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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond

Delegations will find in Annex the abovementioned Council conclusions as also referred to in document 12980/20.

COUNCIL CONCLUSIONS

on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond

I. Introduction and general statements

The Council:

1. UNDERLINES that fair and effective taxation systems in Member States are central to the sustainable recovery of the European Union as a whole and will help respond to the unprecedented health crisis, requiring tax policies that generate revenues for both national and EU budgets and take into account the effects of the crisis on the economy; they will allow for a smooth transition towards policy goals of sustainable competitiveness, the European Green Deal and a full use of the potential of digitalisation in a global economy;
2. RECALLS the European Council conclusions of July 2020, which underline the requirement for an unprecedented effort and innovative approach fostering convergence, resilience and transformation of the EU to tackle effects of the COVID-19 crisis; that the European Council stated that the EU will, in the course of the next MFF, work towards the introduction of additional own resources, as a basis for which the Commission will put forward proposals on a carbon border adjustment mechanism and on a digital levy. Furthermore, it was agreed that the Union will work towards the introduction of other own resources, which may include a Financial Transaction Tax;

3. WELCOMES that the Commission has tabled a Communication on an Action Plan for fair and simple taxation supporting the recovery strategy and a Communication on tax good governance in the EU and beyond;
4. STRESSES that reducing tax obstacles for business in the EU single market, fighting tax fraud and other unfair practices as well as promoting more effective cooperation between tax authorities in ensuring control and preventing and combating fraud are among the main objectives of the EU's tax policy; and RECOGNISES that while work on new tax policy initiatives should be pursued, emphasis should also be placed on ensuring that the existing tax legislation is enforced and improving tax compliance and cooperation;
5. HIGHLIGHTS that any further measures and initiatives for fair and effective taxation should deliver on the objectives of fighting aggressive tax planning and tax evasion and making taxation simple and effective, taking into account the specific conditions and needs of Member States and the digitalisation of their economies, and respecting Member States' competence in the field of taxation;
6. NOTES that indirect taxation can be used as a policy instrument to support the transition to a 'green' economy and help reaching climate neutrality goals, as well as other environmental objectives of the European Green Deal; and that action in the area of indirect tax policy has to be taken with due regard to the economic and social impact and the specifics of national economies of Member States and, where such action is taken, to ensure a smooth transition;

II. Direct taxation, including addressing tax challenges of the digitalisation of the economy

Challenges arising from the digitalisation of the economy

7. RECALLS the Council conclusions of 5 December 2017 on ‘Responding to the challenges of taxation of profits of the digital economy,’ as well as the European Council conclusions of 22 and 23 June 2017, which highlighted the necessity of a ‘holistic’ approach to face up to the challenges and use the opportunities of the digitalisation of the economy, and NOTES the European Council conclusions of 1 and 2 October 2020, whereby the European Council will ‘assess the situation regarding the work on the important issue of digital taxation’ in March 2021;
8. RECALLS the European Council conclusions of July 2020 in which it is noted that the Commission, as a basis for additional own resources, will put forward in the first semester of 2021 a proposal for a digital levy, with a view to its introduction at the latest by 1 January 2023 and INVITES the Commission to also take the ongoing OECD Inclusive Framework on BEPS negotiations into account;
9. WELCOMES the significant progress made at the level of the OECD Inclusive Framework on BEPS for updating the international corporate taxation framework and REAFFIRMS its engagement to that process which consists of two pillars: Pillar 1 is focused on nexus and profit allocation whereas Pillar 2 is focused on a global minimum tax intended to address remaining Base Erosion and Profit Shifting (BEPS) issues;

10. WELCOMES the reports on the ‘blueprints’ for Pillar 1 and 2 approved for public release at the OECD Inclusive Framework meeting on 8-9 October 2020; NOTES that the timeline for reaching international consensus was extended to mid-2021 and SUPPORTS further work to achieve final agreement on both pillars in the context of the OECD Inclusive Framework on BEPS;
11. CONFIRMS its continued support of the work at the OECD Inclusive Framework on BEPS aimed at reaching a global consensus-based solution at the latest by mid-2021, taking into account the interests of all Member States in order to ensure that all corporations pay their fair share of tax on profits generated by their activities in the EU and ASKS the Commission to continue to actively monitor and provide expertise on EU law aspects to Member States, while taking into account the ongoing negotiations at the OECD Inclusive Framework on BEPS;
12. EXPRESSES the willingness of the EU and its Member States to look into the possibilities of implementing, by appropriate legal means, the global agreement to be reached at the OECD Inclusive Framework on BEPS as soon as possible and RECALLS that the European Council will assess the issue in March 2021, and ASKS the Commission to engage on that basis in the relevant preparatory work in the Council on the way forward in line with EU law, in order to address the tax challenges of the digital economy, including in the absence of an international consensus by mid-2021;

Direct taxation – other issues

13. REITERATES that direct taxation is a matter of national competence of Member States, and CONSIDERS that a well-functioning and competitive EU Single Market could justify coordinated actions where it will be necessary to adjust the taxation framework to fit a modern and increasingly digitalised economy, both at global and at EU level;
14. UNDERLINES that an adjustment of the taxation framework is particularly important to support growth and that all corporations should pay their fair share of tax on profits generated by activities in the EU as mentioned in paragraph 11 of these conclusions;
15. NOTES the intention of the Commission to put forward initiatives in the area of corporate and income taxation as well as administrative cooperation as set out in the Action Plan for fair and simple taxation, notably on a more consistent determination of the tax residence in Member States, on the introduction of a common, standardised EU-wide system for withholding tax relief at source, and on the establishment of an expert group on transfer pricing, and WELCOMES work at technical level;

III. Value Added Tax

16. SUPPORTS the Commission's suggestion to clarify, simplify and modernise the EU Value Added Tax (VAT) rules; CALLS ON the Commission to ensure that all its potential proposals are fully assessed in terms of their economic, administrative and social costs and benefits for taxpayers and tax authorities, including their impact on IT capacities and on fundamental rights, such as the protection of personal data; and APPRECIATES the continuation of the dialogue with Member States and the technical discussions of already launched proposals;
17. SUPPORTS actions leading to further simplification of the EU cross-border trade, reduction of administrative burdens for businesses as well as tax authorities and a more efficient fight against VAT fraud, in particular through the improvement of effectiveness and efficiency of registration of VAT liable taxpayers within the EU and of the use of taxpayers' data; CALLS ON the Commission to provide analysis of potential measures to further reduce the need for multiple registrations in different Member States and to consider, as appropriate, issuing proposals in this respect; RECOGNISES, when considering the extension of the VAT One Stop Shop, the need for an assessment of the functioning and, if appropriate to ensure its effectiveness, an adjustment of the recently adopted EU VAT rules including the currently non-mandatory use of the VAT Import One Stop Shop for cross-border sales of goods or services;

18. UNDERLINES the importance of accurate and efficient reporting of necessary information from business to tax authorities for more efficient and fraud-proof taxation; WELCOMES the initiative announced by the Commission to modernise reporting obligations for cross-border transactions within the EU and to examine the need to further harmonise reporting obligations for domestic transactions, while ensuring accuracy and security of reported information; CALLS ON the Commission to continue the dialogue with Member States and stakeholders on the future structure of reporting obligations; SUPPORTS the Commission's intention to examine the need for further expanding e-invoicing; HIGHLIGHTS that the use of new technologies should be explored to improve the efficiency of reporting and control of data;
19. WELCOMES the Commission's intention to examine the need to adapt the VAT framework to the platform economy, including a thorough assessment of the VAT treatment of the transactions between users facilitated by the platforms, of the nature of services provided by the platforms and of the potential role of platforms in the collection of VAT;
20. WELCOMES the Commission's intention to propose soon, where appropriate, to simplify and update rules for taxpayers, notably VAT rules for financial services and travel agents; SUPPORTS the objective of the Commission to ensure a level playing field within the Union and towards third countries; HIGHLIGHTS that the competitiveness of and the impact of the COVID-19 crisis on the respective sectors and the increase of the outsourcing of input services by financial, insurance and other operators with limited right to input VAT deduction need to be taken into consideration;

21. RECOGNISES the important role of the passenger transport sector contributing to the objectives of the European Green Deal; UNDERLINES the importance of the international air and maritime transport sector for EU citizens, economy and connectivity; RECALLS the Council Conclusions of 5 December 2019 on an energy taxation framework; INVITES the Commission to take into account specificities, exemptions, international dimension and the ongoing impact of the COVID-19 crisis on the transport sector, in the work to be undertaken on the VAT treatment of passenger transport;
22. APPRECIATES the important role and contribution of Eurofisc in administrative cooperation and in combatting cross-border VAT fraud; INVITES the Commission to evaluate the implementation of current measures to strengthen administrative cooperation in the area of VAT; SUPPORTS the objective of the Commission to analyse how to improve Eurofisc further; LOOKS FORWARD to the impact assessment of possible improvements (Eurofisc 2.0), which should cover also the issues of data protection and security, costs and revenues aspects and the use of new technologies and IT-tools; and STRESSES in this context the importance to maintain its flexibility and operability;
23. WELCOMES the objective to reinforce verifications of cross-border transactions and boost cross-border investigations and to switch, where appropriate and feasible, to automated data sharing through interoperable electronic systems and to facilitate harmonisation and standardisation of data; STRESSES the utmost importance of data protection, data security and data quality, including, where appropriate, the availability of accurate and reliable real time data;

24. SUPPORTS the ongoing exploratory technical dialogue with third countries on possible avenues for EU-level agreements on administrative cooperation, combating fraud and recovery of claims in the area of VAT; and LOOKS FORWARD to receiving, in due course and as appropriate, a Commission proposal for a mandate to begin formal negotiations with most relevant economic partners of the EU; STRESSES that the needs of Member States should be considered carefully when setting the criteria to be applied, including as regards reciprocity and access to data in such future agreements in this area between the European Union and third countries. In particular, in any possible future agreement the exchange of targeted information through the Eurofisc network established under Chapter X of Council Regulation (EU) No. 904/2010 should be limited to what is strictly necessary and possible to combat cross-border fraud between the Union and the third country and that such aspects should be clearly defined in any future mandate for negotiations;
25. SUPPORTS the Commission's intention to organise a Conference on data analytics and digital solutions as a platform for the exchange of views and experiences;
26. NOTES the Commission's intention to submit a proposal to revise the competences of the VAT Committee and establish a VAT Comitology Committee; CONFIRMS the need for an in-depth discussion on finding the best way to ensure further legal certainty and uniform application of VAT rules in the EU, to the benefit of both tax authorities and taxable persons, with a particular emphasis on VAT issues arising in case of cross-border economic activities in several Member States;

27. RECOGNISES, that double or non-taxation in various cross border cases can be an issue for taxpayers and tax authorities; CALLS ON the Commission continue the conceptual dialogue with Member States and Stakeholders on ways which respect the principle of subsidiarity and the role of judiciary to prevent and resolve VAT disputes, either by improving already existing mechanisms or by exploring other solutions including a dispute prevention and resolution mechanism for VAT;
28. TAKES NOTE of the ongoing discussion on various aspects of the legislative proposals on a definitive VAT system for cross-border trade of goods and on VAT rates.

IV. Excise duties

29. NOTES that a number of legal acts in the area of excise duties were recently adopted by the Council; INVITES the Commission to adopt the delegated acts and the implementing acts that are necessary to apply these legal acts in practice;
30. EMPHASISES that excise duties constitute a significant source of revenues for Member State budgets, the appropriate framework of excise duty contributes to proper functioning of the EU internal market, and the excise duties also help to achieve other policy objectives of public interest, such as in the areas of health, environment protection, and transport, while respecting general principles of the Union law and the relevant international treaties;
31. RECALLS, in this context, the Council conclusions of 5 December 2019 on an EU energy taxation framework and the conclusions of 2 June 2020 concerning the structure and rates of excise duty applied to manufactured tobacco and relevant parts of the conclusions of 5 December 2017 on the Commission report on Directive 2008/118/EC;

32. REITERATES its call upon the Commission to take those Council conclusions into account, while continuing its work aimed at improving the overall functioning of rules on excise duties and on the basis of up to date information and after carrying out necessary technical analyses, public consultations and impact assessments, presenting relevant legislative proposals to the Council which address, as appropriate, issues set out in these conclusions;
33. WELCOMES the intention of the Commission to submit a proposal on e-commerce aspects and cross-border acquisitions of excise goods by private individuals concerning excise duties and a proposal for the revision of the energy taxation framework. Under consideration of the relevant Council conclusions of 2 June 2020 concerning the structure and rates of excise duty applied to manufactured tobacco the Commission is invited to present its legislative proposal for structure and rates of excise duty applied to manufactured tobacco in 2021;

V. Administrative cooperation

34. CONFIRMS its view that improving administrative cooperation and capacities, as well as establishing deeper trust between the competent authorities of Member States in the field of taxation remains an important part of the comprehensive EU effort to curb tax fraud, tax evasion and tax avoidance, which are among the major threats to public revenues;
35. WELCOMES that the Commission is taking into account the Council conclusions of 2 June 2020 on the future evolution of administrative cooperation in the field of taxation in the EU, as well as the objectives set out in Directive 2011/16/EU; and that in order to address the most urgent issues as a priority, such as challenges arising from the digital platform economy, as well as to amend and enhance a number of existing provisions on exchange of information, the Commission has decided to phase-in the legislative proposals in order to facilitate the legislative progress, as requested by the Council;

36. RECOGNISES that the rapid development and increasing worldwide use of alternative means of payment and investment – such as crypto-assets and e-money – may undermine the progress made on tax transparency in recent years and pose substantial risks of tax fraud, tax evasion and tax avoidance; and that it is important to discuss at technical level on how to update the rules on administrative co-operation within the EU and on a global level in order to address these potential risks;
37. WELCOMES the intention of the Commission as expressed in the Action Plan for fair and simple taxation to propose further amendments to Council Directive 2011/16/EU on administrative cooperation in the field of taxation, and in particular concerning administrative co-operation of tax authorities with regard to the exchange of tax-relevant data for the abovementioned alternative means of payment and investment; STRESSES that this work should be carried out consistently with the OECD;
38. BELIEVES that it is of utmost importance to ensure that the EU system for administrative co-operation is developed in such a manner that reporting obligations do not result in disproportionately increased administrative burden on the business entities concerned, while ensuring that tax authorities receive relevant information from taxpayers in an effective manner;

39. STRESSES that in order to make efficient and effective use of tax-payers' data, it is important to have a high quality, harmonised, standardised, secured and automated exchange of data that contributes to the comparability and interoperability for the purpose of administrative co-operation, in the areas of both direct and indirect taxation; INVITES the Commission to analyse how to create an efficient and feasible legal framework for both tax authorities and businesses, while considering implementation and maintenance costs;
40. EMPHASISES that exchange of information between the competent authorities of Member States and between Member States and Third Countries is being conducted exclusively and necessarily for important reasons of public interest, such as curbing tax fraud, tax evasion and tax avoidance, that therefore due consideration should be given to further alignment between EU rules on administrative co-operation in the area of taxation and rules on personal data protection; and that the objective to protect personal data should not impede protection of public interests nor undermine the long-term efforts of the Council to ensure tax transparency;

VI. Tax administration and tax compliance

41. NOTES the expected Commission initiative on taxpayer rights, AGREES that the form of a communication is an appropriate first awareness raising step in this area and CALLS to conduct further analysis in this respect, to facilitate any future debate on this issue;
42. RECOGNISES the need to further work on improving the efficiency of tax compliance control in the EU, and, given the rapid development of technology, to develop standard patterns or mechanisms of data processing for the purposes of revenue collection and identification of risks of tax fraud, so that the utility and benefits of holding and processing of data collected by tax authorities can be maximised;

43. NOTES that the Commission has to evaluate by 30 June 2024 the implementation of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union and present a report to the Council, which may be accompanied by a legislative proposal;
44. WELCOMES the intention of the Commission to propose an initiative on an EU cooperative compliance framework to facilitate and promote tax compliance for businesses, based on greater cooperation, trust and transparency amongst tax authorities, taking account of the relevant work at the OECD;

VII. EU Tax coordination: Tax good governance in the EU and beyond

45. NOTES the Commission Communication on Tax Good Governance in the EU and beyond of 15 July 2020 and REITERATES the importance of the principles of tax good governance in the EU and beyond and the continuation of the successful work undertaken so far in the context of the Code of Conduct (Business Taxation) including on the EU list of non-cooperative jurisdictions for tax purposes that should be further pursued and enhanced, where necessary;
46. WELCOMES the discussion on the revision of the mandate which has started during the German Presidency; ENDORSES the way forward chosen for the ongoing discussions in the Code of Conduct Group (Business Taxation); REITERATES its readiness to continue to discuss the scope of the mandate as soon as there are relevant developments at international level but no later than by the beginning of 2022 and AGREES that the ongoing discussion on the scope of the mandate should also cover features of tax systems that have general application and that may have harmful effects;

47. REITERATES the important role played by the Code of Conduct Group (Business Taxation) supported by the General Secretariat of the Council and with the assistance of the European Commission services in the context of the EU list of non-cooperative jurisdictions, which has led to concrete results based on a cooperative approach with third countries and jurisdictions and REQUESTS to continue its work and STRESSES the importance of the fair treatment within the EU and with respect to third countries and jurisdictions in this regard and of a continuous dialogue with third countries as well as with the OECD;
48. EMPHASISES the importance of a continued dialogue by the Group and its Chair with international actors such as the OECD or jurisdictions concerned in the context of the ongoing work on the EU list of non-cooperative jurisdictions for tax purposes in order to ensure a regular and consistent communication;
49. WELCOMES the progress achieved by the Code of Conduct Group under the German Presidency and APPROVES the report as set out in document 13151/20 and ADD 1-5;

VIII. Concluding statements

50. RECALLS the EU support for a decisive action in the global consensus-based reform of most pressing issues in the areas of taxation and fight against tax fraud, evasion and avoidance and its readiness to take appropriate action at EU level and beyond, as set out in these conclusions;
51. WELCOMES the progress made so far, APPROVES the ECOFIN report to the European Council on tax issues as set out in document 13017/20 and AFFIRMS to continue work in the Council on that basis; ASKS the Council High Level Working Party on tax issues to coherently follow-up on these conclusions, while taking into account relevant work in other international organisations and fora (including the G20 and the OECD) and facilitating the integration of wider tax priorities in the EU's relations with third countries;

52. INVITES the European Commission to present, on the basis of up to date information and after carrying out relevant technical analyses, public consultations and impact assessments, relevant legislative proposals to the Council, with the objective of addressing the tax policy priorities as set out in these conclusions.
