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NOTE

From:	Presidency
To:	High Level Working Party on Tax Issues
Subject:	Tax Policy Roadmap of the Bulgarian Presidency of the Council

Following discussions at the High Level Working party on 17 January 2018, delegations will find in Annex the final version of the Presidency roadmap, setting out future work in the Council during the coming months.

The Presidency will take into account relevant new developments when programming work in practice

ANNEX

TAX POLICY ROADMAP

OF THE BULGARIAN PRESIDENCY OF THE COUNCIL

1. The Bulgarian Presidency starts in a period where EU Tax Policy has to respond to many trends, challenges and expectations, coming both from within the EU, its citizens and businesses and from international developments. This deserves a strategic look by the Council, through the High Level Working Party for Tax Issues (HLWP), at how the EU is considering Tax Policy issues both in the area of direct and indirect taxation.
2. Building on the work carried out in the HLWP so far (EU BEPS roadmaps, preparation of strategic Council conclusions on the future of VAT, the EU's external strategy etc.), the Presidency would like to go into further consideration of horizontal matters ahead of us and go beyond presenting the usual Presidency Programme.
3. Based on the comments received at the HLWP of January, it has prepared, under its own responsibility, a comprehensive Tax Policy Roadmap, for the months to come. This document may also serve as a source of inspiration beyond the Bulgarian Presidency term, as appropriate.

I. <u>DIRECT TAXATION</u>

1. In the area of direct taxation, as a starting point, the Bulgarian Presidency will base its work on the achievements and BEPS roadmap by previous Presidencies, taking into account the views expressed by Member States in informal bilateral contacts and against the background of the recent Commission initiatives, as well as the results of the OECD work on BEPS. Its evolution since 2015 reflects that the EU has already adopted an important number of BEPS-related EU legislative initiatives that are now being implemented in Member States.

2. Therefore the Bulgarian Presidency will also continue to take into account horizontal aspects such as tax certainty, international developments and competitiveness in the area of taxation, digitalisation of economies, overall tax burden for businesses, fair allocation of tax revenues, specific situations of multinationals, in order to address all relevant strategic aspects of work in the Council in the area of direct taxation.

I.1. <u>SHORT-TERM WORK</u>

3. The Presidency will aim at <u>reaching agreement</u> during the coming months on the following EU-BEPS work items:

A. Transparency: Mandatory Disclosure Rules Directive ("DAC6")

4. There have been significant advances at EU level in the area of tax transparency, notably through amendments to the Directive on Administrative Cooperation (DAC) implementing the common reporting standard (CRS) (under the Italian Presidency), the exchange of rulings (under the Luxembourg Presidency) and country-by-country reporting (CbCR) (under the Netherlands Presidency), and access to anti-money laundering information (under the Slovak Presidency).

5. The last remaining element of disclosure and transparency that has not been addressed by the EU is in the area of mandatory disclosure rules (MDR). In its conclusions adopted on 8 December 2015, the Council invited the COCG "*to assess the opportunity of developing EU guidance for implementing OECD BEPS conclusions on Action 12 (disclosure of aggressive tax planning), notably with a view to facilitate exchange of such information between tax authorities*" (doc. 15150/15, paragraph 25).

6. The issue was also discussed at the informal ECOFIN on 22-23 April 2016 and in its conclusions adopted on 25 May 2016, the Council invited the Commission "*to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes*".

7. On 21 June 2017, the European Commission submitted a proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6").

8. The Estonian Presidency started the technical examination of the proposal and organised an exchange of views on the state of play and way forward.

9. The Bulgarian Presidency intends to work towards achieving an early agreement on this file.

B. 'Good Governance in Tax Matters' clause in the EU agreements with third countries

10. The Council conclusions on the External Strategy from 25 May 2016 prepared by the HLWP called for the updating of the existing EU standard provision on good governance in tax matters which dates back to May 2008, and asked the COCG to examine the key elements which should be contained in a clause to be inserted in the agreements between the EU and those countries.

11. The aim of the Bulgarian Presidency is to seek agreement on these key elements, on the basis of the proposal presented by the Commission in Annex 2 of its External Strategy Communication of 28 January 2016.

C. Implementation of the Council conclusions on the 'Future of the Code of Conduct (Business Taxation)'

12. In line with the Council conclusions of 8 March 2016, the Bulgarian Presidency is ready to seek agreement on a guidance note on the interpretation of the third criterion of the Code.

13. The Bulgarian Presidency also intends to continue exploring possible ways forward as regards the revision of the mandate of the Code of Conduct (gateway criterion), taking into account the successes so far of this intergovernmental working method within the Council as set out in various Council conclusions.

I.2. MEDIUM-TERM WORK

14. The Presidency also notes the willingness of the Member States to undertake work on the following items:

A. Legislative proposal establishing rules at EU level allowing taxation of profits generated by multinationals through the digital economy

15. The European Commission is expected to table a legislative proposal establishing rules at EU level allowing taxation of profits generated by multinationals through the digital economy by the end of the first quarter of 2018.

16. The Bulgarian Presidency therefore intends to start the technical examination of the proposal.

B. Follow-up work on the EU list of non-cooperative jurisdictions for tax purposes

17. The Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes were adopted by the Council on 5 December 2017 (doc. 15429/17).

18. Further work is however required notably to:

    i) update the list (annex I of the Council conclusions) based on new commitments;

    ii) monitor the implementation of the commitments received (annex II) and agreeing on procedures to carry out this monitoring process based on Annex IV of the CCs;

    iii) continue exploring further coordinated defensive measures in the tax area.

19. The Bulgarian Presidency is ready to support efforts in all preparatory bodies it is chairing, in co-ordination with the Code of Conduct Group (Business Taxation).

C. Interest and Royalties Directive (IRD)

20. In June 2015, the Latvian Presidency proposed a split of the proposal concentrating work first on the insertion of an anti-abuse provision similar to the one in the Parent-Subsidiary Directive (Articles 1(2) to 1(4) of Directive 2011/96/EU) and to discussing later the remaining provisions from the 2011 Commission proposal. The ECOFIN Council on 19 June 2015 could not, however, reach political agreement as some Member States insisted on the inclusion of a provision setting up a minimum effective level of taxation (hereafter "MET"), which was not foreseen in the original proposal of the Commission.

21. During the last Presidencies, substantial work was devoted to making progress in examining different alternatives to include a MET clause in the IRD. No agreement could, however, be found on any of these compromise suggestions.

22. Taking into account the input received from bilateral discussions with Member States as well as other recent developments, the Bulgarian Presidency will explore how to take the proposal forward.

D. Proposal for a renewed Common (Consolidated) Corporate Tax Base

23. On 25 October 2016, the Commission re-launched its proposal for the Common Consolidated Corporate Tax Base (CCCTB) through the new proposals for the Common Corporate Tax Base (CCTB) that includes a cross-border loss relief mechanism with a view to balancing out the absence of the benefits of consolidation during that phase.

24. On 6 December 2016, the Council supported the view that, as a priority, the work should focus on the elements of the common tax base (doc. 15315/16) and invited Member States to "*concentrate their efforts on the rules for calculating the tax base and, in particular, on the new elements of the relaunched initiative (chapters I to V)*".

25. The Maltese Presidency started the examination of the CCTB proposal concentrating on the new elements of the proposal, whilst the Estonian Presidency closed the article-by-article technical examination of chapters I to V and launched a parallel debate on the challenges of the taxation of profits of the digital economy.

26. Against this background, the Bulgarian Presidency has initiated a debate on the way forward on this file and, after closing the article-by-article examination of the remaining chapters, intends to limit immediate work on defining as broad as possible common corporate tax base at the EU level.

E. ***Outbound payments***

27. In July 2009, the COCG agreed to establish guidelines on outbound payments and included the issue in its Work Package 2015. In April 2017 the COCG mandated its subgroup on anti-abuse issues to resume work on this topic.

28. A preliminary draft of possible guidance was discussed by the subgroup in May 2017, but Member States expressed different perspectives on the way forward and agreed that the issue should be dealt with again when the new data on the effectiveness of anti-abuse measures in EU Directives have become available. The issue could also be revisited in the light of future discussions exploring further coordinated defensive measures in the tax area (see above), as appropriate.

II. INDIRECT TAXATION

II.1. VAT

29. In response to the Commission VAT Action Plan, the Economic and Financial Affairs Council at its meeting of 25 May 2016 adopted a set of conclusions, which contained chapters "On Urgent Measures to Fight VAT Fraud and Tackle the VAT Gap", "On Short and Medium-term Actions in VAT Area and SMEs", "On the Definitive VAT System (Single EU VAT Area)" and "On VAT Rates".[1]

[1] Doc. 9494/16 FISC 86 ECOFIN 509.

30. At its meeting of 8 November, ECOFIN adopted Council conclusions "On Improvements to the current EU VAT rules for cross-border transactions"[2]. These Council conclusions cover certain aspects related to improvement of the current EU VAT rules, applicable within intra-EU supplies of goods: VAT identification number, VIES data, chain transactions, call-off stock simplification and proof of intra-EU supply, which should be addressed within the work on definitive VAT system and, in the first legislative step phased-in as appropriate.

31. The work in the Council during the Bulgarian Presidency will therefore be carried out with this guidance in mind. Particular attention will be given to the value the EU can add in the most relevant fields, such as combatting VAT fraud, simplification of administrative burden for citizens, businesses and administration, strengthening of IT systems, improving administrative co-operation, new business models (digital economy, globalisation of trade, etc.).

II.1.1. <u>SHORT-TERM WORK</u>

A. Signature of the EU-NO Agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT

32. The Council adopted the Decision for the signature of the Agreement. The signature ceremony could be arranged as soon as possible so that to proceed with the conclusion of the Agreement after the Parliamentary consultation and the work on the implementation measures to be adopted by the Joint Committee established by the Agreement.

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2 Doc. 14257/16 FISC 190 ECOFIN 1023.

B. Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonizing and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States; Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) 282/2011 as regards certain exemptions for intra-Community transactions

33. The Presidency will handle this file as one of its priorities by conducting technical and political negotiations on this dossier and further exploring possible ways forward.

C. Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax

34. The European Commission has unveiled on 30 November 2017 new tools to make the EU's VAT system more fraud-proof and close loopholes which can lead to large-scale VAT fraud. The new rules aim to build trust between Member States so that they can exchange more information and boost cooperation between national tax authorities and law enforcement authorities. The proposed measures follow up on the 'cornerstones' for a new definitive single EU VAT area proposed in October 2017 and the VAT Action Plan towards a single EU VAT area presented in April 2016.

35. The Bulgarian Presidency will aim to seek agreement on the key elements on the basis of the proposal presented by the Commission.

D. Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate

36. The European Commission made a proposal on 19 December 2017 to confirm 15% as being the minimum standard VAT rate. The Presidency will handle this file as one of its priorities and will seek to have it adopted during their Presidency.

II.1.2. MEDIUM-TERM WORK

A. Report on the prolongation of the sectorial reverse charge

37. The European Commission intends to present an overall assessment report on the application of the sectorial reverse charge of Article 199a of the VAT Directive 2006/112/EC and on the application of the quick reaction mechanism foreseen under Article 199b of the same Directive. The Presidency will seek agreement on a (possible) legislative proposal for its prolongation if it is tabled in due time by the European Commission during the first half of 2018.

B. Proposal on VAT simplifications for SMEs

38. In view of the incoming legislative proposal on VAT simplifications for SMEs, the Bulgarian Presidency intends to start the first round of technical examination.

C. Proposal on VAT rates

39. The Presidency intends to launch discussions on the expected legislative proposal on VAT rates.

II.2. <u>INDIRECT TAXATION AND FINANCIAL SERVICES</u>

40. Discussion on indirect taxation of financial services has been ongoing for a number of years in the Council,

A. Financial transaction tax

41. At this stage, 10 Member States continue to participate in the negotiations on the basis of a Commission proposal of 14 February 2013 for a Council Directive implementing enhanced cooperation in the area of financial transaction tax (FTT). The Presidency will ensure that any progress among the FTT-ins, once achieved, is taken forward in a constructive, inclusive and transparent manner among the 28 EU Member States.

42. The objectives of this Commission proposal are the same as those of the proposal of 28 September 2011 for a common system of financial transaction tax (FTT): to ensure a fair contribution of the financial sector to the costs of the financial crisis, avoid fragmentation of the Single Market and create appropriate disincentives for transactions that do not enhance the efficiency of financial markets.

B. VAT and financial services

43. Before these proposals were made, technical discussions took place on the Commission proposal to amend the VAT Directive 2006/112/EC as regards the treatment of insurance and financial services. The Commission withdrew this proposal in spring of 2016, as, given the outbreak of the financial crisis, time was needed to complete the overhaul of the EU regulation and supervision of the financial services industry.

C. Way forward in short and medium term

44. Against this background, the Bulgarian Presidency is ready to facilitate a strategic debate, at HLWP level, on the future of the financial services taxation, in order to assess the need for further action by the Council in the short and medium term in this area.

II.3. EXCISE DUTIES

45. Taking into account the relevance of the excise duties sector for national revenues, it seems appropriate to continue the strategic debate on the improvements of the existing regulation, and start the discussion on a number of legislative proposals and reports from the European Commission.

46. The Bulgarian Presidency intends to organise an in-depth discussion and start negotiations, as appropriate, building on the work carried out in the following areas, following the relevant Commission proposals/reports:

   i) the Council in its 8 March 2016 conclusions on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco[3] requested that the European Commission, taking into account the Council Conclusions, as well as the objectives set out in Directive 2011/64/EU, undertakes all relevant studies and, after carrying out relevant technical analysis, public consultations and impact assessment, submits to the Council an appropriate legislative proposal in 2017 or, in case it chooses not to submit a proposal, informs the Council of the reasons. The Commission is finalising a report on Directive 2011/64/EU;

   ii) the Council, in its 6 December 2016 conclusions[4], inter alia, requested that the Commission, taking into account these Council Conclusions, as well as the objectives set out in the Directive 92/83/EEC, undertakes all relevant studies and, after carrying out relevant technical analysis, public consultations and impact assessments, submits to the Council an appropriate legislative proposal in 2017. The Commission is finalising work on an Impact Assessment Report on the possible revision of Directive 92/83/EEC and foresees possible legislative proposals by spring 2018;

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[3] Doc. 6899/16 FISC 34 ECOFIN 207.
[4] Doc. 15009/16 FISC 212 ECOFIN 1134.

iii) Council Conclusions of 5 December 2017 on the Commission report to the Council on the implementation and evaluation of Council Directive 2008/118/EC concerning the general arrangements for excise duty[5] are guiding the Commission in the finalisation of an Impact Assessment Report on possible amendments to Directive 2008/118/EC. The Commission foresees possible legislative proposals by spring 2018.

iv) the Commission is also expected to present the Staff working document of the evaluation of Directive 95/60/EC on fiscal marking of gas oil and kerosene and this document would be discussed in the Council preparatory bodies as appropriate.

III. AGREEMENTS WITH FIVE THIRD COUNTRIES TO COUNTER FRAUD AND ALL OTHER ILLEGAL ACTIVITIES TO THE DETRIMENT OF PUBLIC FINANCIAL INTERESTS ("EU ANTI-FRAUD AGREEMENTS")

47. Under the Maltese Presidency, the HLWP confirmed the need for updating the mandate of negotiations for EU anti-fraud agreements with the Principality of Andorra, the Principality of Monaco, the Republic of San Marino and the Swiss Confederation (doc. 11640/09) and for a possible relaunch of the negotiations on the EU anti-fraud agreement with the Principality of Liechtenstein (doc. 16990/2/09 REV 2), following the repeal of the Savings Taxation Directive, the adoption of DAC2, and the completion of all agreements on automatic exchange of information with the five European third countries.

48. The objective of the Bulgarian Presidency will be to continue discussions on the Commission proposal regarding the signing of the anti-fraud and tax information exchange agreement with Liechtenstein (doc. 16989/09) with a view to assessing if the agreement is still needed and appropriate.

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[5] Doc. 14481/17 FISC 271 ECOFIN 957.