

Procedure file

Basic information		
INI - Own-initiative procedure	2016/2038(INI)	Procedure completed
Tax rulings and other measures similar in nature or effect		
See also 2015/2066(INI)		
Subject		
2.70 Taxation		
3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Special committee on tax rulings (TAX2)		22/02/2016
		 KOFOD Jeppe	22/02/2016
		 THEURER Michael	
		Shadow rapporteur	
		 HÜBNER Danuta Maria	
		 LUCKE Bernd	
		 LAMBERTS Philippe	
		 ZANNI Marco	
		 MONOT Bernard	
European Commission	Commission DG Taxation and Customs Union	Commissioner MOSCOVICI Pierre	

Key events			
02/12/2015	Committee referral announced in Parliament		
21/06/2016	Vote in committee		
29/06/2016	Committee report tabled for plenary	A8-0223/2016	Summary
05/07/2016	Debate in Parliament		

06/07/2016	Results of vote in Parliament		
06/07/2016	Decision by Parliament	T8-0310/2016	Summary
06/07/2016	End of procedure in Parliament		

Technical information

Procedure reference	2016/2038(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Special committee/Committee of inquiry
	See also 2015/2066(INI)
Legal basis	Rules of Procedure EP 207
Stage reached in procedure	Procedure completed
Committee dossier	TAX2/8/05986

Documentation gateway

Committee draft report	PE580.528	11/05/2016	EP	
Amendments tabled in committee	PE583.970	02/06/2016	EP	
Amendments tabled in committee	PE584.081	02/06/2016	EP	
Amendments tabled in committee	PE584.248	14/06/2016	EP	
Committee report tabled for plenary, single reading	A8-0223/2016	29/06/2016	EP	Summary
Text adopted by Parliament, single reading	T8-0310/2016	06/07/2016	EP	Summary
Commission response to text adopted in plenary	SP(2016)694	23/01/2017	EC	

Tax rulings and other measures similar in nature or effect

The Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 2) adopted the report by Jeppe KOFOD (S&D, DK) and Michael THEURER (ADLE, DE) on tax rulings and other measures similar in nature or effect.

The Panama Papers and Lux Leaks revelations have shown the urgent need for the EU and its Member States to fight tax evasion, tax avoidance and aggressive tax planning, and to act for increased cooperation and transparency, particularly by ensuring that corporate taxes are paid where value is created, not only among Member States, but also globally.

Recalling that the scale of tax evasion and avoidance is estimated by the Commission to be up to EUR 1 trillion a year, while the OECD estimates the revenue loss at global level to be between 4 % and 10 % of all corporate income tax revenue, the Special Committee suggested that Parliament reiterated the conclusions of its [resolution of 25 November 2015](#) and of its [resolution of 16 December 2015](#).

Follow-up by the Commission and Member States: Members regretted the fact that to date 14 Member States still have no controlled foreign company rules to prevent aggressive tax planning and that 25 have no rules to counter the mismatching tax qualification of a local company by another state. They called on Member States and the Commission to adopt further legislative proposals on corporate tax avoidance.

Members considered that the [Directive on Administrative Cooperation](#), having undergone two consecutive ad hoc modifications, on automatic exchange on tax rulings and on Country-by-Country Reporting, should now be reviewed in its entirety, particularly but not only in order to reduce and eventually eliminate the current exceptions to the principle of exchange of information. They urged the Commission to come forward with a proposal for a common corporate consolidated tax base (CCCTB) before the end of 2016, which would provide a comprehensive solution for dealing with harmful tax practices within the Union.

Blacklist and concrete sanctions for uncooperative jurisdictions and withholding tax: the Commission was asked to come up with a common Union definition and a blacklist of tax havens, based on sound, transparent and objective criteria and including implementation of OECD recommendations. An escalation procedure, starting with a constructive dialogue with the jurisdiction where shortcomings have been identified, needed to be foreseen prior to the listing.

Members also called for a concrete Union regulatory framework for sanctions against the blacklisted uncooperative jurisdictions, including the possibility of reviewing and, in the last resort, suspending free trade agreements, suspending double taxation agreements and prohibiting access to Union funds. Sanctions should also be applied to companies, banks, and accountancy and law firms and to tax advisers proven to be involved in illegal, harmful or wrongful activities.

The Commission should prepare binding legislation banning all EU institutions from opening accounts or operating in the jurisdictions included in the common Union list of uncooperative jurisdictions. It should also present a legislative proposal for a EU-wide withholding tax, to be operated by the Member States, in order to ensure that profits generated within the Union are taxed at least once before leaving it. For their parts, Member States should renegotiate their bilateral tax treaties with third countries by means of a multilateral instrument, in order to introduce sufficiently robust anti-abuse clauses and thus prevent treaty shopping.

Patent, knowledge and R&D boxes: Members noted that to date patent, knowledge and R&D boxes have not proven as effective in fostering innovation in the Union as they should have. They are, instead, used by multinationals for profit shifting through aggressive tax planning schemes.

The Commission was asked to put forward proposals for binding Union legislation on patent boxes, building on and addressing the weaknesses of the OECD Modified Nexus Approach, in order to prohibit the misuse of patent boxes for tax avoidance purposes.

Banks, tax advisers and intermediaries: Members regretted deeply that some banks, tax advisers, law and accounting firms and other intermediaries have been instrumental and have played a key role in designing aggressive tax planning schemes for their clients, and have also assisted national governments in designing their tax codes and laws, creating a significant conflict of interest. They called on the Commission to come forward with a Union Code of Conduct for all advising services to provide for situations of potential conflicts of interest to be clearly disclosed.

Member States were asked to establish effective, proportionate and dissuasive sanctions, including criminal sanctions, on company managers involved in tax evasion, as well as the possibility of revoking business licences for professionals and companies proved to be involved in designing, advising on the use of, or utilising illegal tax planning and evasion schemes;

The Commission was asked explore the feasibility of introducing proportional financial liability for tax advisers engaged in unlawful tax practices. It was also asked to come forward with a legislative proposal introducing a mandatory disclosure requirement for banks, tax advisers and other intermediaries concerning complex structures and special services that are linked to jurisdictions included on the common EU list of tax havens.

Other recommendations: the Special Committee called for, inter alia:

- a proposal from the Commission of a clear legal framework to guarantee the effective protection of whistle-blowers, as well as of journalists and other persons connected with the press who aid and facilitate them;
- an improvement in the transparency and effectiveness of the working methods of the Code of Conduct Group, given that only a limited number of new documents have been made available for in camera consultation by MEPs, and that the Commission was unable to keep all records of the documents distributed;
- the creation of a new Union Tax Policy Coherence and Coordination Centre within the structure of the Commission, to safeguard the proper and coherent functioning of the single market and the implementation of international standards;
- improved cooperation between the Union, the G20, the OECD and the UN to cooperate further to promote global guidelines that will also be beneficial to developing countries;
- inclusion in all trade and partnership agreements of good governance clauses, including efforts to effectively implement global automatic exchange of information standards;
- a global assets register of all assets held by individuals, companies and all entities such as trusts and foundations, to which tax authorities would have full access and which would include appropriate safeguards to protect the confidentiality of the information retained therein;
- a common and comprehensive EU/US approach on the implementation of OECD standards and on beneficial ownership;
- encouraging the potential of digital solutions for effective tax collection in gathering tax data directly from operations in the sharing economy and in lowering the overall workload of tax authorities in Member States.

Members called on the Council to fully take advantage of the consultation procedure with Parliament, which in particular means waiting for input from Parliament before reaching a political agreement and striving to take on board Parliament's position.

Tax rulings and other measures similar in nature or effect

The European Parliament adopted by 514 votes to 68 with 125 abstentions, a resolution on tax rulings and other measures similar in nature or effect, following the work of The Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE 2).

The Panama Papers and Lux Leaks revelations have shown the urgent need for the EU and its Member States to fight tax evasion, tax avoidance and aggressive tax planning, and to act for increased cooperation and transparency, particularly by ensuring that corporate taxes are paid where value is created, not only among Member States, but also globally. Offshore wealth is estimated to be approximately USD 10 trillion.

Recalling that the scale of tax evasion and avoidance is estimated by the Commission to be up to EUR 1 trillion a year, while the OECD estimates the revenue loss at global level to be between 4 % and 10 % of all corporate income tax revenue, Parliament reiterated the conclusions of its [resolution of 25 November 2015](#) and of its [resolution of 16 December 2015](#).

Follow-up by the Commission and Member States: regretting the fact that to date 14 Member States still have no controlled foreign company rules to prevent aggressive tax planning and that to date not one Member State has called for a ban on aggressive tax planning structures, Parliament called on Member States and the Commission to adopt further legislative proposals on corporate tax avoidance.

Parliament:

- considered that the [Directive on Administrative Cooperation](#), having undergone two consecutive ad hoc modifications, on automatic exchange on tax rulings and on Country-by-Country Reporting, should now be reviewed in its entirety, particularly but not only in order to reduce and eventually eliminate the current exceptions to the principle of exchange of information;
- reiterated its position that multinational undertakings ought to publish in a clear and comprehensible manner in their balance sheets, for each Member State and each third country where they are established, a series of items of information, including pre-tax profits or losses, tax on profits or losses, number of employees, and operations performed; underlines the importance of making this information

available to the public, possibly in the form of a central EU register;

- urged the Commission to come forward with a proposal for a common corporate consolidated tax base (CCCTB) before the end of 2016, which would provide a comprehensive solution for dealing with harmful tax practices within the Union, bearing in mind that 70 % of all profit shifting is done through transfer pricing.

Blacklist and concrete sanctions for uncooperative jurisdictions and withholding tax: the Commission was asked to come up as soon as possible with a common Union definition and a blacklist of tax havens, based on sound, transparent and objective criteria and including implementation of OECD recommendations, tax transparency measures, and Automatic Exchange of Information standards. An escalation procedure, starting with a constructive dialogue with the jurisdiction where shortcomings have been identified, needed to be foreseen prior to the listing.

Parliament also called for:

- a concrete Union regulatory framework for sanctions against the blacklisted uncooperative jurisdictions, including the possibility of reviewing and, in the last resort, suspending free trade agreements, suspending double taxation agreements and prohibiting access to Union funds. Sanctions should also be applied to companies, banks, and accountancy and law firms and to tax advisers proven to be involved in wrongful activities in these countries and territories;
- presentation by the Commission of a legislative proposal for an EU-wide withholding tax, to be operated by the Member States, in order to ensure that profits generated within the Union are taxed at least once before leaving it; such a proposal should include a refund system to prevent double taxation;

For their parts, Member States should renegotiate their bilateral tax treaties with third countries by means of a multilateral instrument, in order to introduce sufficiently robust anti-abuse clauses and thus prevent treaty shopping, including a distribution of taxation rights between source and resident countries reflective of economic substance and an appropriate definition of permanent establishment.

Patent, knowledge and R&D boxes: Members noted that to date patent, knowledge and R&D boxes have not proven as effective in fostering innovation in the Union, as they should have. They are, instead, used by multinationals for profit shifting through aggressive tax planning schemes.

The Commission was asked to put forward proposals for binding Union legislation on patent boxes, building on and addressing the weaknesses of the OECD Modified Nexus Approach, in order to prohibit the misuse of patent boxes for tax avoidance purposes.

Banks, tax advisers and intermediaries: Parliament regretted deeply that some banks, tax advisers, law and accounting firms and other intermediaries have been instrumental and have played a key role in designing aggressive tax planning schemes for their clients, and have also assisted national governments in designing their tax codes and laws, creating a significant conflict of interest.

The Commission was asked to:

- come forward with a Union Code of Conduct for all advising services to provide for situations of potential conflicts of interest to be clearly disclosed;
- strengthen the requirements on banks to report to the Member States tax authorities transfers to and from jurisdictions included on the common Union list of tax havens and uncooperative tax jurisdictions;
- analyse the possibility of introducing proportional financial liability for banks and financial institutions facilitating transfers to known tax havens;
- come forward with a legislative proposal introducing a mandatory disclosure requirement for banks, tax advisers and other intermediaries concerning complex structures and special services that are linked to jurisdictions included on the common EU list of tax havens.

Parliament called on Member States to establish effective, proportionate and dissuasive sanctions, including criminal sanctions, on company managers involved in tax evasion, as well as the possibility of revoking business licences for professionals and companies proved to be involved in designing, advising on the use of, or utilising illegal tax planning and evasion schemes.

Other recommendations: Parliament called for, inter alia:

- a proposal from the Commission of a clear legal framework to guarantee the effective protection of whistle-blowers, as well as of journalists and other persons connected with the press who aid and facilitate them;
- an improvement in the transparency and effectiveness of the working methods of the Code of Conduct Group, given that only a limited number of new documents have been made available for in camera consultation by MEPs, and that the Commission was unable to keep all records of the documents distributed;
- granting Parliament permanent, access to the room documents and minutes of the Council groups working on tax matters, including the Code of Conduct on Business Taxation, the High Level Working Group and the Working Party on Tax Questions;
- the creation of a new Union Tax Policy Coherence and Coordination Centre within the structure of the Commission, to safeguard the proper and coherent functioning of the single market and the implementation of international standards;
- improved cooperation between the Union, the G20, the OECD and the UN to cooperate further to promote global guidelines that will also be beneficial to developing countries; Member States should revise their current legislation on the protection of whistle-blowers by including the possibility of abstention from prosecution in cases in which whistle-blowers have acted in the public interest;
- inclusion in all trade and partnership agreements good governance clauses referring in particular to compliance with the relevant OECD recommendations pertaining to the field of taxation and ensuring that trade and partnership agreements cannot be misused by companies or intermediaries to avoid or evade taxes or launder revenues from illegal activities;
- the establishment of a public Union register of beneficial ownership, including harmonised standards of access to beneficial ownership information;
- a study on the feasibility of a global register of all financial assets held by individuals, companies and all entities such as trusts and foundations, to which tax authorities would have full access and which would include appropriate safeguards to protect the confidentiality of the information retained therein;
- a common and comprehensive EU/US approach on the implementation of OECD standards and on beneficial ownership;

- encouraging the potential of digital solutions for effective tax collection in gathering tax data directly from operations in the sharing economy and in lowering the overall workload of tax authorities in Member States.

Parliament called on all national parliaments to work together to ensure proper control and coherence of tax systems between Member States. The Council was asked to fully take advantage of the consultation procedure with Parliament, which in particular means waiting for input from Parliament before reaching a political agreement and striving to take on board Parliament's position