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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

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**COMBINED DIRECTORATE C/DIRECTORATE D REPORT ON DISCUSSIONS
AT THE HIGH LEVEL WORKING PARTY IN THE COUNCIL ON 6 JUNE 2013
ON THE JUNE ECOFIN PREPARATION**

Subjects:

- 1. Communication on the future of VAT – State of play**
- 2. Revised Savings Tax Directive Proposal**
- 3. Revision of the Administrative Cooperation Directive**
- 4. Draft June ECOFIN report to the European Council**
- 5. Eurofisc**
- 6. Work on Base Erosion and Profit Shifting.**
- 7. Anti-Fraud Agreement with Liechtenstein and associated negotiating mandate with four other non-EU countries**
- 8. Tax in non-tax dossiers**

1) Communication on the future of VAT – State of play

COM presented the room document and put emphasis on recent achievements as regards the mini One-Stop-Shop (MOSS), the ‘VAT anti-fraud Package’ and the definitive regime.



DE indicated that their final position would depend on the proposals tabled by COM and urged COM to take into account the Ecofin Conclusions. They required that any explanatory notes be discussed by Member States before their release.

FR set out their priorities: a review of the VAT rates structure with a proposal in 2013, a proposal on the VAT exemptions and the smooth implementation of the MOSS. They asked for details as to the timetable.

AT agreed with DE as regards the explanatory notes and added that they should require unanimity.

IT asked for details on the timetable in particular as regards the reduced rates, the exemptions and anti-fraud measures with particular emphasis on the split payment and agreed with AT and DE as regards the explanatory notes.

EL asked for the creation of a sub-group on the split payment.

COM explained that the explanatory notes are not binding. Nevertheless, COM tries to reflect the consensus among stakeholders. As to reduced rates and exemptions, Member States should not expect major changes. The split payment requires firstly that businesses make more widely use of electronic tools such as electronic invoicing.

2) Revised Savings Tax Directive Proposal

The Presidency recalled the adoption at the 14 May ECOFIN meeting of the Negotiating Mandate with Switzerland and the four other non-EU countries on the amended EUSD and the call made by the European Council in point 10 (b) of its conclusions of 22 May for the adoption of the revised Directive before the end of this year. The Presidency also asked Croatia to speed up the signature and ratification of its agreements with dependent and associated territories.


COM informed about the letters sent to the five non-EU countries concerning the commencement of negotiations and the initiative of Commissioner Šemeta to have meetings at political level with each of the five countries starting from next week. This initiative is aimed at stressing the level of ambition which the EU should have in the negotiations.

3) Amendment of the Administrative Cooperation Directive

COM explained that its legislative proposal could be adopted either on 11 or 12 June. It entails a quick reaction to the invitation of the European Council and is aimed at accelerating ideas which were already present in Article 8 of the 2011 Directive. It would support AEOI between Member States regarding the items of income included in Member States' FATCA agreements with the US and not covered or to be covered by the Savings Directive. It would ensure coherence in the approach of MS to AEOI; it would be a matter of concern if the MFN implications of FATCA gave rise to diverging bilateral agreements. In essence the proposal is intended to take account of:

- The work at the OECD on a standard for automatic exchange of information;
- The Savings Directive;
- The framework for cooperation provided by the Administrative Cooperation Directive and the obligations of MS under its Most Favoured Nation clause;

- The G-5 initiative.



DE thanked the Commission for its work but supported the [redacted] comments about the need for a single approach. In its view, as FATCA already exists, there is a need for a common standard.

LU raised four points:

- Need for coherence between what happens within and outside the EU;
- Need to be aware that FATCA involves exceptions for some products and institutions, and thresholds; consistency would also entail looking at these issues, in order to keep the administrative burden proportionate;
- As we are "in a period of transition", there is a need for a period of stability with no further changes to Directives, in the interest of smooth functioning of the markets;
- Need for a level playing field with competitors outside the EU, as otherwise capital will flow outside and no additional tax revenue will be collected.

FR observed that the EUSD has been operating for some years and its amendments have been blocked until now, so there has been stability. The broad application of FATCA and the MFN clause already address the level playing field question. Given the benefit which EU Member States derive from free movement within the EU, it is legitimate to ask them to accept more obligations than non-EU countries which don't have that benefit.

COM concluded by pointing out that Member States have agreed that global EOI is important and that the Commission's intention is merely to ensure that any global commitments into which Member States enter take account of their obligations and their interests. For example, there are EU rules on data protection and Member States should not have to agree to an asymmetrical reporting system that does not meet their needs in terms of information.

4) Draft Report from June ECOFIN to the European Council

The Presidency started by distributing a revised version of the relevant Room document, where an attempt was made to take account of the comments and drafting suggestions presented by a number of MS ([redacted] **LU, AT, DE, FR, IT, CY, PL**) on the eve of the meeting.

AT asked for a deletion of the explicit reference to its country as the only one which hasn't switched to automatic exchange of information.

Apart from noting some inconsistencies in the last paragraph devoted to savings taxation, **LU** insisted on making extensive reference to the European Council conclusion of 22 May and on including again the reference in the first paragraph of the same chapter to the link between the Directive and the agreements with third countries which provide for withholding taxes, while **IT** expressed a preference for deleting the reference to the existing agreements.

COM asked for additions to paragraphs 20 and 22, to reflect fully and accurately the content of the ECOFIN Council conclusions. In particular, the Council conclusions did not say that action at national or EU level did not suffice; it talked rather about a need for a combination of actions at national, EU and global levels. Reference should also be made to the Council's call for a key role of the EU in the definition of the global standard for automatic exchange of information. Furthermore, this should not be limited to the simple extension of FATCA; FATCA should provide a basis, not be "used" as such. There should also be a reference to the Commission's upcoming proposal for an amendment to the DAC, as that was mentioned in the European Council conclusions. Reference was also needed to the fact that the Commission will take forward work on aggressive tax planning and profit shifting, as noted also by the European Council.

As regards the concerns raised by [REDACTED] **COM** indicated that given the tight deadline (4 weeks), there would be a need for a streamlined procedure within the Commission and that the appropriate procedure remained to be examined.

DE was also of the view that actions to combat tax evasion should be taken within the EU as well as outside. Concerning paragraph 22, FATCA is a reality that we have to accept so the wording here is fine with **DE** and we should be cautious about changing it.

In the afternoon, the Presidency circulated a further revised version of the Room document (see enclosure).

[REDACTED]

The Presidency will circulate on 7 June a REV3 version to be sent to Coreper.

5. Eurofisc

A presentation (copy available) was made by the incoming (Dutch) chairperson of Eurofisc which focused on the background to the creation of the network, the achievements to date and the areas where there was room for improvement in the functioning of the network in the future. The latter included developing a system for measuring the results of Eurofisc as well as a strategy to respond to new developments. Mention was also made to the idea of extending the remit of the network to cover direct taxation as was referred to in the 2012 Commission Action Plan on Tax Evasion and Fraud.

COM echoed these sentiments and pointed to additional elements that might, in this context, focus attention on the prevention of VAT fraud in the light the current debate on QRM and RC etc. (imminent publication of updated VAT Gap Study, possibility of COM seeking a mandate to negotiate EU-wide bilateral agreements on VAT cooperation with certain third countries, plan by IE to hold a Fiscalis seminar on sharing best practices in VAT fraud prevention in the first half of 2014).

[REDACTED]

6. BEPS

COM remarked that the Room document #5 Rev1 included under Tax Policy Coordination iii that *'the June meeting of the OECD's Committee on Fiscal Affairs (CFA) could receive a written report on recent activities and developments at EU level in relation to issues that concern both EU and the OECD including Beps..'* and furthermore *'it was also proposed that the CFA would continue to be invited to provide the HLWP with updates of its activities'*. Such a reporting is not seen as a real activity for Tax Policy Coordination in the EU vis-à-vis BEPS.

DE and FR did welcome the text proposed by the Presidency.

[REDACTED]

7. Anti-Fraud Agreement with Liechtenstein and associated negotiating mandate with four other non-EU countries

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Tax in non-tax dossiers

This was the third meeting of the HLWP during the Irish Presidency during which the subject of tax issues in non-tax files was on the agenda. The issue was first discussed at the meeting of 29 January 2013. At the meeting on 13 March there was insufficient time to discuss the issue. Before the meeting on 6 June, the Council Secretariat had sent out

two room documents on the subject: i) a Presidency document concerning the proposed approach to be taken by the HLWP; and ii) a document prepared by the General Secretariat of the Council containing four examples of non-tax dossiers that contain tax elements.

The Presidency explained that it had put this subject on the agenda because a large number of Member States are concerned about the growing incidence of tax elements in non-tax dossiers, which they believe undermines unanimity for tax provisions and could lead to undesirable and inconsistent changes in Member States' tax law. It wants to set up an early warning system to address this problem.

All MS delegations that took the floor were very positive to the initiative of the Presidency to launch discussions on this subject. They all agreed that this was an important topic and supported the Presidency's proposal for an alert mechanism.



FR on the other hand opposed the Council Conclusions proposed at the HLWP meeting of 13 March as disproportionate

PT suggested that all documents received by the Council Secretariat that had an element relating to taxation should be given a FISC number in order to keep track of those proposals. Furthermore tax in non-tax files should be a fixed point on the agendas of all meetings of taxation working groups in Council.

FI, MT, CZ, SK, NL, EE & PL also expressed the hope that there would be further discussions on this issue.

BE referred to tax issues in a dossier concerning penal sanctions for fraud (Proposal for a Directive of the European Parliament and the Council on the fight against fraud to the Union's financial interests by means of criminal law ,COM(2012)363).

LU stressed that the most problematic issue is when the EP inserts tax provisions in non-tax proposals during the trilogue.

The Council Legal Service stressed that it verifies the legality of any proposals that are submitted to the Council. However, there is a difference between legality and opportunity. A non-tax proposal may legally include a tax provision despite having a different legal basis to that normally used for tax issues, but it may be preferable for Member States that their tax experts have the opportunity to decide on any tax issues.

COM noted that the issue is politically sensitive and said that the Commission recognises the concerns of the Member States. However, it is for the Council and the Member States to organise themselves in relation to this. The Commission is very vigilant in assessing the legal bases that it uses. But we also need to be constructive and realistic; it may not be such a “sensitive” problem if a proposal on statistics contains a reference to tax and it is an advantage for tax administrations that under the anti-money laundering Directive a tax crime is considered a predicate offence. The Commission has a right of initiative and there is jurisprudence covering the issue of when taxation issues can be covered by other legal bases. Proposals made are legally checked within the Commission and the Council, and it is then for the Council to react. COM opposed the

Presidency proposal for an alert mechanism to be applied by the COM. The Commission's Secretariat General cannot go through all proposals and inform the Council as soon as there is a tax element as that approach would be impossible to manage if it were to apply to all policy areas. However, COM is open to other ideas such as making this point a regular one on agendas.

The Presidency clarified that it had elected to limit itself to producing a paper on the operational aspects because it had decided that it would be difficult at this stage to reach consensus on Council Conclusions and that to aim for that would have risked blocking all progress. The Presidency stated that it was in favour of continuing the discussions under the following presidencies in order to move the process along.

[Redacted]

Cc: Mr Moutarlier; (CAB)
Messrs Zourek, Bergmann, Kermode,

[Redacted]