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

Removing cross-border tax obstacles for EU citizens

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1. INTRODUCTION

Since 1992, nationals of European Union Member States have been EU citizens as well as citizens of their Member States of origin. Europe's 500 million EU citizens derive from EU law the right to move to another EU country to live, study, work or retire and to shop and invest in other EU countries.

In its "Europe 2020 strategy"[1] for smart, sustainable and inclusive growth in the EU, the European Commission concluded that an element of putting the EU economy back on track consists in empowering EU citizens to play a full part in the single market and giving them the confidence to do so.

However, the reality is that EU citizens face many bottlenecks to cross-border activity in the single market. Citizens should be able to benefit from their full rights to be active across national borders within the EU as citizens, consumers, students, workers, patients or pensioners. The Single Market Act[2] and the "EU Citizenship Report"[3] have identified actions that need to be taken in a whole range of areas so that EU citizens' rights are fully effective. Taxation is one of those areas.

This Communication identifies the most pressing cross-border tax problems that citizens face and outlines possible solutions. Depending on the case, solutions could involve changes to the national tax rules of individual Member States to remove discrimination, the introduction of common EU-wide rules, or closer co-operation between tax administrations across the EU in new areas as well as information and awareness initiatives. Tax rules should not discourage individuals from benefiting from the internal market.

2. EU CITIZENS' CURRENT CROSS-BORDER TAXATION DIFFICULTIES

Individual EU citizens frequently raise queries about cross-border taxation problems with the different contact points within the European Commission that are to be found under the Your Europe[4] portal: The annual reports of the *Your Europe Advice*, *SOLVIT* and *the Europe Direct Contact Centres* indicate that they receive many queries and complaints from EU citizens about taxation, **constituting at least 3-4% of the total volume of annual queries and**

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[1] http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf
[2] COM(2010) 608
[3] COM(2010) 603
[4] http://ec.europa.eu/youreurope/citizens/index_en.htm

complaints. The relevant services of the Commission[5], the European Consumer Centres, the European Enterprise Network and the European Employment Services (EURES) in cross-border regions also receive many and varied tax queries and complaints. In addition, the Commission has received or seen many reports on cross-border tax problems produced by cross-border associations. As EU citizens are increasingly active across borders, such queries and complaints are likely to increase further in the future.

A large element of the complaints concerns the complexity of foreign tax rules and the difficulties in obtaining information on those rules and on rights and obligations under those rules. These difficulties are often due to language barriers but there are also complaints of lack of cooperation between tax authorities of different countries. Other common complaints concern contradictory information provision by different parts of Member States' tax authorities and the impact of the application of local taxes on foreign residents.

In addition,

- EU citizens who move abroad to work temporarily or permanently or cross borders every day to go to work complain above all about difficulties in obtaining allowances, tax reliefs and deductions from foreign tax authorities. They also complain frequently about higher progressive tax rates applied to non resident and higher taxation of foreign income. Double taxation problems also feature prominently, arising from conflicts in tax residence, limitations in the amount of credit available under bilateral double taxation treaties and even the lack of such treaties in certain cases.

- EU citizens purchasing property in countries other than their countries of residence complain about the absence of tax exemptions for foreign real estate; the lack of deductions and compensation for non-residents for real estate tax losses; and higher property registration taxes on non-residents.

- Those investing in foreign moveable assets complain about difficulties in claiming relief from withholding taxes.

- Those making payments to foreign pension funds complain in particular of the non-deductibility of such contributions, the double taxation of pensions and tax obstacles to cross-border transfers of pension capital.

- Many EU citizens inheriting property across borders have complained, inter alia, about the lack of provisions to relieve double taxation of inheritances and higher succession duties on non-residents.

- Consumers complain above all about the double registration taxes and/or circulation taxes that they are obliged to pay when buying a car in a Member State other than that of their normal residence or when transferring a car to a Member State other than that in which it is registered. Many seem to have difficulty in understanding how EU rules on free movement apply to taxation and incorrectly assume that car tax rules within the EU are or should be harmonised. They also complain about the tax obstacles to purchasing goods online across borders and cross-border shopping difficulties. Furthermore, they query differences in

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duties on alcohol and tobacco in different countries and complain about difficulties in importing purchases of such goods.

- Associations of artists and musicians and other independent service providers complain of delays in obtaining refunds of taxes withheld on fees; lack of a single point of contact in tax administrations; strict deadlines imposed by tax authorities that are difficult to meet; lack of coordination of time limits for charging tax and for claiming tax relief; and the problems of having to deal with complicated tax forms that differ from one country to another.

- Companies frequently point to the tax barriers hindering the recruitment of employees from across borders and, in particular the way different tax systems interact.

This Communication aims first to explain how the Commission can help EU citizens to find solutions to the problems of tax discrimination that they encounter.

Use of the Commission's problem-solving services and application of EU Treaty rules can resolve many problems of discrimination in the tax area that may face EU citizens when they engage in cross-border activity. However they cannot resolve other problems such as double taxation due to the coexistence of two applicable tax systems and mismatches between such systems. Even where Member States' tax rules do not actually conflict with Treaty rules, the Commission believes that it is not appropriate in a single market that problems such as double taxation, incompatibilities between different tax systems and lack of access to information on the tax rules of Member States should deter individuals from engaging in cross-border activity or penalise them when they do. Harmonisation of all aspects of Member States' tax rules would be neither necessary nor feasible. But solutions are needed that recognise the legitimate interests of citizens in an area of free movement, such as the one established by the Treaties. This may well mean that different tax problems may require varying levels of coordination and cooperation between Member States if they are to be solved.

That is why the Commission also considers it important that EU action should be taken to make the tax systems of the different Member States more compatible. The Communication describes plans in this area and also invites the Council and the Parliament, and all interested parties, to each take an active role in tackling these issues in a shared strategy for the benefit of EU citizens.

3. TACKLING DISCRIMINATION IN THE TAX LAWS OF MEMBER STATES

The Commission attaches great importance to tackling discriminatory tax rules in Member States in order to facilitate citizens who wish to exercise their freedom to engage in cross-border activity. Member States are not allowed to discriminate on the basis of nationality or to apply unjustified restrictions to the exercise of the four fundamental freedoms guaranteed by the EU Treaties. A Member State may treat a cross-border situation differently to a domestic situation only if this is justified by a difference in the taxpayer’s circumstances.

Over the years as EU citizens are more active across borders, it has become apparent that there are numerous aspects of Member States' tax laws that conflict with these Treaty rules. Many problems identified have already been addressed and resolved. They mostly concern rules applied to cross-border income, foreign properties, pensions, dividends, imports of cars and imports of alcohol and tobacco A detailed overview of such cases can be found in the

Commission staff working paper accompanying this Communication[6]. This paper provides information on the Commission's problem-solving services at the disposal of EU citizens and gives examples of the types of tax rules in Member States that have been found incompatible with the EU Treaties.

The Commission encourages citizens to draw its attention to problems with the tax laws of EU Member States which they believe may be incompatible with EU law. Any EU citizen can make use of the contact points in the Your Europe portal described in Chapter 2. Furthermore, all EU citizens have a right to lodge a complaint with the European Commission about any practice of an EU Member State believed to be incompatible with EU law.

The Commission for its part intends to increase its efforts to

- ensure greater transparency and information for citizens on the results of complaints about Member States' tax laws and infringement actions taken in the tax field
- monitor Member States' tax legislation and systematically request Member States to rectify any incompatibilities with EU law within a certain deadline.
- monitor the implementation by EU Member States of Court of Justice rulings in the tax field and ensure that they are implemented also in Member States that were not the subject of the ruling;
- ensure that the EU citizens' advice services have the information, training and documentation in order to equip them to deal with citizens' complaints regarding cross-border tax obstacles.

4. PLANNED EU ACTIONS IN SPECIFIC AREAS

The Commission is planning certain actions to address the most important unresolved tax problems faced by EU citizens in cross-border situations.

1. Double taxation of income and capital

Above all, the Commission believes that action must be taken to resolve problems of double taxation in the EU in a definitive way that goes beyond the solutions contained in bilateral tax treaties. The Commission is currently examining the problems that both individuals and companies face when their income, profits and capital gains are taxed by more than one Member State. It will consider these double taxation problems in detail in a Communication that it aims to adopt in 2011, with a view to presenting possible solutions in 2012, on the basis on an impact assessment, such as a binding dispute resolution mechanism, as suggested by the recent Monti Report[7], in order to tackle shortcomings in the Member States' bilateral double taxation treaties on income and capital.

2. Inheritance tax

6 SEC(2010)1576
7 http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf

Cross-border inheritance tax issues appear to be a matter of increasing concern to EU citizens. The Court of Justice of the European Union never examined the inheritance tax rules of EU Member States before 2003 but since then national courts have referred eight cases to the Court. In addition, the Commission has received many complaints and queries about problems of both discrimination and double taxation in this area. The double taxation problems arise because the laws in those Member States that apply taxes on inheritances differ considerably even as regards who is taxable. Furthermore, there are very few bilateral tax conventions between Member States addressing double taxation of inheritances and Member States' unilateral relief mechanisms do not appear to be comprehensive. The Commission is currently analysing these cross-border inheritance tax problems and consulting widely. It is examining solutions such as providing guidelines concerning the removal of discriminatory features and asking Member States to make their unilateral double taxation relief mechanisms more comprehensive. The Commission intends to present proposals to address cross-border inheritance tax problems in mid-2011 based on the results of the ongoing impact assessment.

3. Taxation of dividends paid across borders

In cross-border situations, withholding taxes on dividends split the right to tax income between the source state of the income and the investor's state of residence. However, the fact that dividend payments are subject to taxes in two Member States is often a cause of major problems: it can be difficult to claim a tax refund, there may be multiple layers of taxation involved and the tax applicable to dividends paid to foreign investors may be heavier than that on dividends paid to local investors. This has given rise to an increase in the number of complaints by citizens about discrimination and of cases referred to the Court of Justice.

The Commission is currently analysing this issue and on the basis of an impact assessment intends to present an initiative in 2012 to resolve the problems that arise when two Member States have taxing rights over dividends paid to individual investors. Pending this fuller analysis of dividend taxation in the EU, the Commission is also working with Member States to ensure that any withholding tax relief on securities income, including dividends, to which investors are entitled under tax treaties will be granted in the simplest and quickest possible manner, ideally at the time of payment of the income in question (cf. Commission Recommendation 2009/784/EC of 19 October 2009).

4. Vehicle Registration and Circulation Taxes

When buying a car in a Member State other than that of their normal residence or when transferring a car to a Member State other than that in which it is registered, EU citizens frequently face excessive red tape and may have to pay registration and/or circulation taxes twice.

In 2005, the Commission proposed a Directive[8] on passenger car related taxes aimed at gradually phasing out car registration taxes and introducing a refund system for the transitional period. Member States have not, so far, reached the unanimous agreement required for adoption of this proposal. The Commission is currently re-assessing the issues

[8] COM(2005) 261 final

with a view to solving the problem of double registration taxes on carsand will come forward with new suggestions in 2011.[9].

5. E-commerce

EU consumers currently find it difficult to purchase goods or services online across borders. One in three EU consumers has made an internet purchase but only 7% made a cross border purchase online. This is at a time when 33% of consumers would be interested in buying cross-border.

Research has shown that 60% of consumers attempt to buy online across borders but fail because the transaction or shipping is declined by the vendor[10]. In half of the cases tested, the transaction could not be completed even though consumers could have saved at least 10% if the transaction had been carried out. There are various factors that discourage businesses from selling across borders but VAT related issues have been identified as a main factor. 62% of retailers said that differences in national tax regulations are an important practical obstacle to cross-border trade. Online traders are reluctant to sell goods abroad because if they do so they may be subject to tax, and reporting obligations, in the countries into which they sell

A partial improvement of the current situation has been achieved through adoption of a one-stop shop for traders supplying consumers in the telecoms, broadcasting and e-services fields and work has already started towards the implementation of such a scheme. The Commission continues to push for a broader application of such a one-stop shop[11]. In this context, the Commission on 1 December launched a Green Paper enabling all stakeholders to be consulted on the future of VAT, including on one-stop shops. The Commission encourages stakeholders to contribute actively to this consultation which will help prepare for future actions in this area.

5. CONSIDERATIONS FOR FUTURE ACTIONS

The Commission also proposes to establish a dialogue with Member States' tax administrations and stakeholders on other appropriate solutions to EU citizens' cross-border tax obstacles. Suggestions that have already been made include:

- Setting up central one-stop-shops in tax administrations where mobile workers and investors could not only seek relevant and reliable tax information, but also directly pay taxes and receive all the necessary certificates for their home country’s tax authorities

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9 A matter separate from double car registration taxes is requirements for double registration of vehicles. Regarding the latter, as announced in the EU Citizenship Report 2010 (COM(2010) 603), the Commission will also propose a legislative instrument in 2011 to simplify the formalities and conditions for the registration of vehicles which have already been registered in one Member State, in order to remove obstacles to the cross-border transfer of such vehicles.

10 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Cross-Border Business to Consumer e-Commerce in the EU of 22.10.2009 (COM(2009) 557 final), and Commission staff working document: report on cross-border e-commerce in the EU’, SEC(2009) 283

11 In 2004 the Commission proposed a "one-stop shop" system (COM(2004) 728) that would allow certain reporting obligations to be met in the Member State where the business is established. However, the proposal has not yet been adopted.

- Facilitating cross-border tax compliance by seeking greater alignment of tax claim and declaration forms, translating information into other EU official languages and making greater use of information technology

- Encouraging Member States to adopt special rules for frontier workers and mobile workers that take account of the interaction of tax and social security systems in different Member States

- Promoting better interaction between the different pension taxation regimes so as to encourage worker mobility.

6. CONCLUSION

Eliminating tax obstacles can play an important role in strengthening EU citizens' ability and confidence to cross borders to work, retire, invest and buy goods and services. The Commission proposes for its part to:

- Actively pursue complaints and ensure greater transparency and information for citizens on the results of complaints about Member States’ tax laws and infringement cases in the tax field. This will be done in particular by publishing citizen-friendly information on the Europa website on an annual basis;

- Make access easier to the Commission's Europe Direct and Your Europe citizens' advice services and ensure that these services can better deal with tax related questions and that citizens can more directly get help and advice. Information available on the Your Europe website will be provided in a user-friendly format;

- Present a detailed analysis of double taxation problems in 2011 and work on a definitive solution for 2012, on the basis of the results of an impact assessment;

- Propose solutions to cross-border inheritance tax problems in 2011, on the basis of the results of an impact assessment;

- Propose solutions in 2012 to problems arising from the taxes applied to cross border payments of dividends, on the basis of the results of an impact assessment;

- Propose solutions concerning the cross-border problems for EU citizens in the fields of passenger car taxation and online purchases of goods and services;

- Launch a debate with Member States in 2011, in a working group of tax experts, on ways of simplifying tax compliance in cross-border situations.

In order to tackle successfully EU citizens' cross-border tax problems such as double taxation, complicated tax procedures and the lack of clear information for foreign taxpayers, the Commission needs the support of the Council, the European Parliament, the Member States and other stakeholders. The Commission therefore calls on all interested parties to take an active role in tackling the tax obstacles outlined in this paper, in order to make the single market of real benefit to EU citizens. The Commission will report on the progress accomplished in tackling cross-border tax problems, in particular the double taxation of cars, in the report on EU citizenship planned for 2013, a European year to be dedicated to citizens.