



European
Commission

ACTIVITIES OF THE EUROPEAN UNION (EU) IN THE TAX FIELD IN 2011



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ACTIVITIES OF THE EUROPEAN UNION (EU) IN THE TAX FIELD IN 2011

1. CORPORATE AND PERSONAL TAXATION

1.1 Common Consolidated Corporate Tax Base (CCCTB)

The European Commission proposed on 16 March 2011 a common system for calculating the tax base of businesses operating in the EU. The aim of this proposal is to significantly reduce the administrative burden, compliance costs and legal uncertainties that businesses in the EU currently face in having to comply with up to 27 different national systems for determining their taxable profits. The proposed Common Consolidated Corporate Tax Base (CCCTB), would mean that companies would benefit from a "one-stop-shop" system for filing their tax returns and would be able to consolidate all the profits and losses they incur across the EU. Member States would maintain their full sovereign right to set their own corporate tax rate. The Commission estimates that, every year, the CCCTB will save businesses across the EU €700 million in reduced compliance costs, and €1.3 billion through consolidation. In addition, businesses looking to expand cross-border will benefit from up to €1 billion in savings. The CCCTB will also make the EU a much more attractive market for foreign investors.

More information including the impact assessment can be found on the dedicated web pages:

http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm

1.2 Inheritance taxation

EU citizens that inherit foreign property are frequently faced with a tax bill from more than one Member State. The overall tax burden may be extremely high because several Member States may claim taxing rights on the same inheritance or tax foreign inheritances more heavily than local inheritances. To tackle these problems, the Commission adopted on 15 December 2011 a comprehensive package on inheritance taxation. It consists of a Communication¹ which analyses and summarizes the possible solutions, a Recommendation² consisting of a series of steps that Member States could adopt in order to prevent double taxation and a Commission Staff Working Paper that sets out principles for non-discriminatory inheritance tax systems. In parallel, the Commission undertook an EU-wide compliance review of Member States' inheritance tax legislation and initiated procedures against a number of Member States in order to bring their laws into line with the prevailing case-law of the Court of Justice.

¹ [COM/2011/864](#)

² [COM/2011/8819](#)



More information can be found on the dedicated web page at:

http://ec.europa.eu/taxation_customs/taxation/personal_tax/inheritance/index_en.htm

1.3 Taxation of savings

Following a debate at the May 2011 ECOFIN Council meeting where broad consensus was reached on the above proposal, the Commission in June 2011 presented to the Council a recommendation in view of obtaining a mandate for negotiating equivalent improvements to the savings taxation agreements which have been operational since 2005 between the EU and Switzerland, Liechtenstein, Andorra, Monaco and San Marino. The Council has not yet decided on this recommendation.

In June 2011, the Commission also presented to the Council a recommendation in view of obtaining a mandate for negotiating the continuing application of the EU acquis on savings taxation and administrative cooperation by the Caribbean island of Saint-Barthélemy following its exit from the French domestic territory and therefore from the territorial scope of the EU treaties. The Council adopted the mandate on 20 October 2011 and negotiations between the Commission and the French Republic, acting on behalf of the island of Saint-Barthélemy, are ongoing.

Further to a commitment taken by the Commission at the ECOFIN Council meeting of December 2010, a Commission Staff Working Document was sent to the Council in June 2011 providing an "ad hoc" report on the correct and effective application of Directive 2003/48/EC on taxation of savings. This ad hoc report reflected Member States' answers to a detailed questionnaire sent by the Commission services. The evidence contained in this ad hoc report has been taken into account in the preparation of the formal report on the functioning of the same directive which is due to be adopted in 2012 by the Commission in accordance with article 18 of the directive.

Detailed information is available on Internet through the following link:

http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/savings_directive_review/index_en.htm

1.4 Transfer pricing issues

On 25 January 2011, the Commission decided to extend the mandate of the EU Joint Transfer Pricing Forum (JTPF) until March 2015, so that it can continue its important work in assisting and advising the Commission on transfer pricing tax matters. The JTPF, which is made up of national tax administrations and business representatives, helps the Commission to solve problems linked to the taxation of cross-border transactions between same-group and associated companies within the EU. Currently differences between Member States' transfer pricing rules can result in double taxation and heavy administrative burdens for businesses. The results of the work of the JTPF is crucial in providing businesses with greater certainty and consistency when it comes to the taxation of their cross-border operations. The Commission also adopted on the same day a Communication³ on the work of the JTPF between April 2009 and June 2010 setting out guidelines on low value adding intra-group services and potential approaches to non-EU triangular cases.

³ [COM/2011/16](#)



In its Conclusions of 17 May the Council of the European Union welcomed the Commission Communication, endorsed the related guidelines on low-value-adding intra-group services and welcomed the report on the potential approach to non-EU triangular cases. The Council considered that implementation of the guidelines on low value adding intra-group services should contribute to reducing tax disputes within the EU and to improving the functioning of the internal market.

1.5 Code of Conduct for business taxation⁴

The Code of Conduct group deals with implementation of a 1997 Code of Conduct aimed at eliminating situations of harmful tax competition in the EU. The Code of Conduct group is responsible for assessing and reviewing Member States' tax measures, with a view to the rolling back of tax measures deemed to be harmful (where a favourable tax regime in one Member State attracts businesses from other Member States) and for monitoring "standstill". The Code of Conduct Group reports on its work at the end of each Presidency.

During the Hungarian and Polish Presidencies of the EU, the Code of Conduct Group continued monitoring standstill and implementing rollback as well as, amongst other things, carrying on the work under the Work Package agreed by the Council (ECOFIN) in December 2008 (anti-abuse rules, administrative practices and the promotion of the application of the principles and criteria of the Code in third countries). The Council supported the work of the Group by way of Council conclusions in June and December 2011.

1.6 Cross-border profit distribution between parent and subsidiary companies ("Parent Subsidiary Directive")

On 30 November 2011 the Council adopted a recast⁵ of the Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States based on a Commission proposal of 4 January 2011.

The Directive is designed to eliminate tax obstacles in the area of profit distributions between groups of companies in the EU by abolishing withholding taxes on payments of dividends between associated companies of different Member States and preventing the double taxation of profits.

1.7 Cross-border interest and royalty payments

The Commission adopted on 11 November 2011 a proposal to amend the Interest and Royalties Directive⁶. This aims to reduce the instances of one Member State levying a withholding tax on a payment, while another Member State taxes the receipt a second time.

⁴ Council Conclusions of the ECOFIN Council meeting of 1 December 1997

⁵ Council Directive 2011/96/EU

⁶ [COM/2011/714](#)



1.8 Cross-border dividends and withholding tax relief procedures

The levying and crediting of withholding taxes on dividend payments to non-resident portfolio and individual investors in the EU can sometimes be carried out in a discriminatory way. Withholding taxes can, in addition, lead to unrelieved double taxation and cash-flow disadvantages, distorting the effective functioning of the Internal Market.

The Commission carried out between January and April 2011 a public consultation⁷ to investigate in more detail the cross-border withholding tax problems faced by portfolio and individual investors in the EU. The results of the public consultation will feed into the Commission's impact assessment work in view of its initiative in the area planned for 2013.

In addition and in parallel to this, the Commission carried out follow-up work to the Recommendation on withholding tax relief procedures of 19 October 2009 (C(2009)7924).

1.9 Double taxation

Double taxation, and double non-taxation, contradict the very spirit of the Single Market. Yet many citizens and businesses are still suffering heavier tax burdens just because they operate in more than one Member State. Meanwhile, others are using loopholes between national systems to escape paying taxes that they owe. Determined to tackle this problem, the Commission adopted on 11 November 2011 a Communication on Double Taxation⁸. This Communication highlights where the main double taxation problems lie within the EU, and outlines concrete measures that the Commission will take to address them. In doing so, the Commission seeks to remove real obstacles to a more competitive economy and make the EU easier to invest and do business in.

A public consultation carried out by the Commission found that more than 20% of reported cases of double taxation of businesses were worth over €1 million, while for individuals, more than 35% of double taxation cases were worth more than €100 000.

1.10 Removing cross-border tax obstacles for EU citizens

In 2010 the Commission adopted a Communication on ways to address the cross-border tax obstacles facing EU citizens. In 2011 the Communication has been well received by the European Economic and Social Committee and the European Parliament. Actions in specific areas referred to in the Communication on the reduction of cross-border tax obstacles for citizens such as more and better tax information for citizens via Europe Direct, Your Europe web portal and the Your Europe citizens' advice service took place in 2011.

http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_policy/index_en.htm#obstacles

⁷ [Consultation page](#)

⁸ [COM/2011/712](#)



1.11 Good governance in the tax area (transparency, exchange of information and fair tax competition)

In 2011 the Commission continued to actively promote good governance in the tax area towards third countries. It continued negotiating specific provisions with third countries on good governance in the tax area in relevant agreements to be concluded by the European Union and its Member States in line with third countries. The Commission has launched negotiations for a good governance clause with twenty eight third countries or regions and so far, fourteen negotiations have been finalised. In addition, and as a follow up to the 2010 Communication on tax and development⁹ that the Commission financed under the EP budget line for promoting good governance in the tax area in developing countries (EUR 780,000 in 2010, EUR 1 million in 2011), several activities, and responded to the technical assistance needs of developing countries in order to assist them in tackling tax evasion and avoidance.

⁹ COM(2010)163 final



2. VALUE ADDED TAX (VAT)

2.1 Communication on the future of VAT

The Commission adopted on 6 December 2011 a Communication¹⁰ on the future of VAT. This Communication sets out the fundamental characteristics that must underlie the new VAT regime, and priority actions needed to create a simpler, more efficient and more robust VAT system in the EU.

Three overriding objectives shape the vision for the new VAT system. First, VAT must be made more workable for businesses. A simpler, more transparent VAT system would relieve businesses of considerable administrative burdens and encourage greater cross-border trade. This, in turn, will be good for growth. Among the measures envisaged for a more business-friendly VAT are expanding the one-stop-shop approach for cross border transactions; standardizing VAT declarations; and providing clear and easy access to the details of all national VAT regimes through a central web-portal. Second, VAT must be made more efficient in supporting Member States' fiscal consolidation efforts and sustainable economic growth. Broadening tax bases and limiting the use of reduced rates could generate new revenue for Member States without the need for rate increases. The standard VAT rate could even be reduced in some Member States, without any impact on revenue, if exemptions and reductions were removed. The Communication sets out the principles that should guide the review of exemptions and reduced rates. Third, the huge revenue losses that occur today due to uncollected VAT and fraud need to be stopped. It is estimated that around 12% of the total VAT which should be collected, is not. In 2012 the Commission will propose a quick reaction mechanism to ensure Member States can respond better to suspected fraud schemes. Furthermore, the Commission will see whether current anti-fraud mechanisms, such as Eurofisc, need to be strengthened and will explore the possibility of a cross-border audit team to facilitate multilateral controls. Finally, the Commission has concluded that the long-standing question of changing to a VAT system based on taxation at origin is no longer relevant. Therefore, VAT will continue to be collected in the country of destination (i.e. where the customer is located), and the Commission will work on creating a modern EU VAT system based on this principle.

The Commission also published a summary of the 1700 contributions from businesses, academics, citizens and tax authorities received further to the 2010 green paper on the future of VAT.

Finally the Commission published a retrospective evaluation of the consequences, in economic terms, of the functioning of the most pertinent elements of the current EU VAT system, as identified in the "Green Paper on the future of the VAT". This evaluation looked into the design and implementation of certain VAT arrangements, assessing their effectiveness and efficiency in terms of results and impacts they had created. It examined their relevance and their coherence with the smooth functioning of the single market and the requirement to avoid distortion of competition specified in Article 113 of the Treaty on the Functioning of the European Union.

¹⁰ [COM/2011/851](#)



2.2 VAT implementation

The Council on 15 March 2011 adopted a Regulation¹¹ laying down new implementing measures for the VAT Directive. The Regulation clarifies certain aspects of the VAT Directive with the objective of ensuring a more uniform application of VAT rules within the EU. This Regulation includes new measures linked to the VAT Package, giving guidance in particular in determining what is the status of the customer, whether he acquires services for business use and where he is located, as this will in most cases determine the place of taxation and thus the rate of VAT to be applied.

2.3 VAT rules on invoicing

On 21 December 2011 the Commission published explanatory notes¹² on the implementation of the Invoicing Directive. Explanatory notes aim at providing a better understanding of legislation adopted at EU level and in this case principally the Invoicing Directive. Published more than one year before the date of implementation of the new legislation, they are expected to allow Member States to transpose the legislation in a more uniform way and to provide business with the necessary information to adapt to the new rules in time.

2.4 Public consultation on simplification of VAT collection procedures in relation to centralised customs clearance

The Commission published on 22 February the summary report of a Public consultation on simplification of VAT collection procedures in relation to centralised customs clearance.

"Centralised clearance" introduced in Article 106 of the Modernised Customs Code is a possibility for the importers that hold an authorisation for this purpose to both declare and pay customs duties to the customs administration of their Member State of authorisation, independent from the actual place of import and destination of goods within the EU.

2.5 VAT treatment of insurance and financial services

The 2007 Commission proposal is aimed at clarifying and updating the definitions and rules governing insurance and financial services – which are exempt from VAT – thus increasing legal certainty for economic operators and tax administrations, reducing administrative burdens and reducing the impact of hidden VAT in the costs of service providers. The existing definitions were established in the 1970s and have led to uneven interpretation by the Member States. This proposal remains under discussion in Council.

2.6 VAT derogations: Council decisions concerning individual Member States

On the basis of Article 395 of Council Directive 2006/112/EC, Member States may be authorised to derogate from the common VAT rules to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Such derogations have been authorised under the following different procedures:

- Council Decisions authorised by the Council under the procedure provided for in Article 395(2) and Article 395(3);

¹¹ Council Regulation 282/2011/EU

¹² [Explanatory notes](#)



- Council Decisions tacitly approved under the former Article 27(4) of the Sixth VAT Directive¹³;
- Special measures that were applied by the Member States before 1st January 1977 and that were notified to the Commission before 1st January 1978, under Article 394.

The list reflecting the present state of play concerning the derogations applicable is available on the EUROPA website:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/table_derogations/vat_derogations_options_directive_112-06_en.pdf

¹³ Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1). This Directive was repealed in its entirety by Directive 2006/112/EC with effect from 1 January 2007 while the provisions of Article 27(4) of the Sixth Directive referred to were deleted by Council Directive 2004/7/EC of 20 January 2004 amending Directive 77/388/EEC concerning the common system of value added tax, as regards conferment of implementing powers and the procedure for adopting derogations (OJ L 27, 30.1.2004, p. 44)



3. EXCISE DUTIES AND OTHER INDIRECT TAXES

3.1 Energy taxation

The European Commission presented on 13 April 2011 its proposal to overhaul the outdated rules on the taxation of energy products in the European Union. The new rules aim to restructure the way energy products are taxed to remove current imbalances and take into account both their CO₂ emissions and energy content. Existing energy taxes would be split into two components that, taken together, would determine the overall rate at which a product is taxed. The Commission wants to promote energy efficiency and consumption of more environmentally friendly products and to avoid distortions of competition in the Single Market. The proposal will help Member States to redesign their overall tax structures in a way that contributes to growth and employment by shifting taxation from labour to consumption. The revised Directive would enter into force as of 2013. Long transitional periods for the full alignment of taxation of the energy content, until 2023, will leave time for industry to adapt to the new taxation structure.

Taxation of energy products is to a certain extent harmonised at EU level. The Energy Taxation Directive already now sets forth minimum rates for the taxation of energy products used as motor fuels and heating fuels as well as electricity. However, the Directive has become outdated and inconsistent. Taxation based on volumes of energy products consumed cannot address the EU's energy and climate change targets. It also fails to set economic incentives to foster growth and stimulate job creation. Taxation of energy products must better take into account their energy content and their impact on the environment.

The revised Energy Taxation Directive will allow Member States to make the best possible use of taxation and, ultimately, support "sustainable growth". To do so, it proposes splitting the minimum tax rate into two parts, one would be based on CO₂ emissions of the energy product and would be fixed at €20 per tonne of CO₂. The other one would be based on energy content, i.e. on the actual energy that a product generates measured in Gigajoules (GJ). The minimum tax rate would be fixed at €9.6/GJ for motor fuels, and €0.15/GJ for heating fuels. This will apply to all fuels used for transport and heating.

3.2 Financial Transaction Tax

The Commission has presented on 28 September 2011 a proposal for a financial transaction tax in the 27 Member States of the European Union¹⁴. The tax would be levied on all transactions on financial instruments between financial institutions when at least one party to the transaction is located in the EU. The exchange of shares and bonds would be taxed at a minimum rate of 0.1% and derivative contracts, at a minimum rate of 0.01%. This could approximately raise €57 billion every year. The Commission has proposed that the tax should come into effect from 1st January 2014.

The Commission has decided to propose a new tax on financial transactions for three reasons. First, to avoid fragmentation of the internal market for financial services bearing in mind the increasing number of uncoordinated national tax measures in place. Second, to ensure that the financial sector makes a fair contribution to covering the costs of the recent crisis at a time of fiscal consolidation in the Member States. The financial sector

¹⁴ [COM/2011/594](#)



played a role in the origins of the economic crisis. Governments and European citizens at large have borne the cost of massive taxpayer-funded bailouts to support the financial sector. Furthermore, the proposal contributes to create appropriate disincentives for transactions that do not enhance the efficiency of financial markets. The proposal would introduce new minimum tax rates and harmonise different existing taxes on financial transactions in the EU. This will help to reduce competitive distortions in the single market, discourage risky trading activities and complement regulatory measures aimed at avoiding future crises. The financial transaction tax at EU level would strengthen the EU's position to promote common rules for the introduction of such a tax at global level, notably through the G20.

The revenues of the tax would be shared between the EU and the Member States. Two-thirds of the tax would be used as an EU own resource which would partly reduce national contributions. Member States might decide to increase their part of the revenues by taxing financial transactions at higher rates.



4. ALL TAXES: TAX AVOIDANCE AND EVASION MEASURES

4.1 Recovery of tax claims

The Commission adopted on 18 November tools that will allow better cross border recovery of tax debts by Member States. These tools include, in particular, a uniform instrument to allow debt recovery decisions to be enforced. The aim is to avoid problems of translation and recognition of foreign legal and procedural instruments. Another concrete tool is a uniform notification form that will enable taxpayers in other Member States to be notified of official documents and decisions. The measures adopted today, which are part of the implementing measures for the Directive on mutual assistance in the recovery of claims¹⁵, will facilitate and accelerate cooperation between Member States' tax administrations, leading to more efficient revenue collection.

4.2 Administrative cooperation in the assessment of taxes

On 15 February 2011, the Council adopted a new Directive on administrative cooperation in the field of taxation¹⁶.

One of the main elements of the new Directive is to tackle the question of bank secrecy being invoked to refuse cross border co-operation. Based on the OECD Model Convention, the Directive contains a provision by which a requested Member State cannot refuse to supply information solely because this information is held by a bank or other financial institution. Another crucial element is that the Directive provides for compulsory automatic exchange of available information on five types of income¹⁷; it also sets up a dynamic mechanism to eliminate the condition of availability of information and to extend the list of income subject to automatic exchange of information.

4.3 Administrative cooperation in the field of excise duties

On 14 November 2011 new rules on administrative cooperation in the field of excise duties, which would speed up the collection of the duties and improve Member States' controls on the revenue, have been proposed by the Commission¹⁸. The new Regulation would replace the existing rules, to better reflect the introduction of the computerised Excise Movement and Control System (EMCS) in April 2010. Currently, part of the information exchange between Member States on the movement of excise products (alcohol, tobacco and energy products) is still done manually. Computerising this exchange will make it easier and faster to collect the excise duties that are due. The proposal seeks to revise the rules on administrative cooperation in order to reap the full benefit of the Excise Movement and Control System. In particular, the new Regulation replaces manual procedures with automated procedures wherever this information is electronically available within the EMCS. This includes, for example, information on road controls or interruptions in the movement of goods. The proposal also clarifies the rights and obligations of Member States in terms of requests they can submit to each other, information they must provide, deadlines to answer requests, and use of standardised forms for these exchanges. The

¹⁵ [Council Directive 2010/24/EU](#)

¹⁶ [Council Directive 2011/16/EU](#)

¹⁷ Income from employment, directors' fees, pensions, life insurance products not covered by other Union legal instrument on exchange of information and other similar measure, ownership of and income from immovable property

¹⁸ [COM/2011/704](#)



ultimate objective is to ensure that the process for Member States to collect and retrieve excise duties is as smooth and efficient as possible.

4.4 EUROFISC

EUROFISC is a common operational structure allowing Member States to take rapid action in the fight against cross border VAT fraud. It was set up by Council Regulation on administrative cooperation in the field of valued added tax, extending and reinforcing the legal framework for the exchange of information and cooperation between tax authorities¹⁹

EUROFISC became fully operational in early 2011.

4.5 FATCA

The US Foreign Account Tax Compliance Act (FATCA) is a US legislation aimed at increasing the ability of the US tax authorities to combat cross-border tax evasion by US persons who use foreign financial institutions (FFIs) to hide assets and avoid reporting income taxable in the US. FATCA tries to achieve this objective by imposing due-diligence, information reporting and withholding obligations on FFIs (including EU financial institutions) defined to include banks, funds, investment vehicles and many others. The Commission supports FATCA's objective, which is in line with objective pursued by the Savings Directive, but is concerned about the method used by the US. Indeed FATCA would involve high compliance costs for EU financial institutions and could also breach EU and Member States' law on data protection, withholding obligations and customer relations. It is for those reasons that the Commission, with the support of the Member States, on April 2011 launched a dialogue with the US Treasury on how to achieve FATCA in a way that is cost-effective and compatible with EU and Member States' laws. The dialogue has been fruitful and constructive and good progress has been made on the Commission's proposal to implement FATCA by utilising a tax administration to tax administration approach based on existing cooperation tools at governmental level. Under such an approach, EU financial intermediaries would comply with their reporting obligation under FATCA by reporting the necessary information to the tax authorities of the country where they are established, instead of reporting it directly to the IRS. The tax authorities of those countries would, in turn, transfer the information received to the IRS, on an automatic basis. The Commission will continue its dialogue with the US in 2012 with a view to arriving at a solution before FATCA enters into force (on January 2013). Moreover, the Commission intends to continue working with the US towards a more ambitious approach on automatic exchange of information for tax purposes to be implemented in the longer term.

¹⁹ [Council Regulation 37/2009/EC](#)



5. TAX COORDINATION

5.1 Annual growth survey

The Annual Growth Survey adopted by the Commission on 23 November 2011 includes an annex on growth-friendly tax policies in Member States and better tax coordination in the EU²⁰. This report advises Member States to take a close look at how the quality of their revenues can be improved, focussing on a number of important areas in particular:

- Raising revenues in a smarter way
- Tackling tax evasion and fraud
- Creating a better environment for business
- Coordinating at EU level to maximise reforms

5.2 Tax Policy Coordination

On 1 December 2011 the report on tax policy coordination annexed to the Annual Growth Survey was endorsed by finance ministers of the Member States participating in the Euro Plus Pact. The Euro Plus Pact is intended to strengthen economic policy coordination between Member States with the aim of improving competitiveness and enabling a greater degree of convergence. It was concluded in March by 23 of the 27 Member States (including the 17 countries of the euro area), and remains open for others to join.

The pact includes a specific section on the coordination of tax policies, calling for a structured dialogue between the participating Member States.

The report identifies the following issues to be addressed in the dialogue:

- avoidance of harmful practices;
- fight against fraud and tax evasion;
- exchange of best practices;
- international coordination.

It suggests that these elements serve as a starting point for further work under the pact in the field of taxation. The Council's high-level working group on tax issues will be the focal point for tax policy coordination. It will be responsible for examining recommendations put forward by the Commission and other relevant bodies, for monitoring progress and reporting to the political level. The work will be taken forward in an inclusive and pragmatic manner, whilst taking into account aspects such as fiscal consolidation and growth.

5.3 Better resources for the EU budget

On 29 June 2011 the Commission announced the multi-annual financial framework for the EU budget 2014-2020. The new multi-annual EU budget will have more transparent, fairer resources and will reduce and simplify Member States' contributions. The Commission proposes new own resources to the existing ones, as foreseen by the Treaty. The aim is not to increase the EU budget, but to put it on a sounder footing and lower Member States' direct contributions.

²⁰ [COM/2011/815](#)



The new own resources would be a financial transaction tax and a new modernized VAT. Simultaneously, the current VAT-based resource (a portion of the national VAT collected by Member States) would be abandoned.

5.4 Fiscus programme

The European Commission adopted on 9 November 2011 a proposal for the FISCUS programme. With a budget of 777.6 million euro, the programme will run for 7 years from 1 January 2014. FISCUS will cover two sectors, a customs and a tax sector. Within each sector, the programme will support the cooperation between the national authorities and occasionally other parties, to help maximise their efficiency and avoid mismatches in their work, which could hinder the Internal Market. The programme also provides the possibility of country-specific assistance when particular challenges call for it. It will facilitate networking, joint actions and training amongst tax and customs personnel, while also funding cutting-edge IT systems to enable the development of fully fledged e-administrations in customs and tax. By relying on shared development of IT, every euro spent jointly can generate cost-savings of at least four times as much for Member States. The objectives of FISCUS are to protect the financial interests of the EU and Member States, facilitate trade, ensure the safety and security of EU citizens, improve the capacities of customs and tax authorities, and implement EU legislation in these fields. Having assessed the challenges for the years ahead, the Commission proposes that particular focus is also given to fighting fraud, reducing administrative burdens and cooperating with third countries. FISCUS will also contribute to the EU's broader objectives by strengthening the Internal Market and the Customs Union, promoting growth and innovation by protecting intellectual property rights at the borders, and contributing to the development of a digital Internal Market.

5.5 Tax Policy Group

The Tax Policy Group (TPG) was established in 1996 as a high-level group for strategic discussion on tax policy issues at a European level. It played an important role in the success of the "Tax Package" in the late 90s. Following a few relatively inactive years, the group was relaunched by Commissioner Šemeta in 2010. The TPG brings together personal representatives of EU Finance Ministers to discuss key tax policy issues and provides a regular fixed forum for high-level discussions to explore the scope and priorities for tax policy coordination within Europe. It is particularly useful as a forum where the Commission and the Member States can have informal tax policy discussions on a number of initiatives before formal proposals are tabled.

In 2011 the TPG met three times to work on fundamental issues such as how taxation can best contribute to a well functioning internal market, be growth-friendly and subject to further "greening" and how the quality of revenue could be improved. During the course of 2011 it also held informal discussions on a series of important tax initiatives, such as the financial transaction tax, environmental taxation or the new VAT Strategy, before these were formally adopted by the Commission.



6. FISCAL STATE AID DECISIONS

For decisions on fiscal state aid cases see the state aid register on the website of the Directorate General for Competition of the European Commission at:

http://ec.europa.eu/comm/competition/state_aid/register/ii/#by_instrument

The State Aid provisions of the EC Treaty apply when a tax measure is selective, providing an advantage only to certain enterprises, or certain activities and is discriminatory.

The Commission has been given the exclusive power under the Treaty to take decisions on whether or not aid granted by Member States is compatible with the Treaty.

The Commission may require that illegally granted aid be repaid by recipients to the public authorities which granted it. The Member State must recover the aid immediately in accordance with domestic procedures. Commission decisions can be challenged before the European Court of Justice. On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered compatible with the common market, if such a decision is justified by exceptional circumstances.



7. INFRINGEMENT PROCEEDINGS LAUNCHED BY THE COMMISSION

The Commission is the 'guardian of the Community Treaties'. It monitors the Member States' application and implementation of primary and secondary Community legislation, institutes infringement proceedings in the event of any violation of Community law (Article 258 TFUE) and, if necessary, refers the matter to the Court of Justice. It should be noted that most cases could be closed without a trial before the Court. Over the last few years, efforts to prevent violation of Community rules have become a major part of the Commission's work.

The XXVIIIth Annual Report on monitoring the application of Community law (2010) was published in September 2011²¹.

See also the press releases on infringements included in the "infringement" pages of the website of the Directorate General for Taxation and the Customs Union. They are presented by policy area²² and by country²³.

Where it detects a failure to comply with Community law, the Commission may initiate the procedure for failure to fulfil an obligation provided for in Article 258 of the Treaty on the functioning of the European Union.

In 2011, the Commission opened 106 **new infringement cases** in the field of taxation, of which 85 were related to indirect taxes (VAT: 59; Excise duties: 17; Car, energy and environmental taxation: 9) and 21 were related to direct taxes.

In most of the cases, this implies that the Commission sent to the Member States concerned a letter of formal notice, the first stage of the infringement procedure, inviting them to submit their observations within two months.

At the date of 31 December 2011, 243 infringement cases, were still ongoing (120 were related to indirect taxes (VAT: 83; Excise duties: 18; Car, energy and environmental taxation: 19) and 123 to direct taxes.

During 2011, 113 infringement cases (indirect taxes 73, direct taxes 40) were **closed after Member States modified their national legislation** and therefore complied with Community Law.

These figures clearly reveal that the **Commission plays an important role in correct implementation of European legislation** into national law and therefore ensures uniform application of EU legislation in all Member States.

²¹ See:

http://ec.europa.eu/eu_law/infringements/infringements_annual_report_28_en.htm

²² See:

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/bypolicy/index_en.htm

²³ See:

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/bycountry/index_en.htm



8. EUROPEAN COURT OF JUSTICE JUDGEMENTS

For judgements of the European Court in 2011 in the tax field see the website of the ECJ at <http://curia.europa.eu/en/index.htm>

Ad-hoc Press releases are published at <http://curia.europa.eu/en/actu/communiqués/index.htm>

See also the website of the Directorate General for Taxation and Customs Union at http://ec.europa.eu/taxation_customs/common/legislation/case_law/index_en.htm

This section provides a catalogue of the case law in direct taxation, in indirect taxation (e.g. VAT, car taxation and excise duties) and the latest lists of Court cases in the area of customs.

9. ACTIVITIES OF THE EUROPEAN PARLIAMENT

Like all parliaments, the European Parliament has three fundamental powers: legislative power, budgetary power and supervisory power. In the ordinary legislative procedure the European Parliament and the Council of Ministers together adopt legislation proposed by the Commission. Parliament therefore has to give its final agreement. In the tax field, however, the European Parliament provides its opinion on Commission proposals in the tax field but the proposal is not adopted unless there is unanimous agreement by the EU's Council of Ministers. Second, the European Parliament and the Council are the two arms of the budgetary authority. Parliament exercises democratic oversight of all Community activities. In this context, it can set up committees of enquiry, table questions on Commission proposals and it plays a central role in appointing the Commission.

The Opinions delivered in 2011 on tax issues by the Parliament's Committee for Economic and Monetary Affairs and by the Committee for Legal Affairs and the Internal Market and Consumer Protection Committee, and parliamentary questions and answers on tax subjects, are to be found on the Parliament's website at http://www.europarl.europa.eu/news/public/default_en.htm

10. ACTIVITIES OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE (ECOSOC)

This Committee is also required to provide its opinion on Commission proposals in the tax field. It can also provide opinions in the taxation field at its own initiative. See website at: http://www.eesc.europa.eu/index_en.asp

11. ACTIVITIES OF THE COMMITTEE OF THE REGIONS

The Committee of the Regions adopts opinions on tax proposals that have regional implications. See website at <http://www.cor.europa.eu/>



12. Tax Publications of the European Commission in 2011

12.1 Report "Taxation Trends in the European Union"

The 2011 Report shows that recession drove down overall tax revenues in the EU in 2009. The overall tax-to-GDP ratio in the EU27 declined to 38.4% in 2009, compared with 39.3% in 2008. Data indicate that this decrease was essentially due to the 4.3% drop in GDP from 2008 to 2009, rather than to tax cuts. The report also lists tax measures adopted by Member States putting into evidence that half of Member States increased their standard VAT rate since 2008.

This report contains a detailed statistical and economic analysis of the tax systems of the Member States of the European Union, plus Iceland and Norway, which are Members of the European Economic Area. The data are presented within a unified statistical framework (the ESA95 harmonised system of national and regional accounts), which makes it possible to assess the heterogeneous national tax systems on a fully comparable basis.

The standard classifications of tax revenues (by major type of tax or by level of government) presented in most international tax revenue statistics are hard to interpret in economic terms. This publication stands out for offering a breakdown of tax revenues by economic function (i.e. according to whether they are raised on consumption, labour or capital). This classification is based on disaggregated tax data and on a breakdown of the revenue from the personal income tax. Besides revenue data, the report also contains indicators of the average effective tax rate falling on consumption, labour and capital, as well as data on environmental taxation and on the top rates for the personal and corporate income tax.

Country chapters give an overview of the tax system in each of the 29 countries covered, the revenue trends and the main recent policy changes. Detailed tables allow comparison between the individual countries and European averages. Data cover the 1995-2009 period and are presented both as a percentage of GDP and as a percentage of total taxation

For the first time this year's edition of the report for the first time includes data on average effective tax ratios (EATRs) for non-financial corporations. In addition, the report also contains a detailed new analysis of the impact of the economic and financial crisis on the tax systems of all EU Member States.

The report is available at the following page:

http://ec.europa.eu/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/index_en.htm

In addition, as a complement to the report, DG TAXUD makes available on its website statistics on tax revenue by individual tax for each Member State. The data covers all main taxes and are supplied to the EU statistical office Eurostat by the National Statistical Offices. The data file can be downloaded through the Taxation Trends page mentioned above.



12.2 Taxes in Europe Database

In 2011, the Commission updated its "Taxes in Europe Database", an internet tool providing citizens, business and researchers with information on around 600 most important taxes in the EU Member States. Using a methodology agreed with the Member States, this database includes information about the main aspects of each tax, as well as economic and statistical data such as the revenue generated. It has been complemented in 2011 by a new database, the new "Tax reforms" database. It collects information on tax reforms in the Member States in a structured way, covering reforms in eight important tax categories: VAT, PIT, CIT, Social Security contributions paid by employees, Social Security contributions and the three EU harmonised Excise duties on alcoholic beverages, energy products and tobacco products. TAXREF is an innovative tool to analyse trends in taxation in the Member States in a timely way. It identifies how European tax systems are evolving over time. The National Tax List (NTL)²⁴, is the most detailed online database on revenue from individual taxes in the EU. It is collected on a harmonised basis and includes information by DG TAXUD on the economic nature of the tax. The work done by DG TAXUD on the NTL notably provides the basis for the calculation of environmental tax revenue, a topic of growing policy interest. The data in the NTL are a key source of information for several important Commission reports, e.g. the "Sustainable Development in the European Union"²⁵, "A sustainable future of transport"²⁶, "Tax Reforms in EU Member States"²⁷, "Taxation Trends in the European Union", as well as the Statistical Pocketbook "EU Transport in figures"²⁸, etc.

The database is equipped with a powerful search tool, allows for easy comparison among Member States and can be found at the following website:

http://ec.europa.eu/taxation_customs/taxinv/welcome.do

12.3 Taxation papers series.

Taxation Papers²⁹ are written by the Staff of the European Commission's Directorate-General for Taxation and Customs Union, or by experts working in association with them. Taxation Papers are intended to increase awareness of the work being done by the staff and to seek comments and suggestions for further analyses. Responsibility for "Taxation papers" rests solely with the authors and, in this regard, they do not necessarily represent the position of the European Commission.

²⁴

http://ec.europa.eu/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/article_5985_en.htm

²⁵ [KS-31-11-224-EN](#)

²⁶ http://ec.europa.eu/transport/publications/doc/2009_future_of_transport_en.pdf

²⁷ Taxation paper n°28

²⁸ <http://ec.europa.eu/transport/publications/statistics/doc/2011/pocketbook2011.pdf>

²⁹ See:

http://ec.europa.eu/taxation_customs/common/publications/services_papers/working_papers/index_en.htm



Taxation Papers published in 2011:

- *Taxation paper No 27: 'The Role of Housing Tax Provisions in the 2008 Financial Crisis'*
Written by Thomas Hemmelgarn, Gaetan Nicodeme, and Ernesto Zangari
 - o *The 2008 financial crisis is the worst economic crisis since the Great Depression of 1929. It has been characterised by a housing bubble in a context of rapid credit expansion, high risk-taking and exacerbated financial leverage, ending in de-leveraging and credit crunch when the bubble bursts. This paper discusses the interactions between housing tax provisions and the financial crisis. In particular, it reviews the existing evidence on the links between capital gains taxation of houses, interest mortgage deductibility and characteristics of the crisis.*

- *Taxation paper No 28: 'Tax reforms in EU Member States 2011 - Tax policy challenges for economic growth and fiscal sustainability'* *Written by European Commission Services.*
 - o *The 2011 issue of the report 'Tax reforms in EU Member States', subtitled this year as 'Tax policy challenges for economic growth and fiscal sustainability', provides an overview of tax measures adopted in Member States in 2010 and the first half of 2011.*

- *Taxation paper No 29: 'Quality of taxation and the crisis: tax shifts from a growth perspective'. Written by Doris Prammer*
 - o *One aim of consolidation after the crisis on the taxation side is to curb growth as little as possible. Economic literature suggests that some tax systems are more conducive to growth, in particular those relying on consumption, environmental and property taxation. This paper reflects on behavioural responses of economic agents to taxation and reviews the literature on the impact of tax structures on growth. Furthermore, it analyses the tax structure in the EU-27 Member States to assess if the crisis has triggered a move towards tax systems more conducive to growth..*



12.4 Other publications

VAT- gold coins

Article 345 of Council Directive 2006/112/EC requires the Commission to publish the complete list of gold coins in conformity with the criteria envisaged in Article 344, paragraph 1, point 2), of that Directive, in the part "C" of the Official Journal of the European Union before 1 December of each year. The coins included in this list shall be deemed to fulfil those criteria throughout the year for which the list is published. The list valid for the year 2012 was published in the Official Journal of the European Union of 2 December 2011 (C 351).

VAT in the European Union

Detailed information on VAT obligations in the different Member States is available at this web link:

http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_community/index_en.htm

VAT refunds

Detailed information on national rules relating to cross-border refunds (Directive 2008/9/EC and Directive 86/560/EEC) is available at this web link:

http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_refunds/index_en.htm

VAT rates in Member States

The list of VAT rates applied in the Member States of the EU is available at this web link:

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf

Excise duty rates in Member States

The list of excise duty rates applied on alcohol beverages, tobacco or energy products in the Member States is available at this web link:

http://ec.europa.eu/taxation_customs/taxation/excise_duties/alcoholic_beverages/rates/index_en.htm

Consultations of the VAT Committee by Member States

Certain provisions of the VAT require Member States to consult the VAT Committee before they introduce national legislation.

The latest list reflecting the consultations made is available at this web link



http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/Consultations_VAT_Committee_en.pdf

Guidelines issued by the VAT Committee

A selection of the Guidelines adopted by the VAT Committee is made available. This selection only shows unanimously adopted guidelines which are not subject to any legislative discussion.

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines_en.pdf

12.5 Studies made for the Commission

The project 'A retrospective evaluation of the elements of the VAT system' evaluates the consequences, in economic terms, of the functioning of the most pertinent elements of the current EU VAT system, as identified in the "Green Paper on the future of the VAT". This evaluation looked into the design and implementation of certain VAT arrangements, assessing their effectiveness and efficiency in terms of results and impacts they had created. It examined their relevance and their coherence with the smooth functioning of the single market and the requirement to avoid distortion of competition specified in Article 113 of the Treaty on the Functioning of the European Union.

http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/report_evaluation_vat.pdf

The project 'Midterm evaluation of the Fiscalis 2013 programme' assesses the effectiveness and efficiency of the programme, whether the objectives of the programme are still adequately formulated and relevant to the needs of Member States, and looks in particular at the EU Added Value of the programme. Overall, the conclusions of the evaluation are positive, as the programme performs very well in terms of effectiveness, efficiency and relevance, and the evaluation also provides clear proof of the EU Added Value of Fiscalis. However, for a few areas, the evaluation report provides a number of recommendations. These include but are not limited to suggestions to revisit priority setting, to define the reduction of administration burden as a specific objective, to set up results-based monitoring and evaluation system for the programme, and to improve dissemination of knowledge and best practices developed with the support of the Fiscalis programme.

http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/fiscalis2013_mid_term_report_en.pdf

The issue of transfer pricing is a central challenge to developing countries' capacity to effectively tax multinational corporations. The European Commission has commissioned a study that recommends suitable approaches for supporting developing countries in the adoption and implementation of transfer pricing rules in line with international standards in order to increase tax revenue. The study outlines the current transfer pricing situation in Ghana, Honduras, Kenya and Vietnam, and based on this makes recommendations for donor support to developing countries. As a follow up to the study the Commission



envisages providing financial support in capacity building in transfer pricing to selected developing countries. The views expressed by the consultants do not necessarily reflect those of the European Commission.

http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/transfer_pricing_dev_countries.pdf

The study on ' VAT in the public sector and exemptions in the public interest ' analyses and measures the issues arising from the current VAT treatment of public bodies and activities carried out in the public interest. It also identifies possible options for the future, and measures their impact.

http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/vat_public_sector.pdf

The Commission published a study carried out by Copenhagen Economics as a reference document for the consultation on possible approaches to tackling cross-border inheritance tax obstacles within the EU. This external study examined the nature and the current extent of cross-border inheritance tax problems with indications about how the situation would evolve if no action is taken.

http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/2010/08/inheritance_taxes_report_2010_08_26_en.pdf

The study "Evaluation to provide advice on detecting the start-up and recurrent costs of implementation of the Savings Taxation Directive", carried out by Deloitte, was commissioned in order to (1) Estimate the start-up and recurrent costs incurred on the implementation of the Directive according to the EU Standard Cost Model; (2) Identify the most burdensome provisions in the current text of the Directive; (3) Summarise the feedback obtained from the economic operators on more cost efficient solutions that would retain and enhance the accuracy and integrity of the information exchanged, without undermining the objectives of the Directive. The results served as an input to the report on the Second Review of the Savings Directive, which is to be adopted by the Commission in February 2012. The study should be published in the first months of 2012.

An expert study on the issues arising from a reduced time frame and the options allowed for submitting recapitulative statements (covering the application of Article 263 (1) of Directive 2006/112/EC as amended by Directive 2008/117/EC) was carried out by PwC. It analysed the impact of the reduction of timeframes for submitting the recapitulative VAT statement from a calendar quarter to a month on businesses, both large, medium sized and small businesses. It also investigated the possible effect of the possibility used by several Member States to derogate from the general rule and their option to continue to allow for quarterly submission periods. The study should be published in the first months 2012.

12.6 Speeches.

Speeches of the EU Commissioner responsible for taxation:

http://ec.europa.eu/commission_2010-2014/semeta/headlines/speeches/index_en.htm



13. Conferences organised by the European Commission

- On 28-29 March 2011, the fifth Brussels Tax Forum took place in Brussels around the topic "Taxation of the financial sector". The Brussels Tax Forum is an annual conference that brings together policy makers, experts, stakeholders and the general public from all over the world to discuss tax issues of particular political and general interest. The Brussels Tax Forum was hosted in Brussels by Algirdas Šemeta, the EU Commissioner responsible for Taxation and Customs Union.

The minutes, presentations and speeches of the Forum are available at this web link:

http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_conferences/tax_forum/taxforum2011_en.htm

- A one day conference took place in Milan on the 'Green Paper on the future of VAT - Towards a simpler, more robust and efficient VAT system' on 6 May 2011. The conference was an important part of the consultation process, bringing together policy makers, experts, stakeholders and the general public from all over Europe, and beyond.

The programme, presentations and speeches of this conference are available at this web link:

http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_conferences/green_paper/index_en.htm

- Fiscalis 2013 Seminars. The Fiscalis 2013 programme aims at stimulating cooperation between tax authorities in order to build on a more effective fight against fraud, to enhance a common understanding of Community legislation and to develop jointly good administration procedures and best practices. The Programme's budget finances a variety of activities amongst which seminars constitute a good framework for the exchange of ideas on particular topics between officials of the national administrations, Commission representatives and other experts, if necessary. Suggestions may emerge for improving the legal instruments in force or facilitating co-operation between administrations.

- Seminars on the following subject took place under Fiscalis in 2011
 - Implementation of the VAT- Mini One Stop Shop
 - Mutual recovery assistance
 - Phase three of the EMCS project
 - Improvement of the cross-border VAT refund procedure
 - Taxation of electricity used by electric vehicles and other national implementations of the ETD
 - VAT: telecom, broadcasting and e-services supplied B2C from 2015
 - The use of common e-Forms for the exchange of information for Direct Taxation
 - Case-law of the Court of Justice of the EU on cross-border taxation of EU citizens



14. European Academic Tax Thesis Award

The European Academic Tax Thesis Award is a joint initiative of the European Commission (Directorate General Taxation and Customs Union) and the European Association of Tax Law Professors (EATLP). It was launched for the first time in December 2006 and is meant to be awarded on a yearly basis. Up to three authors of academic theses defend each year on issues of comparative, European and/or international tax law and have the opportunity to present their work to interested European Commission officials.

The 2011 European Academic Tax Thesis Award was awarded on 4 June 2011. The three prize-winners and their respective subjects were:

- ANDREAS BULLEN: "Arm's length transaction structures: Recognising and restructuring controlled transactions in transfer pricing" - the seminar at the Commission took place on 28 November 2011;
- BART PEETERS: "Fiscale transparantie: toerekening van inkomsten. Een onderzoek naar de classificatie van grensoverschrijdende samenwerkingsverbanden (Fiscal transparency in International tax law)" - the seminar at the Commission took place on 6 December 2011;
- IURE PONTES VIEIRA: "La valeur en droit fiscal et douanier (The value in tax and custom law)" - the seminar at the Commission will take place on 16 January 2012.