COUNCIL OF
THE EUROPEAN UNION

Brussels, 23 November 2012

16327/12

LIMITE

FISC 166
ECOFIN 949

"I/A" ITEM NOTE

from:	General Secretariat
to:	Coreper/Council
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 its conclusions of March and June 2012.

2. A draft ECOFIN Report to the European Council on Tax issues was agreed in the context of the Council High Level Working Party on Tax issues, following discussions on 14 November 2012.

3. The Permanent Representatives Committee is therefore invited to:
   - forward the draft report to Council (ECOFIN) of 4 December 2012;
   - suggest endorsement of the report as set out in the Annex.

Subject: Draft 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 for which ECOFIN was requested to report back by the end of 2012. Building on discussions in the context of the Council High Level Working Party on Tax issues, and relevant Council conclusions adopted[2], and on the basis of the Commission's Communication to tackle fraud, it sets out to what extent "concrete ways to improve the fight against tax fraud and tax evasion, including in relation to third countries" are being developed by the Council. This report 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. The priorities set out in the programme of the Cyprus Presidency illustrate that the Council's work has continued to focus on how to combat the evasion of taxes and tax fraud over the last few months. Ensuring effective tax revenues in Member States has indeed gained in importance following the financial crisis and in times of tight budgets. Discussions on tax issues during the Cyprus Presidency have also taken into account the potential role of taxation as an incentive/disincentive in the context of broader challenges such as growth stimulation, dealing with climate change and drawing appropriate conclusions from the financial crisis.

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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. The above considerations have been taken into account during discussions on the following files over the last six months. Some of the files have made considerable progress. Further efforts will be necessary on others, before a decision or an adoption by the Council will be possible.

Commission Communication on tax fraud and tax evasion

4. The Cyprus Presidency has submitted to the HLWP the Communication on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries presented by the Commission in July 2012 (doc. 12108/12 FISC 96). Member States were given the opportunity to express views on the priorities set out in the Communication regarding tax evasion and fraud, with a view to the presentation by the Commission of an Action Plan as well as a Communication on tax havens and aggressive tax planning later this year. In addition, the Cyprus Presidency presented draft Council conclusions in the HLWP for adoption by the ECOFIN Council (13 November 2012).

5. With the Conclusions the Council welcomed the aforementioned Communication and underlined the importance of intensifying action against tax fraud and evasion as requested by the European Council in June 2012, and set out in its report on this issue (doc. 11802/12 FISC 90).

6. In addition the Council noted that all Member States recognise the importance of taking effective steps to fight tax evasion and fraud, also in times of budgetary constraints and of economic crisis.

7. The Council took the view that, when prioritising steps to fight tax evasion and fraud, it will be important to pay attention to both the area of direct and indirect taxation, without connecting them, and to concentrate on actions for the short term. Action at the level of Member States will be essential to fight tax fraud and evasion, but common efforts should also be made at EU level in areas where this would add value, increase coherence and efficiency of tax collection and help closing loopholes. Particular attention should be paid to the efficient and cost-effective implementation of already existing EU legislation and IT systems, as well as to burdens on businesses and tax administrations. Beyond legislative instruments the EU should consider pragmatic tax coordination at the level of the Council and support, where appropriate, coherent action in relation to third countries, while taking relevant work in international fora into account.

   Furthermore, the EU should support the dissemination of best practices with regard to the national systems for enforcement of tax laws and effective collection of taxes.

8. As far as the suggested actions are concerned, the Council would see progress on the following issues as a priority:

   <u>In the field of direct taxation</u>:

   - carrying forward work and discussions on the revision of the Savings Directive and reaching rapidly an agreement on the negotiating directives for savings agreements with third countries, as recalled by the European Council conclusions of 28/29 June 2012;

   - ensuring effective information exchange between administrations;

   - exploring the possibility of deepening administrative co-operation in the area of direct taxation.

<u>In the field of indirect taxation</u>:

- combating the considerable losses in the field of VAT inter alia by continued work with and analysis of possible measures to combat tax evasion effectively, taking into account Council conclusions adopted in May 2012 (doc. 9586/12 FISC 63 OC 213);

- ensuring effective information exchange between administrations, and effective use of the existing computerised control system in the area of excise duties.

9. The Council also noted that some areas mentioned in the Communication should not be taken forward as a priority at this stage, such as:

   - Administrative and Criminal Sanctions;
   - Joint audits.

10. Finally, the Council is looking forward to the Action Plan to be submitted by the Commission together with a Communication on tax havens and aggressive tax planning. It requested appropriate preparatory Council bodies to examine both, once they have been put forward.

<u>Savings Taxation</u>

11. The Cyprus Presidency has conducted discussions with a view to securing an agreement on two inter-linked files which would make a difference in combating tax fraud and evasion:

   - 2008 proposal to amend the Council Directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments;

- the draft Mandate for negotiations with five third countries (Switzerland, Liechtenstein, Andorra, Monaco, San Marino) on equivalent measures concerning savings income.

12. The current Savings Taxation Directive provides for automatic exchange of information on savings income between Member States, while Austria and Luxembourg have a transitional arrangement that provides for withholding tax on savings income. The transitional arrangement shall expire and all Member States shall take part in reporting and automatic exchange of information when certain conditions requiring a number of unanimous Council decisions are fulfilled[3].

13. The Directive is linked to the Savings Taxation agreements with Switzerland and the other third countries which provide for withholding tax on savings income from these countries.

14. The practical application of the Directive and Agreements has revealed inefficiencies and significant loopholes which facilitate tax fraud and evasion. In 2008, the Commission submitted a proposal to amend the Directive in order to increase its efficiency.

15. During the previous Presidencies agreement was reached on the amendments to the Directive, except for a few outstanding technical questions.

16. However, Austria and Luxembourg were not ready to move towards final adoption of the Directive before level playing field concerns were addressed.

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[3] Art. 10 (2) of the Savings Taxation Directive.

17. In order to address these level playing field concerns pro-actively, the Commission presented on 17 June 2011 a recommendation for a mandate to initiate negotiations with Switzerland and the other third countries.

18. In addition, the European Council in its conclusions of 1/2 March 2012 urged that progress be made on the Commission proposal for a revision of the Savings Directive and in its conclusions of 28/29 June 2012 called for a rapid agreement to be reached on the negotiating directives for Savings Taxation agreements with third countries.

19. In line with this mandate, on 11 September 2012 and 11 October 2012 the Council High Level Working Party (HLWP) discussed Presidency notes (13054/12 FISC 114 and 14036/12 FISC 126, EU restricted) suggesting a way forward as regards those negotiating directives, i.e. possible further amendments to the text of the mandate or any other solutions (e.g. statements by individual Member States when adopting the mandate) which would allow progress on the matter.

ECOFIN held an orientation debate on 13 November 2012 on the basis of a Presidency paper which noted i.a. the following:

- As requested by the Ministers, the discussion in the HLWP touched upon various international developments that could have an effect on the forthcoming negotiations and would be relevant for the position of the EU vis-à-vis its negotiating partners, such as: global acceptance of the OECD standard of the information exchange on request, recent Rubik agreements, requirements under the US FATCA legislation, broad interpretation taken by Switzerland of requests for information based on a common investor behaviour, and developments in this area at the OECD level.

- Following that discussion on international developments, there was a wide support for the view that the current savings agreements with third countries are outdated. They should be upgraded in order not to lag behind current globally recognized standards, in particular as regards the current provisions of the agreements related to the exchange of information on request. This should be reflected in the negotiating mandate as appropriate.

- Austria and Luxembourg have indicated that they could agree to such an approach if Article 10(2) of the Savings Taxation directive laying down the conditions for the end of the transitional period would be amended. Other Member States recalled that this would not be acceptable to them since it would amount to re-opening the overall agreement reached on the Savings Taxation directive when it was unanimously adopted.

At the ECOFIN Council on 13 November 2012 the Presidency put the following questions to Ministers:

- Do you agree that we should update our Savings agreements with the five third countries concerned?

- Do you think that there is a need to discuss the end of the transitional period which was agreed in Art. 10 of the existing Savings directive?

The debate revealed that positions remained unchanged and that progress was not possible at this stage.

Common Consolidated Corporate Tax Base (CCCTB)

20. 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.

The aim of the proposal is two-fold:

- to establish a common EU system for the calculation of the corporate tax base, which would exist in parallel to the national systems of the Member States and would be optional for companies to opt-in;

- to allow for consolidation of profits and losses of the groups of companies that have opted-in to the system.

21. Building on work during the Hungarian, Polish and Danish Presidencies, the Cyprus Presidency has organised three meetings of the Working Party and focused the technical discussion in the Council Working Party on several elements of the proposal which have not been discussed during previous Presidencies – e.g. consolidation, the formula apportionment and administrative procedures, etc. This allowed to conclude the first technical examination of the proposal.

Based on discussions in the Working Party, some Member States expressed substantial objections to the proposal, while some Member States had specific reservations. Discussions revealed that a number of Member States see a need for orientations in order to carry forward work at the technical level, before a decision or agreement can be reached.

Amendment of the Energy Taxation Directive (ETD)

22. 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.

23. The proposal has been discussed in the Council's Working Party on Tax Questions on several occasions under successively the Hungarian, Polish, Danish and Cyprus Presidencies. During the Cyprus Presidency discussions are intensively ongoing at technical level in the Council Working Party. Additional discussions at this level will be necessary to overcome remaining objections to the proposal.

24. The Cyprus Presidency, taking into account the discussions in the Council's Working Party on Tax Questions in July and September 2012, recalling the ECOFIN Council's orientation debate on 22 June and in order to facilitate discussions, has presented compromise proposals on the whole text with the latest on 12 November 2012 (doc. 16060/12 FISC 161 ENER 457 ENV 845). Inter alia, the Presidency's compromise proposals have been based on the principles below, as a starting point for further discussions:

- that the levels of taxation which Member States shall apply to energy products and electricity may not be less than the minimum levels of taxation laid down in the Directive;

- that the single minimum levels of taxation were established on the basis of two reference components, an energy related component and a CO2 related component;

- that Member States may express their national levels of taxation as one single tax or as separate taxes as well as in units other than those used to express the minimum levels of taxation, provided that the minimum levels laid down in the Directive are respected.

25. The Cyprus Presidency has prepared a note for submission to the Council (ECOFIN) on 4 December 2012, explaining the state of play of the discussions on the Commission proposal.

The common system of Financial Transaction Tax (FTT)

26. The proposal for a directive on a common system of financial transaction tax and amending Council Directive 2008/7 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. The ECOFIN Council conclusions of 22 June 2012 reported that there was no unanimous support of FTT from Member States. Also, a significant number of Member States supported the examination of the FTT in the framework of enhanced cooperation. Similarly the European Council of 28/29 June 2012 concluded that the FTT proposal cannot be adopted within a reasonable time and that some Member States are interested in launching a process of enhanced cooperation with a view to its adoption by December 2012. The Cyprus Presidency confirmed at the ECOFIN Council on 10 July 2012 that the proposal for a harmonized FTT tax does not receive unanimous support in the near future.

27. The aim of the Cyprus Presidency was to ensure transparency in this file. The developments were closely followed, by taking stock during the HLWP on 11 September 2012 and in the October ECOFIN.

On the basis of letters received from Member States, the Commission has put forward a proposal for a Council decision authorising enhanced cooperation on 23 October 2012. As announced at the October ECOFIN, Ministers were updated on the state of play in the November ECOFIN meeting. Comments allowed the Cyprus Presidency to assess possible next steps regarding this file.

VAT: Mini-One-Stop Shop

28. The Cyprus Presidency has continued the work, started under the Danish Presidency, on the Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.

29. A compromise proposal was submitted by the Cyprus Presidency which was discussed in the Working Party on Tax Questions on 24 July 2012 and which led to a technical agreement. The Proposal has been adopted by the ECOFIN Council on 9 October 2012.

VAT: Treatment of Vouchers

30. The Commission has submitted its proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers on 15 May 2012. The aim of the proposal is to adopt common rules on the treatment of vouchers for the purposes of VAT by clarifying and harmonising the rules in EU legislation on the VAT treatment of vouchers. During the Cyprus Presidency the Working Party has held discussions on that proposal in three meetings.

VAT: Quick Reaction Mechanism

31. The Commission has submitted its proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a quick reaction mechanism against VAT fraud on 31 July 2012.
The purpose of the proposal is to speed up, in cases of urgency, the possibility for Member States to obtain an authorisation to derogate from the provisions of the VAT Directive, in very specific situations, to combat sudden and massive tax fraud before they start having a considerable impact on national budgets.
The Proposal was listed in the Commission's Communication on the future of VAT, as a priority action for pursuing a more robust VAT system, and was covered by the relevant Council conclusions[4].
The proposal has been discussed in three meetings during the Cyprus Presidency.
The Presidency is considering the possibility to submit the file to the ECOFIN Council on 4 December for an orientation debate at Ministerial level.

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[4] Docs 9586/12 FISC 63 OC 213 and 14877/12 ECOFIN 864 FISC 136 OC 579.

VAT: Optional and temporary reverse charge on certain supplies of goods and services susceptible to fraud

32. In March 2010 the Council adopted Directive 2010/23/EU as regards the optional and temporary application of the reverse charge mechanism to greenhouse gas allowances. The Council also stated that it will continue to work on other elements of the proposal as regards the application of the reverse charge mechanism to mobile phones and electronic circuit devices with a view to reaching an agreement as soon as possible. The Cyprus Presidency sought guidance on the re-opening of discussions on this proposal and presented a compromise proposal to the Working Party. Most Member States welcomed the re-opening of discussions, while a few Member States maintained substantial reservations on this.

FISCALIS 2020

33. The proposal for the programme FISCALIS 2020 was presented by the Commission on 31 July 2012. The Cyprus Presidency organised three Working Party meetings and drafted two compromise proposals, which allowed to bring positions of delegations closer together.

34. Further work is necessary in order to adopt a general approach in the Council and to reach an agreement with the European Parliament (co-decision file).

Tax Policy Coordination

a) Code of Conduct Group (Business taxation)

35. Avoidance of harmful practices remains a key priority for Member States in the area of taxation. They recognise that on-going work in the Code of Conduct Group (Business Taxation) of the Council over the last years has substantially contributed to the avoidance of such practices in EU Member States and has allowed useful initiatives with respect to third countries. The Group reports every six months to ECOFIN Ministers on progress achieved. This successful work should therefore be carried forward on the basis of the work programme approved by the Council in 2011. A new version of the six-monthly report has been prepared during the Cyprus Presidency for submission to the Council (ECOFIN).

b) Other tax coordination issues

36. The Cyprus Presidency in HLWP has continued work on areas already identified by the previous Presidencies for possible tax policy coordination, such as:

a) FATCA (US Foreign Account Tax Compliance Act):

- Discussions with US counterparts on how to implement this US legislation efficiently have continued, as agreed in the HLWP. Informal meetings have allowed a number of practical elements on the way forward to be clarified. The Council HLWP took stock of progress made, discussed how to facilitate further discussions with the US and identified elements for a coordinated approach for further talks.

- In HLWP meetings especially, Member States discussed the progress made between the 5 Member States (France, Germany, Italy, Spain and the United Kingdom) and the USA and heard about the two model agreements that are the outcome of negotiations. In addition, the HLWP was informed about the intentions of other EU Member States concerning the FATCA agreement.

- As a result, the Presidency had the impression that many Member States might be ready to consider moving ahead on the basis of the (reciprocal) model 1 agreement (government to government approach).

- The Presidency also noted the importance of the following issues for future work in the HLWP: ensuring a consistent and coherent approach regarding the individual annexes for each Member State from an EU perspective, the issue of data protection and the possible use of existing IT systems which work successfully within the EU, for the purpose of FATCA.

- Finally, the Presidency expressed its readiness to put the issue for discussion at political level, if necessary, and if Member States so wish.

b) Furthermore, in cases where **EU legislation** could not be adopted so far, the HLWP could continue to discuss possible **ways forward**, as done during the Cyprus Presidency.

c) **Exchange of best practices** should continue to focus on the following areas:

- practical experience of Member States in dealing with tax evasion and fraud, including in relation to third countries; efficiency of tax collection;

- experiences with growth friendly tax structures[5], also taking into account the European Council conclusions of 18/19 October 2012 ('developing a tax policy for growth')[6].

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5 Taking into account recommendations contained in the most recent Annual Growth Survey .
6 EUCO 156/12, item I 2 (h).