



BusinessEurope reply to EU Commission Survey ‘Cross-border resolution of tax disputes for SMEs: a European framework’ (i.e EU Cooperative Compliance Programme)

We welcome the Commission’s initiative on an EU Cooperative Compliance Programme: this well-timed initiative paves the way for greater cooperation and exchange of tax information between businesses and tax authorities, as well as greater cross-border cooperation between tax authorities themselves. Whilst we regret the non-legally binding nature of the programme and the (current) non-inclusion of VAT-issues, we believe that, under the right conditions, an EU cooperative compliance programme, focused on preventive dialogue, can decrease the number of costly (double) tax disputes, and support large and small businesses when expanding and operating across the EU single market, with benefits in terms of trade, tax revenue and economic growth.

For your consideration, we want to highlight, in terms of both the SMEs and MNEs programmes, several important design features which we consider to be important to make the EU cooperative compliance programme reach its full potential.

Scope

Given the current scope of the issues the EU cooperative compliance programme for SMEs is looking into, a turnover threshold not exceeding € 250 million seems appropriate. We would be very concerned however if the subsequent multinational enterprise programme would leave out ‘mid-cap’ companies (i.e. turnover between €250 million and €750 million). As different businesses can struggle with different issues, dependent upon their business models, it could be helpful if companies participating in the programme can highlight in advance what they would particularly like to focus on (permanent establishment status, transfer pricing, losses, etc). This should also help tax authorities in allocating their resources in the most efficient way.

Transparency

National cooperative compliance programmes have sometimes been misinterpreted by third-party observers as offering ‘privileges’ to (large) companies, or even as a ‘sweetheart deal’ between tax authorities and businesses. To avoid any unjustified reputational damage to both businesses and tax authorities, the EU cooperative compliance programme should make it crystal-clear from the start what the programme offers (administrative support, a greater degree of legal certainty, increased compliance) and what it does not offer (e.g. tax cuts), and to whom it is open. In addition, whilst the programme offers indeed many benefits to businesses, it should be highlighted as well that this often comes with greater scrutiny and information-sharing with tax authorities in return, often in the shape of real-time reporting. In terms of transparency, while an annual public list of the participating companies can be envisaged, it is essential that any commercial information that companies report (regarding issues linked to their business models, pricing strategies, etc) as part of the cooperative compliance programme is not disclosed in any shape or form to anyone outside of the tax authority.



Promotion

While the benefits to businesses of a cooperative compliance programme can be numerous (no costly mistakes when administering forms, lower risk of time-consuming audits, no lengthy double tax disputes, tax certainty when expanding cross-border, etc), there remains a general hesitation amongst businesses to move into closer contact with tax authorities, often fearing a higher administrative burden. This is in particular the case for SMEs who often do not have tax adviser in-house, and thus normally have a less direct relationship with the tax authorities. To ensure the EU cooperative compliance programme becomes a success, by also supporting SMEs when expanding cross-border, it will be essential to create promotion and visibility through the tax authorities and relevant stakeholders, both at EU-level and national level. In this context, we highlight the cooperative compliance programme used in France, which provides for a specific and individualised support to specifically cater for SMEs, which is performed through the tax authorities' 'regional offices', rather than a one-size-fits-all centralised system.

Entry and exit rules

The EU cooperative compliance programme would be a welcome alternative to the advance pricing agreements and mutual agreement procedures which often take too much time and are costly in terms of administrative burden. It is therefore logical that an EU cooperative compliance programme, especially when aimed at SMEs, does not come with excessive and lengthy administrative requirements. Dependent upon the final design of the programme, there also needs to be some level of harmonisation on its entry rules. Currently, some national cooperative compliance programmes have very different eligibility requirements: some may require audits before a company is allowed to participate, others only allow companies that have not received any penalties for late/incorrect tax compliance in the past 4/5/6/...years. While it is understandable to only open the EU programme to compliant and honest taxpayers, one needs to take into consideration that some companies have been forced to pay penalties due to an honest mistake, which was perhaps caused by the lack of an efficient dialogue with or between tax administration(s). In this light, we encourage not to take an overtly or unnecessarily strict approach when setting up the programme. In addition, the legal nature of such a cooperation needs to be clearly defined. Some national programmes use only a 'memorandum of understanding' between the participants, whilst other programmes rely on a full formal agreement. To offer companies fair and equal access to an EU-wide programme, it would be helpful to create harmonised rules on the entry requirements.

However, the rules should also cover in a harmonised and clear way the 'exit-rules': a situation where a company wants to step out of the programme. These exit-rules are not intended to discourage companies from participating, but rather to ensure that there is a greater level of certainty about the process, thus contributing to the wider uptake of and greater trust in the EU cooperative compliance programme. Such rules should also provide further clarity on the designated tax authority contact-person and their duties and obligations.



Expansion (VAT)

In terms of the SME programme, we have to underline that small businesses and micro-enterprises struggle particularly more with VAT when expanding cross-border rather than with issues related to corporate tax. While we understand that in an initial pilot phase the scope of the project would be more narrow and targeted, a future expansion of the project should take VAT into account as well.

The inclusion of VAT should not be underestimated. While business are not only struggling with complying with the different VAT administrative requirements throughout the EU when expanding or selling cross-border, we also see a growing concern over "double VAT taxation disputes" in cross-border transactions, which brings further barriers into the Single Market and burdens the businesses involved with costly legal procedures and penalties. This phenomenon is sadly likely to increase in the future due to the ongoing digitalisation of the economy (with new innovative business models centring around the platform and collaborative economy) and thus new challenges to key VAT-concepts such as the place of supply, the identification of the underlying supplier as a (non-)taxable person and the characterisation of certain transactions. The current mechanisms to address these double VAT taxation disputes (Cross-border rulings, SOLVIT, etc) have brought some positive developments, but are certainly not sufficient, and often take too much time or are administratively burdensome. We would like to refer in this context to the study by the VAT forum on "The Prevention and Solution of Double VAT Disputes"¹ and the on-going study at the University of Vienna and the Global Tax Policy Centre, which BusinessEurope actively shared amongst its network to provide real-life examples.

¹ https://ec.europa.eu/taxation_customs/system/files/2020-01/01-2020-executive-note-eu-vat_forum.pdf