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Hungarian Presidency and Commission invite US to dialogue on the Foreign Account Tax Compliance Act

In a letter sent to the US tax authorities on Tuesday, the Hungarian Presidency and the European Commission invited the US authorities to engage in a dialogue on how to best achieve the objectives of the US Foreign Account Tax compliance Act (FATCA). FATCA is a US legislation intended to ensure that US tax authorities obtain information on investments by US residents in foreign financial institutions, including European financial institutions. In this regard it pursues goals similar to those of the EU Savings Tax Directive which provides for an exchange of information between tax authorities of EU Member States. However, FACTA could impose a significant compliance burden on EU financial institutions (including banks, investment funds and insurance companies). In light of the information exchange tools that already exist between tax administrations, and given the ongoing discussions on extending the scope of the Savings Tax Directive, which is a priority for the Hungarian Presidency and the Commission, the Hungarian Presidency and the Commission invited the US authorities to consider exploiting possible synergies to achieve their common goals in a cost-effective and business-friendly way.

Yesterday, the Chair of the Economic and Financial Affairs Council, Hungarian Finance Minister Mr. György Matolcsy and EU Commissioner in charge of Taxation Algirdas Šemeta sent a joint letter to US Treasury Secretary Timothy F. Geithner and Douglas H. Shulman, Internal Revenue Service Commissioner, about the potential negative effects that FATCA could have on the EU financial industry.

Since the adoption of FATCA on 18 March 2010, EU business and financial associations have expressed concerns about the legislation, in particular the costs of compliance and penalties that it will entail in case of non-compliance.

The Presidency and the Commission discussed the issue with EU Member States and obtained their support for an EU-wide approach aimed at exploring solutions that would ensure that U.S. tax authorities can obtain the information they require on investments by U.S. residents in foreign financial institutions without any excessive burden on the EU financial industry.

The EU Savings Tax Directive, like FATCA, imposes obligations on financial intermediaries requiring paying agents to report information on interest income paid to individual investors to tax authorities. A revision of that Directive, in order to expand its scope, is at an advance stage. EU tax authorities also exchange information with each other under the EU Directive on Administrative Cooperation and with third countries, including the US, under information exchange clauses in bilateral double taxation treaties.

Under FATCA, foreign financial institutions with U.S. customers and foreign non-financial entities with substantial U.S. owners must disclose information regarding U.S. taxpayers directly to the IRS (Internal Revenue Service). Failure to disclose information will result in a requirement on non-U.S. financial intermediaries to withhold a 30% tax on U.S.-source income. The European financial industry estimates that the costs of modifying their IT systems and the administrative burden of ensuring compliance with FATCA would be significant.

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