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NOTE

From: Chair of the Code of Conduct Group (Business Taxation)
To: Delegations

Subject: Code of Conduct Group (Business Taxation): work programme during the Portuguese Presidency

Delegations will find in the Annex the Code of Conduct Group (Business Taxation) work programme during the Portuguese Presidency of the Council of the EU.

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME UNDER THE PORTUGUESE PRESIDENCY

1. In its conclusions of 12 June 2020 (doc. 8892/20), the ECOFIN Council acknowledged the impact of the ongoing COVID-19 public health emergency on the work of the Code of Conduct Group (COCG) and gave a guidance to continue in its work under the multiannual work package 2018 (doc. 10420/18);
2. Furthermore, in its conclusions of 27 November 2020 (doc 13350/20), the ECOFIN Council notably:
 - requested the Code of Conduct Group to continue its work in the context of the EU list of non-cooperative jurisdictions, which has led to concrete results based on a cooperative approach with third countries and jurisdictions;
 - reiterated its readiness to continue to discuss the scope of the mandate of the Code of Conduct as soon as there are relevant developments at international level but no later than by the beginning of 2022 and agreed that the ongoing discussion on the scope of the mandate should also cover features of tax systems that have general application and that may have harmful effects.
3. The work of the COCG is to be affected by further developments related to the COVID-19 pandemic. It is proposed to follow these developments very closely and to plan the work flexibly depending on developments and update the programming according to the developments, including decisions on the working methods by Coreper.

4. Against this background, this note sets out the proposed COCG work programme for the duration of the Portuguese Presidency of the Council (first semester of 2021).

I. General aspects

5. As indicated in the email by the GSC from 4 December 2020, the mandate of the current Chair, Ms Lyudmila Petkova, ends on 4 February 2021. The appointment of the Chair for the next period will be foreseen on agenda of the COCG on 1 February 2021. Relevant information will be circulated by the GSC in advance of that meeting. The Chair will be appointed for a period of two years (starting on 5 February 2021).

II. Update and revision of the mandate of the Code of Conduct Group

6. The COCG will continue work on the revision of its mandate started during the German Presidency. It will be based on the results achieved so far and focus more particularly on the scope.

III. Monitoring of standstill and the implementation of rollback

7. The COCG will monitor developments in administrative practices of Member States, complete the review of the tax measures notified by Member States under the standstill and rollback process for the year ending on 31 December 2020 and continue the monitoring of actual effects of some regimes for which regular monitoring was decided.

IV. Monitoring the implementation of agreed guidance

8. In line with its agreed priority list (doc. 6603/18), the COCG will monitor Member States' compliance with the 2017 Guidance on tax privileges related to special economic zones.

V. Links with third countries

9. The COCG will continue monitoring in the jurisdictions covered by the current geographical scope.
10. The EU list of non-cooperative jurisdictions for tax purposes will be revised by the ECOFIN Council in February 2021 with the following objectives:
 - remove jurisdictions that completed their commitments from Annex I;
 - list in Annex I jurisdictions which do not comply with the requirements of the criteria for screening jurisdictions, taking also into consideration the newly released OECD Global Forum for Transparency and Exchange of Information (Global Forum) ratings for criterion 1.2;
 - remove jurisdictions that completed their commitments from Annex II, taking also into consideration the newly released OECD Global Forum ratings for criterion 1.2; and
 - set new deadlines for certain jurisdictions listed on Annex II to comply with their undertaken commitments, as appropriate.

11. The Group will continue work on:
 - a. screening of the jurisdictions that have foreign source income exemption regimes (FSIE) in place;
 - b. the monitoring of the implementation of the country by country (CbCR) anti-BEPS minimum standard (criterion 3.2);
 - c. the future criterion 1.4 on the exchange of beneficial ownership information;
 - d. defensive measures towards non-cooperative jurisdictions (COCG will be invited to discuss the way forward (on the basis of the texts endorsed by the COCG/Council in 2019) and poss. draft questionnaire (incl. deadlines to respond)).

The way forward on these issues will take into account the working methods during the COVID pandemic, while ensuring the consistency of the process, also when requesting jurisdiction to take commitments.

12. Furthermore, the COCG will work with a view to reviewing the geographical scope of the EU listing exercise; it will complete the review of economic data for selecting jurisdictions under the EU listing process, on the basis of an updated scoreboard to be provided by the Commission services.
13. The Chair will continue procedural/political dialogue with jurisdictions, as necessary, and schedule, as soon as circumstances allow, a coordination meeting with the Chairs and secretariats of the OECD Global Forum, Forum on Harmful Tax Practices (FHTP) and Inclusive Framework on BEPS.

VI. Organisation of work

14. The Chairs' note on the planning of the work for January and February 2021 has been circulated on 16 December 2020 (WK 147837/20).

Depending on developments of the COVID -19 pandemic and its impacts, the Group should be ready to continue work via videoconferences and to task Fiscal Attachés to examine urgent questions.