COUNCIL OF
THE EUROPEAN UNION

Brussels, 13 June 2013

10932/13

LIMITE

FISC 127
ECOFIN 548

NOTE

from:	General Secretariat
to:	Council
Subject:	ECOFIN report to the European Council on Tax issues

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues mentioned, in particular in its conclusions of March and June 2012 and of 22 May 2013.

2. A draft ECOFIN Report to the European Council on Tax issues was discussed in the context of the Council High Level Working Party on Tax issues (HLWP) on 6 June 2013. Agreement was reached at the meeting, on the understanding that the (factual) wording in brackets would be updated before forwarding the Report to the European Council. The scrutiny reservation expressed by Poland has been lifted in the meantime.

3. The Permanent Representatives Committee on 12 June 2013 confirmed the agreement on the report reached at the HLWP.

4. The Council is therefore invited to:

   – endorse the report (as set out in the Annex), on the understanding that factual updates would be reflected in the version forwarded to the European Council.

ANNEX

Subject: Draft ECOFIN Report to the European Council on Tax issues

1. This report covers various issues mentioned in the European Council Conclusions of 1/2 March 2012[1] devoted to growth, as well as in the European Council Conclusions of 28/29 June 2012 and the relevant Council Conclusions on the future of VAT and on the fight against tax fraud and tax evasion[2]. This report gives an overview on the state of play of Council work regarding some key legislative proposals, which were specifically mentioned in the aforementioned conclusions, such as Energy Taxation, the Common Consolidated Corporate Tax Base, the Financial Transaction Tax, the revision of the Savings Tax Directive and the Negotiating Directives for Savings Taxation agreements with third countries.

2. The priorities set out in the programme of the Irish Presidency illustrate that the Council's work has continued to focus on concrete measures to combat tax fraud and tax evasion over the last number of months. Ensuring quality of tax revenues in Member States remains an important priority following the financial crisis and in times of tight budgets.

3. ECOFIN also takes note of the meeting of the European Council on 22 May and conclusions of that meeting identifying key dossiers where progress has been made or needed to be made by the end of 2013.

4. During the Irish Presidency considerable progress has been made across a range of files with a significant number of files adopted during this time. Further work will be necessary on others, before a decision or an adoption by the Council will be possible. The above considerations have been taken into account during discussions on the following files over the last six months.

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[1] EUCO 4/3/12 REV 3 (items 9 and 21).
[2] Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

Agreement reached under Irish Presidency:

- Adoption of an authorising decision for enhanced cooperation for the Financial Transaction Tax
- Agreement with the European Parliament on a proposal for the FISCALIS 2020 programme, subject to finalisation of the MFF-related provision
- Adoption of Council Conclusions on the Commission Action Plan on tackling tax fraud and tax evasion and on the associated Recommendations on Good Governance and Aggressive Tax Planning
- Adoption of a negotiating mandate for third countries
- [Political Agreement[3] on the VAT Anti-fraud package encompassing the VAT Quick Reaction Mechanism proposal and a proposal for a Reverse Charge Mechanism]
- [Political Agreement on the Regulation amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services].

[3] Political agreement is a term referring to a decision adopting a definitive position on a text, subject to finalisation of that text by the Legal/Linguistic Experts.

Tackling Tax fraud and Tax Evasion

VAT: Quick Reaction Mechanism

1. The Commission submitted its proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism (QRM) against VAT fraud on 31 July 2012. Work on the proposal commenced during the Cyprus Presidency and has been progressed as a priority in the context of a comprehensive VAT Anti-fraud Package proposed by the Irish Presidency.

2. The purpose of the QRM proposal is to speed up, in cases of urgency, the possibility for Member States to apply a special measure in the VAT Directive, in very specific situations, to combat sudden and massive tax fraud before they start having a considerable impact on national budgets.

3. The QRM proposal and the reverse charge mechanism (RCM) proposal, designed to tackle fraud in known risk areas (e.g. mobile phones, tablet computers) underpin the Irish Presidency's VAT Anti-fraud Package. The package encompasses other important elements focusing on strengthening the VAT system in terms of fraud-proofing and the sharing of best administrative practice among national tax authorities. The achievement of a fraud-proof VAT system is the key longer term (5-year) goal under the package which would remove the need for derogation measures under the QRM and the RCM.

4. While the majority of Member States supported the Commission QRM proposal, a number of Member States expressed strong concerns regarding the underlying transfer of implementing powers to the Commission under the QRM to authorise anti-fraud derogations by implementing Commission Acts/Qualified Majority Voting (QMV) arrangements, their distinct preference being to preserve such powers within the Council under unanimity arrangements.

5. The VAT Anti-fraud Package, including the QRM, was discussed at the ECOFIN on 5 March 2013 and at the informal ECOFIN in Dublin on 13-14 April 2013, and while agreement was not possible, it was clear from the debate that Member States recognised the urgent need for an effective and early response to the risks posed by VAT fraud. The main concern of some Member States remained the potential dilution of unanimity under the QRM proposal, with the question of the RCM and the integrity of the VAT system also being raised. The Presidency summarised the debate as one of "*pragmatism versus principle*" and signalled its intention of holding further discussions at Working Party level with a view to achieving agreement on the dossier by June 2013.

6. At the High Level Working Party of 2 May 2013, the UK proposed an alternative approach to the QRM designed to address concerns regarding the potential dilution of unanimity under the original proposal. In response to a request from the Presidency, the UK provided a draft legal text reflecting its approach which was subsequently discussed at Coreper on 7 May 2013. The positive response at Coreper suggested that the basis for an agreement was now emerging as a realistic possibility.

7. The need for urgent action on tax fraud was further underlined at the European Council of 22 May 2013, the Council agreeing a number of conclusions designed to step-up the fight against tax evasion and tax fraud, including the following conclusion specific to the QRM and RCM proposals:

> *"10 (d) in order to counter VAT fraud, the European Council expects the Council to adopt the Directives on the quick reaction mechanism and on the reverse charge mechanism by the end of June 2013 at the latest."*

8. [Following a very positive response to a Presidency compromise primarily based on the UK alternative at a Council Working Party on 27 May 2013, the Presidency intends seeking political agreement on the QRM and indeed the full VAT Anti-fraud Package at ECOFIN on 21 June 2013.]

VAT: Optional and temporary reverse charge on certain supplies of goods and services susceptible to fraud

9. Discussions on the reverse charge mechanism (RCM) proposal commenced under the Cyprus Presidency and have continued as a priority under the Irish Presidency. The RCM complements the quick reaction mechanism (QRM) Presidency compromise and represents the second main element of the Presidency's anti-fraud package. Recognised as the proven response to known frauds, and particularly carousel fraud, the RCM proposal provided for a broadening of the scope of existing RCM arrangements available under the VAT Directive with a view to ensuring that it remains relevant in the light of significant fraud already extending to new sectors.

10. In achieving this objective, the Presidency proposed that the scope of the RCM be extended to encompass trading in those sectors which are already the subject of derogation requests, including mobile phones, integrated circuit devices, game consoles, tablet PCs and laptops, telecommunications services, gas and electricity, and agricultural products. The Presidency also proposed the inclusion of transactions in metals on the basis that EUROFISC (the Commission's early-warning fraud network) had recently identified significant fraud in this area which was confirmed by some Member States and has already led to two derogation requests.

11. At Coreper on 7 May 2013, Member States, who had previously been opposed to the RCM regarding the broad scope of the proposal and the potential effects on the integrity of the normal VAT system, indicated a willingness to compromise if certain key concerns were taken into account. In light of this, the Presidency revised the RCM proposal building in certain safeguards in the form of evaluation criteria, control measures and reporting obligations to the VAT Committee on the application of the reverse charge mechanism and the fraudulent activity being targeted.

12. The Presidency compromise received a positive response at the Council Working Party on 27 May 2013, and a further compromise reflecting certain adjustments to the scope of the proposal was circulated with a view to achieving political agreement at ECOFIN on 21 June 2013.

13. Similarly to the QRM, the important role of the RCM in the fight against VAT fraud was recognised by the European Council at its meeting on 22 May 2013 which indicated an expectation that the RCM, along with the QRM, be adopted by the end of June 2013 at the latest, conclusion (d) of the Council stating:

> *"10 (d) in order to counter VAT fraud, the European Council expects the Council to adopt the Directives on the quick reaction mechanism and on the reverse charge mechanism by the end of June 2013 at the latest."*

Commission Action Plan on tackling tax fraud and tax evasion and Recommendations on Aggressive Tax Planning and Good Governance in tax matters in third countries

14. The Irish Presidency was active in facilitating discussions on concrete actions on tax fraud and evasion and aggressive tax planning. The main focus of these discussions was the Commission’s Action Plan and two associated Recommendations ("the Commission package") which were published in December 2012.

15. The Commission package was discussed for the first time at a meeting of the Working Party on Tax Questions on 27 February, after which the Presidency circulated draft Council Conclusions for discussion at the next meeting on 10 April. The draft Council Conclusions were discussed at length at the April meeting, and it was clear that a considerable degree of consensus was emerging among Member States.

16. The issue was further discussed at the Dublin Castle Informal ECOFIN and once again a strong desire for consensus was evident, although, because it was an Informal ECOFIN, it would not have been possible to formally discuss and agree Council Conclusions.

17. As a follow up to the discussion at the Informal ECOFIN, a joint letter was issued by Minister Noonan and Commissioner Šemeta to ECOFIN colleagues. The joint letter identified seven key areas which had not yet been agreed at EU level, and sought early agreement on these in order to demonstrate the EU’s determination to tackle tax fraud and evasion.

18. All Member States were anxious to make progress on this initiative and, in order to maintain the considerable momentum which had been developing around this as well as other tax issues, the Presidency decided to hold an additional meeting of the High Level Working Party. This additional meeting was held on 2 May and although formal agreement on draft Council Conclusions on tax fraud and evasion and aggressive tax planning was not achieved, it was clear that progress was being made.

19. The Council subsequently formally adopted comprehensive Council Conclusions at its meeting on 14 May.

20. The agreed Council Conclusions recognised the need for an appropriate combination of efforts at the national, EU and at global levels to combat tax fraud and tax evasion and also aggressive tax planning**.**

21. Close cooperation at international level was essential and to that end there should be improved coordination with the OECD on the Base Erosion and Profit Shifting (BEPS) project through the HLWP.[4]

22. The automatic exchange of information between tax authorities was crucial and the pilot multilateral exchange facility using the model agreed with the United States as the basis, which was agreed between five Member States and subsequently supported by a further twelve Member States so far, could provide the basis for the creation of a new single global standard. The Council recalled the European Council conclusions of 22 May 2013:

> *"10 (a) priority will be given to efforts to extend the automatic exchange of information at the EU and global levels. At the level of the EU, the Commission intends to propose amendments to the Directive on administrative cooperation in June in order for the automatic exchange of information to cover a full range of income. At the international level, building on ongoing work in the EU and on the momentum recently created by the initiative taken by a group of Member States, the EU will play a key role in promoting the automatic exchange of information as the new international standard, taking account of existing EU arrangements. The European Council welcomes ongoing efforts made in the G8, G20 and OECD to develop a global standard."*

4 The Director General of the OECD's Centre for Tax Policy and Administration (CTPA) was invited by the Presidency to address the margins of the meeting of the HLWP on 13 March on the subject of BEPS. This was the first time that the CTPA had been invited to do so.

23. The Council Conclusions noted the work that had already taken place at national and EU level to tackle tax fraud and evasion and aggressive tax planning and stressed the importance of expanding this work to tackle the issue of double non-taxation.

24. The work of the Code of Conduct and its Subgroup which was examining hybrid mismatches was noted.

25. Future Presidencies were invited to work further in this area to find the most appropriate ways to tackle tax fraud and evasion and aggressive tax planning at national, EU and global level.

The Council adopted the conclusions at its May meeting (doc. 9549/13 FISC 94 ECOFIN 353).

Savings Taxation

26. The Irish Presidency conducted discussions at the High Level Working Party and the Council with a view to securing an agreement on two inter-linked files which the Presidency considered would make a difference in combating tax fraud and evasion:

    a. 2008 proposal to amend the Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments;

    b. the draft Mandate for negotiations with five third countries (Switzerland, Liechtenstein, Andorra, Monaco, San Marino) on equivalent measures concerning savings income.

    The Directive is linked to the Savings Taxation agreements with Switzerland and the other third countries which provide for withholding tax on savings income from these countries.

27. In 2008, the Commission submitted a proposal to amend the Directive in order to increase its efficiency and to address significant loopholes which could facilitate tax fraud and evasion.

28. However, at ECOFIN on 14 May Austria and Luxembourg indicated that level playing field concerns should be addressed before a formal adoption of the Directive. The Council noted the following European Council conclusion of 22 May 2013:

    "10 (b) further to the agreement reached on 14 May 2013 on the mandate to improve the EU's agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino, negotiations will begin as soon as possible to ensure that these countries continue to apply measures equivalent to those in the EU.
    In the light of this and noting the consensus on the scope of the revised Directive on the taxation of savings income, the European Council called for its adoption before the end of the year."

29. The Commission presented on 17 June 2011 a recommendation for a mandate to initiate negotiations with Switzerland and the other third countries, in order to improve the EU's agreements with them and to ensure that they continue to apply measures equivalent to those in the EU.

30. In addition, the European Council in its conclusions of 1/2 March 2012 urged that progress be made on the Commission proposal for a revision of the Savings Directive and in its conclusions of 28/29 June 2012 and 14/15 March 2013 called for a rapid agreement to be reached on the negotiating directives for Savings Taxation agreements with third countries.

31. The Irish Presidency held discussions with the Commission and bilaterally with a number of Member States to see if progress was possible, particularly in light of international developments and the European Commission Action Plan to strengthen the fight against fraud and tax evasion. The revised Directive and Negotiating Mandate were discussed as part of the general discussion on anti-fraud and evasion measures at the Informal ECOFIN in April.

32. On 10 April Luxembourg announced it would introduce, on 1 January 2015 and within the scope of the current Directive 2003/48/EC, automatic exchange of information. One Member State will continue to apply the transitional period under the terms of the existing Directive.

33. In line with the mandate from the European Council, the HLWP discussed a way forward as regards those negotiating directives.

34. At the Council on 14 May agreement was reached on the Negotiating Mandate, in line with the recent developments at G20 where it was agreed to promote automatic exchange of information as an international standard. This is an important step forward in an area where progress had been stalled for a number of years. It will be a significant boost to EU and international moves to tackle tax fraud and evasion. Austria and Luxembourg stated their opinion on equivalent measures. The Council recalled the European Council conclusions of 22 May 2013:

"10 (b) further to the agreement reached on 14 May 2013 on the mandate to improve the EU's agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino, negotiations will begin as soon as possible to ensure that these countries continue to apply measures equivalent to those in the EU.
In the light of this and noting the consensus on the scope of the revised Directive on the taxation of savings income, the European Council called for its adoption before the end of the year."

On 6 June 2013, the Commission updated the HLWP on the steps in these negotiations initiated since.

Other taxation dossiers

Common Consolidated Corporate Tax Base (CCCTB)

35. The Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) was tabled by the European Commission on 16 March 2011, as a contribution to more growth-friendly taxation advocated by the Europe 2020 strategy.

36. The report from ECOFIN to the European Council in December 2012 revealed that a number of Member States saw a need for orientations in order to carry forward work at the technical level on the CCCTB dossier.

37. On 15 January, the Irish Presidency held its first meeting on the proposal. The Irish Presidency announced that in order to prepare for orientations, it intended to host a series of bilateral meetings with all Member States to ascertain their views on specific issues. An "issues paper" was circulated in advance to aid the discussions.

38. The Presidency conducted bilateral meetings with all Member States and Croatia in early February where Member States stated their views on how best to progress the proposal so that the Presidency could propose a way forward on the technical work on this dossier.

39. The Presidency prepared a synthesis report (doc. 7830/13 FISC 60) on the outcome of the bilateral meetings which formed the basis of an orientation discussion at the High Level Working Party ('HLWP') on Tax on 13 March. The report noted that:

i. *'An overwhelming majority of delegations expressed a clear preference for the technical discussions to be conducted on a step by step basis, concentrating in the first instance on issues generally related to the calculation of the tax base. Technical work on the elements dealing with consolidation could be envisaged as appropriate in due course. Very few delegations favoured a different approach to the work.'*

40. On 13 March, the HLWP meeting gave an overwhelming endorsement of the Presidency's synthesis report and agreed that:

a) work on the proposal should focus on a step-by-step approach;
b) the first step should focus on those matters which related to the tax base;
c) the issue of consolidation should be addressed in a second step when work on the base has been sufficiently advanced;
d) the proposal was not yet ready for a political discussion;
e) and invited the Presidency to begin the task of drafting a compromise text on that basis.

41. The Presidency circulated a "road map" paper on 27 March, annexed to this report, setting out the next steps for discussions on the proposal, in line with the HLWP discussions and confirmed:

b. *'As indicated at the HLWP it is the intention of the Presidency to prepare a compromise text on work block (b) – Basic elements of the tax base which will encompass Chapters II to VII. In addition, in response to a strong interest from Member States, the Presidency will also examine work block (c) – Anti avoidance Chapter XIV, in particular the GAAR. The aim of the Presidency will be to build on the previous work done in these areas.'*

42. The Presidency circulated a draft compromise text (9180/13), covering Chapters II to VII and Article 80 of the proposal on 2 May and the examination of this compromise text began at the meeting of the Working Party on 24 May. The technical discussions in relation to this compromise text should continue in accordance with the 'roadmap' agreed at the HLWP.

Amendment of the Energy Taxation Directive (ETD)

43. In April 2011 the Commission presented to the Council a proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity ("the Energy Taxation Directive" or "the ETD"). The proposal presented by the Commission seeks to bring the ETD more closely into line with the EU's energy and climate change objectives as requested by the March 2008 European Council. In June and October 2012, the European Council asked that work and discussions on the Commission proposal on energy taxation should be carried forward.

44. The proposal has been discussed in the Council's Working Party on Tax Questions on several successive occasions under the Hungarian, Polish, Danish, Cyprus and Irish Presidencies.

45. The Irish Presidency has chaired two full meetings of the Working Party on Tax Questions on this file. It started discussions on 23 January 2013 on a Presidency paper setting out the logic behind the Irish Presidency approach and posing questions to Member States. It also proposed minimum rates based on the logic presented. Taking into account the State of Play report endorsed by ECOFIN on 4 December 2012 the Presidency focussed specifically on minimum rates and on the exemptions in Articles 15 and 17. The Presidency proposed increasing the rates on a step by step basis up to 2027 (revised subsequently to 2024).

46. The Presidency, following on from the Cyprus Presidency approach, presented new minimum tax levels, based on the total minimum level of taxation following on from the Commission proposal but with a CO_2 related component of €12 and further adjusted the CO_2 related component for heating fuels for business use. The Presidency proposed, for discussion, the rate of 9 €/tCO_2 as the rate of the CO_2-related component to calculate the minimum level of taxation for such fuels in response to concerns raised by several Member States regarding increased costs for business. In the case of motor fuels, the Presidency approach was to apply actual and projected inflation rates to such fuels (from 2010 onwards in the case of group 1 fuels and from 2004 onwards in the case of group 2 fuels).
Although not raised by the Presidency, a Member State recalled its concerns on the structure of taxation.

47. More development on minimum rates is required to address remaining concerns of Member States such as the rates for LPG, natural gas, coal and kerosene as heating fuels for business use, as well as the rates of natural gas and other energy products used as a propellant.

48. With regard to Article 15 the Presidency has presented two compromise texts. The second of these has taken on board the concerns raised by several Member States at the meeting on 12 March, particularly in regard to combined heat and power. The Presidency has also included a paragraph dealing with district heating for households at the request of one Member State. In the case of Article 15.3, the Presidency has proposed a phasing out of the current exemption permissible for energy products used in agricultural, horticultural and piscicultural works and in forestry.
Some Member States remain opposed to the phasing out of the current exemption under Article 15.3 while a number of Member States support its removal.

49. [It is expected that ECOFIN of 21 June 2013 will endorse a note prepared under the Irish Presidency on the "State of Play" which sets out areas for future work.]

The common system of Financial Transaction Tax (FTT)

50. The proposal for a directive on a common system of financial transaction tax was submitted by the Commission to the Council on 28 September 2011. The proposal had as objectives a fair contribution of the financial sector to the costs of the crisis, avoiding fragmentation of the single market, and creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets. Unanimous agreement by all Member States could not be attained within a reasonable period. A number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Adoption of a decision formally authorising enhanced cooperation took place at the ECOFIN meeting on 22 January 2013. A formal Commission proposal for a Directive implementing enhanced cooperation in the area of financial transaction tax was published on 14 February 2013. Three Working Party meetings on FTT were chaired by the Irish presidency.

51. The aim of the Irish Presidency was to ensure transparency and inclusiveness in the working method on this file and to facilitate completion of a first read-through of the proposal. The Presidency worked closely with the EU Commission and Council Secretariat to ensure that the very complex and real concerns of both the participating and non-participating Member States, as well as those of the various institutions, were addressed in a transparent manner. The Presidency also facilitated a report from the UK to the Working Party meeting in May, regarding its legal challenge to the decision authorising enhanced cooperation and the scope of the draft directive. A first read-through of the proposal was almost completed during the Irish Presidency. However, it is acknowledged that further work will be necessary.

VAT: Proposal for a Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services

52. New place of supply rules for VAT, which were agreed in 2008, are coming into effect on 1 January 2015. From this date, the place of taxation of supplies of telecommunications, broadcasting and e-Services to non-business customers will shift completely from the place of the supplier to the place of the customer. This will be a significant change for both tax administrations and business and it is important to ensure there is a common approach in the application of the new VAT rules among Member States and a sufficient lead-in time to prepare for the change and ensure a smooth transition.

53. On 18 December 2012 the Commission published a proposal for a Council Regulation amending Implementing Regulation 282/2011 which will define the rules with regard to the place of supply of these services. This will ensure that opportunities for non-taxation or double taxation will not arise and that there is sufficient certainty for business. The proposal also includes measures dealing with immovable property and services related thereto which will provide consistency in the tax treatment of these services among all Member States.

54. The Presidency has given this proposal high priority and held its first Council Working Party meeting on this new dossier on 8 January 2013. During the Presidency there was continuous consultation with business, practitioners and other Member States. Seven Council Working Party meetings in total were held and 5 compromise texts drafted. [It is expected that political agreement will be reached at ECOFIN on 21 June 2013.] Business had asked for a minimum of 12 months to allow time for implementing new IT and accounting systems. The legislation and administrative practices of tax administrations may also need to be changed so an 18-month lead-in will be widely welcomed.

VAT: Treatment of Vouchers

55. The Commission adopted a proposal in May 2012 to provide for common rules in all Member States for the VAT treatment of vouchers. These changes are necessary to support business operating cross-border and ensure that instances of double and non-taxation do not occur, as these harm both Member States and business.

56. The Cyprus Presidency held three Working Party meetings on this proposal. The Cyprus work programme on this file included a presentation on the proposal by the Commission and an initial article-by-article examination of the text.

57. The Irish Presidency considered that to progress this proposal, there was a need for the Working Party to 'step back' from the technical detail of the proposal, focus on the problems that needed to be solved, and then from there discuss how progress could be achieved, with the Commission's proposal as the starting point. Accordingly, the Presidency prepared a paper for discussion at a meeting in March.

58. From discussions at this meeting, it was clear to the Presidency that Member States are in agreement that there is a real need for common rules on the VAT treatment. It was also evident that agreement on the proposal would be desirable before the introduction of new B2C place of supply rules in 2015 given the high proportion of sales transacted via vouchers for e-services and telecommunications.

59. Arising from these discussions, the Presidency identified three work modules for consideration by the Working Party, 1) definitions, 2) the distribution chain, and 3) discount vouchers which it hopes will pave the way for agreement on this very technical file, bearing in mind that other issues may still emerge. The Irish Presidency presented a paper to the Working Party in April on the definitions module. Arising from this discussion, the Presidency prepared a first compromise text focusing on definitions.

FISCALIS 2020

60. Fiscalis 2020 is a tax administration cooperation programme which will support the cooperation and exchange of information between the tax authorities of Member States. The programme should continue to play a role in vital areas like the coherent implementation of Union law in the field of taxation, securing the exchange of information, supporting administrative cooperation and enhancing the administrative capacity of tax authorities. Given the problem dynamics of new challenges identified, additional emphasis should be put on supporting the fight against tax fraud, tax evasion and aggressive tax planning. An emphasis should also be placed on the reduction of the administrative burden for tax authorities, the reduction of compliance costs for tax payers and preventing instances of double taxation. It will seek to achieve this through shared information technology (European Information Systems), joint actions for tax officials (seminars, working visits and multilateral controls) and common training activities.

61. Fiscalis 2020 builds on Fiscalis 2014 and sets out a budget (estimated to be €234m), operational objectives and programme activities for the next seven years. The budget for the Fiscalis 2020 programme, like other programmes, is to be agreed in the context of the Multiannual Financial Framework (MFF). Negotiations are ongoing on the MFF.

62. Discussions commenced under the Cyprus Presidency and building on that work, the aim of the Irish Presidency was to: (i) agree a partial general approach from Council; (ii) receive the authorisation to negotiate the text with the European Parliament; (iii) agree a compromise text with the European Parliament; (iv) adopt Fiscalis 2020 pending agreement of the MFF.

63. On 18 January 2013 the Presidency achieved a unanimous partial general approach from Council. Coreper authorised the Presidency to engage in negotiation with the Parliament. The first trilogue took place on 30 January 2013. After two trilogues and two technical trilogues the negotiating teams of the co-legislators found an acceptable text.

64. Coreper unanimously agreed the compromise text on 7 May 2013, subject to finalisation of the MFF-related provision. The European Parliament has been informed of this.

[Mandatory automatic exchange of information in the field of Taxation - Proposal for a Directive amending Directive 2011/16/EU

65. As mentioned in paragraph 10(a) of the European Council conclusions of 22 May 2013 (set out above under item 22), the Commission adopted the corresponding proposal for a Revision of Directive 2011/16/EU on 11 June 2013.
The Commission presented this proposal to ECOFIN at its meeting of 21 June 2013 (doc. 10243/13 FISC 113).]

Tax Policy Coordination

a) Code of Conduct Group (Business taxation)

Avoidance of harmful practices remains a key priority for Member States in the area of taxation. They recognise that on-going work in the Code of Conduct Group (Business Taxation) of the Council over the last years has substantially contributed to the avoidance of such practices in EU Member States and has allowed useful initiatives with respect to third countries. The Group reports every six months to ECOFIN Ministers on progress achieved. This successful work should therefore be carried forward on the basis of the work programme approved by the Council in 2011. A new version of the six-monthly report has been prepared during the Irish Presidency for submission to the Council (ECOFIN).

b) Code of Conduct Group – Anti abuse Subgroup on hybrid mismatches

The Code of Conduct Group agreed that a Subgroup should be formed to examine the issue of hybrid mismatches. In particular it was agreed that the issues of hybrid entities and hybrid PEs would be examined as a first step. The Irish Presidency hosted three meetings of the Anti abuse Subgroup. Draft guidance on Hybrid Entity Mismatches Concerning Two Member States was prepared by the Irish Presidency and discussed by the Subgroup. A report incorporating a proposal for draft guidance was presented to the Code of Conduct Group meeting on 29 May. The Group welcomed the Report, which states (in paragraph 5.2) in relation to the draft guidance annexed to the Report that "it could represent a significant first step in coordination by Member States against hybrid entity mismatch planning but requires further consideration". The Group will come to this issue during the Lithuanian Presidency.

c) Other tax coordination issues

The Irish Presidency in the HLWP has continued work on areas already identified by the previous Presidencies for possible tax policy coordination, and has also explored new areas with Member States. The Irish Presidency hosted four meetings of the HLWP:

i) FATCA (US Foreign Account Tax Compliance Act)

- Discussions with US counterparts on how to implement this US legislation efficiently have continued, as agreed in the HLWP. Informal meetings have allowed a number of practical elements on the way forward to be clarified. The Council HLWP took stock of progress made, discussed how to facilitate further discussions with the US and identified elements for a coordinated approach for further talks. Member States continue to engage bilaterally with the US in relation to FATCA. A number of Member States have already successfully concluded agreements with the US and have updated Member States on the process.

ii) Tax Aspects of the European Semester Process

- Over the course of two meetings of the HLWP there was a very positive engagement with the topic of tax aspects of the European Semester process. This was the first occasion that the HLWP discussed this matter. Some of the Member States who had received country specific recommendations in relation to tax were invited to update the HLWP on progress made in this regard. It was agreed that the Commission would be invited to present on an annual basis and prior to designing AGS priorities and horizontal issues for the tax aspects of the European Semester process. The Irish Presidency also updated Member States on the work being carried out as part of the tax dialogue in the EPC.

iii) Base Erosion and Profit Shifting (BEPS) – OECD

- Paragraph 6 of the Council Conclusions of 14 May relates to coordination and cooperation with the OECD and G20 on BEPS.

  'SUPPORTS further efforts at OECD level on Base Erosion and Profit Shifting (BEPS) and RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of base erosion and profit shifting and in particular NOTES the European Council call for the European Union to coordinate its positions. NOTES that this coordination will take place through the appropriate Council bodies including the High Level Working Party and WELCOMES that progress at international level in this area is being monitored. To this end, the EU should closely monitor its legal framework and identify where common solutions would best ensure effectiveness and efficiency.'

- Paragraph 10(e) of the European Council Conclusions of 22 May relates also to this issue.

  "*(e) work will be carried forward as regards the Commission's recommendations on aggressive tax planning and profit shifting. The Commission intends to present a proposal before the end of the year for the revision of the "parent/subsidiary" Directive, and is reviewing the anti-abuse provisions in relevant EU legislation. The European Council looks forward to the OECD's forthcoming report on base erosion and profit shifting."*

- Paragraph 10(j) of the European Council Conclusions of 22 May states that:

  "(j) efforts are required to respond to the challenges of taxation in the digital economy, taking full account of ongoing work in the OECD. The Commission intends to assess these issues further, in advance of the October 2013 European Council discussion on the digital agenda."

- The Irish Presidency presented a paper outlining the proposed approach to fulfilling the above obligation to the HLWP on 6 June for discussion. The approach proposed 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 the EU and the OECD including BEPS, aggressive tax planning and tackling tax fraud and evasion.

- In addition, further to the Irish Presidency inviting the Director General of the OECD's Centre for Tax Policy and Administration (CTPA) to address the margins of the meeting of the HLWP on 13 March on the subject of BEPS, it was also proposed that the CFA would continue to be invited to provide the HLWP with updates of its activities.

- The Presidency approach was discussed at the HLWP held on 6 June. The LT Presidency announced its intention to continue discussions on the basis of progress made during the IE Presidency.

iv) Pilot Multilateral Automatic Information Exchange facility

- On Wednesday 9 April 2013, Germany, France, UK, Italy and Spain submitted a letter to the EU Commission informing them that they have agreed to exchange automatically tax information using the model agreed with the US for implementing FATCA as the basis for this multilateral exchange. They believe that the intergovernmental agreements with the US represent a step change in tax transparency, enabling them to clamp down further on tax evasion. They will be looking to promote these agreements as the new international standard, including through the various international fora, with the aim of agreeing a multilateral framework. These Member States, along with Poland, held a joint press conference about the initiative at the Informal ECOFIN in Dublin in April.

- Paragraph 5 of the Council Conclusions of 14 May relates to this pilot initiative.

  'WELCOMES in that context that France, Germany, Italy, Spain and the UK have agreed to work on a pilot multilateral exchange facility using the model agreed with the US as the basis for this multilateral exchange with the aim of contributing to the creation of a new global standard, NOTES that the EU has a key role to play in supporting and promoting the acceptance of such standards globally and further WELCOMES the commitment of the British Overseas Territories and the Isle of Man to joining the pilot initiative; and the strong interest expressed by Guernsey.'

- At the May ECOFIN, 17 Member States issued a joint statement supporting this initiative and inviting countries to commit to join the initiative. The statement also requested the Commission to support and promote the work of the OECD, G8, and G20 in developing a single global standard for automatic exchange of information, with a view to its quick implementation at EU level also.

- Three of the signatories to this joint statement (Denmark, Sweden and Finland) also issued a supplementary statement highlighting that an extension of the exchange of information will have to be coordinated with other provisions on automatic exchange within the EU, in an efficient manner. In order to secure such efficient coordination, they said they believed that such an extension should be handled within an EU context.

v) Tax in non tax dossiers

- On 29 January, the HLWP discussed the issue of tax in non tax dossiers. A large number of Member States expressed concern over the growing incidence of this issue, which undermined the principle of unanimity for tax provisions, as agreed in the Treaties and could lead to undesirable and inconsistent changes to Member States' tax law. In this regard, the Irish Presidency was invited by the HLWP to develop solutions.

- The Presidency had intended to include this item for discussion at the HLWP meeting on 13 March, but due to time constraints, this was not possible. In the interim period it became clear that it would not be possible to achieve agreement on the political elements of the Presidency's suggested approach. Therefore, the Irish Presidency set out a pragmatic operational approach to ensure that Member States are better informed when tax issues arise in non tax dossiers.

- This approach suggested that Member States, the Commission and the Council Secretariat / Presidency could be invited to consider establishing alert mechanisms within their organisations for communicating the incidence of tax issues arising in non tax dossiers to the relevant parties.

- The Presidency approach was discussed at the HLWP held on 6 June. The LT Presidency announced its intention to continue discussions on the basis of progress made during the IE Presidency.

ANNEX

27 March 2013

Presidency note
CCCTB
Agreed next steps and road map

Subsequent to the bilateral meetings between the Presidency and the Member States on CCCTB, the High Level Working Party (HLWP) discussed on 13 March, 2013, orientations for further work on this file. The discussion confirmed that there was a general consensus amongst the Member States to conduct the technical work on a step-by-step basis, concentrating in the first instance on issues generally related to the calculation of the tax base, while the technical work on the elements dealing with consolidation could be envisaged as appropriate in due course. As agreed the Presidency will incorporate the agreed orientations in the "end of Presidency report" from ECOFIN to the European Council on tax issues.

The Presidency would now like to take the opportunity to give more detail on how it intends to organise its future work. The aim of this note and the road map attached in Appendix 1 is to confirm the breakdown of the step by step approach and the thematic areas on which the Presidency intends to focus its work.

In the Presidency synthesis report the work was broken down into 6 different thematic areas:

a) General issues – especially seeking to achieve a common understanding in order to ensure consistent implementation.

b) Basic Elements of the Tax Base – including depreciation, intangibles, detailed rules and definitions, IAS / IFRS standards and rules for deduction forming the tax base.

c) Anti avoidance – including the issues of the General Anti Abuse Rule ('GAAR').

d) International aspects – including impact on existing Double Tax Conventions ('DTCs') and the treatment of Permanent Establishments (PEs) and Controlled Foreign Companies ('CFCs').

e) Operational issues – including administrative provisions and the use of delegated acts.

f) Consolidation and Apportionment – including assessing the impact of consolidation and apportionment of the tax base on national tax revenues and consideration of the apportionment factors contained in the Commission's proposal.

As indicated at the HLWP it is the intention of the Presidency to prepare compromise text on work block **(b)** – Basic elements of the tax base which will encompass Chapters II to VII. In addition, in response to a strong interest from Member States, the Presidency will also examine work block **(c)** – Anti avoidance Chapter XIV, in particular the GAAR. The aim of the Presidency will be to build on the previous work done in these areas.

The Presidency intends to circulate draft compromise text in the coming weeks for discussion at the Working Party on Tax Questions on 24 May.

Appendix 1 – Road Map

STEP 1	Issues generally related to the tax base	Work Plan
(a)	General	Horizontal theme - achieving a common understanding on all issues and Chapter I[5]
(b)	Basic Elements of the Base	Irish Presidency to prepare compromise text on Chapters II - VII
(c)	Anti – avoidance	Irish Presidency to prepare compromise text on Chapter XIV (Article 80 – General anti-abuse rule)
(d)	International aspects	Chapters II (Article 5), Chapter III (Article 8), Chapter V (Article 31) Chapter XIV (Articles 81 – 83), Chapter XV and the impact on existing Double Tax Conventions ('DTCs').
(e)	Operational issues	Chapters VIII and XVII-XVIII
STEP 2	**Issues related to Consolidation and Apportionment**	**Work Plan**
(f)	Consolidation and Apportionment	Chapters IX-XIII and XVI

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5 The Presidency will not prepare compromise text for Chapter I as it expects the compromise text on this Chapter to evolve during the WPTQ discussions.