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From: Presidency

To: Permanent Representatives Committee/Council

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Subject: Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)

- State of play

I. INTRODUCTION

1. The Commission presented its Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) ¹ on 16 March 2011. It was discussed since then under different presidencies.
2. The CCCTB proposal aimed at addressing the tax obstacles for companies operating in the Internal Market which arise from the coexistence of different national tax systems. The proposal also aimed at avoiding risks of double taxation and reducing opportunities of aggressive tax planning.

¹ Doc. 7263/1/11 REV 1 FISC 23 + ADD 1 and 2

II. STATE OF PLAY

3. After the Cyprus Presidency completed a first reading of the whole proposal, the Irish Presidency tabled a CCCTB Roadmap (doc. 11507/13), endorsed by the ECOFIN Council in June 2013, which divided the technical discussions of the proposal into six thematic blocks.
4. The CCCTB Roadmap also introduced a two-step approach: the first five blocks (general issues, basic elements of the common base, anti-avoidance issues, international issues, and operational issues) would be addressed in a first step, and the last block (consolidation and apportionment) in a second step, notably when work on the common tax base would be sufficiently advanced. The following Presidencies worked essentially on that basis.
5. Following a request by the G20, the OECD released, in July 2013, an "Action Plan on Base Erosion and Profit Shifting" (BEPS). It outlined 15 priority actions to be delivered between September 2014 and December 2015. The overall goal of this initiative is to address the challenges posed in a globalised world by the interaction of different, uncoordinated domestic tax laws and thereby ensure that profits are taxed where economic activities generating the profits are performed and where value is created. The European Council welcomed in December 2013 the work undertaken by the OECD under the BEPS Action Plan.
6. On 28 November 2014, Finance Ministers Schäuble, Sapin and Padoan co-signed a letter to Commissioner Moscovici proposing a "comprehensive anti-BEPS Directive" to be adopted by the end of 2015. In particular, the three Ministers advocated, in the context of the OECD/G20's final adoption of the BEPS conclusions, for "*a set of common, binding rules on corporate taxation to curb tax competition and fight aggressive tax planning*". The Council was informed about the letter as well as of the response by Commissioner Moscovici at the ECOFIN meeting of 9 December 2014. At the High Level Working Party on Tax Questions (HLWP) level, the Commission also indicated its intention to put forward a proposal for an anti-BEPS directive at the beginning of 2016.

7. At the HLWP meeting of 5 February 2015, many Member States proposed to further sequence the work and focus discussions, in the first place, on the international anti-BEPS aspects of the CCCTB proposal, some of which were however directly linked to ongoing work in the context of the OECD BEPS Action Plan:
- a) definition of permanent establishment (PE),
 - b) Controlled Foreign Company (CFC) rules,
 - c) switch-over clause,
 - d) general anti-abuse rule (GAAR),
 - e) exit taxation rules,
 - f) interest limitation rules, and
 - g) (possibly) rules regarding hybrid mismatches.
8. On 17 June 2015, the Commission adopted its Corporate Taxation Action Plan, through a Communication on a "*Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action*" (doc. 9949/15 + ADD 1). It underlined the importance of ongoing work on the CCCTB file in the Council. The Commission indicated indeed that it would welcome if work continues in the Council in the framework of the CCCTB file currently on the table on some international aspects of the common tax base which are linked to the BEPS project. For this purpose, it did not so far withdraw its current CCCTB legislative proposal. The Commission also announced that it will re-launch the CCCTB project through new legislative proposals as soon as possible in 2016.
9. In this context and in line with its EU BEPS roadmap (doc. 10649/15), the Luxembourg Presidency launched a discussion on the possibility of agreeing to a split off from the pending CCCTB proposal of certain provisions on the international anti-BEPS aspects with the aim to achieve a swift, consistent and coordinated implementation of OECD-BEPS recommendations in the EU. At the WPTQ meeting of 9 July 2015, most delegations supported the prospect for such a split and suggested that the "anti-BEPS directive" that would result from this work addresses both third countries and intra-EU situations. At the following WPTQ meetings, the Presidency submitted further clarifications as to how such EU legislation could materialise more concretely.

10. The Luxembourg Presidency continued in parallel the technical examination of a first set of international anti-BEPS aspects that did not depend on ongoing discussions at OECD level (exit taxation, general anti-abuse rule, and hybrid mismatches) and, following the publication of the final reports on the OECD BEPS Actions in October 2015, resumed the in-depth technical examination of the remaining items (definition of permanent establishment, interest limitation rules, switch-over clause and CFC rules).
11. On this basis, the Presidency presented at the WPTQ meeting of 20 November 2015 a consolidated text, which reflects the international anti-BEPS aspects that had so far been submitted to the Working Party for technical examination. This consolidated text was updated after the WPTQ meeting (doc. 14544/15 FISC 171) and may serve as a possible basis for further work on these issues.
12. The consolidated text presented by the Presidency completes the first technical reading of the anti-BEPS proposal without prejudging on individual delegations' positions with regard to both the scope and the content of the various provisions.
13. The Presidency notes that irrespective of its significant efforts to devise specific provisions aimed at implementing BEPS through a EU legislation, further work remains necessary on, notably, the following aspects:
 - a) Scope: whether the Directive should apply to all companies operating in the EU, or only to larger/multinational companies;
 - b) 'De minimis' application: its concrete impact on the various anti-BEPS rules (e.g. with regard to specific thresholds or options);
 - c) Interaction with the OECD Multilateral Instrument: some anti-BEPS directive measures are due to be implemented through the OECD multilateral instrument (BEPS Action 15);
 - d) 'Group carve-out' for interest limitation rules: proposed by the OECD as an option;
 - e) CFC rule: its application to intra-EU situations and its interaction with the switch-over clause;

- f) Exit taxation rules: the need to grant a deferred payment of the taxes due on unrealised capital gains in cross-border transfers;
 - g) Hybrid mismatches: transposition into hard law of the guidance developed by the Code of Conduct Group (business taxation).
14. An exchange of views on the state of play of ongoing work in relation to BEPS was held at the HLWP meetings of 2 September and 20 October 2015. On this basis, and taking into account the G20 summit in Antalya (15-16 November 2015), the Presidency submitted to the HLWP meeting of 19 November 2015 a proposal for Council Conclusions on 'Base Erosion and Profit Shifting in the EU context', which will be submitted for adoption to the ECOFIN Council meeting of 8 December 2015.

III. THE WAY FORWARD

15. Against this background, the Permanent Representatives Committee is therefore invited to recommend to Ministers to:
- a) take note of the progress so far achieved at technical level on this dossier following publication of the OECD BEPS conclusions,
 - b) share their views on the future EU work in the field of BEPS,
 - c) discuss the necessity of a coherent, common and coordinated implementation of the BEPS recommendations in the EU in order to achieve a level playing field and maintain competitiveness of EU companies,
 - d) express their opinions on the best approach ('hard law' or 'soft law') in achieving such an efficient implementation of BEPS recommendations in the EU.
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