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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	VAT Action Plan "Towards a single EU VAT area" <ul style="list-style-type: none">– VAT Action Plan "Towards a single EU VAT area - Time to decide"– Special Report no 24/2015 by the European Court of Auditors "Tackling intra-community VAT fraud: more action needed"= Council conclusions

I. INTRODUCTION

1. The Commission Communication on an Action Plan on VAT "Towards a single EU VAT Area – Time to decide" (the VAT Action Plan) was published on 7 April 2016.¹ The VAT Action Plan sets out the Commission's views on the pathway for the modernisation and rebooting of VAT, which, with a set of urgent and mid-term measures, would lead towards a Single EU VAT Area. Those measures are built around these major cross-cutting objectives:
 - i) the simplification and reduction of compliance costs for businesses (especially e-commerce and SMEs);

¹ COM (2016) 148 final. See also:
http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm

- ii) urgent measures to tackle VAT fraud (improvements of tax administrations and administrative cooperation);
 - iii) medium term measures to tackle VAT fraud and the way forward to VAT definitive regime;
 - iv) VAT rates.
2. The European Court of Auditors' (ECA) Special Report No. 24 "Tackling intra-Community VAT Fraud: More action needed"², published on 3 March 2016, also presents, together with the results of the audit, 14 recommendations aimed at better fighting VAT fraud. These recommendations touch upon improvement of administrative cooperation, efficiency of tax administration, exchange of information and policy issues. Many of these recommendations are also covered by the areas and measures presented in the Commission's VAT Action Plan.
3. In the VAT Action Plan, the Commission calls on the Council to provide, as soon as possible, clear political guidance and confirm its willingness to support the actions set out therein. The Committee of Permanent Representatives has instructed the Working Party on Tax Questions (WPTQ) to examine the ECA Special Report.³ On this basis, delegations have agreed with the Presidency proposal to discuss these two initiatives jointly and work towards agreeing on the Council conclusions covering both documents, as appropriate.

II. STATE OF PLAY

4. The VAT Action Plan and the ECA Special Report were discussed at the meetings of the Working Party on Tax Questions (WPTQ) on 11 and 19 April 2016. While a significant degree of convergence could be observed between the views of delegations on various aspects of the VAT Action Plan, some ideas set out therein could not be supported by all Member States, as further reflection, explanation and technical detail were deemed necessary.

² Available at: <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=35308>

³ See docs. 6918/16 and 6919/16.

5. One of the components of the VAT Action Plan (fight against VAT fraud by means of information exchange, with a focus on the use of information technology tools) was also discussed in the April 2016 informal ECOFIN meeting in Amsterdam, where:
- i) large majority of delegations has confirmed that progress in automatic exchange of information between tax authorities in the field of indirect taxation is required;
 - ii) many delegations have confirmed their willingness to identify the necessary prerequisites that would enable them to start using the Transaction Network Analysis⁴ (TNA) tool, on a voluntary basis;
 - iii) there was also a large measure of commitment to grant a priority for taking a decision on how automatic exchange of targeted VAT fraud-related information could be exchanged, once the appropriate legislative proposal by the Commission is made.
6. On this basis, the Presidency has proposed a text of the draft Council conclusions, which has been discussed at the WPTQ meeting of 29 April 2016 and at the meeting of the High Level Working Party on Tax Questions on 10 May 2016.⁵
7. Following these exchanges of views, the Presidency proposes the updated text of the draft Council conclusions set out in the Annex to this note. Noteworthy, these draft Council conclusions leave room for further work and debate in a number of areas, as certain aspects of the VAT Action Plan and future work should continue to be discussed in the coming months, for example:

⁴ TNA is a data analysis tool that, by using the existing software and existing data exchange channels and databases, could automate the working methods for detection of national or cross-border networks of fraudulent VAT transactions.

⁵ At that HLWP meeting the Commission has also presented the main results of its feasibility study of the TNA tool.

- the definitive VAT regime (incl. the idea of the "Single EU VAT Area");
- possibility for derogations to be granted by the Council permitting wider (general) use of the reverse charge mechanism⁶;
- further work on the TNA⁷;
- "One Stop Shop" mechanism.

III. CONCLUSION

8. Against this background, the Presidency takes the view that the text of the draft Council conclusions, set out in the Annex to this note, should strike the right balance between the positions expressed by Member States and be an acceptable compromise.
9. The Committee of Permanent Representatives is therefore invited to suggest to the Council, in its forthcoming meeting, to:
 - a) exchange views on the Commission Communication on an Action Plan on VAT "Towards a single EU VAT Area – Time to decide" and European Court of Auditors' Special Report No. 24 "Tackling intra-Community VAT Fraud: More action needed"; and
 - b) reach an agreement on the draft Council Conclusions set out in the Annex to this note.

⁶ It is expected that the Commission will present its analysis concerning possibilities for such a derogation in time for June 2016 ECOFIN meeting. See also doc. 5302/16 PV/CONS 1 ECOFIN 28 LIMITE, point 8 (page 4).

⁷ The TNA feasibility study will be discussed in greater depth in the forthcoming meetings of the WPTQ.

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**COUNCIL CONCLUSIONS ON
THE COMMISSION 2016 ACTION PLAN ON VAT AND
EUROPEAN COURT OF AUDITORS SPECIAL REPORT No. 24 ON VAT FRAUD**

The Council of the European Union (ECOFIN):

- WELCOMES the Commission Communication "Towards a single EU VAT area – Time to decide" (VAT Action Plan) and TAKES NOTE of the Special Report of the Court of Auditors No. 24: "Tackling intra-Community VAT Fraud: More action needed", as well as of the findings and recommendations set out therein;
- RECALLS Council conclusions of 15 May 2012 "On the Future of VAT", where the Council has emphasised that the EU needs a simpler VAT system, which at the same time is more efficient, more robust, fraud-proof and tailored for single market and has pointed out the following principles and legal considerations, which should be taken into account in furtherance of any future action: cost-efficiency, proportionality, unanimity, data protection legislation, compliance with the subsidiarity principle and full respect for the respective competences of the Union and the Member States;
- AGREES that the EU VAT system needs to be modernised and improved with these general objectives in mind, while stressing the importance of keeping the EU's business environment competitive;
- ACKNOWLEDGES the objectives outlined in the VAT Action Plan, which provide a framework to achieve a Single EU VAT area, and
- ADOPTS the following conclusions:

I. ON URGENT MEASURES TO FIGHT VAT FRAUD AND TACKLE THE VAT GAP

The Council of the European Union:

1. RECALLS the utmost importance of robust legal rules which hamper VAT fraud and AGREES with the Commission and the Court of Auditors that improving administrative cooperation between tax authorities is of significant importance in the fight against VAT fraud, and hence UNDERTAKES to pursue discussion on means of enhancing the scope of administrative cooperation and stepping up efforts to exchange information between tax administrations;
2. CONFIRMS that there is a need for further co-operation in a spirit of good understanding among business and tax administrations, as well as between tax administrations of EU Member States;
3. UNDERLINES that further initiatives in this area should form an efficient addition to existing rules and instruments and also seek to guarantee high standards of data protection, and fully take into account the principles of sovereignty, subsidiarity and proportionality;
4. TAKES NOTE of the Commission's intention to table in 2017 a legislative proposal that will aim at improving the exchange, sharing and analysis of key information and foresee conducting of joint audits;
5. ACKNOWLEDGES that improvement of information exchange could result in a clear improvement of efficiency in the fight against VAT fraud, and CALLS upon the Commission to propose ways of addressing legal obstacles and practical limitations that might exist in the EU and in the Member States that prevent from making a qualitative leap in this area in the EU;
6. HIGHLIGHTS that this work should promote co-operation and cover the full range of available means and methods and alignment of procedures, including, *inter alia*, VIES, Eurofisc, feedback procedures and customs procedure 42, where the challenges both to customs and tax authorities must also be addressed;

7. LOOKS FORWARD to the other measures referred to in the VAT Action Plan that the Commission will propose to the Council with the objective of improving cooperation between tax administration and customs authorities;
8. UNDERLINES that as discussed during an informal meeting of ECOFIN ministers in Amsterdam, automatic exchange of information is one of the ways forward in the fight against fraud;
9. CONFIRMS that risk assessment and analysis remains a major area for further improvement in the EU, and INVITES the Commission, after the results of the feasibility study on Transaction Network Analysis have been evaluated by Member States, to present relevant initiatives enabling the Member States, wishing to start this tool on a voluntary basis, to exercise such an option, and at the same time ASKS the Commission to consider the possibilities of an explicit legal basis;
10. RECOGNISES that some Member States are more heavily affected by VAT fraud than others and the need to find practical and short-term solutions rapidly, and TAKES NOTE of the position of the Commission regarding a possible temporary derogation for certain Member States to apply the reverse charge mechanism in a wider scope and that the implementation of such derogation would require legislative measures;
11. CONFIRMS that such derogations should not disproportionately hamper the proper functioning of the internal market and NOTES that political, legal and economic implications of such requests for derogations have to be thoroughly assessed, while taking positive, as well as critical factors into account, such as the effects on businesses and tax administrations, the possible dissolving of existing missing trader fraud and possibilities of fraud increasing in other Member States or at retail level;

12. UNDERLINES, without prejudice to a definitive VAT system, that the information obtained from a temporary derogation could be useful to decide on the most efficient way of fighting VAT fraud, and LOOKS FORWARD to an in-depth analysis by the Commission on possibilities for a temporary derogation, to be presented at the upcoming June ECOFIN;
13. TAKES NOTE of the non-legislative measures whereby the Commission intends to tackle the VAT gap and STRESSES that the Council will examine these non-legislative measures on the basis of the principles of sovereignty, subsidiarity, and proportionality.

II. ON SHORT AND MEDIUM-TERM ACTIONS IN VAT AREA AND SMEs

The Council of the European Union:

14. WELCOMES the call by the Commission to reduce VAT compliance burdens for business, particularly for SMEs, both within Member States and across borders, and TAKES NOTE of the Commission's intention to make legislative proposals in 2016 and 2017;
15. EMPHASISES that the ultimate objective remains that VAT compliance costs in the single market are brought closer to the levels of those in domestic trade, however, further simplification should not result in an increase of VAT fraud risks or disproportionate rise of the costs of tax administration;
16. HIGHLIGHTS the importance of reflecting upon the position of micro-SMEs in the VAT system, in order to promote growth, jobs and real economy in the EU, without causing distortions of competition;
17. In the context of the Digital Single Market Strategy, STRESSES the importance of finding an EU-level solution rapidly to eliminate the competitive disadvantage for EU suppliers and UNDERTAKES to review the scope and discuss the possibility of repealing the VAT exemption for final importation of small consignments of goods into the EU by non-EU suppliers, considering also the impact of possible changes on the customs administration;

18. RECOGNISES the need to simplify cross-border e-commerce, and the opportunity to extend the "One Stop Shop" for online sales of tangible goods to final consumers and CALLS FOR further analysis and technical work to be undertaken on a common EU-wide simplification measure, including a threshold;
19. NOTES that the debate will continue concerning a possible introduction of legal means allowing for home country checks, including a single audit of cross-border businesses;
20. In this context, LOOKS FORWARD to receiving the results of the ongoing Commission' study on VAT obstacles to cross-border e-commerce and the legislative proposals by the Commission;
21. STRESSES that improvements on the current system could be possible and necessary in the short term.

III. ON THE DEFINITIVE VAT SYSTEM (SINGLE EU VAT AREA)

The Council of the European Union:

22. TAKES NOTE of the points made by the Commission in its VAT Action Plan as regards the way forward towards the definitive VAT system and of its intention to present a legislative proposal in 2017 for the definitive VAT system for cross-border trade, as a first step;
23. NOTES, while working towards the definitive VAT system in the EU, the importance of fully respecting the principles of subsidiarity and proportionality and taking full account of how potential EU-level solutions would best fit with the aspects upon which Member States continue to exercise their competence;

24. REITERATES that the principle of “taxation in the Member State of origin of the supply of goods or services”, as envisaged in article 402 of Directive 2006/112/EC on the common system of value added tax, should be replaced by the principle of “taxation in the Member State of destination” for the definitive VAT system for B2B transactions, as stated in the Council conclusions of 15 May 2012;
25. WELCOMES the in-depth technical work conducted by the Commission so far, as well as the broadly based dialogue it initiated with Member States to examine in detail the different possible ways how to best implement the destination principle;
26. STRESSES nevertheless that the work has to continue to set ground for the political choice to be made with regard to the definitive VAT system;
27. TAKES NOTE that taxation with cross-border reverse charge in the Member State of destination could be analysed as an option to the proposed taxation of cross-border supplies for the definitive VAT system;
28. UNDERSCORES that the Council will continue to follow up the debate to reach an agreement on the political guidance to the Commission to conduct further analysis that would enable it to carry this work forward and enable the Council to properly evaluate the impact of possible technical solutions and adopt those that suit the common EU objectives best.

IV. ON VAT RATES

The Council of the European Union:

29. TAKES NOTE of the directions of action proposed in the Commission Action Plan on VAT with regard to the VAT rate system and its intention to make a legislative proposal in 2017, proposing a reform to give more freedom to Member States in setting up rates and proposing two options;

30. RECALLS the conclusions of the European Council of 17-18 March 2016 which welcomed "the intention of the Commission to include proposals for increased flexibility for Member States with respect to reduced rates of VAT, which would provide the option to Member States of VAT zero rating for sanitary products";
 31. WELCOMES the intention of the Commission to present a proposal for increased flexibility for Member States, so that they could benefit from the existing reduced and zero rates in other Member States, INVITES the Commission to include an impact assessment, and STRESSES that a sufficient level of harmonisation in the EU remains required and the adopted solution has to be carefully balanced to avoid distortion of competition, rise in business costs and negative impact on the functioning of the single market;
 32. INVITES the Commission to present a legislative proposal which integrates provisions concerning VAT rates for e-publications in the context of Digital Single Market initiatives by the end of 2016;
 33. CALLS UPON the Commission, in line with the March 2016 European Council conclusions, to present to the Council a legislative proposal foreseeing an option to Member States of VAT reduced or zero rating for women's sanitary products at the earliest opportunity.
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