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European Commission

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	**Proposal for a Council Directive amending Directive 2011/16/EU as regards measures to strengthen the exchange of information framework in the field of taxation.**
LEAD DG (RESPONSIBLE UNIT)	DG TAXUD. This is a common initiative coordinated among TAXUD B4, C1, C4, D1, D2, D4, and E2.
LIKELY TYPE OF INITIATIVE	Proposal for a Council Directive amending Directive 2011/16/EU
INDICATIVE PLANNING	By June 2020
ADDITIONAL INFORMATION	–

The Inception Impact Assessment is provided for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

Having an economy that works for people, while making Europe greener and more digital, are clear political priorities for this Commission. In terms of Union tax policy, this notably translates into fair taxation where everybody pays their fair share, as stressed by President von der Leyen in the political guidelines for the European Commission. This Commission is committed to step up the fight against tax fraud and tax evasion.

This proposal aims at improving cooperation between national tax authorities. In addition to various possible improvements to existing elements of the Directive on Administrative Cooperation in Direct Taxation, this initiative should provide tax administrations with information to identify taxpayers who generate gross income (revenues) through the digital platform economy (whereby digital platforms facilitate transactions between individuals and/or entities). This aims at ensuring the adequate taxation of such revenues from any perspective (e.g. direct taxes, VAT), while streamlining and updating exchange of information more generally. It builds upon the recently completed evaluation of the Directive.[1] It also will ensure consistency with ongoing work at EU and international level on taxation of the digital platform economy.

Problem the initiative aims to tackle

The main problems the initiative aims to tackle are: tax revenue losses caused by the fact that some taxpayers do not report what they earn via online platforms; the weaknesses in how national tax administrations cooperate to tackle tax evasion and the inefficiencies in data exploitation.

The digital platform economy has been growing rapidly and is expected to keep growing. However, tax compliance is suboptimal and the value of unreported income is likely to be significant and growing. The specific problem is that Member States' tax administrations have little information to correctly assess and control gross income (revenues) earned in their country via activities (such as renting a property via a web platform or giving a ride to a person who needs a lift and/or other cases) made via the intermediation of some digital platform which basically matches demand and supply. This is especially the case when the income or the taxable amount passes via platforms established elsewhere. The latter hold important pieces of tax information and the relevance of this information keeps growing: in 2018, one out of four Europeans made some use of services offered via collaborative platforms, a higher proportion than in 2016, suggesting a growing trend.[2] Pressure is growing on

[1] Commission staff working document Evaluation of the Council Directive (EU) no 2011/16/EU on administrative cooperation in the field of direct taxation and repealing Directive 77/799/EEC (SWD(2019)328 final)

[2] Flash Eurobarometer 467: The use of the collaborative economy.

platforms to report information to individual tax administrations in a variety of ways. Several Member States have implemented unilateral measures to ensure reporting from such digital platforms, and others are planning to implement similar measures in the short term.

Moreover, there is a need to address some inefficiencies of the current Directive identified in recent years, especially in its latest evaluation, in terms of cooperation and data exploitation. For example, in some cases tax administrations are uncertain to ask or to give tax related information to other tax administrations because they are not sure whether such information is foreseeably relevant or not. In other cases, tax administrations are not fully sure whether they can ask and then expect to receive tax information about several taxpayers (a group of taxpayers), instead of the more typical case of asking information only about one taxpayer. The evaluation shows there is also some uncertainty concerning how to conduct a joint audit(i.e. having two or more tax administrations auditing together) of a taxpayer. Another issue which emerged from the evaluation is the need to improve the reporting of the benefits of cooperation: this means gathering better information from the Member States on how they use the information they obtain via cooperation and what they use it for, for which results.

Basis for EU intervention (legal basis and subsidiarity check)

Provisions for introducing or enhancing administrative cooperation in the field of direct taxation would be based on Article 115 of the TFEU, which stipulates that the main rationale for EU action in the field of direct taxation is that the functioning of the Internal Market would be hampered by the operation of uncoordinated national legislation.
Promoting EU-wide standardisation of the reporting rules would help platforms comply with reporting obligations across the Single Market and make the EU intervention more effective and efficient. It would allow platforms to follow largely similar information gathering and reporting processes, avoiding unnecessary compliance costs. Such costs are mostly stemming from proliferation of unilateral reporting rules. It would also ensure that reporting rules are consistent with the internationally agreed standard.

Avoiding duplication and inconsistencies among national practices is essential when it comes to streamlining administrative cooperation. Cooperation has to be based on common rules and ways of working.

B. Objectives and Policy options

The **general objectives** of the initiative are to ensure the proper functioning of the Single Market, reduce tax evasion and other forms of tax abuses, simplify compliance and increase the confidence of European citizens in the fairness of the tax system while ensuring fair competition in the internal market.
The **specific objectives** are to enable tax administrations to obtain information to control that taxpayers pay their fair share, in particular taxpayers who earn money via the digital platform economy, as well as to provide for better cooperation across tax administrations and keep business compliance costs to a minimum by providing a common EU reporting standard.

The impact assessment will consider what data should be collected and exchanged among national tax administrations and the impact of different policy options. The aim is to collect only the data necessary to perform the risk analysis and facilitate tax control of the digital platform economy. The information to be reported by platforms might also be of relevance for indirect taxation and in particular for VAT. It will thus be explored how the reporting system can be construed to ensure that data can also be used for compliance in the VAT field.

The **baseline scenario** used as benchmark will consider the current national practices and legislation (where existing) on mandatory transmission of data from digital platforms to national tax authorities.
Concerning administrative cooperation more broadly, the baseline scenario is well described in the evaluation from September 2019 and past reports of the Commission on how cooperation among EU national tax authorities in the field of taxation is working at the moment.

The Commission will consider whether guidelines (soft-law) addressed to Member States tax administrations and platforms may eventually achieve the objectives. Otherwise, it will be considered whether an amendment of Council Directive 2011/16 could be necessary in order to:

- Include relevant data from digital platform economy under the provisions for mandatory automatic exchange of information between Member States. The scope of such an obligation will have to be assessed, in particular with regard to the following options: relevant business areas (goods and/or services), relevant platforms (e.g. EU-based and/or all), relevant sellers, cross-border vs. domestic situations. The specifics of such amendment may vary depending on different operational technical arrangements for the transmission and exchange of data and the regulatory burden, costs, benefits and savings related to it. Where applicable, burden reduction and simplification potential with a special focus on SMEs will be also identified and quantified.
- Strengthen provisions for administrative cooperation.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

The intervention will have two main impacts, namely on tax revenues (mainly direct taxation and VAT) and on EU competitiveness.

It is expected that the effect on tax revenues will be positive, also from an indirect tax perspective. Thanks to the introduction of stronger rules of cooperation between tax authorities and reporting of tax information from platforms to tax administrations, the latter will have more tools to check that taxpayers pay their fair share. This will in turn encourage that taxable activities and their revenue and income are reported accurately from the start, thanks to an effect of deterrence of non-compliance. When it comes to costs of compliance, an EU wide common reporting standard for platforms will likely keep to a manageable level the compliance costs and burdens for platforms operating in different EU countries rather than the current potential 28 different reporting requirements.

Introducing reporting by platforms of income earned via the digital platform economy should therefore result in lower compliance costs. Savings should also emerge from improvements in joint audit provisions aimed at promoting joint audits rather than potentially duplicating 'single' audits.

Standardised reporting of gross income (revenues) generated through the digital platform economy will create a level playing field across businesses (whether they operate through a platform model or not). Making the standardised reporting available also for VAT purposes would enhance efficiency and simplification of the whole tax system.

Likely social impacts

Fair(er) taxation is expected to have a positive social impact. A well-functioning tax system has a stronger distributive role to convert the public revenues into public services for the benefit of all citizens.

Likely environmental impacts

The initiative is expected to have no significant environmental impacts. Additional revenues generated from increased tax compliance will increase resources available, among others, to environmental protection.

Likely impacts on fundamental rights

The protection of fundamental rights and especially data protection must be ensured. In particular, the set of data elements to be transmitted to tax administrations will be defined in a way to capture only the minimum data necessary to detect non-compliant underreporting or non-reporting, in line with the General Data Protection Regulation obligations.

Likely impacts on simplification and/or administrative burden

The impact assessment endeavours to establish - where applicable - whether an EU harmonised framework may result in a low level of regulatory costs (administrative burden/compliance costs) for both tax administrations and businesses – especially compared to the economic impacts the measure could achieve. The analysis will look into the relevant costs and burden reduction potential, to the extent possible. A structured and harmonised transmission of data may simplify technical and administrative processes for all the stakeholders, resulting in easier handling and management of the data. This simplification potential will be identified and quantified as much as possible.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision. The work on data collection and the economic analysis has already started. The assessment's publication is expected at the same time as a possible legislative proposal.

Evidence base and data collection

Extensive work on possible improvements to administrative cooperation has been carried out over the last two years. Two Commission Reports on the Directive have been issued: one in December 2017 and one in December 2018. In September 2019, the Commission published an evaluation report on the effectiveness of the Directive. In that context, the need to streamline administrative cooperation and to broaden it to cover the digital platform economy was mentioned among other actions needed to ensure the continuous relevance of the intervention.

Moreover, significant work on a possible reporting regime has been done by Member States under the umbrella of the Tax Administrations EU Summit (TADEUS).

The OECD Forum on Tax Administration recently published the report "The Sharing and Gig Economy: Effective Taxation of Platform Sellers" (OECD, 2019) where it highlights the challenges tax administrations are facing when dealing with new business models and looks at approaches to help ensure the effective taxation of those earning income from the sale of goods or services in the sharing and gig economy. The report makes a strong case for the development of a legal framework for standardised reporting of information between jurisdictions.

Consultation of citizens and stakeholders
In addition to a public consultation lasting 8 weeks, the Commission will run targeted consultations of Member States' tax authorities, to provide a comprehensive and balanced picture in terms of regulatory costs (administrative burdens & compliance costs), benefits and savings of the suggested intervention. The consultation activities are planned to start in February 2020. Furthermore, the Commission services will be organising a large, high-level stakeholder consultation event in April 2020, through its conference on 'Tax Compliance in a Digitalised World' (tentative working title – actual title may differ).
Will an Implementation plan be established?
An implementation plan will be developed to help Member States to transpose and implement the Union legislation in a consistent fashion.