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From: General Secretariat of the Council
To: European Council
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Subject: Ecofin report to the European Council on tax issues

1. The Ecofin Council was invited to report back to the European Council on various tax issues as mentioned, in particular in its conclusions of March and June 2012, May 2013, December 2014 and October 2017.
2. A draft Ecofin report to the European Council on tax issues was prepared and endorsed by the Working Party on Tax Questions (High Level) on 1 June 2023 for submission to the Council on 16 June 2023 via Coreper. It was also agreed that the usual factual updates (parts in square brackets) would be made by the GSC after the Council meeting before the release of the final version of the report.
3. The Council (Ecofin) has approved the report as an “A”-item on 16 June 2023. As agreed, the GSC has made factual updates in the report in the Annex to this note, which is being made available to the European Council.

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

A. INTRODUCTION

1. This Council report provides an overview of the progress achieved in the Council during the term of the Swedish Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation. It has been prepared on the basis of discussions in the Working Party on Tax Questions (High Level) (HLWP) covering horizontal tax policy issues of strategic relevance, in line with its mandate.
2. This report reflects the state of play of relevant Council work and covers issues mentioned in various European Council conclusions since 2012¹, the statement of the Members of the European Council of 25 March 2021², the Council conclusions in the VAT area of 2012³ and of 2016⁴, the Council conclusions on “Responding to the challenges of taxation of profits of the digital economy” of 2017⁵, the Council Conclusions of 2020 on the future evolution of administrative cooperation in the field of taxation in the EU⁶, as well as the Council conclusions of 27 November 2020 on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond⁷.

¹ Doc. EUCO 4/3/12 REV 3 (points 9 and 21), EUCO 76/12, EUCO 75/1/13 REV 1, EUCO 14/17 (point 11), EUCO 10/20 (points A29 and 147) and EUCO 13/20.

² Doc. ST 18/21.

³ Doc. ST 9586/12.

⁴ Doc. ST 9494/16.

⁵ Doc. ST 15175/17.

⁶ Doc. ST 8482/20.

⁷ Doc. ST 13350/20.

3. The Swedish Presidency pursued the work on key files, including the amendment of the Directive on administrative cooperation for tax purposes, the proposals comprised by the “VAT in the Digital Age” package, the revision of the Energy Taxation Directive, the update to the EU list of non-cooperative jurisdictions for tax purposes, as well as the proposal for a Directive to prevent the misuse of shell entities for tax purposes.
4. More specifically, the Council:
 - a) reached a general approach on the proposal for a Council Directive amending Directive 2011/16/EU (DAC8);
 - b) and made progress on
 - the proposals comprised by the “VAT in the Digital Age” package;
 - the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast); and
 - the proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes.
5. The Code of Conduct Group (Business Taxation) also further continued its work on the various matters falling within its current mandate, including on the EU list of non-cooperative jurisdictions for tax purposes, as set out in its six-monthly report⁸. The EU list was most recently updated by the Council on 14 February 2023⁹.
6. More detailed information on individual dossiers can be found below.

⁸ Doc. ST 9875/23 ADD 1-5.

⁹ OJ C 64, 21.2.2023, p. 17.

B. EU TAX LEGISLATION

1) Direct Taxation

Misuse of shell entities

7. On 22 December 2021, the Commission submitted a proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (the “Unshell” proposal)¹⁰.
8. The objective of the proposal is to prevent tax avoidance and evasion through actions by undertakings without minimal substance, and enhance the proper functioning of the internal market. The proposal aims to fight against the misuse of shell entities for improper tax purposes and to ensure that shell companies in the EU that have no or minimal economic activity are unable to benefit from tax advantages.
9. On 6 January 2022, at the HLWP, the proposal was presented to delegations and the French Presidency announced its intention to launch the discussions in the Council on this file. The technical analysis of the proposal was carried out in the WPTQ (Direct Taxation) on 11 March, 1 April, 6 May, 23 May and 9 June 2022. The first round of article-by-article analysis of the proposal was completed on 23 May.
10. Under the Czech Presidency, the technical analysis in the WPTQ continued on 11 July, 27 September and 22 November 2022. Progress was made on exploring the way forward as regards tax consequences and compromise texts were submitted on parts of the proposal, such as the identification of entities not having minimum substance as well as on exchange of information. In principle, most delegations supported the objectives of the proposal, but were of the view that further important technical work will be necessary before an agreement could be feasible.

¹⁰ Doc. 15296/21.

11. Under the Swedish Presidency, the file was discussed in the WPTQ on 22 January, 21 February and 22 March 2023, and in the HLWP on 25 April 2023. The objective of the Presidency was to make as much progress on this file as possible, focusing inter alia on finding accurate substance criteria and tax consequences. The Presidency prepared partial compromise texts and background notes on several aspects of the draft Directive, including a timeline on reporting deadlines, as well as a compromise text covering the whole Directive. Progress was made on a number of controversial issues, such as the scope, criteria of minimum substance, tax consequences and tax residency certificate. The HLWP¹¹ provided guidance for further work on these and also other outstanding issues. Further discussions will be needed in order to find compromise solutions on outstanding issues, also with the common objective to limit administrative burdens for both taxpayers and tax administrations. Delegations stressed the interlinkages between different parts of this complex Directive, meaning that an orientation chosen in one part of the Directive might influence the solution in other parts.

2) **Indirect Taxation**

a) VAT in the Digital Age

12. On 8 December 2022, the Commission issued its package “VAT rules for the digital age”, containing three proposals:

- a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age¹²;
- a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age¹³; and
- a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes¹⁴.

¹¹ Doc. WK 4309/2023.

¹² Doc. ST 15841/22.

¹³ Doc. ST 15842/22.

¹⁴ Doc. ST 15843/22.

13. The package has three objectives. Firstly, it sets out to modernise the VAT reporting obligations by introducing digital reporting requirements based on electronic invoicing. Secondly, it intends to address the challenges of the platform economy by updating the applicable VAT rules. And thirdly, it seeks to address administrative burden by moving towards a single VAT registration.
14. The Commission presented its package at a Working Party meeting under the Czech Presidency, and the Swedish Presidency started its work on the package, which it deemed a priority, by devoting two meetings to a broad exchange of views on the aims and directions proposed by the Commission to guide the further technical discussions on the package.
15. The Presidency organised four more meetings on the package to deepen the understanding of the concepts, structure and functioning of the proposed new rules, and to analyse the legal text of the amending provisions to give effect to the new rules.
16. After this analysis, the Presidency presented compromise texts on all three aspects of the proposals, which were welcomed by the delegations as a solid basis for further work.
17. To steer the further work on this file, on 16 June 2023 the Council held a policy debate on the proposals, which was prepared by the HLWP on 1 June 2023.

b) Revision of the Energy Taxation Directive (ETD)

18. On 14 July 2021, the Commission submitted a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)¹⁵, ('the ETD proposal').
19. The ETD proposal is part of the "Fit for 55" package¹⁶, which aims at implementing the ambitious EU targets to reduce emissions by at least 55% by 2030, as compared to 1990 levels, and to achieve climate neutrality by 2050. The package consists of a set of inter-connected proposals, which all drive towards the same goal of ensuring a fair, competitive and green transition by 2030 and beyond.

¹⁵ Doc. ST 10872/21.

¹⁶ Doc. ST 10849/21.

20. The ETD proposal aims at the following objectives:
- a) providing an adapted framework contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal. This would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU efforts to reduce emissions;
 - b) providing a framework that preserves and improves the EU internal market by updating the scope of energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
 - c) preserving the capacity to generate revenues for the budgets of the Member States.
21. On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal¹⁷. On 6 December 2022, the Council (Ecofin) held a policy debate¹⁸ on the ETD proposal and gave political guidance on the way forward. In general, the Ministers supported the more flexible Presidency approach and asked to find solutions to open issues.
22. Building on the progress made by the previous Presidencies, the Swedish Presidency continued work on the ETD proposal which was discussed in the WPTQ on 2 February, 27 March and 11 May 2023. The Presidency submitted compromise texts and background notes on specific topics. The outstanding issues were analysed, including as regards taxation of aviation and maritime sectors, including fishing, as well as electricity. Furthermore, the Presidency launched a discussion on the new minimum levels of taxation of fuels for different uses and electricity.
23. The Presidency managed to converge views and to find compromise solutions. Delegations supported several discussed changes, but some delegations were not yet in a position to support the Presidency text or had scrutiny reservations. Thus, further work is needed in order to reach a well-balanced compromise on the outstanding issues that takes into account the concerns of the relevant Member States.

¹⁷ Doc. ST 9874/22.

¹⁸ Doc. ST 14736/22.

3) Administrative cooperation in the field of taxation

a) Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 8)

24. The Council in its 27 November 2020 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” recognised that the rapid development and increasing worldwide use of alternative means of payment and investment – such as crypto-assets and e-money – might 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 was important to discuss at technical level on how to update the rules on administrative cooperation within the EU and on a global level in order to address these potential risks¹⁹.
25. On 7 December 2021, the Council indicated in the report to the European Council on tax issues that it expected the Commission to table in 2022 a legislative proposal on further revision of the Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC)²⁰ concerning exchange of information on crypto-assets and tax rulings for wealthy individuals²¹.
26. A proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC 8) was presented by the Commission on 8 December 2022²².

¹⁹ Doc. ST 13350/20, point 36.

²⁰ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

²¹ Doc. ST 14767/21, point 59.

²² Doc. ST 15829/22 + ADD1 – ADD5.

27. The key objectives of this legislative proposal are the following:

- a) to extend the scope of automatic exchange of information under DAC to information that will have to be reported by crypto-asset service providers on transactions (transfer or exchange) of crypto-assets and e-money. Expanding administrative cooperation to this new area is aimed at helping Member States to address the challenges posed by the digitalisation of the economy. The provisions of DAC 8 on due diligence procedures, reporting requirements and other rules applicable to reporting crypto-asset service providers will reflect the Crypto-Asset Reporting Framework (“CARF”) and a set of amendments to the Common Reporting Standard (“CRS”), which were prepared by the OECD under the mandate of the G20²³. The G20 endorsed the CARF and the amendments to CRS, both of which it considers to be integral additions to the global standards for automatic exchange of information²⁴.
- b) to extend the scope of the current rules on exchange of tax-relevant information by including provisions on exchange of advance cross-border rulings concerning high-net-worth individuals, as well as provisions on automatic exchange of information on non-custodial dividends and similar revenues, in order to reduce the risks of tax evasion, tax avoidance and tax fraud, as the current provisions of DAC do not cover this type of income;
- c) to amend a number of other existing provisions of DAC. In particular, the proposal seeks to improve the rules on reporting and communication of the Tax Identification Number (TIN), in order to facilitate the task of tax authorities of identifying the relevant taxpayers and correctly assessing the related taxes, and to amend DAC provisions on penalties that are to be applied by Member States to persons for the failure of compliance with national legislation on reporting requirements adopted pursuant to DAC.

²³ <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>

²⁴ G20 Bali Leaders’ Declaration of 15-16 November 2022, point 31.

(https://www.g20.org/content/dam/gtwenty/gtwenty_new/about_g20/previous-summit-documents/2022-bali/G20%20Bali%20Leaders%27%20Declaration,%2015-16%20November%202022.pdf)

28. The opinion of the European Economic and Social Committee on this legislative proposal was delivered on 22 March 2023²⁵. The opinion of the European Data Protection Supervisor was issued on 3 April 2023²⁶. The opinion of the European Parliament is pending.
29. As announced at the HLWP meeting on 31 January 2023, the Swedish Presidency has prioritised work on this file and has invited Member States to conclude the necessary preparatory work in time for the meeting of the Council (Ecofin) in May 2023. Nine meetings of the WPTQ have taken place (9 and 26 January, 22 and 23 February, 15 and 30 March, 3 and 19 April 2023, as well as the HLWP meeting on 25 April).
30. The Council (Ecofin), at its meeting on 16 May, reached a general approach on the text of the draft Directive²⁷, with a view to adopting the Directive, subject to receiving the opinion of the European Parliament and legal-linguistic revision.

b) Automatic exchange of tax-relevant information with non-EU jurisdictions

31. During the Swedish Presidency term, discussions and technical work continued as regards the state of play, risks and opportunities in the area of tax information exchange with non-EU jurisdictions, in particular covering aspects relating to the personal data protection framework and its correlation with work on international administrative cooperation.
32. This work will continue and will also build on the discussions on these matters that were held during previous Presidency terms²⁸. The aim is to ensure the continuous functioning of the system of international exchange of information with non-EU jurisdictions, which is necessary for important reasons of public interest.

²⁵ Doc. ST 8088/23.

²⁶ Doc. ST 8283/23.

²⁷ Doc. ST 8730/23.

²⁸ See doc. ST 15506/22, points 46 to 48; doc. 9970/21, points 81 - 82 ; doc. 14651/21, points 50 - 59.

c) Administrative cooperation with other non-EU countries in the area of VAT

33. At the HLWP meeting on 1 June 2023, the Commission briefed delegations on the following issues:

- a) the ongoing work in view of the forthcoming third meeting of the Trade Specialised Committee on VAT Administrative Cooperation and Recovery of taxes under the EU-UK Trade and Cooperation Agreement;
- b) the state of play of negotiations (on the basis of the authorisation and the negotiating directives adopted by the Council)²⁹ with the authorities of Norway to amend the agreement on administrative cooperation, combating fraud and recovery of claims in the field of VAT;
- c) the state of play of the exploratory contacts that took place with the authorities of Australia, Canada, Japan, New Zealand, as regards possibilities for further work towards administrative cooperation in the area of VAT;
- d) negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding (possible future administrative cooperation framework between the EU and People's Republic of China in the area of VAT)³⁰. The Commission indicated that these negotiations are still on hold.

²⁹ Council Decision (EU) 2022/1311 of 17 June 2022 authorising the opening of negotiations with the Kingdom of Norway to amend the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax (OJ L 198, 27.7.2022, p. 14) and doc. 9643/22.

³⁰ On 10 March 2021 the Council approved, with a number of observations (Doc. CM 1978/21 LIMITE, with further details set out in doc. ST 6351/21 LIMITE) that the Commission enter into negotiations with the authorities of the People's Republic of China, in view of the conclusion of a non-binding Memorandum of Understanding.

34. It is recalled that, concerning the negotiation and conclusion of non-binding instruments under EU law (such as the abovementioned Memorandum of Understanding), and in accordance with the requirements of the Treaty on the EU (Article 16 (1) TEU in particular), policy-making remains a prerogative of the Council. It is therefore for the Council to assess whether it is in the interest of the Union to enter into such discussions (negotiations) on a possible non-binding instrument. Moreover, following the Court of Justice judgment in case C-660/13 (Swiss MoU), the Secretaries General of the Council, the Commission and the European External Action Service agreed, in 2017, on the Arrangements for non-binding instruments³¹. These Arrangements apply to all non-binding instruments irrespective of the policy field and of who represents the Union in the negotiations with the third party or parties and irrespective of their denomination or form. It is understood that the Commission will continue to regularly update the Member States on the progress in these negotiations (including on any further contacts with non-EU countries in this field), and will revert to the Council at the end of the negotiations to seek, in accordance with Union law, the Council's authorisation of the signature of the non-binding instrument on behalf of the Union.

d) Regulation on administrative cooperation in the field of excise duties

35. Council Regulation (EU) No 389/2012³² lays down the legal basis for administrative cooperation between Member States in the field of excise duties. Within the context of administrative cooperation, Member States currently exchange the data of economic operators included in national registers using a computerised system with a central register operated by the Commission, but only as regards the economic operators moving goods under “duty suspension”.

³¹ Doc. ST 15367/17.

³² Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

36. Under Chapter V of Council Directive 2020/262³³, as from 13 February 2023 this computerised system is to be used also for “duty paid” movements. To align the procedure for exchanging the data of economic operators moving goods under “duty paid” with the procedure for goods under “duty suspension”, on 24 October 2022³⁴ the Commission submitted a proposal to amend the 2012 Regulation on administrative cooperation in the field of excise duties.
37. Following the agreement reached at working party level, and the completion of the consultation of the European Parliament and the European Economic and Social Committee, the Council, under the Swedish Presidency, adopted the proposed amendments on 30 January 2023³⁵.

e) Fiscalis programme for cooperation in the field of taxation

38. The Fiscalis programme aims at supporting tax authorities to enhance the functioning of the internal market, foster competitiveness, fight tax fraud, tax evasion and tax avoidance and improve tax collection. In April 2023, the Commission informed the HLWP on the results of the negotiations of the Commission to conclude agreements for the participation of Albania, Bosnia and Herzegovina, Georgia, Kosovo*, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine in the Fiscalis programme. In June 2023, the Commission informed the HLWP about the Fiscalis Programme Annual Progress Report 2022³⁶.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

³³ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

³⁴ Doc. ST 13979/22.

³⁵ Council Regulation (EU) 2023/246 of 30 January 2023 amending Regulation (EU) No 389/2012 as regards the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes (OJ L 34, 6.2.2023, p. 1-3).

³⁶ Doc. ST 8228/23.

C. **TAX POLICY COORDINATION (non-legislative activities)**

Important work in the area of tax policy coordination (outside of the scope of EU legislation in the tax area) has been taken forward, as set out below.

1) **Code of Conduct Group (business taxation)**

39. The Code of Conduct Group (COCG) met on 1 February, 26 April and 2 June 2023; the subgroup on internal/external issues was convened on 12 and 24 January, 3 and 29 March and 25 May 2023.
40. On the 1st of February, the Code of Conduct Group elected a new Chair, Ms María José Garde Garde, for a period of two years to succeed Ms Lyudmila Petkova.
41. The biannual revision of the EU list of non-cooperative jurisdictions for tax purposes was approved by the Council on 14 February 2023 and published in the Official Journal on 21 February 2023³⁷.
42. A more extensive report can be found in the dedicated biannual Code of Conduct Group report³⁸.

2) **UN Resolution on promoting inclusive and effective international tax cooperation at the United Nations**

43. On 30 December 2022, the UN General Assembly formally adopted a Resolution on the promotion of inclusive and effective international tax cooperation (Resolution 77/244). With the resolution, UN Members requested the UN Secretary General to prepare a report (which the General Assembly will discuss at its 78th session in September 2023) to analyse all relevant international legal instruments, other documents and recommendations that address international tax cooperation, taking into full consideration existing international and multilateral arrangements. To this end, the Secretary-General launched a consultation in February 2023.

³⁷ OJ C 64, 21.2.2023, p. 17.

³⁸ Doc. ST 9875/23.

44. On 8 March 2023, the Fiscal Counsellors/Attachés supported the submission of an EU contribution. Following this support, a draft contribution was circulated and approved by the HLWP through an informal silence procedure on 15 March 2023. The contribution was subsequently signed by the Chair of the HLWP and submitted to the UN Secretariat jointly by the delegations of the EU and of Sweden³⁹.
45. During the discussion at the HLWP on 25 April 2023 delegations expressed their support for the coordination, as relevant, of positions on international tax cooperation by the EU Member States to be conveyed in UN fora, while avoiding duplication of work. The HLWP will continue to oversee developments. Based on its discussions, the HLWP intends to facilitate the procedure to enable such coordination and to agree the content where possible.

3) Russia's aggression against Ukraine

46. In the context of Russia's aggression against Ukraine with the participation of Belarus, the Council Working Party on Tax Questions examined a number of measures that Member States could pursue to support the implementation of EU restrictive measures and prevent their circumvention through tax cooperation instruments.
47. Firstly, Member States agreed on the need to discontinue all exchanges of information for tax purposes with the Russian Federation and Belarus. Secondly, EU Member States examined a number of measures aiming at enhancing the use of administrative cooperation and other instruments in the tax field in the context of the enforcement of the restrictive measures.
48. In this context, the Working Party on Tax Questions will continue to examine further developments concerning these measures, including the work taking place within the temporary platform created by the Commission on 3 June 2022 in the form of a Freeze and Seize Task Force subgroup on tax enforcement.
49. At the HLWP meeting on 1 June 2023, delegations took note of the update provided by the Commission on the work of this subgroup.

³⁹ Doc. ST 7564/23.

4) **International developments**

50. The HLWP was regularly informed of relevant international developments in the area of tax policy, notably in relation to the meetings of the G20 Finance Ministers and the OECD/G20 IF on BEPS.
51. Issues related to the US Foreign Account Tax Compliance Act (FATCA) have been regularly brought to the attention of delegations at the HLWP meetings. As regards the issue of the so-called accidental Americans, at the end of 2022, the US Internal Revenue Service released a notice that temporarily relaxes the rules for being determined as non-compliant because of missing TINs for the years 2022, 2023 and 2024. In January 2023, this development was brought to the attention of the HLWP. In April 2023, the members of the HLWP underlined that a permanent and wider solution is needed to prevent Financial Institutions in EU to be treated as non-compliant because of missing TINs in cases where it is not possible for the Financial Institutions to collect TINs.

5) **Tax in non-tax areas (TINTA)**

52. On 19 November 2013, the HLWP agreed that tax provisions in non-tax dossiers leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under an 'informal alert mechanism'. The systematic approach of bringing these cases to the attention of tax experts, with the support of the General Secretariat, has continued to ensure that Member States are alerted in a timely manner, including on negotiations of agreements between the EU and third countries. The issues which were monitored by the HLWP include the anti-corruption package, the amendment of the alternative investment funds managers Directive and the amendment of the capital requirements Directive implementing the Basel III framework.

6) **Draft Multilateral Convention on the International Tax Dispute Resolution Council**

53. On 10 March 2023 a draft Multilateral Convention on the International Tax Dispute Resolution Council was presented by a Fiscalis project group, making use of the possibility of an Alternative Dispute Resolution Commission of a permanent nature which is facilitated in Article 10 of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms. On 1 June 2023, the HLWP held an exchange of views on the way forward.
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