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DRAFT REPORT

from : ECOFIN Council
to : European Council in Seville

Subject : Administrative cooperation in the area of taxation

I. INTRODUCTION

The purpose of this report is to inform the Seville European Council of progress achieved in the area of administrative cooperation.

In recent years, Member States and the Commission have embarked on various initiatives designed to improve and increase cooperation between Member States' tax administrations.

Many of these initiatives stem from the recommendations of the ad hoc Working Party on Tax Fraud, set up by COREPER on 8 September 1999 with a mandate to assess the situation concerning tax fraud, study possible weaknesses in existing Community rules and control systems, the efficiency of existing administrative cooperation arrangements for dealing with tax evasion and fraud in the areas of both indirect and direct taxation and examine the possibility of improved administrative cooperation in these areas.

Following intensive work under the Finnish and Portuguese Presidencies, the ECOFIN Council of 5 June 2000 acknowledged the report of the ad hoc Working Party on Tax Fraud, stating that it formed a useful basis for future work by the Commission and the Member States. The second part of this report examines the stage reached in the work undertaken in response to the ad hoc Working Party on Tax Fraud's recommendations.

Other initiatives not stemming from the recommendations of the ad hoc Working Party on Tax Fraud include specifically the exchange of information on taxation of savings, pensions, transfer pricing, cooperation in the field of electronic commerce and assistance in collection.

II. STATE OF PLAY

Discussions at Community level on exchange of information and administrative cooperation are taking place within the Council and the Commission.

1. Discussions on the proposal for a Regulation on administrative cooperation in the field of value added tax

There are currently two Community legal instruments for administrative cooperation in the field of value added tax: Directive 77/799/EEC and Regulation 218/92. The first provides Member States with the necessary legal framework for exchanging information on VAT and other taxes. The second relates exclusively to the exchange of information on intra-Community supplies of goods and specifically establishes a system (VIIES) for obtaining information on operators identified for the purpose of value added tax and for exchanging information on intra-Community transactions.

On 18 June 2001, the Commission submitted its proposal for a Regulation on administrative cooperation in the field of value added tax. If adopted, the Regulation will provide a single legal framework for administrative cooperation in value added tax matters.

Discussions within the Working Party on Tax Questions began during the Spanish Presidency. The Working Party has completed its first reading of the Commission's proposal and the Presidency has provided the Working Party with an initial compromise text on the proposal's first 23 Articles.

At this stage in proceedings, Member States agree on the need for increased controlled decentralisation of information exchange.

They also agree on the establishment of a general time limit of three months for responding to information requests, and a time limit of one month if the requested authority is already in possession of the information in question.

Member States believe that simultaneous controls are a very useful instrument for controlling taxable persons carrying out transactions in several Member States but that the participation of tax administrations in simultaneous controls should be optional.

Furthermore, Member States in principle agree to the presence in the requested Member State of officials from the requesting Member State responsible for applying VAT legislation, subject to the agreement of the requested Member State.

2. Administrative cooperation in the field of VAT on certain services supplied by electronic means

After intense discussions under the French, Swedish, Belgian and Spanish Presidencies, on 7 May 2002 the ECOFIN Council finally adopted the proposed amendments to Directive 77/388/EEC and Regulation 218/92 for new VAT arrangements for certain services supplied by electronic means.

A temporary special regime has been created for operators not established in the Community to make it easier for them to comply with their tax obligations.

Non-established operators will be able to meet all their formal obligations by identifying and reporting to the tax administration of a single Member State using electronic means.

Non-established operators will submit a tax return to the Member State of identification and make the relevant VAT payments to that Member State.

The introduction of this novel system for enabling non-established operators to comply with their tax obligations calls for an amendment to Regulation 218/1992 on administrative cooperation in the field of indirect taxation (VAT).

The Member State of identification will transmit the relevant tax information to the Member State of consumption and transfer the corresponding VAT revenue to it. A new Title has been added requiring the Member State of identification to provide the other States with information on its register of non-established operators and, once a quarter, to transmit the transaction information reported by its non-established operators to each of the Member States of consumption concerned.

This new mechanism for administrative cooperation enters into force in July 2003 for a period of three years. The Standing Committee on Administrative Cooperation will design the formats and procedures required to ensure that this automatic information exchange mechanism functions correctly.

3. Proposal for a Decision on computerising the movement and surveillance of excisable products

The Commission submitted this proposal for a Decision on 20 November 2001.

The proposal aims to introduce a Community computerised system to control the movement of excisable products, enable data on such products to be transmitted electronically, improve the fight against fraud and simplify control and administrative management. Excisable products have hitherto been administered and controlled through the physical movement of accompanying documents.

The examination of this proposal for a Decision began under the Spanish Presidency. There is a consensus between Member States to reach a prompt agreement on the decision. The Presidency has presented a compromise proposal on 24 May 2002.

4. Discussions on the proposal for a Decision on the Fiscalis Programme

The Fiscalis Programme is a five-year programme whose objective is, inter alia, to improve cooperation among the Member States' tax administrations to combat fraud and to achieve a more uniform application of European rules in the field of value added tax and excise duties.

The proposal for a Decision on the Fiscalis 2007 programme extends its scope to administrative cooperation in the field of direct taxation and provides for the participation of candidate countries in the programme.

The Commission submitted the proposal for a Decision on 17 January 2002. The Working Party on Tax Questions has given the text of the proposal a first reading. Member States have welcomed, in principle, the proposal to extend the current programme to 2007.

On the meeting of the Working Party on Tax Questions which took place on 16 May, the Presidency presented a compromise proposal comprising articles 1 to 18. A general agreement has been reached on most of the proposal but the Working Party has not achieved a consensus on the matters of legal basis, the extension to direct taxes, the financial framework and the creation of a Fiscalis committee.

5. Directive on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures

The ECOFIN Council on 15 June 2001 adopted Directive 44/2001/EC amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ L 175, 28.6.2001).

Under the Directive as amended, the scope of mutual assistance for the recovery of claims is widened to include taxes on income and capital and taxes on insurance premiums.

The Directive on mutual assistance for recovery establishes a system whereby tax administrations act with a view to recovering tax claims at the request of the tax administration of another Member State by recognising the enforcement instruments issued by the Member State holding the claim and requesting recovery action.

Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 30 June 2002 at the latest. The Recovery Committee is studying a proposal of directive for the implementation of the Directive 44/2001/EC

6. Automatic exchange of information in the field of savings income

The Santa Maria da Feira European Council on 19 and 20 June 2000 established that exchange of information, on a wide a basis as possible, was the ultimate objective of the European Union with a view to implementing the principle set out in the Helsinki European Council Conclusions that "*all citizens resident in a Member State of the European Union should pay the tax due on all their savings income.*"

The ECOFIN Council on 13 December 2001 adopted the text of the draft Directive on taxation of savings for the purpose of negotiations with third countries and talks with dependent or associated territories.

A standard format for the automatic exchange of information between the competent authorities of the Member States was prepared during the Swedish, Belgian and Spanish Presidencies and adopted by the ECOFIN Council on 5 March 2002 with the statement: *"The Council agreed on a standard format for the exchange of information for the purpose of the taxation of savings to be applied in the context of the future Directive. The Directive format is based on an OECD format for the automatic exchange of information."*

Attention will now turn to agreeing the necessary technical and communications infrastructure for information exchange under the Directive.

7. Automatic exchange of information on pensions

The Working Party on Tax Questions comprising competent authorities under Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, held its first meeting on April 26 2002. The Presidency put forward several proposals to Member States as a starting point for examining the exchange of information on pensions and the tax treatment of cross-border pensions. Under the mandate given by the ECOFIN Council on 16 October 2001, a report on the outcome of the discussions is to be submitted to the Council before the end of 2002.

Delegations stated their preliminary interest in the introduction of an automatic and annual information system. Many delegations were also in favour of using the OECD format, with the necessary alterations, as the basis for the exchange.

However, the point has been stressed by some Member States that the sharing of information should be linked to an EU-wide sharing of taxation rights between the Member State where the pension has been earned and the Member State where the pension is received.

8. Exchange of information on transfer pricing

The Code of Conduct Group has reported to the ECOFIN Council on 26 and 27 November 2000 that Member States shall inform each other yearly about the use of the transfer pricing guidelines in practice and the number and kind of Advance Pricing Arrangements concerning transfer pricing. In addition, they will inform on the procedures regarding Advance Pricing Arrangements. Member States will also exchange information on individual cases.

During the Swedish and Belgian presidencies the Code of Conduct Group considered the issues arising for Member States from exchange of information on transfer pricing. As regards exchange of information in individual cases, during the Spanish Presidency it has been agreed that a sub-group will consider various issues and report back to the Code Group by 15 October 2002.

9. Study of Commission Working Party No 4 (Direct Taxation) on the possibility of amending Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States

On 17 September 2001, Commission Working Party No 4 (Direct Taxation) began studying the implementation of the recommendations of the ad hoc Working Party on Tax Fraud that required amendments to Directive 77/799/EEC.

The Commission and Member States thus embarked on discussions on:

- Clarifying certain ambiguities in Articles 7 and 8 of the Directive.

- Setting a time limit for replying to information requests.

The Working Party No 4 (Direct Taxation) has discussed the above mentioned issues on 17 September 2001, 13 March 2002 and 24 May 2002.

On 13 March 2002, the Spanish delegation proposed to Working Party No 4 (Direct Taxation) that certain aspects of the proposal for a Regulation on administrative cooperation in the field of value added tax be incorporated into the scope of the administrative cooperation under Directive 77/799/EEC. These aspects were:

- A system of mutual assistance for notifications similar to the one proposed for value added tax.
- The principle of the requested authority proceeding as though it were acting on its own account when carrying out enquiries at the request of another Member State.
- Rules for conducting simultaneous controls on a voluntary basis of the tax situation of one or more taxable persons in several Member States.

The Working Party had a positive attitude towards the Spanish delegation's proposals and examined it in detail in the meeting on 24 May 2002.

10. Proceedings within the Standing Committee on Administrative Cooperation(SCAC)

The Standing Committee on Administrative Cooperation(SCAC) has followed up the recommendations of the ad hoc Working Party on Tax Fraud in the field of value added tax. The Commission plans to submit to the Council a report on the follow-up work before the end of 2002.

Practically all the Working Party's recommendations addressed to the Commission and involving legislative work are reflected in the proposal for a Regulation on administrative cooperation in the field of value added tax submitted on 18 June 2001.

The recommendations addressed to Member States have been examined by the SCAC. Member States have submitted reports on their follow-up of those recommendations and significant progress has been observed.

Member States have begun to improve such key areas as human resources, particularly in liaison offices. They have also strengthened their internal administrative procedures to make more effective administrative cooperation with other Member States possible. Most Member States are taking steps to improve the organisational and methodological aspects of control, in particular by implementing risk analysis systems. Several Member States have set up specific carousel antifraud units. However, some Member States point out that barriers to the implementation of the recommendations still exist. These relate mainly to specific features of national law, particularly confidentiality rules, and to the organisation of administration at national level.

The SCAC has studied the recommendations requiring Community action of a non-legislative nature. Specifically, improvements have been made to VIES that will start becoming operational halfway through 2002. In the area of risk analysis, the Community's criteria for risk assessment systems and risk management processes have been reviewed. Special exchanges and seminars financed by the Fiscalis Programme have also been held.

In relation to the recommendation that national inspection plans be improved by establishing certain guidelines based on common denominators of tax evasion and fraud, the SCAC has examined the information collected in the cases of fraud and the information that could be usefully exchanged at Community level. An agreement to exchange general information on a voluntary basis in cases of carousel fraud has been reached. Experience of Member State priorities in the investigation area are also exchanged in the SCAC.

11. Discussions within the Committee on Excise Duties

The report of the High Level Group on fraud in the field of excise duties, endorsed by the ECOFIN Council on 19 May 1998, stressed that certain procedures were ill suited to the needs of national administrations. This was true in particular of the register of operators (SEED) and the means of exchanging and processing the information required to combat fraud effectively.

The Committee on Excise Duties, on the basis of discussions of a group comprising eight Member States ¹, has proposed, in preparation for the computerisation of the movements and surveillance of excisable products, the following actions :

- Introducing a new procedure for checking movements based on the electronic exchange of documents and information. The trial stage began on 2 May 2002 with electronic messages and will be implemented by Member States from 1 September .
- Strengthening the advance warning system on intra-Community movements, and extending it to all Member States by 1 September 2002.
- Developing a new database for management offices and the modernisation of the register of operators (SEED).

III. CONCLUDING REMARKS

In recent years, progress on cooperation between Member States' tax administrations has undeniably been made. Once the work currently in progress has been completed, Member States will have new and powerful tools with which to apply their national tax systems.

¹ Belgium, Germany, Spain, France, Italy, the Netherlands, Sweden and the United Kingdom.

These different projects will lead to a significant increase of volume of exchange of information, especially in an electronic way. The technical aspects of this increase especially its impact on the IT systems shall have to be taken into consideration, if necessary, by the Member States and the Commission so as to guarantee the efficiency of the administrative cooperation.

However, some of the recommendations of the ad hoc Working Party on Tax Fraud have yet to be fully analysed and there are areas in which Member States must continue to work towards an enhanced and more effective cooperation between their tax administrations.