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From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Addressing taxation challenges arising from the digitalisation of the economy - State of play

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I. STATE OF PLAY

1. The objective to make further progress towards a solution to address the international tax challenges arising from the digitalisation of the economy continues to remain high on the EU policy agenda.
2. The Council has already in its conclusions of 5 December 2017 on ‘Responding to the challenges of taxation of profits of the digital economy,’ set out its policy priorities in this area, stressing the importance of ensuring that all companies pay their fair share of taxes and ensuring a global level playing field and encouraging in this respect close cooperation between the EU, the OECD and other international partners in responding to the challenges of taxation of profits of the digital economy.

3. The ECOFIN Council on 17 May 2019 discussed digital taxation in the international context. Ministers supported discussions at EU level in order to exchange views on the issues under negotiation in the OECD. At the ECOFIN Council on 8 November 2019 there was an overall support for continuing the technical analysis of the OECD proposals and work related to impact analysis, having then the Council preparatory bodies been tasked with continuing that work.
4. The OECD/G20 Inclusive Framework on BEPS adopted on 29-30 January 2020 a statement defining the direction of further work. It set out the two pillars of the approach:
 - Pillar 1, which addresses the broader challenges of the digitalized economy by focusing on the allocation of taxing rights, including taxable presence without the traditional physical presence of a company; and
 - Pillar 2 (also called GloBE proposal - "Global Anti-Base Erosion Proposal"), which is focused on addressing the remaining Base Erosion and Profit Shifting (BEPS) issues and covers the risks of profit shifting to entities subject to no or very low taxation, as well as contains measures which aim to ensure that corporate profits are subject to taxation at an effective minimum rate.
5. Most recently, on 27 November 2020, the Council approved Conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond"¹, with which it responded to the "Package for fair and simple taxation" (presented by the European Commission on 15 July 2020).

¹ Doc. 13350/20.

6. In these conclusions, the Council indicated its consensus on the following specific points concerning the issues related to "digital taxation":
- recalled the European Council conclusions of July 2020 in which it is noted that the Commission, as a basis for additional own resources, will put forward in the first semester of 2021 a proposal for a digital levy, with a view to its introduction at the latest by 1 January 2023 and invited the Commission to also take the ongoing OECD Inclusive Framework on BEPS negotiations into account;
 - welcomed the reports on the ‘blueprints’ for Pillar 1 and 2 approved for public release at the OECD Inclusive Framework meeting on 8-9 October 2020 and supported further work to achieve final agreement on both pillars in the context of the OECD Inclusive Framework on BEPS;
 - confirmed its continued support of the work at the OECD Inclusive Framework on BEPS aimed at reaching a global consensus-based solution at the latest by mid-2021, taking into account the interests of all Member States in order to ensure that all corporations pay their fair share of tax on profits generated by their activities in the EU;
 - asked the Commission to continue to actively monitor and provide expertise on EU law aspects to Member States, while taking into account the ongoing negotiations at the OECD Inclusive Framework on BEPS;
 - expressed the willingness of the EU and its Member States to look into the possibilities of implementing, by appropriate legal means, the global agreement to be reached at the OECD Inclusive Framework on BEPS as soon as possible;

- recalled that the European Council will assess the issue in March 2021, and asked the Commission to engage on that basis in the relevant preparatory work in the Council on the way forward in line with EU law, in order to address the tax challenges of the digital economy, including in the absence of an international consensus by mid-2021;
- reiterated that direct taxation is a matter of national competence of Member States and considered that a well-functioning and competitive EU Single Market could justify coordinated actions where it will be necessary to adjust the taxation framework to fit a modern and increasingly digitalised economy, both at global and at EU level;
- underlined that an adjustment of the taxation framework is particularly important to support growth and that all corporations should pay their fair share of tax on profits generated by activities in the EU;
- noted the intention of the Commission to put forward initiatives in the area of corporate and income taxation as well as administrative cooperation as set out in the Action Plan for fair and simple taxation, notably on a more consistent determination of the tax residence in Member States, on the introduction of a common, standardised EU-wide system for withholding tax relief at source, and on the establishment of an expert group on transfer pricing, and welcomed work at technical level.

7. The issues relating to 'digital taxation' are also of interest to the European Council. The European Council in its conclusions of 22 and 23 June 2017 highlighted the necessity of a 'holistic' approach to face up to the challenges and use the opportunities of the digitalisation of the economy, and in its conclusions of 1-2 October 2020, the European Council indicated that it will return to the topics of the Single Market, industrial policy and digital at its meeting in March 2021, and that, in this context, it will also assess the situation regarding the work on the important issue of digital taxation.

8. Moreover, as regards the EU own resources system, in accordance with the 17-21 July 2020 European Council conclusions, it is expected that the Commission will, *inter alia*, put forward in the first semester of 2021 a proposal on a digital levy, with a view to its introduction by 1 January 2023 at the latest.

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