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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

On: 2 June 2020

To: Delegations

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Subject: Council conclusions on the future evolution of administrative cooperation in the field of taxation in the EU

Delegations will find in annex the Council conclusions on the future evolution of administrative cooperation in the field of taxation in the EU, which were approved by the Council by a written procedure which was completed on 29 May 2020 (CM 2382/20).

COUNCIL CONCLUSIONS

**ON THE FUTURE EVOLUTION OF ADMINISTRATIVE COOPERATION IN THE
FIELD OF TAXATION IN THE EU**

The Council:

1. WELCOMES the Commission evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and TAKES NOTE of the findings set out in that evaluation, which indicate satisfactory results and further opportunities for improving the current provisions of Directive 2011/16/EU;
2. TAKES THE VIEW that Directive 2011/16/EU is a very important tool provided by the EU to support the tax authorities of the Member States in tax revenue safeguarding and tax collection, and NOTES WITH SATISFACTION that, during 2014-2019, the scope of that Directive was expanded on five occasions and now covers the exchange of information between the competent authorities of the Member States on financial accounts information, cross-border tax rulings and advance pricing agreements, country-specific reports which provide certain financial information concerning the largest multinational corporations, and access to beneficial ownership information, as well as information on potentially aggressive cross-border tax planning arrangements;

3. STRONGLY BELIEVES that it is appropriate to take stock of these developments and update Directive 2011/16/EU, with the aim of making the system of administrative cooperation in the area of taxation in the EU more robust and more efficient;
4. IS CONVINCED that improving administrative cooperation and capacities, as well as establishing deeper trust between the competent authorities of Member States in the field of taxation remains a very important part of the comprehensive EU effort to curb tax fraud, tax evasion and tax avoidance, which are among the major threats to public revenues;
5. RECALLS, in this context, the European Council conclusions of 18 December 2014, stating the urgent need to advance efforts in the fight against tax avoidance and tax evasion, at both global and EU levels, WELCOMES the significant progress achieved so far, REITERATES its commitment to the principles of international taxation and TAKES THE VIEW that efforts to improve administrative co-operation with the objective to fight tax fraud and tax evasion are particularly relevant in the context of the need for recovery from the crisis caused by the COVID-19 pandemic;
6. EMPHASISES that the tax authorities of the Member States need comprehensive and high-quality purposeful tax-related information in order to efficiently and effectively promote tax certainty, reduce compliance burdens for taxpayers and address the tax challenges stemming from the new business models as well as the digital platform economy, and that certain provisions of Directive 2011/16/EU could be improved in that respect;

7. WELCOMES the work that is currently being carried out by the Commission with the objective of possibly amending Directive 2011/16/EU, in order to address the identified shortcomings of existing elements of that Directive and provide the tax authorities of the Member States with useful and relevant information on taxpayers who generate income (revenue) through the digital platform economy;
8. NOTES that a number of Member States have already begun to apply measures in their national law as regards reporting of income (revenue) generated through digital platforms, and DEEMS IT IMPORTANT to take this opportunity to establish a common standard at EU level for the reporting and tax information exchange mechanisms in this area, while taking account of the fact that, in the OECD fora, a parallel discussion is taking place regarding obtaining the necessary tax information from digital platforms;
9. RECALLS the recent amendments to Council Implementing Regulation 282/2011/EU establishing data collection and record-keeping obligations for digital platform operators as regards taxpayers who generate income (revenue) through such digital platforms, UNDERLINES, in this context, the importance of an effective and coherent EU regulatory framework and of aligning Directive 2011/16/EU and Council Implementing Regulation 282/2011/EU where appropriate in order to increase efficiency, utility and cost-effectiveness by making use of data that are already available with due consideration to the differences and specific challenges in the field of direct taxation;
10. STRONGLY BELIEVES that any new EU-level measures in this area should also aim to create and maintain a level playing field between EU and non-EU based digital platforms, through which income (revenue) that are subject to taxation in Member States are generated;

11. DEEMS IT ESSENTIAL that the EU legislation on tax transparency and exchange of information continues to build on the international consensus reached in the OECD fora and that the EU continues to set the agenda for the global attempt to curb cross-border tax fraud, tax evasion and tax avoidance through administrative co-operation;
12. IS CONVINCED that work on the further development of Directive 2011/16/EU should promote better use of information that is exchanged between Member States, including by further facilitating identification of relevant tax payers, and ENCOURAGES national and international best practices against cross-border tax fraud, tax evasion and tax avoidance to be shared among the tax authorities of the Member States. As this work should also continue to be carried out in the context of Fiscalis Programme activities that are related to Directive 2011/16/EU, which allow tax authorities to meet and build up trustful relationships and further develop the network for information exchange, INVITES the Commission to report regularly on these activities to the Council;
13. BELIEVES that this is a good opportunity to assess the efficiency of existing tools and to make an effort to adopt, where necessary new initiatives at EU level, to ensure that the authorities of the Member States concerned obtain simplified and targeted information on cross-border tax fraud and usable information on financial or technological patterns relating to cross-border tax fraud, tax evasion and tax avoidance;

14. NOTES that the current text of Directive 2011/16/EU does not provide for a procedure relating to data protection in the event of a data breach, and INVITES the Commission to suggest appropriate substantive amendments to Directive 2011/16/EU or other relevant EU legislation, which would ensure better protection and security of information exchanged by the competent authorities of the Member States, as well as to suggest provisions for a common approach regarding the requirement for information exchange in the event of data breach in a Member State. Meanwhile, it is appropriate to continue work on rapidly finding an administrative solution, if such is possible under the current legal framework, with the objective of improving the security of data exchanged between the authorities involved in tax information exchange and acting as data controllers;
15. INVITES the Commission to analyse the possibilities for further improvement of the interoperability between Directive 2011/16/EU and Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
16. RECALLS the recent amendments to Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, which markedly extended the scope of tools for administrative cooperation available to the tax authorities of the Member States;
17. BELIEVES that, while Council Regulation (EU) No 904/2010 and Directive 2011/16/EU now create a number of synergies at institutional and technical levels, further points of convergence could be sought between those legislative instruments, and INVITES the European Commission to analyse, with due consideration to the differences and specific challenges in the field of direct taxation, whether and to what extent it would be feasible, beneficial and suitable to further align the scope of tools available for tax authorities under Council Directive 2011/16/EU with specific provisions of Council Regulation (EU) No 904/2010, where further convergence would result in the increased efficiency of the tax authorities of the Member States;

18. STRESSES that any amendments to the current text of Directive 2011/16/EU would, among other things, have to be balanced, while the objectives to optimize costs and administrative burdens for the businesses and competent authorities concerned, as well as to simplify compliance requirements should not be sought at the expense of undermining the efficiency and functioning of the system of administrative cooperation in the area of taxation in the EU;
19. BELIEVES that work on further improvements to Council Directive 2011/16/EU on administrative cooperation in the field of taxation should be carried out continuously, and INVITES the Commission to analyse whether additional improvements to Directive 2011/16/EU would be useful, appropriate and feasible in order to increase certainty and ensure better clarity of the existing provisions, and in particular the definitions, with the aim of facilitating administrative cooperation, especially by taking into account challenges arising from digital platform economy;
20. REQUESTS that the Commission, taking into account these Council Conclusions, as well as the objectives set out in Directive 2011/16/EU, undertake all the relevant studies and, after carrying out relevant technical analyses, public consultations and impact assessments, submit to the Council a legislative proposal as soon as possible, and INVITES the Commission to address the most urgent issues as a priority, such as challenges arising from digital platform economy, and, for that purpose consider phasing in the legislative proposals in order to facilitate legislative progress.