

**Meeting of Commissioner Moscovici
with [REDACTED] of Apple**

4 June 2015

Brussels

List of interlocutors:

[REDACTED]

[REDACTED]

[REDACTED]

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1. SCENE SETTER

[REDACTED]

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2. KEY POINTS

1) 2015 EU VAT changes

- The change of the rules makes sure that the revenue from digital economy is shared in a more fair way between Member States – the revenue goes to the Member State of consumption.
- This change should be seen only as a first step on the way to adapt the rules to quickly changing and developing digital economy.
- The first assessment of the new rules will take place in the second half of 2015 and the beginning of 2016 – only afterwards any conclusions can be drawn for possible future improvements (regulatory or non-regulatory).
- The successful delivery of the new place of supply rules for B2C supplies of telecommunications, broadcasting and electronic services and the accompanying MOSS has been a priority for the Commission services.
- The Commission will continue to work in close cooperation with all interested stakeholders in order to improve and develop regulatory and non-regulatory solutions for ever changing digital economy.

2) EU Action Plan on Corporate Taxation

CCCTB:

- Promote the benefits of the Common Consolidated Corporate Tax Base, including the staged approach of having a CCTB (i.e. without consolidation) combined with cross-border loss relief.
- Remind Apple that large businesses, in particular, have always supported the CCCTB. Business Europe issued a public supportive statement the day the Commission adopted the proposal, i.e. on 16 March 2011.

BEPS:

- Inform Apple that in the coming months, the Commission is planning to bring EU Member States together to discuss commonly acceptable ways for implementing the OECD deliverables on BEPS. We need EU solutions to tackle tax abuse within the Union, but also to protect our Single Market from profit shifting to third countries. Furthermore, it should be ensured that the output is in line with EU law.
- Clarify that the currently pending proposal for a CCCTB includes rules on international tax law matters which tie with certain themes discussed at the OECD as BEPS Action Items. MSs' experts have already extensively debated most of these topics in the Council Working Party for Tax Questions while discussing the CCCTB proposal. We therefore believe that this is the best framework for bringing back this debate.

Country-by-Country Reporting (CBCR):

- Explain that according to the Transparency Communication of 18 March 2015, the Commission intends to carry out a full Impact Assessment before it takes any initiative. The aim will be to carefully evaluate the benefits, costs, risks and safeguards of possible disclosure requirements relating to certain corporate tax information on multinational companies.

Effective Taxation:

- Reassure Apple that the Commission has, until now, always considered corporate tax rates as a matter of exclusive national competence. There is thus no attempt to interfere with Member States' sovereign right to decide their statutory tax rates. However, it has become increasingly important to ensure that profits generated in the EU do not leave the Union untaxed ('double non-taxation') or virtually untaxed (low or very low taxation).

3. STEERING BRIEF

1) 2015 EU VAT changes

Scene setter:

As from 1 January 2015 all telecommunication, broadcasting and electronically supplied services are taxable in the Member State of the location of the final consumer. The new rules create a level playing field for smaller and bigger businesses. Before 2015 it was difficult for smaller businesses to relocate within the EU to Member States with lower VAT rate. Now domestic and non-domestic suppliers are put on equal footing. Suppliers have a simplification measure in order to fulfil their obligations in all Member States of their final customers – a single window in order to register, file tax returns and pay VAT. It is called Mini One Stop Shop – MOSS. Such system is not completely new to digital businesses, as it has been in place since 2003 for non-EU e-service suppliers selling to EU consumers. The Commission took many steps in order to prepare and inform the stakeholders in advance about the rules that entered into force on the 1st January 2015: 3 Implementing Regulations, Guidance for Member States and Business published on a dedicated website of the Commission, Widespread communication plan with many meetings with stakeholders, Development of the IT solutions.

As announced in May 2015, as part of the Digital Single Market Strategy, the Commission will make legislative proposals in 2016 to reduce the administrative burden on businesses arising from different VAT regimes including (i) extending the current single electronic registration and payment mechanism to intra-EU and 3rd country online sales of tangible goods, (ii) introducing a common EU-wide simplification measure (VAT threshold) to help small start-up e-commerce businesses, (iii) allowing for home country controls including a single audit of cross-border businesses for VAT purposes and (iv) removing the VAT exemption for the importation of small consignments from suppliers in third countries.

- [REDACTED] [REDACTED] To be noted however that Apple being based in LUX for eservices, they have been directly affected by those changes.

2) EU Action Plan on Corporate Taxation

Scene setter:

You should expect that at present, Apple is heavily pre-occupied about the outcome of the ongoing State Aid procedure. Yet still, its representatives may be interested in the actions envisaged under the upcoming Action Plan on Corporate Taxation notably the CCTB and effective taxation following the BEPS work. Depending on the results of the investigation, Apple may need to rethink their global structures and in this context, the short- and mid-term EU initiatives in corporate taxation are likely to impact on their choices for the near future.

- [REDACTED]. However, most Irish businesses took a position against the proposal for a CCCTB in 2011. It can be expected that Apple would follow the same line since the current *status quo* has allowed it to secure significant tax benefits through its Advance Pricing Arrangements with the Irish authorities. Up until now, Apple does not seem to have had any good reason to expect more benefits under the CCCTB. However, if the current State Aid investigation finds that Apple has received illegal subsidies, Apple may show more openness to reflecting on the alternative of a CCCTB. In the light of this, the Apple officials could ask to learn more about the advantages that a CCCTB could bring for businesses. They may also wish to find out how the Commission envisages implementing the staged approach.

4. DEFENSIVES

1. 2015 EU VAT changes

***Why suppliers using MOSS have to keep data for 10 year?
It is very burdensome.***

- The requirement to store data for 10 years is a compromise reached during the discussions in the Council. Member States chose to apply the highest time limit existing in one Member State [REDACTED]
- During the first assessment of the new rules that will take place in the second half of 2015 and the beginning of 2016 these issue will also be looked at and assessed.

Why e-platforms acting as an intermediary in a chain of supply of electronic (and phone internet) services have to account for VAT in relation to supplies to final customers?

- Supply chains are often long and can stretch across borders. It can be difficult to know when the services are finally supplied to a final consumer, and who is responsible for the VAT on that supply.
- To provide legal certainty for all parties involved in relation to these complex situations and to ensure collection of the tax, a rebuttable presumption was introduced.
- This presumption normally sees all intermediaries as supplying further down in a chain an e-service. When such an intermediary further supplies a given electronic service to an end consumer, he will be the one responsible for accounting for VAT in the country where that customer is located.

- It is important to remember that although this presumption is rebuttable, under certain conditions, not all intermediaries are allowed to do it. Un-rebuttable situations are listed in the EU VAT legislation and further explained in Commission's Explanatory Notes published on our webpage.
- In general situation of an intermediary depends on its level of involvement in the concrete supply.

How to distinguish between electronically supplied services and other services?

- EU VAT legislation gives a definition which is further explained in Commissions Explanatory Notes published on our webpage.
- VAT Committee is currently working on developing guidelines which should further help businesses and Member states to apply a very harmonized approach to the understanding of this notion.



- *The definition contains four elements: (1) the service is to be delivered over the Internet or an electronic network and its nature is that (2) it is essentially automated, (3) involve minimal human intervention and (4) is impossible to ensure in the absence of information technology.*
- The works in the VAT Committee concern mainly the understanding of the third element: what is the level of minimal human intervention for the service in order to be seen as covered by the definition.

Having in mind declaration from the President Juncker, how the Commission plans its future work in relation to e-books?

- There have been a number of calls to reform the current system of VAT rates, which foresees that e-publications are always taxed at the standard rate, unlike printed publications.
- The Green paper and the Communication on the future of VAT announced a review of the current VAT rates system (with lower limits for the standard and reduced rates; limited application of reduced rates to a specific list of goods and services (Annex III, which does not include e-publications)).
- The issue has attracted political attention from the green paper in 2011 onwards owing to a campaign by publishers to extend reduced VAT rates as well as the derogations (super-reduced and zero rates), currently applied on printed publications, to e-publications. The Directive, as highlighted by a recent ECJ decision, clearly does not allow this.
- The Commission is planning to conduct the VAT rate review in parallel to the review for the definitive regime, in order to avoid introducing piecemeal solutions for specific sectors.

2. EU Action Plan on Corporate Taxation

The OECD BEPS project is nearly finalised. Is there really a need for separate EU action on these issues?

- EU is very supportive of BEPS project and has been an active contributor.
- But EU's own agenda should be aligned with international reforms, but also meet our own particular needs.

- Without a common EU approach to implementing BEPS, we risk the chaos of 28 different national approaches in a Single Market.
- We need to have a common defence vis-à-vis third countries to effectively protect the integrity of the Single Market.
- We need EU solutions to tackle tax abuse within the Union, but also to protect our Single Market from profit shifting to third countries.

CCCTB has been stuck in the Council for 4 years, and some MSs are fundamentally against it. Why do you think they would agree to it now, just because of a re-packaging exercise?

- Member States gave their broad support for a new approach to the CCCTB, when COM consulted them on this earlier this year.
- The new CCCTB proposal will reflect discussions in the Council over the past 4 years. We will continue to listen to Member States' views as we prepare the adapted proposal, in order to maximise the chances of a timely adoption.
- Given the public and political demand for effective tools to combat corporate tax avoidance, there should be good support for re-launching the CCCTB (with some adaptations).

What are the international aspects in the CCCTB that could be agreed quickly, and how do they tie in with the OECD BEPS project?

- The CCCTB proposal includes certain measures which are also close to being agreed at international level (OECD BEPS).
- These include rules on Permanent Establishment, Interest Deductibility and Controlled Foreign Corporations (CFC).
- Member States are very keen to pin down an EU approach to implementing the new international standards on these issues.
- The OECD guidelines will be non-binding and quite general – which could lead to 28 very divergent approaches if each Member State tries to implement them alone.
- Agreement on these international aspects within the framework of the CCCTB would ensure legal certainty, coherence in the Single Market and a stronger EU stance towards profit shifting out of the EU.]

Why is the Commission addressing the issue of effective taxation?

- Member States, the EP and the public have all asked for the issue of effective taxation to be addressed.
- The current situation, whereby a company can generate large profits in the EU and not pay any tax here, is unacceptable.
- A common approach is needed so that companies making profits in the EU pay tax in the EU.
- Some Member States are already trying to find individual solutions to effective taxation. But this does not work in a single market, and is causing legal disputes and uncertainty for businesses.
- A common EU approach to effective taxation would mean a stronger single market, protected against base erosion and

less prone to harmful tax competition between Member States.

- Businesses would have greater legal certainty and a level playing field.

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