COUNCIL OF THE EUROPEAN UNION

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	ECOFIN report to the European Council on Tax issues

1. The Council (ECOFIN) was invited to report back to the European Council on various tax issues mentioned, in particular in its conclusions of March and June 2012 and of 22 May 2013.

2. A draft ECOFIN Report to the European Council on Tax issues was prepared in the Council High Level Working Party on Tax issues (HLWP) on 19 November 2013, for submission to the Council via Coreper.

3. ECOFIN on 10 December 2013 endorsed the report as set out in the Annex, and agreed to forward it to the European Council on 19/20 December 2013.

ANNEX

ECOFIN REPORT TO THE EUROPEAN COUNCIL ON TAX ISSUES

1. This report covers various issues mentioned in the European Council Conclusions of 1/2 March 2012[1] devoted to growth, as well as in the European Council Conclusions of 28/29 June 2012 and the relevant Council Conclusions on the future of VAT and on the fight against tax fraud and tax evasion[2]. It gives an overview on the state of play of Council work regarding some key legislative proposals, which were specifically mentioned in the aforementioned conclusions, such as Energy Taxation, the Common Consolidated Corporate Tax Base, the Financial Transaction Tax, the revision of the Savings Tax Directive and the Negotiating Directives for Savings Taxation agreements with third countries.

2. In particular the European Council on 22 May 2013[3], and more recently on 24/25 October 2013[4], identified tax dossiers where progress needed to be made by the end of 2013. These dossiers are covered by the current report.

3. The report shows that during the Lithuanian Presidency further progress has been made across a range of files, although additional work will be necessary.

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[1] EUCO 4/3/12 REV 3 (items 9 and 21).
[2] Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.
[3] EUCO 75/1/13 REV 1, 22 May 2013.
[4] EUCO 169/13, 24/25 October 2013.

A. Legislative files in the field of direct and indirect taxation

Savings Taxation

1. In 2008, the Commission submitted a proposal to amend the Directive 2003/48/EC on taxation of savings income in the form of interest payments in order to increase its efficiency and to address significant loopholes which could facilitate tax fraud and evasion.

2. The technical work on this proposal has been finalised during previous Presidencies. However, Austria and Luxembourg indicated that level playing field concerns in relation to third countries should be addressed before a formal adoption of the Directive.

3. The Commission presented on 17 June 2011 a recommendation for a mandate to initiate negotiations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino, in order to upgrade the EU's agreements with those countries and to ensure that they continue to apply measures equivalent to those in the EU.

4. At the Council on 14 May 2013 agreement was reached on the Negotiating Mandate, in line with the recent developments at the G 20, where it was agreed to promote automatic exchange of information as an international standard.

5. The European Council of 22 May 2013 concluded:

   "10 (b) further to the agreement reached on 14 May 2013 on the mandate to improve the EU's agreements with Switzerland, Liechtenstein, Monaco, Andorra and San Marino, negotiations will begin as soon as possible to ensure that these countries continue to apply measures equivalent to those in the EU.
   In the light of this and noting the consensus on the scope of the revised Directive on the taxation of savings income, the European Council called for its adoption before the end of the year."

6. As a response to this call by the European Council, the Presidency addressed the issue at the preparatory bodies of the Council. The Commission updated Member States on its contacts with the five non-EU Western European countries.

7. Against this background the Presidency submitted the revised Savings Directive in the form agreed at technical level to the Council (ECOFIN) on 15 November 2013 and 10 December 2013 in view of the European Council mandate to reach a political agreement on the issue by the end of 2013. The political agreement could not be reached due to reservations by two delegations.

Common Consolidated Corporate Tax Base (CCCTB)

8. The Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) was tabled by the European Commission on 16 March 2011, as a contribution to more growth-friendly taxation advocated by the Europe 2020 strategy. Since then, intensive technical discussions on this proposal have been taking place in the Council preparatory bodies.

9. On 13 March 2013, the High Level Working Party (HLWP) agreed that:

   a) work on the proposal should focus on a step-by-step approach;
   b) the first step should focus on those matters which are related to the tax base;
   c) the issue of consolidation should be addressed in a second step when work on the base has been sufficiently advanced;
   d) the proposal was not yet ready for a political discussion;

   and invited the Presidency to begin the task of drafting a compromise text on that basis.

10. In line with this roadmap, the Lithuanian Presidency organised several working party meetings on this proposal and circulated a compromise text (doc. 14768/13 FISC 181), covering general and specific elements of the common corporate tax base and the general anti–abuse rule, i.e. Chapters IV to VII and Article 80 of the proposal as a basis for the technical discussions. The work on this proposal should continue in accordance with the roadmap set out in the ECOFIN report to the European Council on Tax Issues submitted in June 2013 during the Irish Presidency. While progress was made, some Member States maintained substantial objections to the proposal.

Revision of the Energy Taxation Directive (ETD)

11. In April 2011 the Commission presented to the Council a proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity ("the Energy Taxation Directive" or "the ETD"). The proposal presented by the Commission seeks to bring the ETD more closely into line with the EU's energy and climate change objectives as requested by the March 2008 European Council. In June and October 2012, the European Council asked that work and discussions on the Commission proposal on energy taxation should be carried forward.

12. The proposal has been discussed in the Council’s Working Party on Tax Questions during the Lithuanian Presidency, building on work carried out by previous Presidencies.

13. Following the state of play report endorsed by ECOFIN on 21 June 2013, the Presidency focussed its efforts on an article by article examination, while paying attention to a number of open technical issues.

14. In this context, the Working Party has discussed compromise texts presented by the Presidency, and in particular the scope of the Directive, definitions, exemptions and reductions. The Working Party has also discussed the issues of regional derogations and of delegation of powers.

The common system of Financial Transaction Tax (FTT)

15. The proposal for a directive on a common system of financial transaction tax was submitted by the Commission to the Council on 28 September 2011. The proposal had as objectives a fair contribution of the financial sector to the costs of the crisis, avoiding fragmentation of the single market, and creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets.

16. Unanimous agreement by all Member States could not be attained within a reasonable period. A number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Adoption of a decision formally authorising enhanced cooperation took place at the ECOFIN meeting on 22 January 2013. A formal Commission proposal for a Directive implementing enhanced cooperation in the area of financial transaction tax was put forward to the Council on 14 February 2013.

17. The Lithuanian Presidency has been continuing the work on the Financial Transaction Tax (FTT) started by the previous Presidencies at the level of the Working Party.

18. A first technical read-through of the proposal has been performed, during which the Commission presented and explained provisions of the proposal in detail and Member States had the opportunity to raise concrete questions, including on legal issues.

19. The Council Legal Service gave its opinion on a number of aspects of the proposal.

20. The Lithuanian Presidency intends to continue work at technical level as necessary before the end of 2013.

VAT: Treatment of Vouchers

21. The Commission put forward a proposal in May 2012 to provide for common EU rules for the VAT treatment of vouchers. These changes are considered necessary to support businesses operating cross-border and to ensure that instances of double and non-taxation do not occur.

22. From discussions in the Working Party, it became clear that Member States agree on the real need for common rules on the treatment of VAT. It was also evident that agreement on the proposal would be desirable before the introduction of new 'B2C place of supply rules' in 2015, given the high proportion of sales transacted via vouchers for e-services and telecommunications.

23. During the Lithuanian Presidency the Working Party paid particular attention to definitions and the distribution chain. In particular, priority was given to the clarification of concepts and to reaching a common understanding on the definition of vouchers.

24. In the light of the discussions held, the Presidency prepared a compromise legal text on the proposal for further discussion at experts' level.

FISCALIS 2020

25. The proposed Fiscalis 2020 Regulation is a tax administration cooperation programme, which is intended to support the cooperation and exchange of information between tax authorities of Member States.

26. Subsequent to the partial agreement on the compromise text between the Council and the European Parliament under the Irish Presidency, the Lithuanian Presidency finalised the MFF-related provisions, thus paving the way for the adoption of this Regulation, in time for the new financial cycle starting in 2014. Political agreement was reached at Coreper level on 6/7 November 2013. The Council (TTE) adopted the Fiscalis Regulation on 5 December 2013.

Mandatory automatic exchange of information in the field of Taxation - Proposal for a Directive amending Directive 2011/16/EU

27. The European Council on 22 May 2013 concluded:

"10 (a) priority will be given to efforts to extend the automatic exchange of information at the EU and global levels. At the level of the EU, the Commission intends to propose amendments to the Directive on administrative cooperation in June in order for the automatic exchange of information to cover a full range of income. At the international level, building on ongoing work in the EU and on the momentum recently created by the initiative taken by a group of Member States, the EU will play a key role in promoting the automatic exchange of information as the new international standard, taking account of existing EU arrangements. The European Council welcomes ongoing efforts made in the G8, G20 and OECD to develop a global standard;"

As indicated in the European Council conclusions of 22 May 2013, the Commission adopted the proposal for a Revision of Directive 2011/16/EU on 11 June 2013, which has been put forward to the Council. The aim is to upgrade and broaden automatic exchange of information in the area of direct taxation.

Through the international pilot, Member States have played a leading role in developing a new global standard in the Automatic exchange of Tax information which will provide a step change in our ability to tackle tax evasion.

28. In line with the ECOFIN Conclusions on 14 May 2013, the EU Presidency has put this file high on its agenda, by discussing the issue at the HLWP and the Informal ECOFIN Council in Vilnius in September 2013.

29. In order to avoid multiplication of standards on automatic exchange of information, it was stressed at the HLWP and the Informal ECOFIN Council in Vilnius that the EU should work in synergy with the OECD, which is in the process of developing a global standard.

30. On that basis, the work undertaken by the OECD has subsequently been discussed by the Working Party on Tax Questions. This resulted in a letter by the Council Presidency to the OECD Secretariat addressing the points of concern that had been discussed, as an input to ongoing discussions at the OECD.

31. The work on the Proposal for a Directive amending Directive 2011/16/EU and its correlation with Common Reporting Standard developed by OECD continued at the Council's Working Party on Tax Questions.

B. Tax Policy Coordination

Important work in the area of Tax Policy coordination (outside of EU tax legislation) has been taken forward during the Lithuanian Presidency.

a) Code of Conduct Group (Business taxation)

In June 2013, the Council welcomed the report on the progress of the work of the Code of Conduct Group during the Irish Presidency (11465/13 FISC 134) and encouraged the Group to continue work on the basis of the Work Programme approved in 2011 (doc. 18398/11 FISC 167). On that basis, the Group met under the Lithuanian Presidency and continued work on rollback and standstill of harmful tax regimes and the Work Programme.

A new six-monthly report has been prepared during the Lithuanian Presidency and submitted to the Council, together with the Council conclusions.[5] The work of the Group will continue on the basis of the Work programme approved in 2011.

b) Code of Conduct Group – Anti Abuse Subgroup on hybrid mismatches

The Anti Abuse Subgroup launched its work on hybrid mismatches during the Irish Presidency. The report incorporating a proposal for draft guidance on intra-EU hybrid entity mismatches to the Code of Conduct Group of 29 May 2013, was welcomed. On that basis, during the Lithuanian Presidency, the Anti Abuse Subgroup continued considering solutions to tackle undesirable effects of mismatches involving intra-EU hybrid entities. The Subgroup also launched discussions on mismatches involving intra-EU hybrid permanent establishments with a view to preparing the draft guidance. The Subgroup has reported to the Code of Conduct Group on its progress and submitted draft guidance.

5 Docs 16656/13 FISC 226, 16680/13 FISC 230.

c) Other tax coordination issues

The Lithuanian Presidency has continued work on new areas already identified by previous Presidencies for possible tax policy coordination in the HLWP:

i) EU/OECD: Base Erosion and Profit Shifting (BEPS), automatic exchange of information

- Paragraph 6 of the Council conclusions of 14 May 2013 relates to coordination and cooperation with the OECD and G20 on BEPS:

  "6. SUPPORTS further efforts at OECD level on Base Erosion and Profit Shifting (BEPS) and RECALLS the European Council Conclusions of 13 and 14 March 2013 on the need for close cooperation with the OECD and the G20 to develop internationally agreed standards for the prevention of base erosion and profit shifting and in particular NOTES the European Council call for the European Union to coordinate its positions. NOTES that this coordination will take place through the appropriate Council bodies including the High Level Working Party and WELCOMES that progress at international level in this area is being monitored. To this end, the EU should closely monitor its legal framework and identify where common solutions would best ensure effectiveness and efficiency."

- As requested by the Council conclusions of 14 May 2013 and the European Council conclusions of 22 May 2013, the Lithuanian Presidency has addressed the issue of Base Erosion and Profit Shifting. As requested by the conclusions, coordination has taken place in the HLWP.

- During the HLWP meeting on 19 November 2013, the importance of a concerted action on BEPS in connection with European Tax legislation was discussed. Incoming Presidencies were invited to address this issue by setting up a BEPS/EU legislation focused working programme. The compatibility of ongoing OECD work with the EU legal framework should be examined. Work should be based on a comprehensive and timely diagnosis including an analysis of the European legal framework in relation to corporate taxation. The results and interim results of this work should be reported by the Council at the end of each Presidency's term.

- The incoming Greek Presidency indicated its intention to take this issue forward and to ensure timely monitoring, while using the HLWP as a focal point and reporting to the Council as appropriate.

- The Director-General of the OECD Centre for Tax Policy and Administration (CTPA) was invited in the margins of the HLWP meeting on 12 September 2013. He presented the ongoing OECD work in the context of the BEPS Action Plan and concerning the OECD global standard on automatic exchange of information. Another presentation was made by OECD SG Angel Gurría at the informal ECOFIN meeting in Vilnius, during which the importance of cooperation between the OECD and the EU was underlined.

- Discussions during the HLWP meeting on 12 September 2013 highlighted the support, at this stage, for a pragmatic interaction between the OECD work and EU initiatives, which could involve twofold cooperation: the progress reached in the EU could be shared with the OECD as an input to its ongoing work and, on the other hand, the OECD's work could be considered while developing EU solutions.

- The HLWP also discussed the relationship between the new proposal for a revised EU Administrative Cooperation Directive and the OECD global standard and how the EU could accompany the ongoing work at the OECD on the development of a global standard for automatic exchange of information (cf. above, letter sent by the Presidency to the OECD Secretariat).

- The incoming Greek Presidency announced its intention to continue discussions on these EU/OECD-related issues, also in the context of the HLWP and in cooperation with the OECD.

ii) Tax fraud, avoidance and aggressive tax planning: exchange of best practices

The Lithuanian Presidency gave Member States the opportunity to exchange best practices/reforms regarding the fight against fraud, tax avoidance and aggressive tax planning. France, Ireland and Slovakia made detailed presentations on their national approach to these issues.

iii) Tax in non tax dossiers

On 19 November 2013, the HLWP discussed the issue of tax in non tax dossiers. Member States continued to express concern over the growing incidence of this issue, and welcomed the systematic approach to this issue by the Lithuanian Presidency with the support of the GSC, allowing for a better monitoring of files containing tax elements. It was agreed that tax provisions leading to any changes in Member States' tax laws or administrative practices or having other consequences on taxation should fall under the alert mechanism at the earliest possible stage. The incoming Presidency was invited to continue this effort.

iv) Digital economy: Follow-up to the European Council on 24/25 October 2013

- The HLWP discussed the follow-up of the European Council conclusions of 24/25 October 2013, covering tax aspects linked to the digitalisation of the economy:

  "4. The ongoing work to tackle tax evasion, tax fraud, aggressive tax planning, tax-base erosion and profit shifting is also important for the digital economy. Member States should further coordinate their positions where appropriate in order to achieve the best possible solution for Member States and the EU in the OECD/BEPS (Base Erosion and Profit Shifting) framework. In its ongoing VAT review, the Commission will also address issues which are specific to the digital economy, such as differentiated tax rates for digital and physical products. The European Council welcomes the Commission's initiative to set up an expert group on taxation of the digital economy. The European Council will return to taxation-related issues at its December 2013 meeting."

- The potential link between the digitalisation of the economy and ongoing work in the Council on tackling tax evasion, tax fraud and aggressive tax planning and in the context of the VAT review was stressed.

- The Commission was invited to report back on its work to the Council by the end of the Greek presidency.

- The incoming Greek Presidency indicated its intention to follow up discussions already launched under the Lithuanian Presidency in this field.

v) HLWP updates on other issues

The HLWP was updated on the following issues on 12 September 2013:

- Ongoing EU negotiations on tax issues with third countries;
- Information on the status of work on the 'Future of VAT'.