Position Paper

Insurance Europe additional response to the European Commission consultation on further corporate tax transparency

Our reference:	ECO-TAX-15-127	Date:	9 September 2015
Referring to:	EC Public consultation on further corporate tax transparency		
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Pages:	4	Transparency Register ID no.:	33213703459-54

Introductory comment

This position papers complements Insurance Europe's response to the questionnaire associated to the European Commission's public consultation on further corporate tax transparency. The position paper includes comments referring to questions which did not allow room for explanation, as well as answers which are slightly longer than the 1000-character limit allowed by the questionnaire. This position paper must be read along with Insurance Europe's answer to the questionnaire.

Answers and comments relating to consultation questions

Question 1: *In terms of corporate tax transparency, which of the following assertions would you support?*

Insurance Europe believes that the EU should implement international initiatives (the Organisation for Economic Co-operation and Development (OECD) project on base erosion and profit shifting (BEPS)) at the same pace and to the same extent as its global partners in order to ensure a level playing field (Answer c). Even though the insurance industry believes that existing transparency requirements are sufficient, in the current context the EU should focus on implementing international initiatives (like BEPS) at the same pace and to the same extent as other non-EU jurisdictions. A competitive disadvantage would otherwise exist, which would be harmful for future investments in the EU.

Question 6A: *How would you assess the extent to which enterprises will need to change their tax planning or structure as a result of being more transparent towards tax authorities?*

Insurance Europe believes that enhancing transparency towards tax authorities will have no effects on enterprises' tax planning (answer a). The OECD's recommendations in relation to BEPS Action 13 (ie submission of a country-by-country report (CbCR) to the tax authorities) seems sensible and appropriate, as the information will show obvious anomalies and — along with other information available — will enable tax authorities to undertake a risk assessment in order to determine whether profits are being shifted from their country of origin. Given that the insurance industry is subject of regular scrutiny, ranging from real time working to tax audits, Insurance Europe does not expect that BEPS will materially alter the industry's tax planning strategies.

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Question 8: *Can you provide an estimation of any additional costs and resources that will be incurred by enterprises in preparing a consolidated CBCR in accordance with BEPS 13?*

Companies' internal preparations to produce a country-by-country report (CbCR) are still at an early stage. Therefore, a detailed calculation of the expected costs is at present not possible. However, it is already a certainty that significant additional costs will be incurred when complying with the upcoming new requirements, since several requested information items are currently not readily available. The currently unavailable data include, inter alia, *Income tax paid (on cash basis)* and *Income Tax accrued – current year*. Moreover, in many cases, the required information is currently only available at the level of legal entities but not for every permanent establishment. Some insurance groups are commercially organised by primary reference to business lines and not by reference to geography. Hence, CbCR requires a local geographical consolidation of figures not actually required for any other form of reporting. Therefore, CbCR brings significant additional administrative burdens between headquarter and local business operations. This comes at a point in time when companies are already spending vast resources on preparations and implementations of other reporting requirements (like Solvency II or International Financial Reporting Standard (IFRS) 4 Phase II on insurance contracts).

Question 9: What consequence would tax transparency towards tax authorities have in terms of fostering a growth friendly environment and the attractiveness of the EU as a place to invest?

Insurance Europe does not have a particular opinion (Answer d). Assuming that tax authorities will use the information in the manner that is intended, namely as a risk assessment tool, it may be the case that these further measures would contribute positively to the EU's attractiveness and foster a growth friendly environment. However, Insurance Europe fears that tax authorities may use the additional information collected inappropriately and that this would lead to raised tax assessments, increased compliance costs and less regulatory certainty for business. All of this would negatively impact investment into the EU, as non-EU companies will have second thoughts about investing in Europe. The risk of this happening would only be mitigated by the EU adopting BEPS at the same pace and to the same extent as its global partners in order to ensure a level playing field. Only if this happens, a positive effect can ensue; businesses would then be certain that they will not be the subject of inappropriate enquiries from tax authorities leading to increased compliance costs. This would indeed be favourable for growth and increase the EU's attractiveness.

Question 11: What information would it be absolutely necessary to include in a publicly available CBCR (option D)?

In addition to the response provided in the questionnaire, Insurance Europe has a number of specific comments regarding the European Commission's legislative proposal for automatic exchange of tax rulings. Although the insurance industry is committed to tax transparency, it also has the following concerns:

- **Scope:** In the Commission's legislative proposal, the definition of the tax rulings to be exchanged is extremely broad (tax returns and tax audit conclusions would fall under its scope). In our view, this would make the proposal disproportionate to its objective and very burdensome for both businesses and tax authorities to implement, given the high volume of documents which would need to be processed. We would suggest that it would be more sensitive, as a first step, to identify what constitutes a "harmful" ruling and request disclosure of such rulings only.
- **Counterparties:** According to the Commission's proposal, the tax rulings information is to be communicated to all EU member states as well as to the Commission. Insurance Europe doesn't see any compelling reason for which the exchange of information is not limited to the member states directly concerned by the tax ruling considered harmful. Tax rulings contain sensitive commercial data and sharing them with all member states and the Commission would be disproportionate. In some cases, the mere knowledge of a ruling being issued relating to certain parties can reveal sensitive information, especially with regard to planned business activities or transactions such as mergers and

acquisitions. Insurance Europe therefore strongly argues in favour of limiting the automatic exchange of information to the affected member states.

- **Confidentiality:** Insurance Europe welcomes the fact that the European Commission has not proposed to make all rulings public as this avoids misuse of published information. Insurance Europe would point out though that the confidentiality regime which is foreseen to apply to information exchanged is that of the receiving member state. This is, in Insurance Europe's view, insufficient, given that not all member states apply a strict tax secret.
- **Unintended consequences:** The risk of disclosing commercial and industrial secrets would deter businesses from applying for advance rulings. Informal agreements with tax administrations might be encouraged, which is a less transparent option than formal advance rulings. As a result, the proposal could result in less transparency, which is contrary to the purpose of the proposal. In addition, if companies resort less to advance tax rulings, they will be less able to assess complex tax and legal matters prior to making an investment. This increased uncertainty could have a negative impact on cross-border investment and trade within the EU.

Question 12: *In the case of tax authorities publishing aggregated/anonymised information based on returns filed by enterprises with them (OPTION C), what information should be provided by those authorities (on a country-by-country basis)?*

Insurance Europe selected answer "h: None" in the questionnaire. The information mentioned in answers a through g would be less relevant to the public. It might instead be appropriate to publish the number of CbCR reports received by tax authorities as a means of building public confidence in tax authorities, business and the international tax system.

Question 16: *Considering that the EU may have stricter rules on tax transparency towards the public than other countries, is there a risk of placing enterprises established/listed in the EU at a competitive disadvantage vis-à-vis non-EU multinational companies operating in the EU?*

Insurance Europe responded "Yes" in the questionnaire. The country-by-country report contains details down to the country-level of competitively important and company-specific data which would otherwise not be generally accessible. Because of the resulting information asymmetry, public disclosure of this information would cause significant competitive risks for companies established in the EU vis-à-vis non-EU multinational companies operating in the EU. Therefore, the considerable additional administrative burden has to be seen as harmful for competition. This risk can be avoided only by waiving a public disclosure.

Question 17: *Is there a risk that tax transparency towards the public could have other unintended negative consequences on companies?*

Insurance Europe responded "Yes" in the questionnaire. A meaningful interpretation of the complex and aggregated data requires in-depth knowledge of tax law that can only exist within a fiscal administration. As such, a public disclosure could in some circumstances lead to misinterpretations and to unjustified claims and accusations against the companies concerned.

Question 24: *Please estimate additional costs and resources entailed by the introduction of further transparency measures for enterprises compared to an implementation of OECD BEPS Action 13 at national level and identify information which is not currently available.*

Companies' internal preparations to produce a country-by-country report are still at an early stage. Therefore, a detailed calculation of the expected costs is at present not possible. However, it is already a certainty that significant additional costs will be incurred when complying with the upcoming new requirements, since several requested information items are currently not available. The currently unavailable data include, inter alia, *Income tax paid (on cash basis)* and *Income Tax accrued – current year*. Moreover, in many cases, the required information is currently only available on the level of legal entities but not for every permanent

establishment. CbCR brings significant additional administrative burdens between headquarter and local business operations. This comes at a point in time when companies are already spending vast resources on preparations and implementations of other reporting requirements (like Solvency II or IFRS 4 Phase II). Furthermore, whilst we do not see the benefit of public disclosure, given the additional compliance burden and costs, if the conclusion of this consultation is in favour of public disclosure of country-by-country reports, then the information to be published should be exactly the same as that required under BEPS Action 13.

Question 26: *Is there anything else you would like to bring to the attention of the Commission?*

- Insurance Europe's response to this consultation can be summarised as follows: the target of EU action is aggressive tax planning, harmful tax regimes and tax fraud. These matters may be facilitated by lack of transparency but are driven by inadequacies in international tax legislation that has not kept pace with globalisation. For this very reason, the OECD is now driving the BEPS project towards finalisation; the EU should focus on ensuring that the corresponding legislative implementation of BEPS will be coordinated and will not lead to further unilateral differentiation amongst its member states. Working towards a greater degree of harmonisation and producing practical guidance and tools to enable implementation would be far more effective than reporting CbCR information to the public. There is no need for the EU to introduce additional transparency requirements that go beyond BEPS. This would not combat aggressive tax planning, harmful tax regimes and tax fraud but will indeed harm the competitiveness of the EU region.

- European tax authorities could deal more effectively with tax transparency by having "real time" tax audit in which matters are constructively discussed as they occur, rather than many years after. This would build trust between taxpayers and tax authorities, bring about constructive behaviour and discourage abusive tax planning. Business places a premium on certainty. The Commission should also not lose sight of the fact that one of the best methods of eliminating tax abuse is for the tax regime to be straightforward, with a broad base and a comparatively low rate, therefore minimising loopholes and discouraging profit shifting.

- Insurance Europe would like to point out that the consolidated financial statements of listed companies comply with IFRS requirements which aim to meet the needs of investors and other suppliers of capital; in this case, the necessary comparability of reporting bases is achieved. IFRS have presentation and disclosure requirements that generally correspond to a number of the CBCRs. The level of detail given in IFRS-based accounts (e.g. effective tax rate disclosures according to International Accounting Standard (IAS) 12 on Income Taxes) is oriented to meet investor needs and it is important that there is consistency in financial reporting at a global level. Insurance Europe therefore considers it generally more appropriate for changes to financial reporting to be made through changes to the International Accounting Standards Board's (IASB) IFRS requirements.

- Insurance Europe would also like to point out that Article 48 of the Accounting Directive 2013/34/EU mandates the European Commission to review the existing scope of CbCR and to provide a related report to the European Parliament and the Council until 21 July 2018. The European Parliament, Council and Commission have just recently reconfirmed the need for this review before taking further steps in the Directive on non-financial disclosures 2014/95/EU of 22 October 2014 (Corporate Social Responsibility (CSR) Directive). The outcome of this CbCR review should not be anticipated and the existing political agreement in this sense should not be overwritten.
