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NOTE

From: Presidency

To: Permanent Representatives Committee/Council

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Subject: Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services

– Policy debate

I. INTRODUCTION

1. In preparation of the policy debate at the Council (ECOFIN) on 6 November 2018 this Presidency note presents the state of play of work so far and raises some key points for discussion by Ministers, as set out below.
2. On 19 October 2017, the European Council in its conclusions¹ underlined the "*need for an effective and fair taxation system fit for the digital era.*"
3. On 5 December 2017, the Council (ECOFIN) adopted its conclusions on "Responding to the challenges of taxation of profits of the digital economy".²

¹ EUCO 14/17

² 15445/17

4. On 21 March 2018 the Commission presented the "digital taxation package:"
 - i. a Communication "Time to establish a modern, fair and efficient taxation standard for the digital economy";
 - ii. a proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence;
 - iii. a proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (further referred to as "DSTD");
 - iv. a Commission recommendation relating to the corporate taxation of a significant digital presence.
5. After initial discussions in the Working Party on Tax Questions (WPTQ) (Digital Taxation),³ the High Level Working Party on Tax Questions (HLWP),⁴ as well as an initial exchange of views at the informal meeting of ECOFIN ministers on 28 April 2018, it was agreed to focus the discussions, in the first phase, on DSTD.⁵

II. STATE OF PLAY

6. The Austrian Presidency continued discussions on DSTD at technical level,⁶ since it noted at the informal meeting of ECOFIN Ministers on 8 September 2018 that there was broad interest among Ministers in exploring the possibilities for ensuring a fair taxation of the digital economy.
7. Following up on the interest shown by Ministers, the Presidency considers that technical work has been finalised in broad terms. More specifically the Presidency has been able to progress on the following issues:
 - a) There is agreement on most of the definitions used for the purposes of the Directive, including multi-sided digital interfaces and targeted advertising.

³ On 11 April, 2 May, 14 May, 4 June, 5 June and 13 June 2018.

⁴ On 18 April and 16 May 2018.

⁵ ST 9052/18.

⁶ WPTQ on 18 July, 13 September, 24 September, 11 October and 25 October 2018.

- b) Delegations agree that, in principle, DST collection should function without the one-stop-shop. The interim nature of DST requires that the tax should be collected without taking too much time to set up new and costly IT tools that might need to be abolished after DSTD expires.
 - c) There is agreement in principle that a taxable person that has no business or fixed establishment within the EU would have to nominate a tax representative to fulfil the obligations under DSTD in the name and on behalf of that taxable person. The exact content of these provisions is still being drafted at experts' level.
 - d) WPTQ has started the examination of the recitals that are essential for the interpretation of the provisions of DSTD.
 - e) WPTQ is also in the process of finalising the provisions on administrative cooperation for the purposes of DSTD.
8. At the HLWP on 26 October 2018 a number of legal aspects (legal basis of the DSTD proposal⁷ and the compatibility of DST with Article 2 of the OECD Model Convention⁸) were discussed.
9. In the context of technical discussions set out above a few open issues remain to be addressed. Further WPTQ meetings during the Austrian Presidency will be devoted to those. At this stage the Presidency has identified two key issues it wishes to submit to Ministers for discussion in order to obtain guidance for further work at technical level.

III. POINTS FOR DISCUSSION BY MINISTERS

a) **Scope: taxable services**

10. The Commission has proposed that the revenues from the provision of each of the following types of services will qualify as "taxable revenues":
- a) the placing on a digital interface of **targeted advertising**;
 - b) the making available to users of a **multi-sided digital interface**;
 - c) the transmission of data collected about users and generated from users activities on digital interfaces ("**sale of user data**").

⁷ ST 12922/18

⁸ WK 12655/18 and WK 12722/18

11. After intensive discussions in the WPTQ, the Presidency considers that most delegations would prefer to maintain all three taxable services as proposed by the Commission. But some delegations are sceptical about the “sale of user data”.
- b) Sunset clause**
12. With a view to the interim character of DST, all delegations agree that the Directive should expire once the comprehensive solution at global level is in place. It is recalled that a comprehensive solution relating to the revisions to the international corporate tax system to adapt it to the challenges arising from digitalisation is being discussed at G20/OECD level.
13. However, there have been diverging views expressed by delegations as to how to link the expiry of DSTD to the developments at the global level.
14. The Presidency invites Ministers to examine whether the Directive should have a fixed expiry date upon which the DSTD expires automatically or whether the expiry of the DSTD should be linked to developments at OECD/G20 level.

IV. WAY FORWARD

15. The Presidency invites Ministers:
 - a) **Scope:** To set out their positions with regard to whether the scope should cover all three taxable services as set out in paragraph 10. In case there is a preference to exclude the sale of user data from the scope of DSTD, do the Ministers agree that technical solutions should be elaborated to prevent the circumvention of the taxation of online advertising? Or would Ministers prefer that a new definition of the taxable sale of user is elaborated?
 - b) **Sunset clause:** To choose whether the Directive should have a fixed expiry date upon which the DSTD expires automatically or whether the temporary application of the DSTD should be linked in a different way to developments at G20/OECD level.
 - c) **Next steps:** To instruct the WPTQ to make further progress on the proposal, taking into account the discussion among Ministers, with a view to reaching an agreement by the December 2018 ECOFIN Council.