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EDITORIAL

The EU Anti Tax Avoidance Package: Moving Ahead of BEPS?

Ana Paula Dourado*

1 The EU regional implementation of BEPS

The Anti Tax Avoidance Package adopted by the European Commission (EC) on 28 January is the Commission's answer to the Base Erosion and Profit Shifting (BEPS) project delivered in 2015.[1] It is composed of four documents: a proposal for an Anti Tax Avoidance Directive (ATAD);[2] a Communication on an External Strategy for Effective Taxation;[3] the amendment to the Directive on mutual assistance to apply automatic exchange of information to country-by-country reporting;[4] and the recommendation on tax treaties adding the 'genuine economic activity' test to the Principal Purpose Test (PPT) rule.[5]

The aforementioned EC Package is meaningful in many respects: It is a relevant sign that the European Union (the European Parliament and the European Commission) is taking the BEPS actions seriously;[6] it is a bold follow-up to the EC Recommendations of 6 December 2012,[7] the amendments of the Parent-Subsidiary Directive[8] and the proposal for amendment to the Interest and Royalties Directive[9]; it is also an interesting exercise in interpreting the G20/OECD BEPS ideals, because it is a regional implementation of the BEPS holistic approach, which is much more consistent with the BEPS spirit, than the unilateral measures that have been taken by some EU Member States.

In fact, even though the BEPS actions are meant to reduce gaps and disparities, their openness and ambiguity is deceiving (even though the multilateral instrument envisaged by Action 15, the BEPS Action Plan[10] will reduce discretion). Their unilateral implementation is leading to the enactment of different national measures and therefore, again, to disparities.

From an international perspective, the EC Anti Tax Avoidance Package is an acknowledgment that there is no single international standard, but rather coexisting national or regional interests on policies attracting investment, tax competition and tax protectionism. The following paragraphs focus on selected critical aspects in the ATAD Proposal and in the Communication on an External Strategy for Effective Taxation.

Notes

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1 OECD, *Explanatory Statement: 2015 Deliverables*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2015), 4.

2 COM (2016) 23 final. Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

3 COM (2016) 24 final, Communication from the Commission to the European Parliament and the Council.

4 COM (2016) 25 final. Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

5 COM (2016) 271 final, Commission Recommendation of 28.1.2016 on the implementation of measures against tax treaty abuse:

> Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that *it reflects a genuine economic activity or that* granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

6 Asking for an EU Response, see, for example: Eric Kemmeren, *Where Is the EU in the OECD BEPS Discussion*, 23(4) EC Tax Rev. 190–193 (2014).

7 C(2012) 8806 final, 2012; C(2012) 8805 final, 2012. See: Ana Paula Dourado *Aggressive Tax Planning in EU Law and in light of BEPS – The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6*, 43(1) Intertax 44, 48 (2015).

8 Council Directive 2015/121/EU, 27 Jan. 2015, OJ L21; Council Directive 2014/86/EU, 8 Jul. 2014, OJ L219. See: Cécile Brokelind, *Legal Issues in Respect of the Changes to the Parent-Subsidiary Directive as a Follow-Up of the BEPS Project*, 43(12) Intertax 816–824 (2015).

9 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML.

10 OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, para. 63.

2 The proposal for an anti tax avoidance directive

2.1 *Object and Purpose*

The ATAD Proposal (for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market)[11] aims to be a coherent EU approach against corporate tax abuse. It builds on the Action Plan for Fair and Efficient Corporate Taxation, delivered by the Commission on 15 June 2015.[12]

Chapter II of the proposal includes six measures named 'Measures against Tax Avoidance': an interest limitation rule (Article 4); an exit taxation provision (Article 5); a switch-over clause (Article 6); a general anti-abuse rule (Article 7); Controlled Foreign Companies (CFC) legislation (Articles 8 and 9); and hybrid mismatches (Article 10).

The ATAD Proposal targets tax planning schemes aiming to reduce the tax bill. It covers both abusive ('situations where taxpayers act against the actual purpose of the law') and aggressive tax planning schemes ('taking advantage of disparities between national tax systems'). Although there is a current tendency for national and supranational decision-making players to mix both types of schemes, action against the latter is easily identifiable in the ATAD Proposal.

This is the case for some of the proposed measures that fight against disparities, independently of there being abuse, as defined by the Court of Justice of the European Union (CJEU), in the concrete situation:[13] e.g., the CFC rules in respect of third countries (Article 8 paragraph 1), the switch-over clause (Article 6) and the hybrid mismatches rule (Article 10), which are to be automatically applicable. Exit taxes, in turn, are a different category, aimed at preventing difficulty in collecting taxes, and therefore, the recommendation in Article 5 of the ATAD Proposal may be questioned.

Measures preventing aggressive tax planning in the ATAD Proposal aim to either guarantee a single tax principle in cross-border taxation by eliminating disparities leading to gaps (as is the case with the hybrid mismatches rule); or to interfere in the allocation of taxing powers, based on a principle of fair taxation (which is the case with the CFC rules in Article 8, paragraph 1 and the switch-over clause, in Article 6).

If these rules, which do not require demonstration of abuse on a case-by-case basis, are understood as allocation of taxing rights rules, they will not raise issues of incompatibility with the fundamental freedoms. They may be accepted following the line of reasoning of the *Columbus Container* case:

> In this respect, it must be recalled that the fiscal autonomy referred to in paragraphs 44 and 51 of this judgment also means that the Member States are at liberty to determine the conditions and the level of taxation for different types of establishments chosen by national companies or partnerships operating abroad, on condition that those companies or partnerships are not treated in a manner that is discriminatory in comparison with comparable national establishments.[14]

However, it is questionable from the BEPS project perspective, whether the EU may interfere with tax policies in third-country jurisdictions and neutralize them.

The switch-over clause in Article 6 is an extreme example of this interference. It applies to all situations in which taxes on profits are levied at a statutory rate, which is lower than 40% of the rate applicable in the EU Member State of residence.

The Commission may want to contribute to internal harmonization in the European Union, when it makes reference to comparative rates between the source and the Member State of residence, and proposes a switch-over of tax competence. But this technique of comparing rates leading to compensatory taxation in the residence country, can lead to a result that is the opposite of the one intended by the Commission.

For example, the 'Confédération Fiscale Européenne (CFE) Fiscal Committee Opinion Statement delivered in March suggests that some measures in the ATAD Proposal may contribute to a race-to-the-bottom: the fact that some proposed measures (the switch-over clause and CFC rules) make 'use of the tax rate of the taxpayer's Member State as a benchmark for a number of measures has the consequence that the race-to-the-bottom will be intensified with regard to rates'.[15]

The switch-over clause in Article 6 is unlikely to be (easily) accepted by all EU Member States. It can be seen as complementary to CFC rules, and therefore some Member States may prefer that the switch-over clause is either alternative to the CFC rules or optional. Since some

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11 COM (2016) 26 final, 28.1.2016.

12 COM (2016) 26 final, Explanatory Memorandum, p. 3, point 1.

13 For example, CJEU, Judgment of 12 Sep. 2006, Cadbury-Schweppes and Cadbury Schweppes Overseas (C-196/04, ECR 2006, p.I-7995) ECLI:EU:C:2006:544; Judgment of 13 Nov. 2014, *Commission v. UK* (C-112/14, EU:C:2014:2369); Judgment of 3 Oct. 2013, *Itelcar – Automóveis de Aluguer Lda v. Fazenda Pública* (C-282/12, EU:C:2013:629, Judgment of 12 Dec. 2002, *Lankhorst-Hohorst GmbH v. Finanzamt Steinfurt* (C-324/00, ECR 2002 I-11779) ECLI:EU:C:2002:749.

14 CJEU, Judgment of 6 Dec. 2007, *Columbus Container Services BVBA & Co. v. Finanzamt Bielefeld-Innenstadt* (C-298/05, ECR, 2007 I-10451 ECLI:EU:C:2007:754), para. 53.

15 http://www.cfe-eutax.org/sites/default/files/CFE%20Opinion%20Statement%20FC%203-2016%20on%20the%20Anti%20Tax%20Avoidance%20Directive.pdf, 3–4.

Member States already have CFC rules in their legislations, and taking into account that those rules are recommended under BEPS Action 3, they will probably be mandatory under the Directive. In turn, switch-over rules may be foreseen as optional.

2.2 *The* De Minimis *Character*

The ATAD proposal is not the first-best solution to fight aggressive tax planning and abuse, but it is the second-best response. In fact, it is a means to circumvent the delay in the approval of the CCCTB Directive, it being recognized that the latter directive would solve most of the tax planning and abuse schemes by multinationals within the European Union.[16]

If the ATAD were adopted as per the Commission Proposal, it could be a means to prevent the introduction of unilateral obstacles to the internal market. This would be so, as long as Member States abstained from introducing other anti-avoidance rules than the ones foreseen in the ATAD.

The anti-avoidance rules in the Proposal have a *de minimis* character (Article 3 of the ATAD Proposal). Thus, if Member States adopt anti-avoidance rules, which are stricter than the ones proposed and approved in the Directive, they will risk introducing unilateral obstacles to the internal market. They will be potentially scrutinized by the CJEU and may be considered disproportionate.

Whether Member States will go beyond the measures in the ATAD and interpret them as *de minimis* rules is uncertain. The business sector may well put pressure on national parliaments and governments, in order to limit the national measures to the ones mentioned in the ATAD, for purposes of competitiveness and reduction of disparities. In any case, if the provisions in the ATAD were to be formally adopted as *de maximis* anti-avoidance measures (and Article 3 of the Proposal deleted), legal certainty would increase, even if articulation with other EU anti-abuse measures is not clear.[17]

Interestingly, the legislative progress in the Council of the European Union may well follow a path that is not in the straightforward interest of the business sector. It is foreseeable that in order to achieve unanimity in the Council, the final outcome will go in the BEPS direction of offering multiple solutions: i.e. in the direction of eliminating the *de minimis* character of the package, by opening several 'best practice' options to the Member States in each or some of the provisions in the ATAD (e.g., on the limits to interest deductibility rule, the GAAR[18] or the CFC rule). Clearly, if such a path were followed, coordination of measures in the internal market will not be achieved.

Disparities will again foster aggressive tax planning and legal uncertainty. Double taxation will eventually take place if one Member State considers a scheme to be abusive but the other Member State does not, and both Member States tax the same income. Improving the effectiveness of the Arbitration Convention is one of the possible answers to quickly address juridical double taxation, but other dispute resolution mechanisms are being considered.[19]

Some provisions in the ATAD Proposal go beyond the BEPS final reports and therefore raise suspicion and criticism. It is the case of the aforementioned switch-over clause and of the General Anti-Avoidance Rule (GAAR) that is too broad and vague.[20]

Moreover, it is not clear that the drafting of the GAAR in the proposal covers withholding taxes. In fact, Article 7(1) of the proposal refers to 'the purposes of calculating the corporate tax liability': 'Non-genuine arrangements or a series thereof carried out for the essential purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability'.

The Commission is aware of the potential negative impact of its proposals on the internal market: According to the Commission, the Anti Tax Avoidance Package was designed in order to minimize as far as possible, the risk of juridical double taxation. It also urges Member States to allow for deductions in cases of juridical double taxation. In addition, it further raises concerns on the Limitation on Benefits Clauses proposed by the G20/OECD report.[21]

Approval of the Directive implies that competences on the enacted matters will shift to the European Union. The

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16 Walter Hellerstein, *Formulary Apportionment in the EU and the US: A Comparative Perspective on the Sharing Mechanism of the Proposed CCCTB*, in *Movement of Persons and Tax Mobility in the EU: Changing Winds* 413–459, espec., 419–421, 430–431, 442, 450–458 (Ana Paula Dourado ed., IBFD 2013); Thomas Ronfeld, *Anti-Abuse or Harmonization*, 39(1) Intertax 12–18 (2011); Michel Aujean, *Tax Competition and Tax Planning: What Solution for the EU?*, 23(2) EC Tax Rev. 62–63 (2014).

17 Cécile Brokelind, 'Legal issues…', *supra*, 819–820.

18 On the uncertainty resulting from application of a common GAAR (in the context of the EC Recommendation (C 2012) 8806 final, 2012: Tobias Franz, *The General Anti-Abuse Rule proposed by the European Commission*, 43(11) Intertax 660–672 (2015).

19 See the discussion on the international level: Roland Ismer & Sophia Piotrowski, *A BIT Too Much – or How Best to Resolve Tax Treaty Disputes?*, 44(5) Intertax 348–359 (2016).

20 See also the negative reaction by the CFE Document: fn. 15.

21 COM (2016) 23 final, 6–9. See also the discussion in Debelva et al., *LOB Clauses and EU-Law Compatibility: A Debate Revived by BEPS?'*, 24(3) EC Tax Rev. 132–143 (2015); Vogel, Gutmann & Dourado, *Tax Treaties between Member States and Third States: 'Reciprocity' in Bilateral Tax Treaties and Non-discrimination in EC Law*, 15(2) EC Tax Rev. 83–94 (2006).

CJEU will then contribute to the introduction of a level-playing field for fair taxation in the European Union and in its relations with third countries.

Nevertheless, the more options that are granted to the Member States in the Directive, the harder the task of the national courts and the CJEU will be.

3 An external strategy for effective taxation

3.1 *Good Governance Standards*

The Anti Tax Avoidance Package is a tax good governance package departing from the international standard on transparency and the G20/OECD BEPS actions, but going beyond them. The 'external strategy for effective taxation' requires a minimum level of taxation in third countries. It is a work in progress on the design and application of sanctions in the case of third-country jurisdictions that do not comply with the tax good governance rules.

The Anti Tax Avoidance Package moreover combines an internal with an external strategy. Besides the aforementioned ATAD Proposal on common anti-avoidance and anti-aggressive tax planning rules, it includes an update of the EU's good governance standards and criteria; promotes the conclusion of good governance clauses in relevant treaties with third countries; develops an EU screening and listing process for 'problematic third countries', and sanctions for the non-compliant ones; strengthens the EU Financial Regulation to promote tax good governance;[22] and it also foresees a different approach with developing countries, excluding them from the 'good governance' assessment.

3.2 *Pushing Third Countries into Fair Tax Competition*

The External Strategy for Effective Taxation is intended to show a common EU approach to the international standards (EU good governance standards) and to increase the fair tax competition level of the European Union (the internal market) in the global arena. This strategy is oriented to promoting EU outbound investment aimed at ensuring that third-country jurisdictions do not limit market access for EU exporters (harmful tax competition and state aid in third countries). In addition, to deter EU outbound investment in third-country jurisdictions that are listed as not compliant with the EU tax good governance standards.

Good governance standards require automatic exchange of information, the new fair tax competition measures agreed under OECD BEPS and state-aid provisions – good governance clauses are put forward as the core minimum standards of good governance.

3.3 *Transparency and the Name and Shame Approach*

In relation to transparency, the strategy of the European Commission and the Global Forum are not coincident. The Global Forum approach has been one of including jurisdictions, by bringing them into the transparency movement and attributing rates after the completion of the two rounds of review.

The Commission approach to transparency, in contrast, aims to publicly identify non-cooperative jurisdictions. Currently, a pan-EU list of non-cooperative third-country jurisdictions is published online: a 'name and shame' methodology has been used as a starting point.

As a next step, the European Commission is proposing to establish an EU list of problematic tax jurisdictions. It aims to achieve a common EU approach to listing third countries by selecting those prioritized for screening, and those to be assessed against the EU's good governance criteria. The screening and assessment of compliance with good governance rules is intended to either make non-compliant jurisdictions compliant or to introduce sanctions if they remain non-compliant. Ratings published by the Global Forum will be taken into account by the European Union[23] and, in a final step, Member States should select the jurisdictions to be added to the EU list (as a last resort option). Both listing and de-listing of third-country jurisdictions is proposed and common counter-measures recommended.

The EU list of problematic tax jurisdictions has found resistance from Member States, considering that many of them do not (want to) have a national list and instead handle avoidance through anti-avoidance rules or *substance over form* doctrines of interpretation. The topic is to be handled by the Code of Conduct Group and the G5 Declaration in April, on more sharing of beneficial ownership information, in the aftermath of the 'Panama Papers' scandal, may bring new developments.

In any case, listing third-country jurisdictions because they are not compliant with the good governance standards is controversial, not necessarily because of the 'name and shame' approach which is consistent with transparency aims, but because the Commission is proposing common counter-measures, some of which can be interpreted as sanctions.

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22 Platform for Tax Good Governance, meeting of 15 Mar. 2016, Annotate Agenda, p. 1.

23 Annex 1, pp. 2 and 3.

Among those common counter-measures are the aforementioned anti-avoidance and anti-aggressive tax planning rules in the ATAD Proposal, domestic anti-avoidance rules, withholding taxes and non-deductibility of costs for transactions in listed jurisdictions. The EU Financial Regulation (Article 140(4)) already prohibits EU funds from being invested in or channelled through entities in non-cooperative jurisdictions.

3.4 *Good Governance Clauses and 'The Place Where Value is Generated'*

As mentioned before, the Commission also proposes that good governance clauses (with the current standards) are introduced in bilateral treaties with third countries. These clauses include a fair tax competition parameter (a state-aid provision) which is also controversial in its purpose. According to this parameter, a third country will be required not to operate harmful tax measures in the area of business taxation.[24]

Harmful tax measures are those providing for a significantly lower level of taxation, including zero taxation, than the level generally applicable in the third country in question. The aforementioned assessment is based on the criteria in the Code of Conduct on Business Taxation as well as practice and guidance issued by the Code of Council Working Group.[25] Harmful tax practices and state aid seem to be equivalent in the External Strategy document: 'when third countries grant support to certain local companies through preferential tax regimes, administrative practices or individual tax rulings may constitute state aid'.

From the EU perspective, state-aid provisions in bilateral treaties may increase transparency on subsidies and create fairer tax competition between Member States and third countries in the area of business taxation. However, they will also increase uncertainty, overload the Commission with notifications and be detrimental to the investment in the EU.[26] From the perspective of the rest of the world, the introduction of state-aid provisions in bilateral treaties with third countries can be seen as interference in their tax policies that are aimed at attracting genuine investment.

By prohibiting selective tax competition, the European Union is requiring third countries to adopt the EU parameters on tax good governance, which may result in indirect protectionism for EU companies. Moreover, discrimination of third countries that do not accept the introduction of state-aid provisions in bilateral treaties contradicts the purpose of ensuring tax is due where the value is generated.

This type of measure may provoke retaliation from these or other third countries, leading to protectionist movements. And if this occurs, it would be the opposite result to the one intended by the BEPS actions, since the latter aim at coordination in an open world.

Unlike the EU state-aid provisions, the BEPS project is centred on the single tax principle, without referring to a minimum level of taxation and leaving to each jurisdiction the assessment of whether the cross-border transaction is taxed abroad. The 1998 OECD Report was very much criticized for suggesting harmonization of tax rates and the G20/OECD did not try to go in that direction.[27]

3.5 *The Case of Developing Countries*

It is true that flexibility is intended in respect of good governance clauses, and developing countries will not be required to include them in bilateral treaties. Different good governance clauses, however, will in turn deter international fair tax competition or at least introduce distortions.

The Commission may also recommend that EU Member States renegotiate their treaties with developing countries and include provisions on withholding taxes (the author has suggested this deviation from the international standards before[28]). The work done so far is still incipient and some difficulties are anticipated: First, it will be difficult to characterize what are 'developing countries' for the purposes of the EU Anti Tax Avoidance Package and to select those countries.

Among the large category of developing countries, it may be questioned whether, for the purposes of the EU Anti Tax Avoidance Package, there is a difference between developing countries with natural resources and those without natural resources. And whether there is a difference between those developing countries that are adopting the international standards on exchange of information and those that are not.

Moreover, it is not clear what the role of withholding taxes is in the good governance context, when applied by developing countries in bilateral double taxation

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24 Annex 1, p. 3.

25 Annex 1, p. 3.

26 Luc de Broe, *The State Aid Review against Aggressive Tax Planning: 'Always Look a Gift Horse in the Mouth'*, 24(6) EC Tax Rev. 292 (290–293) (2015).

27 On the OECD 1998 Report: Ana Paula Dourado, *International Standards, Base Erosion and Developing Countries*, in *Tax Design Issues Worldwide* 180–182 (Thuronyi & Michielse eds, Kluwer 2015).

28 Ana Paula Dourado, 'International Standards…', *supra*, 194. And 'Exchange of Information and Validity of Global Standards in Tax Law: Abstractionism and Expressionism or Where the Truth Lies', RSCAS 2013/11, Robert Schuman Centre for Advanced Studies Global Governance Programme-37, 18, http://cadmus.eui.eu/bitstream/handle/1814/26059/RSCAS_2013_11.pdf?sequence=1.

conventions concluded by Member States. In theory, withholding taxes may replace exchange of information and operate as broad switch-over rules if the residence State has an exemption system or applies taxes that are significantly lower than the ones applied in the developing country.[29]

4 The anti tax avoidance package and the TFEU fundamental freedoms

Compatibility between the Anti Tax Avoidance Package with the fundamental freedoms is also to be assessed. Good governance clauses and the anti-abuse measures in the anti-avoidance rules in the ATAD Proposal towards third countries raise several issues.

For example, it may be questioned whether the switch-over clause and the CFC rules vis-à-vis third-country jurisdictions are compatible with the free movement of capital. In the case of Member States adopting the participation exemption regime, the CJEU may compare the tax burden resulting from the exemption method applied domestically and the credit method applied to third-country jurisdictions. This will occur in where the statutory tax rate is lower than 40% (switch-over clause), or the effective rate is lower than 40% (CFC rule).

As mentioned above, a switch-over rule may be seen as a rule allocating taxing rights. The same perspective can be applied to CFC rules in their application to third-country jurisdictions.[30]

CFC rules have been interpreted by the CJEU as falling under the freedom of establishment, according to the test of the purpose of the legislation.[31] Because third-country jurisdictions are only protected by the free movement of capital (Article 63 TFEU), a CFC clause applied by an EU Member State to third countries is not incompatible with the Treaty on the Functioning of the European Union (TFEU). Article 8 of the ATAD Proposal relies on this case law, which is, in the author's opinion, essentially correct. But recent case law is not so clear and seems to extend the analysis on the compatibility of CFC rules (or similar ones) to free movement of capital,[32] which is an unfortunate development in the post-BEPS era.

Discriminatory rules towards European Economic Area (EEA) states, however, are not compatible with the fundamental freedoms, and the switch-over clause in the ATAD Proposal misses the distinction between EEA Member States and other third-country jurisdictions.

Another point for discussion relates to the tax good governance clauses to be included in bilateral agreements, such as association agreements. If these clauses require a minimum level of taxation in the third state, they may be incompatible with the non-discrimination clauses often included in those agreements, and with any provisions in those treaties on the freedom of establishment and free movement of capital.

In fact, some association agreements include clauses on fundamental freedoms that may have direct effect. In such agreements, an issue of internal (in)consistency between or among different good governance clauses and non-discriminatory clauses may arise.

5 Concluding remarks

It will be interesting to observe how the Anti Tax Avoidance Package evolves and is implemented by the Member States and the European Commission. This is especially so in respect of the ATAD and the external strategy for effective taxation.

Both *de minimis* and *de maximis* approaches have advantages and drawbacks. The *de minimis* approach intensified by multiple options granted to the Member States in the ATAD will continue to promote legal uncertainty, disparities, double taxation and double non-taxation. Critics of the G20/OECD BEPS project will take the opportunity to once again highlight that cross-border abuse and aggressive tax planning require a different international tax system.

A *de maximis* approach, in turn, would not find the necessary support, and the European Union would then miss the historical opportunity of being at the forefront of the anti-BEPS movement. More than that, implementation of the BEPS deliverables by each Member State would (irreversibly?) jeopardize the internal market and the aim of coordination underlying the BEPS project.

Taking into account the pros and cons, *a de minimis* approach with simple coercive rules would be the best solution for the internal market.

The most risky and at the same time groundbreaking proposal, is the external strategy for effective taxation and the good governance standards applied to third-country jurisdictions other than EEA States (besides the anti-avoidance and anti-aggressive tax planning measures directed at third-country jurisdictions, based on comparison of tax rates). The good governance standards

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29 The importance of tax treaties for developing countries is also questioned: See the discussion, e.g., in Tsilly Dagan, *The Tax Treaties Myth*, 32 N.Y.U, J. Int'l L. & Pol. 939 (1999–2000); Veronika Daurer, *Tax Treaties and Developing Countries*, 42(11) Intertax 695–701 (2014).

30 See, however, the discussion on economic double taxation resulting from the application of CFC Rules: Blazej Kuzniacki, *The Need to Avoid Economic Double Taxation Triggered by CFC Rules under Tax Treaties, and the Way to Achieve It*, 43(12) Intertax 758–772 (2015).

31 See again, Cadbury-Schweppes, *supra* n. 13.

32 See *Commission v. UK* (C-112/14), paras 16–29, *supra* n. 13.

go beyond the BEPS deliverables and aim at reducing or eliminating tax competition. They seem to foster a *de minimis* harmonization of corporate income tax rates in the relationship between the EU Member States and third-country jurisdictions (other than EEA States). But some measures risk encouraging a race-to-the-bottom, since they use the rate of the taxpayer's Member State of residence as a benchmark.

Moreover, the application of good governance clauses to third countries, if approved, interferes in the tax policies of sovereign jurisdictions and will bring considerable litigation to Europe. Such clauses also disrespect the rule of taxation according to the place where value is generated.

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This established international tax journal offers detailed coverage of direct tax, indirect tax, and social security from both legal and economic angles, and provides 12 issues a year of practical, up-to-date, high-level international tax information. Coverage includes all aspects of transnational tax issues. The journal includes authoritative, reliable content, written for tax attorneys, practitioners (litigation and transactional) in other areas where international tax issues are a concern, and academics.

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