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NOTE

From: Presidency
To: Members of the High Level Working Party on Tax issues
Subject: BEPS: Presidency roadmap on future work

Following discussions at the High Level Working Party on 2 July 2015, delegations will find in Annex the final version of the Presidency roadmap, setting out future work in the Council during the coming months, in the field of Base Erosion and Profit Shifting (BEPS).

The Presidency will take into account relevant new developments when programming work in practice.

**EU-BEPS ROADMAP
BY THE LUXEMBOURG PRESIDENCY**

1. On 25 November 2014, at the High Level Working Party on Taxation (HLWP), a discussion was held on further work related to unfair tax competition, base erosion and profit shifting in the EU context (hereinafter – EU BEPS). It was noted that this work should be brought forward on the basis of a concrete roadmap, which would include actions and clear timelines, taking account of the OECD work in this area.
2. The Italian Presidency presented a draft roadmap to the Working Party on Tax Questions (WPTQ) on 5 December 2014 setting out a number of priorities for actions in the short, mid and long term. The Latvian Presidency undertook to continue work on the basis of this draft roadmap, and circulated a final version of its Presidency roadmap (doc. 5968/15 FISC 15) following WPTQ technical examination on 21 January 2015 and discussion at the HLWP meeting of 5 February 2015.
3. On 18 March 2015, the Commission proposed a package of measures to create more transparency in corporate taxation in the EU, in particular a legislative proposal providing for compulsory exchange of information between tax authorities in respect of cross-border tax rulings. On 17 June 2015, the Commission also adopted a Communication on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action. It was put forward to the Council and presented to ECOFIN Ministers on 19 June 2015.

4. The Luxembourg Presidency intends to build on the work undertaken by the Italian and the Latvian Presidencies to ensure transparency of tax practices and respond to the challenges posed by BEPS within the EU, and to make substantial progress on the current legislative files, while taking into account new developments. The Luxembourg Presidency will facilitate discussions in Council in order to find solutions consistent with the results of the OECD work on BEPS, paying specific attention to the respect of the acquis of the Single Market and of the Treaty freedoms. The HLWP should play a central role in overseeing work in this field.
5. This paper intends to set out how the Luxembourg Presidency will conduct further work in the Council, taking into account views expressed by Member States and against the background of recent Commission initiatives in the field of corporate taxation and automatic exchange of information on tax rulings, as well as the results of the OECD work on BEPS.

I. Short-term work

6. The Presidency will strive to reach progress during the next months on the following EU-BEPS work items:

A. Transparency of tax rulings

7. On 18 March 2015 the European Commission presented to the Council the proposal on the automatic exchange of information on tax rulings. The Latvian Presidency held four meetings of the Working Party on Tax Questions during which the proposal has been examined and compromise solutions were tabled. ECOFIN Ministers held an exchange of views on the main issues identified by the Latvian Presidency in June.

8. The Luxembourg Presidency will give high priority to this file and continue discussions on the proposal in the WPTQ with a view to reaching a political agreement and adoption before the end of 2015. The Presidency will pay particular attention to the outcome of the OECD work in this field in order to ensure consistency. It will take into account views expressed by ECOFIN on some key elements of the proposal such as the scope for exchange of information, timing issues (including retroactivity) and the possible role the Commission could play.

B. Interest and Royalties Directive (IRD)

9. Following the opinion of the majority of the Member States, the Latvian Presidency decided to concentrate its work first on a *de minimis* anti-abuse clause, similar to the one recently adopted for the Parent-Subsidiary Directive, with the aim to reach an agreement of the Council on this part of the Directive, leaving the remaining provisions for later discussions. A number of Member States were however not in the position, at this stage, to agree to that approach and were of the opinion that the discussion should be held on the proposal as a whole, notably on the 'subject to tax' criterion contained in the 2011 recast proposal.
10. The Luxembourg Presidency intends to hold a discussion on this proposal and, in particular, the issue of minimum effective taxation, which was not foreseen by the original Commission proposal and which should be discussed on a more comprehensive basis.
11. In this context it will be important to assess possibilities to introduce a provision allowing to effectively combat base erosion and profit shifting, in particular towards third countries.

C. Minimum effective taxation

12. During the discussions on the IRD a number of Member States expressed the need to hold a discussion on the minimum effective level of taxation. This issue has also been raised in the context of the discussions on the PSD and CCCTB and in the Commission's Action Plan of 17 June 2015.
13. The Presidency notes that this topic requires a thorough and comprehensive examination of the feasibility of a common approach. Any solution should respect the Single Market acquis and the Treaty freedoms, as well as the related case law of the Court of Justice of the European Union. The Luxembourg Presidency intends to hold a broad discussion on the minimum level of effective taxation taking into account the abovementioned aspects. The Council HLWP should serve as a focal point for this issue and ensure a coherent approach.

D. CCCTB proposal

14. In previous discussions, many Member States stressed the need to focus on the international anti-BEPS aspects (in particular definition of permanent establishment, CFC rules, switch-over clause, general anti-abuse rule, exit taxation, interest limitation and, possibly, hybrid mismatches), taking into account the work done at the OECD, where appropriate. Several Member States also expressed the opinion that further steps on the proposal can be taken only after the outcome of the OECD work will have become available. Several opinions were also expressed on a possible continuation of the work on selected matters of the proposal, namely exit taxation, the general anti-abuse rule (GAAR) and hybrid mismatches.

15. Taking into account the opinions expressed by a number of Member States and the Commission regarding the need to continue the work on the international anti-BEPS aspects of the CCCTB, the Luxembourg Presidency intends:
- a) As a first step, to continue work in the WPTQ inter alia on the abovementioned selected international anti-BEPS aspects, taking into account the work already done under previous Presidencies. If considered useful a possible split of the CCCTB proposal could be envisaged;
 - b) As a second step, to finalise this technical examination of all international aspects, taking into account the final results of the work of the OECD BEPS project(which should be known in Autumn 2015), to the extent that they are compatible with the EU legal framework. The aim would be to ensure a consistent implementation of the OECD recommendations in the EU context;
 - c) As a final step, to take stock of the results of the discussions in the WPTQ, wrap up technical examination into a Presidency compromise and see whether a political agreement on enshrining these international aspects into EU legislation (or any other EU instrument) is reachable.
16. In its Communication of 17 June 2015, the Commission underlined the importance of ongoing work on this file in the Council and indicated further proposals it could make in the mid term.

E. Hybrid mismatches

17. A guidance and explanatory notes on Hybrid Permanent Establishments were finalised by the Code of Conduct Subgroup and agreed by the Code of Conduct Group under the Latvian Presidency.

18. The Luxembourg Presidency notes that on 2 June 2015 the Code of Conduct Group decided to extend the mandate of the Subgroup to continue work on further cases of hybrid mismatches (hybrid entities and hybrid permanent establishments in situations involving third countries; hybrid financial instruments other than dividends/interest; hybrid transfers; dual resident companies and imported mismatches). The Presidency will facilitate discussions with a view to providing guidance on these issues, taking into account the work of the OECD.

F. Patent boxes

19. The Presidency notes that the Code of Conduct Group will continue monitoring the legislative process necessary to change existing patent box regimes following the agreement reached on the interpretation of the third criterion of the Code of Conduct. In this context, some Member States stressed the importance of addressing transitory timing and windfall effects regarding new entrants. The Luxembourg Presidency will pay particular attention to the ongoing work at the OECD in this field.

G. Code of Conduct Group (business taxation)

20. A discussion was held during the Latvian Presidency on the scope and the governance of the Group, on the basis of various proposals from Member States. The HLWP welcomed in June 2015 that the Code of Conduct Group will continue work on this issue in July 2015, focusing on: a) making better use of the existing mandate of the Code; b) examining the possibilities to extend the mandate and to update the criteria; c) the possible need to adjust the governance of the Code of Conduct accordingly. ECOFIN Ministers endorsed this approach on 19 June 2015.
21. The Presidency will discuss the future of the Code of Conduct in the HLWP, on the basis of the contribution from the Code of Conduct Group, with the aim of bringing the decision on the future work under the Code to the ECOFIN Council by the end of the Luxembourg Presidency.

H. Good governance in Tax matters in third countries

22. In line with the ECOFIN conclusions of 14 May 2013 (item 20), the Luxembourg Presidency will pay attention to good governance in tax matters in third countries.
23. With a view to facilitating discussions on how to proceed within the Council, discussions in the HLWP could focus on the principles of good governance (transparency, exchange of information, fair competition), and on the most appropriate means to promote these principles in third countries, and in particular in non-cooperative jurisdictions, whilst taking into account work done at the OECD.

II. Medium-term work

24. The Presidency also notes the willingness of Member States to undertake work in the medium term on the following items:

A. Country-by-country reporting (CBCR) on transfer pricing agreements

25. The Commission has launched a public consultation on various possible options, which will feed into the impact assessment work which it expects to conclude at the latest in the first quarter of 2016. An early inclusion of elements resulting from OECD work into EU legislation could be envisaged. The Council HLWP will monitor further developments on this issue as appropriate.

B. Beneficial ownership of non-transparent entities

26. Some Member States expressed strong interest in a possible extension of the access to the register foreseen in the 4th Anti-Money Laundering proposal (articles 29-30) to tax authorities in order to exchange information for tax purposes. This Directive has come into force in June 2015.
27. The outcome of the negotiations on the 4th Anti-Money Laundering proposal could therefore be discussed.

C. Outbound payments

28. The discussions showed an interest in work to be undertaken on this issue, even though the suggested possible solutions differ among Member States (some consider the topic strictly connected with the discussion on the Interest and Royalties directive, while others believe it is more of a transfer pricing issue). A possible forum could be the Code of Conduct Group, given the previous discussion of this topic in connection with dividend payments.

D. Transfer Pricing and Arbitration

29. Several Member States stressed the need to ensure coordination between EU work in the area of Transfer Pricing and the OECD's work in the context of its BEPS project (Working Party N°6), against the background of BEPS priorities defined within the Council and its preparatory bodies.
30. The Council HLWP could assess ongoing work in this field. It could also discuss the state of play regarding the Arbitration Convention allowing the settlement of disputes concerning transfer pricing. This issue is also covered by the Commission Action Plan from 17 June 2015.

III. Long-term work

31. The discussion showed that the following issues would not need to be addressed as a matter of priority, but could be dealt with in the long term.

A. Conditions and rules for the issuance of tax rulings

32. It was noted that any work going beyond mere transparency aspects would require more time. Some exploratory talks could nevertheless be conducted in the mid term in the context of the Code of Conduct Group. In addition, the Commission has organized a technical WPIV meeting on 6 February 2015 to open a discussion on this topic.

B. Residency rules

33. This matter is considered important by some Member States and could be explored, taking into account the wider work being done by the OECD on BEPS. Issues arise notably with regard to residency rules that allow businesses to shift their tax residence outside the EU, tax structures making use of "double residency" or "double non-residency" effects within the EU, and broader tax provisions and mismatches that may be associated with aggressive tax planning and double non-taxation.
