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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	Directive as regards disclosure of income tax information - Information from the Swedish delegation

Delegations will find in Annex a Note by the Swedish delegation on the Directive as regards disclosure of income tax information by certain undertakings and branches (public country-by-country reporting). This delegation will provide information to ECOFIN on 5 December 2019 (under legislative AOB) on this issue.



Government Offices of Sweden

Memorandum

3 December 2019

Ministry of Finance

Tax and Customs Department

Directive as regards disclosure of income tax information by certain undertakings and branches (public country-by-country reporting)

In April 2016 the Commission presented a proposal for a Directive as regards disclosure of income tax information (public country-by-country reporting).

According to the proposal certain multinational enterprises would be obliged to disclose publicly in a specific report information about the income tax they pay as well as other specified tax-related information on a country-by-country basis. The information that should be disclosed is similar to the information multinational enterprises should report to tax administrations according to Directive 2011/16/EU, as amended by DAC 4.

The legal basis of the Commission proposal is Article 50(1) TFEU. Consequently, the ordinary legislative procedure applies, under which legislation is adopted by qualified majority voting.

As noted by the Council Legal Service in its written opinion (ST 14384/16), the proposal aims at preventing corporate income tax avoidance and increasing transparency in the area of corporate taxation. Against this background and considering the case law of the European Court of Justice on what constitutes “fiscal provisions”, the Swedish view is that the proposal concerns tax matters and that the legal base should be Article 115 TFEU.

Taxes constitute a central part of the national sovereignty and the means by which countries can meet the expectations of their citizens. Moving away from unanimity on tax matters would, at least in the longer term, significantly reduce the powers of National Parliaments and Governments. It would reduce National Parliaments and Governments ability to design a tax system that reflects national circumstances and the will of the people as expressed in national elections.

Consequently, for Sweden it is very important that tax matters are dealt with in accordance with the special legislative procedure that inter alia requires unanimity and that they are discussed in the Council configuration responsible for taxes, i.e. ECOFIN. Sweden is also of the opinion that it is important to safeguard that tax provisions, to the greatest extent possible, are not included in EU acts other than those relating to tax.

The proposal on public country-by-country reporting is a recent example which highlights the importance of safeguarding that proposals on direct tax matters are made on the basis of Article 113 or 115 TFEU and thus that such proposals are subject to unanimity in the Council. For the reasons explained above, Sweden is of the view that the proposal should not be decided by the Competiveness Council until it has been thoroughly discussed in the Ecofin Council in the future.