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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

Tax and Development

Cooperating with Developing Countries on Promoting Good Governance in Tax Matters

SEC(2010)426

INTRODUCTION

On 28th April 2009, the European Commission issued a Communication on Promoting Good Governance in Tax Matters¹, to present concrete actions that could be taken to better promote the principles of good governance in the tax area (transparency, exchange of information and fair tax competition), both within the European Union and towards third countries. The general objective is to improve tax cooperation and tackle tax evasion and avoidance on as broad a geographical basis as possible. This is also in line with the Declarations of Monterrey² and Doha³ where capital flights and illicit financial flows were explicitly identified as a major obstacle to mobilization of domestic revenue for development. According to a Norwegian government commission illegal money flows from developing countries totalled 641 to 979 billion USD in 2006, thus at least seven times higher than official development assistance⁴. This is facilitated by tax systems vulnerable to harmful tax practices and non-cooperative jurisdictions. Addressing this problem requires joint efforts by both developing and developed countries to implement the principles of good governance in the tax area, thereby also enhancing growth prospects and poverty reduction in developing countries while strengthening tax systems at global level. On 18 May 2009, and taking also into account the Commission Communication on Supporting Developing Countries in Coping with the Crisis⁵ the General Affairs and External Relations Council invited the Commission to propose concrete EU action “*on dialogue with, and assistance to, developing countries on promoting Good Governance in tax matters and more effective national tax systems in order to achieve development goals*”. This is also a key priority of G8 and G20.

This Communication aims to improve synergies between tax and development policies by suggesting ways in which the EU could assist developing countries in building efficient, fair and sustainable tax systems and administrations with a view to enhancing domestic resource mobilisation in a changing international environment. The European Parliament has expressed strong support in this regard.

1. STRENGTHENING GOOD GOVERNANCE IN TAX MATTERS IN DEVELOPING COUNTRIES

In many developing countries, the sustainable provision of public services that is necessary to achieve and maintain the Millennium Development Goals (MDG) requires an increase in domestic revenue. Their tax-to-GDP ratio ranges between 10 to 20% as opposed to 25 to 40% in developed countries. Increasing domestic revenue not only creates additional space for supporting MDG-related spending, it also allows a country to assume ownership for its policy choices. As underlined in the Doha Declaration, mobilizing domestic financial resources for development is central to the global partnership for sustainable development, especially in support of the MDG. For the developing countries this partnership means enhanced efforts to

¹ COM(2009) 201.

² Monterrey Financing for Development Conference, 2002.

³ Doha Financing for Development Conference, 2008.

⁴ Norwegian Government Commission Report “Tax Havens and Development”, June 2009.

⁵ COM(2009) 160, 2.4.2009.

mobilise domestic resources to finance development priorities while donors have to respect their commitment to provide long-term and predictable assistance towards internationally agreed poverty reduction objectives. The Commission assumes this mutually shared responsibility by providing an increasing share of development assistance through budget support, including through innovative aid modalities such as the MDG-Contracts concluded with a number of ACP countries.

Moreover, taxation is instrumental for state-building and fostering citizenship. Good governance in tax matters cannot be exported or imposed from the outside. Accountable government must deliver on the basic needs of citizens or risk losing legitimacy and public support. The EU is committed to the principles of ownership of development strategies and programs by partner countries. In supporting developing countries in this area, the EU is also committed to the principles of mutual accountability laid down in the Paris Declaration on Aid Effectiveness. Better tax governance in developing countries will increase the willingness of EU tax payers to support development aid.

1.1. Difficulties encountered by developing countries

1.1.1. Domestic factors

When attempting to increase their domestic tax revenues, developing countries are often confronted with several constraints linked to:

- The structure and competitiveness of their economy (e.g. large informal sectors, predominance of agriculture over industry and services);
- Political and macro-economic instability, poor public service delivery, low quality of public finance management, the incidence of corruption, poor governance and deficient rule of law, including in resource-rich settings and particularly severe in countries in situations of fragility;
- The features of the tax system and its management that may explain the limited effectiveness and responsiveness of tax reforms:
 - narrow tax base often leading to an uneven distribution of tax burden between economic factors and taxpayers;
 - balance between direct/indirect taxation that may not always appropriately reflect the structure of the economy;
 - weak link between tax policy and tax administration;
 - lack of capacity of tax administrations to operate and supervise the tax system, which can result in low tax compliance and collection.

1.1.2. International factors

The increasing integration of international markets and the economic globalisation also affects the effectiveness of national tax systems:

- Implementation of domestic tax rules becomes difficult in a world with an increasing geographical mobility of taxpayers, the volume of trade and capital flows and the use of new technologies;
- Transition from revenue systems largely dependent on customs revenue to broader and more modern ones create adjustment issues ;
- Countries might be tempted to encourage foreign direct investments through too costly tax incentives and derogations that often fail to attract real and sustainable investment;
- The existence of non-cooperative jurisdictions and harmful tax practices, both in developed and developing countries, is detrimental also to developing countries by not only having a negative impact on their revenues but also by undermining good governance and institutional development.

1.2. Supporting effective, efficient, fair and sustainable tax systems

Efficient and fair tax systems are crucial for growth, poverty reduction, good governance and state-building. They tend to result in higher and more stable revenues, more sustainable investments, and improved competitiveness of economies. In particular, the nexus between tax reform and the improvement of the business environment is critical by making it easier for business to invest, trade and create jobs. Moreover, in countries encountering capacity difficulties, it seems particularly important to design tax systems that are easy to operate with limited resources.

Efficient and fair tax systems are also essential for promoting democracy and state legitimacy since tax payers tend to hold their governments accountable. They help build a strong fiscal social contract between citizens and their government at all levels that encourages tax compliance, leads to improved democratic and economic governance, higher revenues through higher economic growth and broader tax bases, and allow for combating tax evasion and avoidance, fighting money laundering, corruption and the financing of terrorism.

1.2.1. Assisting in tax reforms and strengthening tax administrations

The Commission acknowledges the prime responsibility of developing countries themselves to improve their revenue systems and policies, according to their own economic and political circumstances and choices. When designing tax systems and strengthening tax administrations a number of challenges need to be addressed:

- The appropriate level of and balance between direct and indirect taxes, the scope of the tax base and the tax burden distribution considering the structure of the economy, the potential to generate sustainable revenues, and the country's social needs;
- Bringing in the informal economy, productive investments and facilitating employment generation, notably in micro and small enterprises;
- Establishing a stable legal framework, transparent tax systems and accountable tax administrations as well as ensuring simplified procedures and low compliance costs;
- Giving tax administrations the necessary means to effectively process tax information and ensure tax compliance for all economic actors, nationals and internationals alike.

1.2.2. Promoting domestic accountability and public financial management

Enhancing ownership and domestic accountability is at the forefront of the EU's development cooperation framework, given the emphasis put on the use of country systems in aid delivery, including the use of budget support. This implies enhancing adherence to sound and transparent public finances, including with regards to revenue flows resulting from mineral resource projects.⁶ It is important to continue to promote greater transparency in preparing the budget, including subsidies provided through tax exemptions, as well as the transmission to parliaments of budget execution reports and audits. More attention is needed to strengthen the technical expertise of parliaments so as to enable them to assess and meaningfully contribute to the formulation and oversight of national budgets, including on domestic revenues from resource extraction and tax matters. Local authorities' capacities to collect taxes and to provide accountability to citizens on local public spending should be strengthened.

Non-state actors such as academia, think tanks, NGOs and media, as well as taxpayers, play an important role in providing public fora for informed discussions and in ensuring public scrutiny of tax governance.

1.2.3. Strengthening transparency and cooperation in the international tax environment

In an ever globalizing economy, it becomes increasingly difficult for national tax systems to operate efficiently without international cooperation. This may lead to tensions on tax competences, which can be solved by agreeing to international principles.

A number of developing countries claim that their capacity to mobilize domestic revenues is affected by international tax evasion and avoidance, in particular because of asset and profit shifting to and through attractive and/or non-cooperative tax jurisdictions. Since multinational corporations are not required to disclose their financial data on a country-by-country basis enterprises may try to lower their tax liability in developing countries notably through transfer pricing practices. The G20 countries agreed to work on the international application of rules of

⁶ The Raw Materials Initiative - COM(2008) 699, 4.11.2008.

transparency in financial and tax matters and have repeatedly called on the standard setting institutions to come up with a single set of high quality global accounting standards. The EU is seeking from all countries, and in particular its partner countries, agreement on the basic cooperation principles of good governance in the tax area (transparency of the tax system, exchange of information and fair tax competition) that its Member States have already achieved.⁷ This would enhance the capacity of EU Member States and their partner countries to address international tax evasion and avoidance, building on complementary international initiatives.

Guided by the EU policy of effective multilateralism, the Commission underlines the importance of the development of and subsequent compliance with global principles and standards on transparency and exchange of information. Ideally, this calls for global conventions with binding commitments for all treaty signatories. For the time being, efforts have to be undertaken to make effective use of existing regional cooperation frameworks established with, for instance, the African, Caribbean and Pacific (ACP) countries, Latin American and European Neighbourhood regions so that best practice in good tax governance can be introduced and broadened at the appropriate regional level. The Commission will also strengthen transparency by putting forward a Communication on Corporate Social Responsibility, where it will consider how to develop a system for mandatory disclosure of governance information in the annual accounting.

Developing countries need to be enabled to participate more effectively in international tax cooperation structures and processes. This would allow them to negotiate relevant agreements, including on tax information exchange, at multilateral, regional and/or bilateral level, wherever most appropriate and effective.

2. HARNESSING EU INSTRUMENTS TO PROVIDE ENHANCED SUPPORT

Progress in strengthening tax systems and raising domestic revenues in developing countries has rather been modest over the last years. The Commission believes the donor community can do more and make better use of the existing funds and instruments by setting up a more consistent approach in this area.

The Commission highlights the importance of assistance, including technical cooperation, in designing developing countries' tax systems and implementing the principles of good governance in the tax area. For example, in 2009 the Commission has disbursed EUR 117 million on ongoing activities and committed an additional EUR 49 million in new projects to support public financial management, including tax policy and administration, in developing countries⁸. EU Member States and other donors provide important support to this area as well.

The following approach should help enhancing support from the EU and the international community to tax systems in developing countries.

⁷ COM(2009) 160 and 201, and ECOFIN conclusions of 14 May 2008.

⁸ These amounts cover the following activities: fiscal policy and planning; support to ministries of finance; strengthening financial and managerial accountability; public expenditure management; improving financial management systems; tax policy and administration, budget drafting; inter-governmental fiscal relations, public audit, public debt.

2.1. Stepping up and improving the effectiveness of EU support to tax systems

2.1.1. Introducing a more comprehensive approach to tax administration and tax reforms

On the basis of a comprehensive approach taking notably into account the economic situation, political economy and the international environment of the country, as well as broader governance and public finance management contexts, the Commission proposes that relevant assistance tools and instruments be improved and best use made of them in the appropriate frameworks:

- The European Development Fund (EDF) for African, Caribbean and Pacific (ACP) States: when concluding country and regional strategy papers, attention will be given to the principles of good governance in the tax area, using the countries' governance commitments as a basis. There will be a greater focus on domestic revenue and principles of good governance in tax issues as part of countries' governance commitments and profiles. Countries eligible for development aid which, after assessment based on the elaboration of a governance profile, undertake detailed commitments (Governance Action Plan), may receive an additional allocation depending on the quality of their commitment. This will enable a strengthened dialogue in this area, including in the context of mid and end of term reviews, and Article 8 Political Dialogue. In line with the proposals of the 2009 Communication "Promoting Good Governance in Tax Matters", important provisions related to good governance in tax area and tax reforms have been introduced in the process to revise the Cotonou Agreement.
- The Development Cooperation Instrument (DCI) and the European Neighbourhood Policy and Partnership Instrument (ENPI): Specific attention will be paid to effectively integrating domestic revenue and good governance in tax matters principles into the programming, implementation and monitoring of national and regional envelopes in accordance with the priorities of the Strategic Documents, including in the context of the relevant political and policy dialogues structures established with the partner countries.
- Support for national oversight bodies, parliaments and Non-State Actors, to produce and disseminate quality work about tax fraud and its impact, to ensure public scrutiny of public financial management, including tax governance performance, and to assist in policy formulation, where appropriate and feasible.

This enhanced and broadened focus on tax matters requires building up more expertise at EU level and more coherence in the allocation and use of resources.

2.1.2. Supporting multilateral and regional initiatives

Where appropriate, support to multilateral and regional initiatives on tax administration and tax reforms should be granted. The Commission welcomes regional fora such as the African Tax Administration Forum and the Inter-American Centre of Tax Administrations, which aim at promoting improvements in tax administrations through sharing experiences, benchmarking and peer reviewing best practices. The Commission will consider financial support to these initiatives, inter alia through intra-ACP regional funds.

The Commission considers that support for IMF regional technical centres for the provision demand-driven and targeted technical cooperation on tax administration to developing countries should be enhanced. In addition, support is being considered, also by EU Member States, for the IMF Revenue for Development Trust Fund to extend technical cooperation on revenue management to developing countries.

In resource-rich settings, the Commission, notably through the EDF, and Member States should reinforce support to the Extractive Industries Transparency Initiative (EITI) which has been instrumental in strengthening governance by improving transparency and accountability, through the disclosure of government revenues and company payments from resource extraction.

2.1.3. Strengthening public financial management in the context of budget support

The architecture of budget support programs facilitates policy dialogue, performance measurement and capacity development in order to improve revenue systems and collection. The processes and tools developed for public financial management (PFM) are also relevant for revenue mobilization. The Public Expenditure Financial Accountability (PEFA) framework, which includes indicators on revenue, offers one avenue for this. As regards ACP countries, the revision of the Cotonou Agreement streamlines institutional development and capacity building support to tax reforms and good governance in tax matters and creates incentives to commit to public financial management reforms, including in the revenue area, in order to be eligible to budget support.

The EU should encourage partner governments to develop reform programs, including in resource-rich settings and in the context of support to local authorities that clearly state the objectives in terms of tax policy and tax administration reforms. A structured reform program will facilitate the transition from fragmented projects to a more coordinated donor approach.

2.1.4. Deepening regional integration

Regional integration is crucial for developing countries and a key feature in EU cooperation. The creation of custom unions and the adoption of Common External Tariffs in several areas, and the signature of Economic Partnership Agreements with the EU bring significant economic benefits for the partner countries, but also new challenges, in particular the need to shift the resource base from the external common tariffs towards other types of taxation. Regional organizations have adopted convergence macroeconomic criteria including tax revenue objectives, have worked towards harmonized VAT rates and codes of investment and have provided guidance on strengthening other forms of taxation, increasing efficiency of cross-border tax services and addressing transparency. The Commission considers that support should be enhanced for furthering the process of regional integration in partner regions, notably through the appropriate indicative programs implemented in partnership with the regional organisations concerned.

2.1.5. Improving donor coordination

The Commission intends to improve donor coordination at EU and international levels.

At EU level, the EU Code of Conduct on Complementarity and Division of Labour in Development Policy⁹ presents guiding principles on division of labour. These principles, including the notion of lead donorship and delegated cooperation/partnership arrangements, should be applied to the tax area. The Commission and the Member States should coordinate support to government priorities taking into account specific expertise and avoiding overlapping.

An effective division of labour at donor level in general and among EU partners in particular allows for properly targeted tax governance assistance while fully respecting aid effectiveness principles. Close collaboration with the European Investment Bank (EIB), and coherence between EU policy priorities in the tax area and relevant EIB and other International Financing Institutions (IFIs) interventions should be further ensured¹⁰.

At international level, donor coordination in relation to tax assistance should also be further improved notably through the International Tax Dialogue (ITD), members of which include the European Commission, the IMF, OECD, the UN, and the World Bank.

2.2. Working towards a transparent, cooperative and fair international tax environment

The Commission is convinced that tax evasion and avoidance cannot be addressed properly without international tax cooperation in an environment where developing and developed countries can benefit from and contribute to international initiatives.

2.2.1. Enhancing the participation of developing countries in relevant international fora

It is necessary to support developing countries in their fight against illicit outflows and a stronger involvement of developing countries in international tax dialogues and cooperation, including in the standards setting process. International tax standards for cooperation should also be discussed in a forum where developing and developed countries are both represented.

To this end, the Commission supports stepping up international dialogue and cooperation in tax matters, notably through a broader participation of developing countries in the OECD Global Fora on Transparency and Exchange of Information and on Development, respectively. Furthermore, the Commission encourages enhanced cooperation between the OECD Development Assistance Committee and the Committee of Fiscal Affairs, the United Nations Committee of Experts on International Cooperation in Tax Matters, the International Tax Dialogue, and, as an informal platform, the International Tax Compact.

Concrete steps have already been taken under the ongoing revision of the Cotonou Agreement to support ACP countries to participate in international tax cooperation structures and to implement

⁹ COM(2007) 72.

¹⁰ IFIs must carry out a broad-based due diligence in order to avoid that any EU funds are used directly or through intermediaries in Offshore Financial Centres, so-called tax havens or any other jurisdiction, for the purpose of evading tax payment to beneficiary countries and EU Member States or in connection with tax fraud and avoidance.

best practices in tax matters, including the principle of transparency and exchange of information.

2.2.2. Supporting adoption and implementation of international standards

The Commission considers that EU action should focus on encouraging and supporting developing countries to adopt and implement international standards in the tax area.

With regard to the principles of good governance in tax matters:

- The Commission will further seek their adoption through relevant agreements between the EU and its partners in line with the ECOFIN conclusions of 14 May 2008;
- The Commission will provide support for their adoption and implementation at regional and national levels, including through technical cooperation where requested, including by:
 - Strengthening capacities to conclude and implement Tax Information Exchange Agreements (TIEA) and, where appropriate, Double Taxation Conventions (DTC), including through multilateral mechanisms;
 - Adapting the legal framework and improving tax administration capacity as appropriate;
 - Sharing experience in international tax cooperation gained through applicable instruments such as the EU Savings Taxation Directive, in order to explore the relevance and feasibility of multilateral agreements and automatic exchange of information for developing countries.

The Commission will encourage research on innovative approaches to the implementation of the OECD transfer pricing guidelines by developing countries, such as assistance by other countries in applying rules, or joint tax audits by developing countries' administrations. The Commission also considers that strengthening assessment capacities in tax administrations of partner countries is necessary regarding the application of the arm's-length principle.

In order to enhance transparency and facilitate access of relevant data by tax administrations in developing countries, there is an increasing interest in a country-by-country reporting (CBCR) standard for multinational corporations operating in developing countries. The Commission supports the timely conclusion of ongoing work being done by the OECD with respect to a CBCR guideline, which should then be referred in the OECD Guidelines for Multinational Enterprises and in the OECD Principles of Corporate Governance. Moreover, the Commission supports research work currently undertaken by the International Accounting Standards Board towards the possible inclusion of CBCR in an International Financial Reporting Standard for extractive industries and encourages further investigation into other methods which could be used to help developing countries authorities to correctly assess, at low cost, the tax liabilities of their taxpayers.

3. CONCLUSIONS AND RECOMMENDATIONS

The Commission proposes to:

- Strengthen support to domestic revenue mobilisation in developing countries, in the context of its broader efforts to strengthen good governance and public finance management in these countries, by:
 - Increasing the effectiveness of the support to developing countries' capacities to raise domestic revenues in line with the principles of good governance in the tax area. This will be done in particular through a more comprehensive approach in support of tax reforms and administration, increased support to demand-driven regional and international capacity development initiatives, including EITI and IMF initiatives, and better donor coordination at EU and international levels;
 - Making best use of relevant dialogue and assessment tools, e.g. governance criteria, profiles, action plans, for ensuring an effective monitoring of domestic revenue issues and good governance commitments in the tax area;;
 - Better integrating tax issues when assessing budget support eligibility and supporting Public Financial Management reforms;
 - Strengthening monitoring capacities in developing countries in the fight against illicit financial flows, including through support to non-state actors;
 - Supporting regional institutions and countries engaged in economic regional integration and trade liberalisation, and strengthening their capacity to improve domestic tax revenue mobilisation.
- Promote the principles of good governance in tax matters, and support developing countries to fight against tax evasion and other harmful tax practices, by:
 - Encouraging and supporting closer cooperation between relevant OECD and UN bodies when developing international standards of tax cooperation, taking into account the specific needs and capacities of developing countries;
 - Including, as appropriate, a specific reference to strengthening tax systems and to the principles of good governance in the tax area in all development cooperation agreements with third parties;
 - Providing technical cooperation to developing countries committed to the principles of good governance in the tax area to enable them to conclude and implement TIEA and, where appropriate, DTC;
 - Supporting the adoption and implementation of the OECD transfer pricing guidelines in developing countries;

- Supporting ongoing research on a country-by-country reporting requirement as part of a reporting standard for multinational corporations, notably in the extractive industry.