

Christiana HJI Panayi - Statement

Simplification and transparency: Role of simplified tax policy to encourage growth, job creation, competitiveness and cross-border business within the EU

Good morning ladies and gentleman,

It's a great honour to be invited at this hearing. My name is Christiana and I'm a professor in tax law at Queen Mary University of London.

A sound tax system has a strong bearing on competitiveness and economic growth.

A sound tax system, however, needs a good tax administration clear rules and a robust legal framework in which the proper checks and balances can be provided. This helps deter evasion. It also encourages compliance and promotes competitiveness.

In the past decade, the pace of new legislative tax instruments (or amendments to instruments) has been relentless. The complexity that has accumulated is undeniable. This complexity can give rise to more opportunities for tax evasion. It also increases the likelihood that taxpayers make inadvertent mistakes in calculating their tax liabilities.

Many businesses struggle to navigate the evolving regulatory landscape not only because of its complexity but also the variable implementation by Member States.

I'm pleased to see that the tide seems to be changing. At least I hope so. Initiatives such as this hearing are encouraging.

'Declutter' seems to be the buzz word currently in Brussels. Two important tax directives subject to evaluation - the Directive on Administrative Cooperation and the Anti-Tax Avoidance Directive.

Firstly, I completely agree that the Directive on Administrative Cooperation and all its amendments, especially DAC 6 must be reassessed. DAC 6 introduced an obligation for intermediaries (tax advisors) or taxpayers to report potentially aggressive cross-border arrangements, which information was then automatically exchanged between the relevant Member States.

There are various hallmarks which determine when this obligation is triggered. However, the interpretation of key concepts varies between Member States. There are discrepancies in the applicable penalty regimes, which intermediaries are exempted from reporting based on a legal professional privilege etc.

Shifting the disclosure obligations to the taxpayer, if an intermediary is protected by legal professional privilege, is arguably an infringement of the taxpayer's right to silence (nemo tenetur principle) or the right against self-incrimination (enshrined in the Charter of Fundamental Rights).

There is uncertainty as to how the disclosed information is being processed local tax administrations. Let's not forget that Member States have varying levels of technical infrastructure and resources, affecting their ability to implement/maintain standardized data exchange systems.

It is generally recognised that the complexity of the DAC6 rules and the reporting/notification obligations have created disproportionate administrative costs for both intermediaries, taxpayers and tax authorities.

We need to ask ourselves. Is DAC 6 justified in terms of cost-effectiveness? Is it fit for purpose today?

Anti-Tax Avoidance Directive

The ATAD, enacted in 2016, is another instrument under review. This Directive has significantly altered the tax landscape within the EU, with the introduction of minimum anti-abuse rules (some with options) provided in the Directive. The idea was to bring a level playing field amongst Member States with different approaches towards aggressive tax planning.

Has this Directive achieved this purpose though? Broadly speaking yes, but refinements are certainly overdue.

Again, the implementation of some of the provisions across the EU is fragmented due to divergences between Member States (MS). This is in places embedded in the Directive. The CFC provision itself contains two models from which Member States can choose. This generates variable results.

As far as the CFC provision is concerned, there are also overlaps with later legislation (the Directive on Minimum Effective Tax Rate) and profits need to be recalculated. [

As for the interest limitation rule, the one size fits all approach is highly problematic, as it doesn't take into account the different industries/sectors, the differences in investment structures.

And there are more anti-abuse proposals in the pipelines: the Unshell proposal, for example.

My honourable committee, the EU's tax policies must align with its broader economic goals: promoting the Single Market and frictionless cross-border trade. Frictionless from a tax perspective as well. Therefore, when considering further amendments, policymakers should keep these goals in mind and weigh the value of such measures against the additional administrative costs.

I believe we need to press the pause button before more anti-abuse instruments are introduced.

For this reason, I would advocate that the Unshell proposal be shelved and perhaps more emphasis should be placed on the Head Office Tax proposal which tries to reduce tax obstacles within cross-border structures.

R&D tax incentives

Achieving the full potential of the Single Market entails adaptation of the tax systems to a rapidly changing technological landscape and emerging business models.

Innovation (and as a corollary R&D investment) are key drivers of economic growth, global competitiveness, and social welfare.

Boosting R&D investment should be one of the main objectives of the European Union. Currently, there is no unified approach from a tax perspective – Member States deal with this in a piecemeal manner. In fact, the proposed EU approach has changed through the years. For example, under the 2016 CCTB/CCCTB proposal, there was a super-deduction for R&D costs, the allowance for growth and investment (AGI).

Both of these have been scrapped from the BEFIT. This is a major regression.

Tax incentives, such as accelerated depreciation, super deductions must be more widely available.

I do recognise that there is a complex interplay between innovation, tax policy, and the protection of Member State tax base. This is why it might be beneficial for the EU to adopt a uniform approach, which caters for these concerns. And also avoids issues with the state aid prohibition.

Overall, in the current context of global economic and political instability, it is crucial to work towards a coherent EU tax policy, to simplify and streamline the tax compliance process, and to create a more business-friendly environment.

This also seems to be aligned with the new European Commission's Political Guidelines (2024-2029), where it is stated that we need a Union that is faster and simpler, more focused, more united, more supportive of people and companies.

As we say in Greek: Ἰδοὺ ἡ Ρόδος, ἰδοὺ καὶ τὸ πῆδημα

Or in Latin: Hic Rhodus, hic salta

My honourable committee, this is your opportunity to put your mark in this very important debate.

Thank you.