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REPORT

From:	General Secretariat of the Council
To:	Delegations
Subject:	Code of Conduct Group (Business Taxation) - Report to the Council

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MONITORING OF THE ACTUAL EFFECTS OF INDIVIDUAL MEASURES

BACKGROUND

During the years 2017 and 2018 the Code of Conduct Group has looked into several national measures, and for certain of these measures the Group decided that a regular monitoring of their actual effects should take place [listed in Annex].

The Group agreed in its meeting of 24 October 2019 that a regular notification date should be set. Member States whose national measures were looked into by the Group and where a decision was taken to annually monitor the actual effects, should communicate the relevant data for a given year by end of June two years later. Example: data for 2018 should be notified by end of June 2020.

Delegates were reminded to communicate by 30 June 2020 the data available for any previous years, until the year 2018 included (data for the year 2019 is to be sent by end of June 2021, unless such data is already available and can be easily reported at this stage).

The Code of Conduct Group can thus observe the trends in respect of the actual effects of a particular measure and take any appropriate decision, if need be.

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Annex: List of measures in respect of which the Code of Conduct Group decided that a regular monitoring of the actual effects should take place:

Ref	MS	Year of decision	Date ECOFIN report	Ref ECOFIN report	Description	Follow up
LU016	**LU**	2017	12-06-2017	10047/17 FISC 133	**Intra-Group Financing - safe harbour rule**	Annual monitoring
LT005	**LT**	2017	24-11-2017	14784/17 FISC 300	**Special economic zones and intra-group services (IP component)**	Annual monitoring
IT017	**IT**	2017	24-11-2017	14784/17 FISC 300	**Rollback OLD IP regime**	To monitor
EL015	**EL**	2018	08-06-2018	9637/18 FISC 241	**Patent tax incentive**	Annual monitoring
PT018	**PT**	2018	28-11-2018	14364/18 FISC 481	**Notional interest deduction regime (NID)**	Annual monitoring
LT006	**LT**	2018	28-11-2018	14364/18 FISC 481	**Extension of CIT incentive for the SEZ**	Annual monitoring

1. Luxembourg - Intra-Group Financing - safe harbour rule (LU016)

I. Background

At the end of 2019, Luxembourg authorities informed the Group that no company had used the safe-harbour simplification rules in the tax year 2017 and 2018.

In light of this information, the Commission's services took the view that, the LU016 measure had not affected the business location among Member States in a significant way. At its meeting of 14 November 2019, the COCG reached the same conclusion.

On 30 June 2020, Luxembourg communicated the updated data and revised their previous reply, informing that one taxpayer has used the measure at stake (see annex below).

II. Preliminary assessment

In light of the recent information, in particular the number of taxpayers concerned (one company) and financing amounts involved, the Commission's services maintain their view that so far, the LU016 measure has not affected the business location among Member States in a significant way.

The Group should further look into the effects in the next year's monitoring exercise, when the data for 2019 will have become available.

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Annex 1 to Addendum 4

Luxembourg - LU016 Intra-Group Financing - safe harbour rule [2017 CoCG decision]

Luxembourg - LU016	2017	*2018 [revised data]*
Overall number of companies performing Intra-Group financing	Statistics on the number of companies performing intra-group financing activities are not available as the commitment provided by Luxembourg and accepted by the Code of Conduct did not refer to the necessity to compile this type of statistics.	Statistics on the number of companies performing intra-group financing activities are not available as the commitment provided by Luxembourg and accepted by the Code of Conduct did not refer to the necessity to compile this type of statistics.
Number of companies having used the safe harbor provisions (2% net return)	Until 30/09/2019 and on the basis of the files already taxed for fiscal year 2017 and 2018, *no company has correctly communicated and applied*[1] the simplification measure (2% minimum return on assets financed after tax) as described in point 4 of the financing circular.	Only 1 company has correctly communicated and applied the simplification measure.
The total values of the financial assets of the companies having used the safe harbor	n/a	500 000 EUR
Number of companies having applied the 2% net return and afterwards made a downward adjustment	Until 30/09/2019 and on the basis of the files already taxed for the fiscal year 2017 and 2018, no company was identified that opted for the simplification regime (i.e. return of 2%) together with a 2% downward adjustment based on a transfer price analysis.	No company was identified that opted for the simplification regime (i.e. return of 2%) together with a 2% downward adjustment based on a transfer price analysis.
Overall number of information exchanges sent	n/a	1
The name of the Member States to which the relevant information was sent	n/a	PT

1 In his annual tax return, the taxpayer has to tick a specific box in order to inform the Luxembourg tax authority that he used the simplification measure. In providing our answer, we also considered those cases where a taxpayer that could prima facie be subject to the simplification measure, ticked this box in his tax return, but did not apply the 2% net return in the taxed accounts and was neither in scope of the "simplification regime together with a 2% downward adjustment based on a transfer price analysis". Accordingly, those taxpayers cannot be considered as having “used the safe harbor provisions” as referred to in the Commission’s questionnaire on monitoring of 26 July 2019.

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2. Lithuania - Special economic zones and intra-group services (IP component)) (LT005)

I. Background

In respect of the LT005 measure which extended the SEZ regime to certain (intra-group) service activities (Sections M and N from NACE Rev2[2]), the Group agreed not to assess it. The Group decided however to monitor the potential IP component (limited to computer related activities) in the SEZ regime[3].

The effects of the measure for the years 2017 and 2018 have already been looked into by the Code of Conduct Group at the end of 2019, because Lithuania had provided the relevant information at that time.

As a reminder, at its meeting of 14 November 2019, the Code of Conduct Group concluded that the measure had not affected the business location among Member States in a significant way. In particular, in respect of the potential IP component, none of the companies' activities indicated in the submitted data could be attributed to computer related activities [otherwise, data on computer related activity would be stated under sector J, NACE rev. 2)].

The Group should further look into the effects in the next year's monitoring exercise, when the data for 2019 will have become available.

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2 accounting, bookkeeping and consultancy activities (except for audit, evidence of invoice expertise and veracity), office administrative and support activities, human resource activities, architectural, engineering and related technical consultancy activities (except for construction work control and aerial photography

3 *At the meeting on 8 June 2017, the Group agreed that, based on the description, the regime as notified does not need to be assessed against the Criteria of the Code. Lithuania agreed to provide additional information on the possible IP component of the regime in order for the Commission to examine this aspect.*

At the meeting on 20 July the Commission, after receiving further additional information from Lithuania, was of the opinion that the regime did not create any BEPS issue. This conclusion was endorsed by the Group which decided that Lithuania would provide data to the Commission on an annual basis in order to monitor the implementation of the regime.

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Annex 2 to Addendum 4

Lithuania - LT005 - Special economic zones and intra-group services (IP component) [2017 CoCG decision]

Sector(s) of activity that benefited from the regime by NACE Rev. 2	Number of entities in each sector that benefitted from regime			Declared taxable profit/ Taxable income in euros		Budget revenue losses due to the SEZ relief/ The amount of exempted tax in euros		
	2016	**2017**	**2018**	**2017**	**2018**	**2016**	**2017**	**2018**
C Manufacturing	-	16	8	-	60 793 280	-	-	5 260 743
D Electricity, gas, steam and air conditioning supply	-	1	1	-	7 536 414	-	-	565 231
F Construction	-	2	1	-	2 647 086	-	-	397 063
G Wholesale and retail trade; repair of motor vehicles and motorcycles	-	2	0	-	0	-	-	0
H Transportation and storage	-	4	3	-	954 736	-	-	75 713
L Real estate activities	-	4	4	-	1 771 564	-	-	171 795
M Professional, scientific R&D and technical activities	-	1	2	-	143 678		-	21552
Total	32	30 (8 foreign owned; 22 LT owned)	19 (10 foreign owned: 9 LT owned)	52 200 000	73 846 758	7 327 000	5 522 000	6 492 097

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3. Italy – Rollback OLD IP regime[4] (IT017) [2017 CoCG decision]

I. Background

The Council Conclusions of 9 December 2014 emphasised the need for Member States to start in 2015 the legislative process necessary to change the patent box regimes and asked the Group to monitor this process. Member States which had patent boxes needed to begin the legal processes to close the regimes to new entrants from the end of June 2016 and end all benefits for existing claimants by June 2021.

In 2017, the Group decided to monitor the actual effects of the Italian implementing rules on grandfathering in particular with regard to the cut-off date for new entrants, which deviated from the required date set at 30 June 2016. Several delegations considered the effects of the Italian rollback rules regarding the cut-off date for new entrants to be potentially harmful[5].

As a reminder, Italian transition rules closed the old IP regime while allowing *IP assets entering the regime between 1/07/2016 and 31/12/2016 to benefit from the old IP regime until 30 June 2021.* In other words, access to the old regime was allowed until 31 December 2016, instead of 30 June 2016, and the effects of the old IP regime were prolonged for these companies until 30 June 2021.

Given the absence of any data from the Italian authorities, the Commission services could not present conclusions in 2019 on their actual effects.

By the set deadline of 30 June 2020, the Italian authorities communicated the requested data in respect of the tax years 2016 and 2017.

At the same time, Italy informed that the data for 2018 was not yet available, as such data was due to be gathered via the 2019 tax returns, which were still being processed at that time.

4 "The actual effects of the implementing rules on grandfathering will be further monitored in particular with regard to the cut-off date for new entrants (9637/18 FISC 241)".

5 Report to ECOFIN 14784/17 FISC 300.

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II. Further follow-up

Further clarifications are needed before concluding on the actual effects of the Italian transition rules.

The Commission services will clarify bilaterally the outstanding issues with the aim of preparing an assessment for the upcoming meeting of the Code of Conduct Group.

Annex 3: to be inserted at a later stage.

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4. Greece - Patent tax incentive (EL015)

I. Background

In 2018, as regards the EL015 regime, the Group agreed that the regime should be monitored in the future and that Greece should notify the Group on an annual basis of any developments relating to the use of the regime.

II. Preliminary assessment

The data communicated by the Greek authorities already at the end of 2019 indicates a descending trend, the number of taxpayers opting for the IP regime has decreased from three taxpayers to one taxpayer between 2017 and 2018. The amount of the reserve [the aggregate amount of income benefitting from the regime] has also followed a descending trend and has almost halved.

In light of the above, in particular the number of taxpayers concerned (one company) and the amount of income involved, the Commission's services take the view that so far, the EL015 measure has not affected the business location among Member States in a significant way.

The Group should further look into the effects in the next year's monitoring exercise, when the data for 2019 will have become available.

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Greece – EL015 - Patent tax incentive [2018 CoCG decision]

Greece - EL015	2016	2017	2018
The number of taxpayers benefitting from the regime,	2	3	1
How many of the companies benefitting from the regime are domestic companies and			
How many are foreign or foreign owned companies and			
The aggregate amount of income benefitting from the regime.	Amount of reserve: 2.853.222,24	Amount of reserve: 5 416 813,44	Amount of reserve: 3.515.314,07

4. Portugal - Notional interest deduction regime (NID (PT018)

I. Background

In 2018, the Group concluded that the Portugal's notional interest deduction regime (PT018) did not need to be assessed, given the average NID allowance of 2.283 EUR per company and the maximum NID allowance of 140 000 EUR, but that its economic effects should be monitored.

II. Preliminary assessment

End of August 2020 Portugal sent relevant data concerning the effects of the measure in the tax years 2017 and 2018 (annex below)[6]. Further information was provided end of September 2020.

Based on the data received, we can note that the use of the NID regime increases every year, both as regards the number of taxpayers benefitting from it and the amount of the NID granted (both generally and specifically for foreign owned companies).

[6] 2013-2016 data was available in the draft assessment paper (WK 13136/18)

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In comparison to 2016 (last data available when the measure was assessed), in 2017 and 2018:

- the global amount of NID granted rose from 7.5 million EUR to 63 million EUR and 120 million EUR, respectively, and
- the number of taxpayers benefitting from the NID regime has almost doubled and tripled, from around 3000 taxpayers to almost 6000 and 9000 taxpayers, respectively.
- the number of taxpayers directly or indirectly owned by foreign companies rose from 32 to 144 and 261, respectively, but their proportion remained rather low at 2.4% or 2.9% of the total taxpayers benefiting from the NID regime.

Although the number of foreign owned taxpayers represented only around 2.9% of the total taxpayers benefitting from the NID regime in 2018, the total tax expenditure attributable to them represented around 9.2% of the total tax expenditure (2.3 million EUR out of 25.2 million EUR). In other words, the foreign owned taxpayers, which represented only 2.9% of the taxpayers benefitting from the NID regime in 2018, received almost 10% of the NID granted. Per company, this means that the average NID tax benefit amounts in general to 2830 EUR per company (21% CIT x 13477 EUR average NID allowance), whereas the average NID tax benefit attributable to foreign owned taxpayers amounts to 8 819 EUR.

This indicates that the NID benefits are higher for taxpayers with foreign links. Portugal explains this difference with the fact that taxpayers with foreign links have a larger business dimension than the domestic ones.[7] The data communicated shows indeed that although the taxpayers with foreign links represent only 2.9% of the total number of taxpayers benefitting from the regime, they count for around 11.5% of the total assets, 13.5% of the total sales and 13% of the employees.

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2018	Number	Sales (euros)	Total Assets (euros)	Employees
Taxpayers benefitting from the measure	8.922	32.839.188.354,34	51.828.634.916,19	190.400
Out of which directly or indirectly foreign owned companies:	261	4.448.667.900,86	5.980.875.062,22	25.247

To conclude, the average NID tax benefit attributable to foreign owned taxpayers is almost three times higher than the general average of NID tax benefit (8 819 EUR compared to 2 830 EUR). Nonetheless, it remains rather low and significantly below the maximum amount of tax benefit of 29 400 EUR allowed under the PT NID (CIT rate of 21% x 140.000 EUR maximum NID allowance). An average NID tax benefit of 8 819 EUR actually stands for an average increase of capital (new share capital contributions) of 600 000 EUR (600 000 EUR x 7%[8] x 21% CIT rate).

Based on the arguments above, it is our preliminary assessment that the regime does not seem to have affected in a significant way the business location among the Member States.

However, the Commission services take note of the ascending trends of the measure and therefore suggest that the Group should further monitor the effects of the measure.

8 Rate of interest deduction

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Portugal – PT018 - **Notional interest deduction regime (NID)** [2018 CoCG decision]

Portugal - PT018	2013	2014	2015	2016	2017	2018
Total number of taxpayers benefitting from the measure	631	1440	2044	3299	5915	8922
Out of which directly or indirectly foreign owned companies:	0	7	13	32	144	261
Global amount of NID granted	1 300 948	3 503 749	4 903 392	7 530 000	63 447 187	120 239 239
Total tax expenditure (*at 21% CIT rate*)	325 237	654 053	917.581	1 407 269	13 323 909	25 250 240
Average amount of NID allowance				*2283*	10 726	13 477
Total tax expenditure attributable to directly or indirectly foreign owned	0	10743	33102	64 107	1 203 084	2 301 980
Average NID tax expenditure attributable to directly or indirectly foreign owned				*2 003*	8 354	8 819

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Lithuania - Extension of CIT incentive for the SEZ (LT006)

I. Background

In 2018, the Group agreed that the LT006 measure, *Lithuania's Extension of the corporate income taxation regime to special tax zones* does not need to be assessed but its potential adverse economic effects should be monitored.

II. Preliminary assessment

The data communicated by the Lithuanian authorities indicates that – in the first year after the introduction of the measure - two companies have so far benefited from the extension of the CIT incentive for SEZ. The amounts of income exempt are in both instances below 500 000 EUR, with a total budget revenue loss of around 100 000 EUR.

In light of the above, in particular the number of taxpayers concerned and amount of income involved, the Commission's services take the view that so far, the LT006 measure has not affected the business location among Member States in a significant way.

The Group should further look into the effects in the next year's monitoring exercise, when the data for 2019 will have become available.

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Annex 5 to Addendum 4

Lithuania – LT006: Extension of CIT incentive for the SEZ [2018 CoCG decision]

Sector(s) of activity that benefited from the regime by NACE Rev. 2	Number of entities in each sector that benefitted from regime	Declared taxable profit/ Taxable income in euros/ Aggregated amount of exempted income	Budget revenue losses due to the SEZ relief/ The amount of exempted tax in euros
	2018	**2018**	**2018**
H Transportation and storage	1	326 095	48 914
S Other services activities	1	368 655	55 298
Total	2	694 750	104 212

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