SPANISH
PERMANENT
REPRESENTATION

The Permanent Representative

Brussels, 10 July 2015

Alain Lamassoure
Special Committee on Tax Rulings
European Parliament
Brussels

Dear Mr Chairman,

I hereby reply to your letter of 23 April inviting the Minister for Finance and Public Administration to participate in one of the forthcoming meetings of the Committee you chair or instead to receive a delegation from that Committee, and requesting information on several matters considered relevant to the work of the Committee.

It is necessary to set out some preliminary considerations before going on to reply to the questions raised.

Spain has suffered damage and shares the concerns about the extent of abusive tax planning which makes use of regulatory differences and specific practices in some Member States. Although major progress has been made in the design and adoption of new tools to combat tax evasion and tax avoidance more effectively, and significant progress has been made worldwide in counteracting tax-base erosion and the artificial shifting of profits, and the Committee has decided to look into certain tax rulings which have particularly benefited some companies and been detrimental to other general interests, there is still much to be done. The Spanish Prime Minister clearly stated this in a letter to the President of the European Council on 16 December (attached). As he concluded, the EU must demonstrate that it means business. Its citizens and the fiscal effort called for deserve this.

The European Commission has proposed initiatives which, when approved in the manner determined by the Council, will undoubtedly make it possible to limit the excesses which have occurred in recent years. There are many interests involved, and the joint action of corrective and preventive measures must respect both the competences conferred on the Community institutions and those of the Member States. The European Union is based primarily on the rule of law and its institutions in particular must respect that, with the European Parliament working in terms of its legitimate interest in contributing to setting up a new framework.

Spain has decisively promoted transparency both in its domestic rules and international agreements. It has participated and continues to participate actively in that regard in working groups which examine the various issues directly related to the field under examination by the European Parliament Special Committee. It works with the Committee by providing the documentation and information requested from it, for example, regarding the investigation in all Member States of national practices in respect of tax treaties. Also in the OECD Spain has supported and promoted ongoing work projects, to which it accords great value and recognition of the benefits achieved, which were scarcely imaginable a few years ago. Since it is fully reflected in Community legislation through Directive 2014/107/EU, special mention should be made of the adoption by the OECD of the new global standard for automatic exchange of financial account information, driven by the joint initiative of Germany France, Italy, the United Kingdom and Spain, on the basis of FATCA (Foreign Account Tax Compliance Act) agreements with the United States. The recent signature of the agreement with Switzerland is a clear milestone in the change of context. Likewise, Spain has criticised situations it considers unjustifiable within the European Union arising from Gibraltar's tax regime.

In short, Spain is clearly in line as regards the promotion of transparency and the prevention of abusive tax planning situations of which it has been aware. In recent years, in the context of the severe economic crisis it has had to face and the major fiscal effort called for on the part of its citizens, preventing and combating tax evasion and tax avoidance has been an ongoing priority for Spain.

Information is given below on the points raised in your letter.

1. Measures taken to increase transparency in the field of corporation tax.

These measures are, inter alia, the following:

- Convergence of tax rates. Specifically, the standard tax rate will apply to a larger number of corporation tax payers.

- Elimination of fiscal incentives, such as the deduction for the reinvestment of extraordinary profits, deduction for the investment of profits, deduction for environmental investments and deduction for professional training expenses.

- Measures to simplify tax (generalisation of the exemption of dividends and capital gains for shares in both resident and non-resident entities, or the new amortisation schedule).

- Obligation to provide the tax authorities with information on a country-by-country basis, which is expected to come into effect for the tax periods commencing on 1 January 2016.

2. Actions taken to limit BEPS in the field of corporation tax:

In recent years, the following have been adopted:

- Anti-hybrid rules, concerning both expenditure (establishing that it is non-deductible if the corresponding income was not taxed or was taxed below a nominal rate of 10 %) and income (since the exemption for dividends does not apply where their distribution gives rise to expenditure deductible at source).

- Restricting the deductibility of net financing costs to 30 % of operating profit (with a minimum amount of EUR 1 million).

- Non-deductibility of financial expenditure through borrowing to buy stakes in group companies or stakes in third companies acquired by other group companies.

- Strengthening of international tax transparency rules (CFC).

3. Summary of all tax rulings issued since 1991, including the date of issue and identification of the parties involved.

It should be stated, first, that Spain does not have the sort of arrangements which have led to the cases being examined by the European Commission as constituting alleged state aid.

In any case, the tax information requested is confidential, and in accordance with Article 95(1) of General Tax Law No 58/2003 of 17 December 2003 (Official State Gazette (BOE), 18 December) 'the data, reports or records obtained by the tax authorities in carrying out their functions are confidential and may be used only for the effective application of taxes or resources whose management has been entrusted and for the imposition of the appropriate sanctions, and may not be transferred or communicated to others', except in a small number of cases, of which this is not one.

Accordingly, data in breach of the current legislation cannot be disclosed, unless there is another provision at the same level which lays down an exception. In particular, Directive 2011/16/EU provides for the spontaneous exchange of information between the EU Member States but, at the same time, Articles 16, 23 and 25 lay down very rigid rules affecting the disclosure of information and documents. The European Parliament itself, when it adopted its resolution on 10 February 2010 on the then draft directive, placed emphasis on ensuring the privacy of taxpayers and securely protecting the information exchanged.

In the context of promoting transparency, Spain is working at European level and with the OECD on an amendment to the abovementioned Directive 2011/16/EU, in order to increase exchange in tax ruling matters so that such exchange becomes mandatory between the 28 EU Member States and for all types of tax rulings, with the exception of indirect taxation and customs duties.

4. All information shared with the other Member States since 2010 under Article 9 of Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC and Article 4 of Directive 77/799/EEC.

The Spanish tax authorities have made use of the methods set out in both articles and have arranged for the spontaneous exchange of information with other tax administrations. The number of cases handled in the following years are given below:

2010:367

2011: 348.

2012: 182

2013: 195.

2014: 248.

As stated above, the tax information exchanged is confidential and in accordance with Article 95(1) of General Tax Law No 58/2003 of 17 December 2003 cannot be disclosed except in the cases expressly provided, and such cases do not apply here. Nor may the information requested be provided to the Special Committee under the two Community directives cited.

6. List of tax havens and jurisdictions not cooperating in the exchange of information

In accordance with the first additional provision of Law No 36/2006 of 29 November 2006 on measures for the prevention of tax evasion (BOE of 30 November), '*Tax havens are those countries and territories laid down by regulation.'*. Where there is no such regulation, the countries or territories set out in Article 1 of Royal Decree No 1080/1991 of 5 July 1991 laying down the countries or territories referred to in Articles 2(3)(4) of Law No 17/1991 of 27 May 1991 on urgent fiscal measures and Article 62 of Law No 31/1990 of 27 December 1990 on the general State budget for 1991 (BOE, 13 July) are to be considered tax havens.

Currently, the following are considered to be tax havens:

- Kingdom of Bahrain
- Sultanate of Brunei
- Anguilla
- Antigua and Barbuda
- Bermuda
- Cayman Islands
- Cook Islands
- Dominican Republic
- Gibraltar
- Grenada
- Fiji
- Guernsey and Jersey
- Falkland Islands
- Isle of Man
- Mariana Islands
- Mauritius
- Montserrat
- Republic of Seychelles
- Solomon Islands
- Saint Vincent and the Grenadines
- Saint Lucia
- Turks and Caicos Islands
- Republic of Vanuatu
- British Virgin Islands
- United States Virgin Islands
- Hashemite Kingdom of Jordan
- Lebanese Republic
- Republic of Liberia

- Principality of Liechtenstein

- Macau

- Principality of Monaco

- Sultanate of Oman

- Republic of Seychelles

Finally, the second final provision of Law No 26/2014 of 27 November 2014 amending Law No 35/2006 of 28 November 2006 on income tax on natural persons, the consolidated version of the Law on income tax for non-residents, approved by Legislative Royal Decree No 5/2004 of 5 March 2004 and other tax provisions (BOE, 28 November), amends the first additional provision of Law No 36/2006 cited, laying down that from 1 January 2015 the list of countries and territories which are considered to be tax havens may be updated on the basis of the following criteria:

(a) A treaty exists with that country or territory to avoid double taxation with a clause on exchange of information or an agreement on exchange of information in tax matters, or the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the Council of Europe, as amended by the 2010 Protocol, is applicable.

(b) There is no effective exchange of tax information.

(c) The results of the peer reviews carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

6. List of treaties to avoid double taxation which have the effect of reducing the tax rate applicable in respect of the taxation of corporations.

The list of existing international treaties to avoid double taxation and prevent tax evasion is published on the website of the Ministry of Finance and Public Administration:

hffp://www.minhap.gob.es/es-ES/Normativa%20V%20doctrina/Normativa/CO//Paginaslcdi.aspx

It should be noted in this regard that the international treaties govern the allocation of taxation powers between the countries party to them; in addition to dealing with the elimination of international double taxation which may occur in transnational operations, their other main purpose is to combat tax evasion and tax avoidance through the exchange of information and mutual assistance in tax collection and anti-abuse clauses. In those cases in which the tax administrations of different countries tax the same economic transaction, the existence of a treaty makes it possible to divide the taxation between those countries in such a way that double taxation does not occur, since the said treaty will lay down a limit to the levy in one of the countries concerned and a formula applicable in the other country which enables the tax paid abroad to be deducted.

In the light of the foregoing, all the international treaties to avoid double taxation and prevent tax evasion provide for limits on the taxation of certain sources of income to avoid overtaxation and lay down mechanisms which promote transparency and cooperation between tax authorities.

As can be seen, through its interventions in various fora (whether the European Union or the OECD) Spain supports setting the fight against tax evasion and tax-base erosion as a priority in all respects. It therefore participates in and heads up the BEPS work in the OECD and encourages, in particular in cooperation with Germany, France, Italy and the United Kingdom, the appropriate adoption by the EU of relevant measures against tax evasion and abusive practices of States and the promoting of transparency.

Accordingly, in reply to the invitation from the Chair of the Committee on Tax Rulings in the letter of 23 April, I report that the Ministry of Finance is willing to receive a delegation of that Committee, on dates to be agreed and in which the members participating will have the opportunity to obtain more detail on the matters discussed in this letter.

I also thank you for your letter of 10 June in which you invited the Minister for Economic Affairs and Competitiveness to present to the Committee a short statement together with other Ministers on 13 July during the Eurogroup meeting. I appreciate this interest and the opportunity to state face-to-face the Spanish authorities' position on the tasks entrusted to the Special Committee, although as may be inferred from the preceding paragraphs Spain's position cannot be summarised clearly in a few minutes.

Spain's position could be presented in full on the occasion of the proposed visit to Madrid, where any issues and concerns can be clarified, in light of Spain's firm commitment to the work aimed at increasing transparency and strengthening the fight against tax evasion and tax avoidance.

Yours faithfully,

Alfonso Dastis