Thoughts relating to the draft report of the TAXE Committee, as requested, for further discussion.

We support the TAXE Committee's goal of tax reform in the EU that aims for greater coordination and increased transparency between member states and the review of practices that are ultimately agreed by Member States to be harmful tax competition. At the same time, we believe a balanced approach is needed that achieves these objectives without losing competitiveness at a time when Europe badly needs jobs and growth. We have focused on six key areas below, and stand ready to further engage with the Committee and other stakeholders on these issues.

Make increased transparency between governments work

The EU would benefit from meaningful exchange of information between governments with respect to tax rulings. The proposed transparency package with mandatory automatic exchange between Member State governments is regarded as a positive development. If it functions well it would encourage rigor in the ruling process and visibility of rulings across EU tax authorities. There are further ways to improve transparency e.g. through publication of ruling statistics, types of ruling granted, anticipated effect on revenue and the like. However, it will be very important to think hard about an effective system for automatic exchange of information with 28 Member States, many different languages, and thousands of rulings per year to be processed. Perhaps a central database with smart translation and analytical tools could indeed result in meaningful information exchange between governments?

External expertise should remain available for EUIs and governments

The size, complexity and mandate of both EU institutions and governments mean there is a need for external expertise to support the implementation of critical policy objectives and directives The large firms have great depth of experience, technical and industry knowledge and human resources, which can be used to complement the internal resources of both EU institutions and governments in order to further their objectives. On that basis, we believe that the public interest is better served when EUIs and governments are able to access the resources within those firms and networks, with appropriate and clear procedures for conflict of interest. At the same time, the public should be assured that individuals are not able to "work both sides of the system" - making policy and advising on how to take advantage of the policy in a way that wasn't intended. We and the contracting institutions have an important job to do in assuring the public that the engagements we undertake with the EUI or governments are awarded through rigorous procurement processes and / or framework agreements as part of which any real or perceived conflicts of interest are considered.

The acceptable limits of tax planning should be defined by good legislation and increased international co-ordination

Tax planning, for both costs and compliance, is and will always be necessary for companies with cross-border activities, as indeed they plan for any other business cost and regulation. Despite all the efforts to co-ordinate internationally, taxpayers have to navigate through more than 150 different tax systems in order to manage their costs, compliance obligations and the risk of double taxation. Businesses are also increasingly mobile which brings with it choices as to where to locate activities bearing in mind their markets, their costs, and compliance burdens. All tax planning should take place within the boundaries of the law and the applicable treaties. What is aggressive tax planning? Is it aggressive if a royalty that is deductible in country S, is taxed under a patent box regime in country R? Is this against the spirit of the law of country R and/or country S? The most appropriate answer against tax planning that governments conclude to be undesirable, is good legislation and international co-ordination as to desired outcomes. That is not to say that it is only the letter of the law that is taken into account in business decision-making, or in good professional advice – uncertainties as to the application of the law to a particular situation or action carries significant business risk and the business impact of reputational risk is also increasingly a factor.

Corporate governance guidelines (e.g. chapter XI of the OECD Guidelines for multinational enterprises) also seek to take into account the intent of the law. The ethical standards and principles laid down by professional bodies in a number of countries as well as businesses and advisory firms themselves, all contribute to a framework for tax conduct over and above the application of the law. We are of course prepared to engage with governments and international institutions, e.g. via the Platform for good tax governance, to further develop a framework for good tax conduct. In this process it is important to make clear how such a framework relates to the rule of law.

Independent, scientific research on the tax gap and work on definitions is recommended
Commissioning a comprehensive study on the tax gap could be valuable, so that policy responses can be based on information that is as robust as possible. The numbers referred to from time to time by the Commission and in the press are very big and no distinction is made between tax fraud and legal tax avoidance. Each needs a different response to be effective. We acknowledge that there is a big and constructive role for multinational enterprises and other stakeholders in the tax system to play in restoring trust in the international tax system, but firmly believe that discussions and actions should be based on facts and not on perceptions that lead to imprecise targeting of interventions and unintended consequences. There is already evidence available that effective tax rates of multinational enterprises are within a small bandwidth of the statutory tax rates (we refer to the study of Avi-Yonah mentioned on page 83 of the OECD BEPS Study of February 2010).

Effective dispute resolution mechanisms are necessary, possibly with an independent and permanent tax arbitration court as last resort
In the post BEPS era, an increase of cross border disputes can be expected all over the board e.g on the questions around permanent establishments, treatment of hybrids. By taking appropriate action in this area the EU can give a good example to the rest of the world. A lot could be gained from enhancing and supporting the JTPF's work on dispute resolutions. A first step could be taking stock of all the EU-MAP cases, the issues under dispute, the time to solve MAPs and the resources available. The next step could be to build and maintain a database of cases and introduce a mechanism to share experiences. The MAP forum could publish its findings to support or speed up Member States' efforts. The focus should not only be on transfer pricing. Could installing a permanent Tax Arbitration Court serve as such an example? We would support an initiative to include arbitration mechanisms on tax issues in the Association Treaties with third countries.

Transfer pricing is not inherently a bad thing
Commercial transfer pricing is necessary for multinational enterprises, for measuring performance of the various parts of the enterprise, for internal management and control purposes, for preparing statutory accounts and also for allocating taxable profits to the countries they operate in. For tax purposes transfer pricing is an obligation for which the arm's-length principle has thus far been agreed to be the best / most practical approximation for commercial third party pricing. Guidance on this economic principle has been developed by the OECD and is published in the regularly updated Transfer pricing guidelines for multinational enterprises and tax administrations. Transfer pricing follows the decision making on the allocation of activities, assets and risks within the multinational company. The OECD (including the G20 countries that are not members of the OECD) will publish new guidance in October this year aimed at better reporting of taxable profits in the territories where the economic value is added. Conflicts on and inconsistencies of interpretation of the arm's-length principle between the EU and the OECD should be avoided. Such conflicts and inconsistencies will hamper doing business in the EU as they lead to a lack of clarity, uncertainty and therefore double taxation.