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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Code of Conduct Group (Business Taxation)
– Report to the Council
= Endorsement

Spain's national patent box regime (ES021)

The following rollback was agreed by the Code of Conduct Group on 21 September 2018:

a. Previous assessment:

*"There is one main concern **which deviates** from the CoC criteria and it relates to:*

*- the **scope of the Spanish IP regime** which is broader than the scope set in the Action 5 report. IP assets such as know-how, trade secrets¹ are not covered by the latter, while they fall under the ES IP regime. "*

b. Rollback amendments:

- Know-how/trade secrets (along with trademarks and other non-qualifying IP rights) have been specifically excluded from the scope. Thus, the "harmful" feature is corrected.

¹ "secret formula or process or from the assignment of information concerning industrial, commercial or scientific experience".

- New IP assets are added amongst the qualifying assets:
 - complementary protection certificates of medicine and of plant protection products,
 - designs and models legally protected;

resulting from research and development and innovation activities;

and

 - sophisticated copyrighted software resulting from research and development activities.

The above changes are in line with paragraphs 34 to 36 of the nexus agreement² and the Group's previous decisions.

- Legal reference: 2018 Budget Law. Law 6/2018, 3rd of July. Articles 68 and 72 modify article 23 and the twentieth transitory provision of Law 27/2014, of November 27, of the Corporate Income Tax, in relation to the State IP regime. Publication: BOE (Spanish Official Gazette), on 4th of July 2018:

<http://www.boe.es/boe/dias/2018/07/04/pdfs/BOE-A-2018-9268.pdf>

² Action 5 Report.