TAXATION IN THE EUROPEAN SEMESTER 2018

Background quotes from the documents adopted on 23 May 2018

1) Quote from the **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS AND THE EUROPEAN INVESTMENT - BANK '2018 European Semester - Country-specific recommendations',**

COM(2018) 400 final

« **Improving tax rules and administration is essential to ensure the sustainability of Member States' tax systems and secure a level playing field and a positive business environment for companies.** A stable, simple and cost-efficient tax system can improve tax compliance and contribute to a positive investment climate. Recommendations are therefore proposed to simplify the tax system in France and Hungary, increase its efficiency in Germany, and improve tax administration and compliance in Bulgaria, Lithuania and Romania. As indicated in the 2018 euro area recommendation, the fight against taxpayers' aggressive tax planning strategies is essential to impede distortions of competition between firms, provide fair treatment of taxpayers, and safeguard public finances, thereby also helping preserve social cohesion and fight inequalities. Spill-over effects of taxpayers' aggressive tax planning strategies between Member States call for a coordinated action of national policies to complement the Union legislation. Member States have engaged at European level to enhance tax transparency and agree on a minimum level of protection against abuse. They have also taken steps at national level, for example by amending or repealing their patent box that facilitated aggressive tax planning, or changing their tax residency rules. Despite this progress, a thorough review of tax rules and relevant economic indicators shows that the tax system of a number of Member States continues to be exploited by multinationals that engage in aggressive tax planning."

(p.8-9)

2) Quote from the recommendation for a **COUNCIL RECOMMENDATION on the 2018 National Reform Programme of Belgium.**

COM(2018) 401 final

"(15) As indicated in the 2018 euro area recommendation, the fight against aggressive tax planning is essential to impede distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spill-over effects of taxpayers' aggressive tax planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. The former Notional Interest Deduction system that was based on the stock of equity has been replaced by an incremental system. The new system, which shares an incremental baseline with the Allowance for Growth and Investment proposed in the common corporate tax base will be limited to incremental equity capital calculated on the basis

of a 5-year average. This change is meant to contribute to the budget-neutrality of the corporate tax reform while addressing the potential use of the system in aggressive tax planning and still alleviating the debt/equity bias issue. While the absence of some specific anti-abuse rules was a cause of concern, a reform of the anti-abuse framework is now being prepared. This is a positive step. It will be closely monitored to ensure that the new rules address all relevant forms of abuse. Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

3) Quote from the recommendation for a **COUNCIL RECOMMENDATION on the 2018 National Reform Programme of Ireland and delivering a Council opinion on the 2018 Stability Programme of Ireland**

COM(2018) 407 final

"(10) As indicated in the 2018 euro area recommendation, the fight against taxpayer's aggressive planning strategies is essential to impede distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spill-over effects of taxpayers' aggressive planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. The high level of royalty and dividend payments as a percentage of GDP suggests that Ireland's tax rules are used by companies that engage in aggressive tax planning. Limited application of withholding taxes on outbound (i.e. from EU residents to third country residents) royalty and dividend payments made by companies based in Ireland may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction. Furthermore, companies may use certain provisions in bilateral tax treaties between Ireland and some other countries to overrule the new tax residence rule put in place in Ireland in 2015. The outcome of the consultation undertaken by Ireland following the Independent Review of the Corporation Tax Code will be relevant for the design of the announced tax reforms. The Commission takes note of recent positive steps announced or adopted (i.e. steps taken to tackle aggressive tax planning domestically; possible defensive measures against listed non cooperative jurisdictions). Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

4) Quote from the recommendation for a **COUNCIL RECOMMENDATION on the 2018 National Reform Programme of Cyprus.**

COM(2018) 412

"(10) As indicated in the 2018 euro area recommendation, the fight against aggressive tax planning strategies is essential to impede distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spill-over effects of taxpayers' aggressive planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. The high levels of dividend and interest payments (relative to GDP) continue to suggest that Cyprus' tax rules are used by companies that engage in aggressive tax planning. The absence of withholding taxes on outbound (i.e. from EU residents to third country residents) dividend, interest and, in many cases, royalty payments by

Cyprus-based companies to third country residents may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction. The absence of such taxes, together with the corporate tax residency rules, may continue to facilitate aggressive tax planning. While notional interest deduction regimes help to reduce the debt equity bias, they can also be used for tax avoidance purposes, if there are no effective anti-abuse rules. The Commission takes note of recent positive steps announced or adopted (i.e. the announced review of corporate tax residency rules, planned changes on transfer pricing provisions). Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

5) Quote from the recommendation for a **COUNCIL RECOMMENDATION. on the 2018 National Reform Programme of Luxembourg**

COM(2018)415 final

"(8) As indicated in the 2018 euro area recommendation, the fight against aggressive tax planning strategies is essential to prevent distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spill-over effects of taxpayers' aggressive planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. Despite the size of its financial sector, the high level of dividend, interest and royalty payments as a percentage of GDP suggest that the country's tax rules are used by companies that engage in aggressive tax planning. The majority of foreign direct investment is held by 'special purpose entities'. The absence of withholding taxes on outbound (i.e. from EU residents to third country residents) interest and royalty payments and the exemption from withholding taxes on dividend payments under certain circumstances may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction. The Commission takes note of the positive step taken by Luxembourg (i.e. adoption of a patent box regime compliant with international rules). Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

6) Quote from the recommendation for a **COUNCIL RECOMMENDATION on the 2018 National Reform Programme of Hungary**

COM(2018) 416 final

"(12) Measures have been implemented to improve the tax system, but some problems remain. Although decreasing, the tax wedge on labour, especially for certain low-income groups, is still high in EU comparison. The overall complexity of the tax system, coupled with the continued presence of sector-specific taxes, remains a weakness. Measures against taxpayer's aggressive planning strategies are essential to impede distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spill-over effects of taxpayer's aggressive planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. Hungary records relatively high capital inflows and outflows through special purpose entities, which are disconnected from the real economy. The absence of withholding taxes on outbound (i.e. from EU residents to third country residents)

dividend, interest and royalty payments made by companies based in Hungary may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction. The Commission takes note that Hungary acknowledges that outbound payment may lead to aggressive tax planning if misused. Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

7) Quote from for a **COUNCIL RECOMMENDATION on the 2018 National Reform Programme of Malta and delivering a Council opinion on the 2018 Stability Programme of Malta**

COM(2018) 417 final

"(6) As indicated in the 2018 euro area recommendation, the fight against aggressive tax planning strategies is essential to impede distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spillover effects of taxpayers' aggressive planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. The absence of withholding taxes on outbound (i.e. from EU residents to third country residents) dividends, interest and royalty payments made by Malta based companies may lead to those payments avoiding tax altogether, if they are also not subject to tax in the recipient country. While Malta's new Notional Interest Deduction regime will help to reduce the debt equity bias, insufficient anti-abuse rules, combined with a relatively high rate and a stock-based regime, may provide opportunities for tax avoidance. The existence of some provisions in bilateral tax treaties between Malta and other EU Member States, coupled with Malta's tax system, where a company that is resident but not domiciled in Malta is taxed on source and remittance basis, may be used by companies to engage in tax avoidance practices. The Commission takes note of Malta's commitment to fight against taxpayers aggressive tax planning. Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

8) Quote from the recommendation for a **COUNCIL RECOMMENDATION on the 2018 National Reform Programme of the Netherlands and delivering a Council opinion on the 2018 Stability Programme of the Netherlands**

COM(2018) 418 final

"(9): "As indicated in the 2018 euro area recommendation, the fight against aggressive tax planning strategies is essential to impede distortions of competition between firms, provide fair treatment of taxpayers and safeguard public finances. Spill-over effects of taxpayer's aggressive planning strategies between Member States call for a coordinated action of national policies to complement EU legislation. The high level of dividend, royalty and interest payments made via the Netherlands continue to suggest that the country's tax rules are used by companies that engage in aggressive tax planning. A large proportion of the foreign direct investment stock is held by 'special purpose entities'. The absence of withholding taxes on outbound (i.e. from EU residents to third country residents) royalties and interest payments may lead to those payments escaping tax altogether, if they are also not subject to tax in the

recipient jurisdiction. The lack of some anti-abuse rules, especially in the case of hybrid entities, may also facilitate aggressive tax planning. The Commission acknowledges the Netherland's commitment to fight aggressive tax planning as set out in the reform agenda on taxation, including withholding taxes on royalty, interest and dividend payments in case of abuse or payments to low-tax jurisdictions, is a positive step to decrease aggressive tax planning and should be implemented swiftly and monitored closely. Based on recent exchanges, the Commission will continue its constructive dialogue to fight against taxpayers aggressive planning strategies."

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK AND THE EUROGROUP - 7 March 2018

2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011

COM(2018) 120 final

p.1-2 "With its continued focus on the 'virtuous triangle' of investment, structural reforms, and responsible fiscal policies, the European Semester continues to guide Member States in taking the necessary reforms. The 2018 Annual Growth Survey provides this economic guidance to Member States, in line with President Juncker's 2018 State of the Union address. The recommendation for the economic policy of the euro area in 20182 stresses the need for reforms to promote quality job creation, social fairness, rebalancing and convergence, higher investment, the quality of public finances, the completion of the Banking and Capital Markets Unions, and deepening the Economic and Monetary Union. The recommendation also calls for fighting aggressive tax planning. It calls on all Member States to prioritise reforms that increase productivity and growth potential, improve the institutional and business environment, remove bottlenecks to investment and foster innovation, support the creation of quality jobs and reduce inequality. Member States with current account deficits or high external debt should additionally contain unit labour cost growth and improve their account deficits having been corrected, but with persistent large current account surpluses. Stock imbalances – notably private and public debt levels – are adjusting, helped by nominal growth, but progress is unequal. Stocks of net foreign liabilities remain high in a number of countries. Given that internal and external stock imbalances only adjust slowly, despite recent improvements in flows, they remain a source of risks in many Member States. Mainly in countries without identified imbalances at present, there are signs of a possible overheating in housing prices."

p.11 "Aggressive tax planning entails significant losses to European taxpayers; the transposition of EU legislation will help curtailing such practices. Revenue losses from profit shifting within the EU alone are estimated at EUR 50-70 billion. Aggressive tax planning distorts the playing field among companies, and unfairly diverts resources from governments' spending objectives. Tax abuse can be reined in by strengthening national tax legislation, increasing transparency, and cooperation among governments. Belgium, Cyprus, Malta and the Netherlands are amending aspects of their tax systems that have facilitated aggressive tax planning. In Ireland, the recommendations of an independent review of the corporation tax

code have been submitted to public consultation. By the end of 2018, Member States have to transpose the provisions of the Anti-Tax Avoidance Directive (ATAD) into their national law."