

The UK opposes the new EU definition of a tax haven

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The following is a briefing from the European Greens, but is on an important issue so I am happy to reproduce it:

On 28 June 2012, the European Parliament and the Danish EU Presidency reached an agreement on an EU-wide venture capital regime^[1]. This new regulation creates a single rulebook that allows venture capital funds to obtain an 'EU passport', provided that they fulfil a set of requirements.

Among the requirements agreed upon, it has been decided to exclude from the EU passport venture capital funds that are either domiciled in tax havens or that invest in companies established in tax havens (see the annex). For this purpose, a definition of tax havens was inserted in the new regulation.

The adopted definition - by far the most comprehensive one to be included to date in EU legislation - identifies as a tax haven any third country that:

- * provides for tax measures which entail no or nominal taxes;*
- * grants tax advantages even without any real economic activity and substantial economic presence;*
- * is listed as a Non-Cooperative Country and Territory by FATF;*
- * has not signed an agreement with the home Member State of the venture capital fund manager and with each other Member State in which the units or shares of the qualifying venture capital fund are intended to be marketed, so that it is ensured that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;*

While the two last intents are commonly used in the EU legislation to determine whether a third country is to be considered as a tax haven, the first two - i.e. 'no or nominal taxes' and lack of substantial economic presence - are referred to for the first time in a EU legislative text.

Throughout the negotiations with the Council, Philippe Lamberts - Green MEP and EP rapporteur for the new rules - has fought to get these first two intents inserted in the new venture capital regulation. Their exclusion from the listed criteria would have indeed turned the definition into an empty shell since neither the FATF lists, nor the OECD Model Tax Convention constitute relevant elements to define a tax haven.

While the FATF lists are biased and uncompleted, the OECD standards on tax information exchange have, for their part, proven to be ineffective in practice for the following reasons: firstly, they do not provide for automatic exchange of information and, secondly, there are still many obstacles to information exchange^[2] to date (i.e. the burden of proof still lies on the requesting country; secrecy jurisdictions enact domestic legislation to impede compliance with information requests, etc.).

The enhanced definition of a tax haven that was agreed both by the Council and the European Parliament last June should therefore be considered as an important step forward in the fight against secrecy jurisdictions. This will act indeed as a precedent for the future revision of EU legislations where tax haven issues are of particular importance, namely: the AIFM directive, the savings tax directive, etc.

As part of the final deal on the new venture capital framework, the Commission has committed in a declaration (see the annex) to explore the option of proposing an EU definition of tax havens.

Clearly this is welcome, and was thought to be final. However, the UK is now one of 11 countries opposing such a move, alongside, inevitably the EU's other tax haven locations. Have we learned nothing as yet? The battle is not over yet - if on a second reading the EU Parliament approves this then the definition is approved. There is much to play for.

^[1] See the press release of the Danish EU Presidency: <http://eu2012.dk/fr/NewsList/Juni/Uge-26/Funds>. See also the press release of the EU Commission:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/507&format=HTML&aged=0&language=FR&guiLanguage=fr>

^[2] In order to request information from a contracting secrecy jurisdiction, the requesting country needs to provide a dossier of information about the specifics of the request, including the name of the (non) taxpayer. Moreover, the implementation of Tax Information Exchange Agreements (TIEAs) is also thwarted by secrecy jurisdictions interpreting agreements in a very narrow way, some even going to the extent of enacting domestic legislation to impede compliance with information requests., in <http://taxjustice.blogspot.be/2011/04/death-of-information-exchange.html>