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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council

Subject: Draft Council conclusions on Improvements to the current EU VAT rules for cross-border transactions
– Adoption

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.
2. In response to the VAT Action Plan, the Economic and Financial Affairs Council at its meeting of 25 May 2016 adopted a set of conclusions, which contained chapters "On Urgent Measures to Fight VAT Fraud and Tackle the VAT Gap", "On Short and Medium-term Actions in VAT Area and SMEs", "On the Definitive VAT System (Single EU VAT Area)" and "On VAT Rates".²

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

² See doc. 9494/16 FISC 86 ECOFIN 509.

3. The Council conclusions of 25 May 2016 Council left room for further work and debate in a number of areas.³ Therefore the Slovak Presidency initiated an exchange of views between Member States on identifying the needs for quick improvement of the current VAT rules governing cross-border supplies of goods, which could be done in view and in the context of the ongoing work on the definitive VAT system in the EU.
4. The draft text of the Council conclusions, resulting from the discussions at the meeting of the Working Party on Tax Questions (Indirect Taxation) of 27 September and the silence procedure that followed is set out in the Annex to this note.⁴
5. Against this background, the Committee of Permanent Representatives is invited to suggest that the Council adopt, subject to any remaining reservations being lifted, the abovementioned draft Council conclusions as set out in Annex to this note, as an "A" item on the agenda of a forthcoming meeting.

³ See doc. 9046/16 FISC 77 ECOFIN 404, point 10.

⁴ The UK delegation maintains a parliamentary scrutiny reservation.

DRAFT**COUNCIL CONCLUSIONS ON
IMPROVEMENTS TO THE CURRENT EU VAT RULES FOR CROSS-BORDER
TRANSACTIONS**

The Council of the European Union (ECOFIN):

1. RECALLS the Council conclusions of 25 May 2016 adopted in response to the Commission Communication 'Towards a single EU VAT area – Time to decide' (VAT Action Plan) and the Council conclusions of 15 May 2012 'On the Future of VAT';
2. TAKES NOTE of the most recent study on the VAT gap in the EU;
3. CONFIRMS that there is a need for further co-operation in a spirit of good understanding among tax administrations of EU Member States, as well as constructive relations between business and tax administrations to deepen tax compliance;
4. STATES, while the Commission work on the abovementioned areas is ongoing, that improvements to the current VAT system could be possible and necessary in the short term, in line with the objective of a simpler VAT system, which at the same time is more efficient, more robust, fraud-proof and tailored to the single market, and RECALLS that, in any future action, the following principles and legal considerations should be taken into account: cost-efficiency, proportionality, legal certainty, unanimity, data protection legislation, and compliance with the subsidiarity principle and with rules on the respective competences of the Union and the Member States;
5. RECALLS that further harmonisation in the area of VAT relating to cross-border transactions is needed and should be continued to be carried out in line with Article 113 of the TFEU;
6. NOTES that improvements to the current EU VAT rules could efficiently be made in selected areas by means of legislative proposals;

7. NOTES that any legislative initiatives in these areas should be addressed within the work on the definitive VAT system and, in the first legislative step phased-in as appropriate; and should not prevent the Commission from keeping to the expected timeline for work in this area;
8. STRESSES that it is of the utmost importance that, on one hand, the design of any potential simplification measures should reflect the objectives of tax fraud prevention and efficient tax control, and, on the other hand, should not lead to a disproportionate administrative burden for businesses;
9. ADOPTS the following conclusions:

I. VAT Identification Number; VIES Data

The Council:

10. INVITES the Commission to present a legislative proposal aimed at amending the relevant provisions of Directive 2006/112/EC on the common system of value added tax to the effect, that the valid VAT identification number of the taxable person or non-taxable legal person acquiring the goods, allocated by a Member State other than that in which dispatch or transport of the goods began, should constitute an additional substantive condition for application of an exemption in respect of an intra-EU supply of goods.
11. NOTES that such a requirement for a valid VAT identification number should also further contribute to increasing the quality and reliability of data in the VAT Information Exchange System (VIES), which is of crucial importance to Member States in the fight against VAT fraud.
12. CALLS, in this context, upon Member States to continue their efforts both to enhance the quality of data used for the identification of taxable persons for VAT purposes and to keep those data accurate and up to date, and INVITES Member States to exchange best practices as regards the process of VAT registration and de-registration.

II. Chain Transactions

The Council:

13. TAKES NOTE of the practical problems that Member States' tax authorities and businesses encounter when applying VAT rules relating to chain transactions including triangular transactions, due to a lack of harmonisation and national divergences between Member States in the interpretation of the words 'dispatched or transported by or on behalf of'.
14. INVITES the Commission to analyse and propose uniform criteria and appropriate legislative improvements which would lead to increased legal certainty and harmonised application of VAT rules when determining the VAT treatment of the transaction chain including triangular transactions.
15. NOTES that any uniform criteria should be based on the national practices that would best suit the objective sought.

III. Call-off Stock

The Council:

16. OBSERVES that differences exist in national VAT rules, when businesses operate call-off stock in cross-border trade, i.e. when a seller transfers the stock to a warehouse at the disposal of a known buyer in another Member State, where that buyer becomes the owner of the goods upon calling them off the warehouse.
17. NOTES that in the absence of harmonised VAT rules for call-off stock at EU level, divergences in national rules that permit simplification of VAT registration, treatment and reporting relating to such arrangements may lead to higher compliance and administrative costs for businesses and hinder appropriate tax controls by Member States' authorities.
18. INVITES the Commission to analyse and propose how to modify the current VAT rules in order to allow simplification for call-off stock to be applied in a more uniform manner in the EU.

19. NOTES that the Commission has already carried out an in-depth examination of the call-off stock issue, the results of which could represent a solid basis for further work.

IV. Proof of Intra-EU Supply

The Council:

20. TAKES NOTE of the work carried out by the Commission so far in relation to the proof of dispatch or transport of goods to another EU Member State required in order to exempt intra-EU supplies from VAT.
 21. IS OF THE VIEW that increasing the level of legal certainty for tax-compliant businesses would facilitate their operations, and that further work concerning the rules on exemption for intra-EU supplies would be especially useful.
 22. INVITES the Commission to continue exploring possibilities for a common framework of recommended criteria for the documentary evidence required to claim an exemption for intra-EU supplies.
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