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OUTCOME OF PROCEEDINGS

of: High-level Working Party on Tax Questions
on: 18 March 2011
Subject: 1. Savings Taxation Directive
 2. The US Foreign Account Tax Compliance Act (FATCA)
 3. Any other business

1. Savings Taxation Directive

The Presidency recalled discussions on the proposal to amend the Savings Tax Directive and related files in the Council (ECOFIN) on 15 February 2011, during which it was indicated that work would be taken forward at the level of the High Level Working Party (HLWP).

In preparation of the meeting, the Presidency had circulated a discussion paper (doc. 6946/11 FISC 19), setting out the proposed approach and reproducing the latest compromise text on the amendments to the Savings Tax Directive.

On the basis of ECOFIN discussions and the Presidency paper, it was suggested:

- 1) to address the extended scope of the Savings Tax Directive as a priority before dealing with the Anti-fraud and tax cooperation agreements;
- 2) to keep the issue of the transitional period separate from the discussions on the amendments to the Savings Tax Directive;
- 3) to address the issue of the level playing field in the context of the amended Savings Tax Directive by inviting the Commission to start the negotiations with third countries on the application of the measures similar to those provided by the amended Savings Tax Directive;
- 4) to consider the latest compromise text on the amendments to the Savings Tax Directive as agreed so that the discussions on it could be closed in order to provide the Commission with a basis for negotiations.

The Presidency emphasized that this approach aimed at closing the discussions on the extended scope of the Savings Tax Directive with a view to negotiations, addressing the level playing field concerns pro-actively and creating the basis for a political agreement on the amended Savings Tax Directive at a later stage.

The Presidency invited delegations to give their views on the approach outlined above:

Though preferences for a more ambitious approach were expressed, most delegations saw a merit in the pragmatic approach proposed by the Presidency and could support it as a way to make progress. In this context, one delegation emphasized the importance of the due diligence report on the functioning of the current Savings Tax Directive, which is currently being prepared by the Commission. One delegation questioned the Presidency's suggestion to separate discussions on the amended Savings Tax Directive from other related issues, as expressed by this delegation during the Ministerial discussion. This delegation also indicated that it saw a need for external conditionality along the lines of the current Savings Tax Directive and that it could not agree at this stage to the "freezing" of the text of the amendments to the Savings Tax Directive.

The Commission supported the Presidency approach. It noted that strengthening the current Directive would be an important step forward, while taking into account how discussions have developed over time. The Commission expressed its readiness to put forward draft negotiation mandates on the basis of an agreed text.

Most delegations took the view that the text of the amendments to the Savings Tax Directive as set out in Annex to doc. 6946/11 FISC 19 contains all the necessary elements in order to be considered as agreed. **DELETED**. Two delegations put forward some drafting suggestions as regards life insurance products.

Following the discussion the Presidency indicated that it felt encouraged to go ahead with the proposed approach. The Presidency will consider how to bring the matter forward at the next HLWP, while maintaining the possibility to bring the issue to the Council (ECOFIN) in May 2011 as appropriate.

2. The US Foreign Account Tax Compliance Act (FATCA)

The Presidency recalled the HLWP meeting on 31 January 2011, where delegations supported a coordinated approach as regards the United States (US) "Foreign Account Tax Compliance Act" (FATCA). On this basis the Presidency and the Commission presented to the HLWP a draft letter to the US administration, setting out main concerns over FATCA legislation and suggesting a dialogue, which would take into account what the EU has been pursuing via introduction and development of the Savings Tax Directive. During the discussion, delegations emphasized that a reasonable transitional period, a more risk-based approach and reciprocity should be among the aims of the dialogue. Data protection concerns and the various solutions foreseen under the Savings Tax Directive should also be kept in mind.

Delegations agreed the letter with few amendments. Several delegations indicated their willingness to be closely associated in the dialogue with the US authorities alongside the Presidency and the Commission.

The Presidency indicated that the letter as amended will be co-signed by the Presidency and the Commission and will be sent to the US authorities as soon as possible. The HLWP will be regularly updated on further developments.

3. Any Other Business

The Commission informed delegations that the proposal for a directive on a common consolidated corporate tax base (CCCTB) has been put forward to the Council. The Presidency indicated that the first exchange of views on this proposal will take place in the HLWP on 28 April 2011, following discussions at the European Council meeting (24/25 March 2011). The file could also be addressed in the Working Party on Tax Questions on 5 May 2011.
