



Brussels, 18 November 2019
(OR. en)

14045/19

FISC 437
ECOFIN 992
UD 294

'I/A' ITEM NOTE

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

Subject: Draft Council conclusions on the European Court of Auditors' Special Report No 12/2019: "E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved"
– Adoption

1. On 11 June 2019, Members of the Court of Auditors adopted the Special Report No 12/2019 entitled : "E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved". The report has been published in the *Official Journal of the European Union* on 17 July 2019¹.
2. On 4 September 2019, under the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors² , the Permanent Representatives Committee instructed the Working Party on Tax Questions (Indirect Taxation - VAT)³ to examine this report according to the rules laid down in the abovementioned conclusions.

¹ OJ C 241, 17.07.2019, p. 8.

² 7515/00 FIN 127 + COR 1.

³ ST 11706/19.

3. On 24 September 2019, representatives of the Court of Auditors presented the Special Report No 12/2019 to the WPTQ. At its meetings on 23 October and 11 November 2019, the WPTQ examined draft Council conclusions on the report. All delegations support the text of the conclusions as set out in the Annex to this note.
 4. The Permanent Representatives Committee is therefore invited to recommend that the Council (ECOFIN) adopt these conclusions as an "A" item on 5 December 2019.
-

Draft

Council conclusions on the European Court of Auditors' Special Report No 12/2019

**"E-commerce: many of the challenges of collecting VAT and customs duties
remain to be resolved"**

THE COUNCIL OF THE EUROPEAN UNION:

- (1) WELCOMES the Special Report No 12/2019 by the European Court of Auditors (hereafter referred to as "the Court") entitled "E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved"; and TAKES NOTE of the findings set out therein;
- (2) STRESSES that the fast evolving e-commerce landscape and dynamic growth of cross-border e-commerce of goods and services, both within the EU and globally, brings opportunities for economies of Member States and the EU as a whole;
- (3) NOTES, however, that this growth also presents challenges for regulatory, control and enforcement frameworks because Member States should be able to control and collect VAT and customs duties despite the remote location of the suppliers;
- (4) RECALLS the Council conclusions of 25 May 2016 on the Commission 2016 Action Plan on VAT⁴, where the Council underlined the importance of administrative cooperation and information exchange between tax authorities in the fight against VAT fraud;

⁴ 9494/16.

- (5) RECALLS the Council Conclusions of 16 April 2018 on the Court of Auditors' Special Report No 19/2017 on Import Procedures: Shortcomings in the Legal Framework and an Ineffective Implementation Impact the Financial Interests of the EU⁵, where the Council took note of Recommendation 9, which concerned among other things introducing checks on customs electronic release systems to block the acceptance of incorrect import declarations, and emphasized the ongoing work conducted by the Commission and the Member States on low value consignments and e-commerce;
- (6) UNDERLINES, in this context, the importance of an effective and coherent EU regulatory framework, in particular the VAT Directive and the Union Customs Code, in order to ensure collection of VAT and customs duties for budgets of the Member States and the EU;
- (7) RECALLS that the Council has recently adopted a number of legislative acts that already to a large extent address the concerns raised by the Court regarding the improvement of the current arrangements for collecting VAT and customs duties on e-commerce; RECALLS in particular the recent adoption of the VAT e-commerce Directive and the amendments of the Regulation on administrative co-operation;
- (8) RECALLS also the general approach reached within the Council on the VAT e-commerce implementing package laying down rules needed to ensure the functioning of the VAT rules for e-commerce;
- (9) STRESSES the importance of the ongoing negotiations within the Council on the legislative proposals on mandatory transmission and exchange of VAT-relevant payment data; and HIGHLIGHTS the objective of these proposals to enhance the effectiveness of controlling VAT collection in connection with e-commerce by allowing Member States to quickly detect non-compliance and VAT fraud;

⁵ 7474/18

- (10) HIGHLIGHTS that the effectiveness of the regulatory framework, administrative cooperation and the control of cross-border e-commerce should be evaluated in a more timely manner after these reforms have been implemented; and
- (11) RECALLS the importance that any future work should continue to take into account the general principles of Union law, in particular the principles of proportionality and subsidiarity, and the full respect for the respective competences of the Union and the Member States;
- (12) TAKES NOTE of the statement by the Court that undervaluation remains to be addressed despite the adoption of the e-commerce reform; but EXPECTS the abolition of the VAT exemption on small consignments and the proposed future control based on exchanged payment data to be very useful in tackling the problem;
- (13) TAKES NOTE of the Court's recommendations concerning the effectiveness of the regulatory framework; INVITES the Commission, together with Member States, to explore thoroughly the possibility to use suitable technology-based systems to tackle VAT fraud on e-commerce as recommended by the Court while taking into account cost-efficiency for both tax authorities and enterprises;
- (14) TAKES NOTE of the Court's recommendations to strengthen the use of the administrative cooperation; UNDERLINES the importance of exchanging information relevant to e-commerce and the full and timely use of both the intra-EU administrative cooperation arrangements provided for in the EU legislation and information exchange arrangements with third countries provided in international agreements; CONFIRMS also the importance of providing timely feedback to the fraud signals linked to e-commerce received from other national tax and customs authorities in Eurofisc;

- (15) ACKNOWLEDGES that the EU–Norway Agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT is an important step in exchanging information with third countries; INVITES the Commission to explore opportunities for new agreements on mutual assistance arrangements in VAT and recovery with third countries;
- (16) INVITES the Commission to reflect on appropriate measures to improve the functioning of the mutual administrative assistance agreements in customs and tax matters, with a view to reaching their full and timely potential, as well as to reflect on innovative methods of international cooperation and mutual administrative assistance in matters related to customs union, including an enhanced and automated exchange of information, as necessary and with appropriate governance and safeguards, targeted to address the challenges posed by e-commerce for the collection of customs revenue; EMPHASISES the importance that Member States continue to provide the Commission with the necessary information;
- (17) UNDERLINES the importance of ensuring effective controls on cross border e-commerce, especially on businesses applying the current Mini One Stop Shop for electronically supplied and telecommunication services and the future One Stop Shop arrangements for distance sales of goods and services to consumers, and in relation to compliance with low value consignment customs relief, including monitoring the authorised economic operators; TAKES NOTE of the recommendations by the Court to the Commission and to Member States to increase the effectiveness of such controls; ENCOURAGES Member States to support the Commission in assessing their Authorised Economic Operator (AEO) monitoring processes;

- (18) TAKES NOTE of the Court's recommendations to improve the enforcement of collection of VAT and customs duties; ENCOURAGES Member States to use more extensively, where appropriate, the existing instruments on mutual assistance for the recovery of claims relating to tax and customs duties also in the field of e-commerce; ENCOURAGES Member States to also take into account the recommendations on producing estimates of the compliance VAT gap on e-commerce, where possible with specific attention to VAT fraud; and INVITES the Commission to assist in developing a methodology for such estimates especially as regards VAT fraud;
- (19) WELCOMES the fact that the Commission has accepted and is committed to implementing nearly all of the recommendations by the Court of Auditors.
-