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COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Guidance of the Code of Conduct Group (Business Taxation) on tax privileges related to special economic zones

Delegations will find attached the Guidance of the Code of Conduct Group (Business Taxation) on tax privileges related to special economic zones, as endorsed by the Council (ECOFIN) on 16 June 2017.

Guidance on tax privileges related to special economic zones

Without prejudice to the second paragraph of letter G of the Code of Conduct, the specific and detailed State Aid rules based on Article 107 TFEU and any other Guidance Notes that may be applicable to specific regimes, business tax privileges available for a special geographic area of a Member State ("special economic zones") will be the object of particular scrutiny by the Code of Conduct Group when one or more of the following circumstances are met:

- a. access to the zone, either *de jure* or *de facto*, specifically favours foreign investors or discriminates against domestic investors or the tax benefits available to companies operating in the zone specifically favour transactions with non-residents or discriminate against domestic transactions;
- b. the regulations for the zone place restrictions on activities that require a substantial economic presence;
- c. the regulations do not require a definite *de jure* and *de facto* link between real economic activity carried on within the zone (such as distribution and manufacturing activities and activities that generate employment, assets and investments) and the profits for which the tax privilege is granted;
- d. tax privileges are available also for the highly mobile activities (for example, activities typical of the banking or insurance industry, intra-group services or activities consisting only of the holding of equity participations and earning only dividends and capital gains) that are permitted in the zone;
- e. there is a lack of regular tax audits verifying that the profits accruing in the zone and allocated to the activities to which tax privileges are available are commensurate with those activities;
- f. the terms and conditions for establishing a zone, for being allowed to operate in the zone and for the benefits available for companies operating in a zone are not clearly defined in public legislation or are not limited in time, or permission to establish a zone or to be active in a zone is subject to discretionary powers.