companies. This raises serious concerns, as the European Commission appears to be of the opinion that the imposed PIMOT should take precedence over methods described in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

BUSINESSEUROPE stresses the need for clarifying that the national rules are the reference framework for assessing the incidence of selectivity.

3. TAX RULINGS

We share the European Parliament rapporteurs' assessment that "tax rulings provide legal certainty for the taxpayer in cases where circumstances are unclear or subject to diverging interpretations and thereby avoid future disputes between the taxpayer and the tax authority".

We also support Commission's assessment that "tax rulings are primarily issued to provide legal certainty" and that they represent an effective mechanism to ensure predictability and consistent application of national tax rules both for companies and national tax authorities. Tax rulings are essential for determining how national tax rules will apply regarding cross border investments in the EU

Tax rulings are an expedited means for taxpayers and tax authorities to predetermine how the national tax rules will be applied regarding a defined investment. The value of a tax ruling lies solely in the certainty it provides regarding the national tax rules in advance of an investment. Agreements that are laid down in a tax ruling can under no circumstances go beyond the boundaries set by these national tax rules. Tax rulings should not provide any benefits that would not be available to taxpayers who do not seek a tax ruling.

4. AUTOMATIC EXCHANGE OF INFORMATION IN TAX RULINGS

BUSINESSEUROPE supports the principle of transparency and of automatic exchanges of information amongst tax authorities, also where tax rulings and administrative practices are concerned. This is an instrument that can increase confidence between Member States, specifically by setting up automatic exchanges of information under the same rules, obligations and rights for all Member States.

Under these uniform rules companies/investors should be guaranteed that any information they have provided, which is commercially sensitive, must be protected and strict rules on data protection must be respected.

¹ E.g. SA.38373, SA.38374 and SA.38375



Without adequate guarantees on the confidentiality of proprietary information the result will simply be that taxpayers will shy away from asking for tax rulings. The end result will then be that the EU effectively loses a very efficient mechanism to boost investment confidence, and there will likely be a significant loss of future domestic and foreign direct investments in the EU.

5. EFFECTIVE DISPUTE RESOLUTION MECHANISM

We share the European Parliament rapporteurs' assessment that "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".

BUSINESSEUROPE supports the need to have an effective dispute resolution mechanism for cases of double taxation.

6. CORPORATION TAX – ONLY A SMALL PART OF COMPANIES CONTRIBUTION TO SOCIETY

The current discussion should not undermine the essential role that companies play in generating growth, creating jobs and foster prosperity for our citizens. Paying taxes is only a fraction of companies' contribution to society and corporation tax is just a small part of the overall tax paid by businesses.

In 2012, businesses paid nearly € 2 trillion of taxes in the EU, through corporation tax, social security contributions, property, resource, energy, environmental and other taxes. In addition to paying taxes, enterprises help tax systems to run smoothly by collecting VAT and income tax from their employees.
