



Brussels, 26 November 2021
(OR. en)

14230/21
ADD 5

FISC 202
ECOFIN 1125

REPORT

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

Subject: Code of Conduct Group (Business Taxation)
- Report to the Council
= Approval

Italy's Rollback of the old IP regime (IT017)¹

I. Background

1. In 2017, the Group decided to monitor the actual effects of the Italian grandfathering rules, in particular with regard to the cut-off date for new entrants. According to the Italian rules, new entrants from 1 July to 31 December 2016 could still benefit of the old IP regime until its abolition date (30 June 2021)².
2. The Code Group took note of such deviation of the Italian grandfathering rules from the established timeframe and considered the effects of those rules to be potentially harmful³ and decided these should be monitored.

¹“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)”.

² Member States were required to close their respective patent box regime to new entrants no later than 30 June 2016. Additionally, Member States could allow taxpayers benefitting already from the existing regime to keep such entitlement until 30 June 2021 (abolition date) under grandfathering arrangements.

³ Report to ECOFIN 14784/17 FISC 300.

3. Given the absence of data from the Italian authorities up until June 2020, the Commission services could not present any preliminary assessment of the rollback done by Italy.

II. Preliminary assessment

1. General remarks

4. By 30 June 2020, the Italian authorities submitted the requested data for tax years 2016 and 2017 only. In its submission, Italy informed the Commission Services that 2018 data were not available as data from the 2019 tax returns still needed to be processed at that time. In early August 2021, the Italian authorities complemented their first submission by including the requested data for tax years 2018 and 2019.
5. According to the data provided, it is worth noting that Italy made a distinction between the following four categories of taxpayers:
 - domestic companies;
 - Italian PE of foreign companies;
 - foreign or foreign-owned companies (e.g part of a multinational group; *ultimate owner abroad*), and
 - Italian companies with a Resident Ultimate Parent Entity⁴ (multinational companies headquartered in Italy, in other words *ultimate owner in Italy*).
6. In the past, the Code of Conduct Group has not made any distinction between the last two categories of *companies*. The distinction that the Code usually makes is between domestic companies, PEs of foreign companies and foreign or foreign-owned companies.

2. Preliminary analysis

7. From the data made available, it is possible to draw the following main conclusions:
 - The IP assets put into the old IP regime during the extended period from 1 July 2016 to 31 December 2016 concerned mainly trademarks, which are IP rights that do not qualify for tax benefits under nexus-compliant IP box regimes⁵.

⁴ “An additional type of taxpayers (Ultimate Parent Entity) has been inserted. As they are Italian ultimate parent companies, including them in one of the categories listed in the Annex would not be appropriate. Therefore, we inserted the relevant information apart.”

⁵ From the data on 2018 and 2019, an increasing trend in the number of taxpayers that benefitted from trademarks beyond the end of 2016 can be noted. The Italian authorities explained that this was mainly due to difficulties encountered in the calculation of the IP income as embedded royalties, and to the lengthy administrative procedure regarding the mandatory request for a

- Taxpayers that entered IP assets into the old IP regime after the cut-off date were 156 in 2016 and 2017, 179 taxpayers in 2018 and 206 taxpayers in 2019, of which:
 - almost 2/3 were domestic taxpayers in 2016 and 2017 (101/156), 60% in 2018 (108/176) and around 55% in 2019 (114/206);
 - a bit more than 1/3 (55/156) were foreign-owned taxpayers (with ultimate owner abroad or in Italy) in 2016 and 2017, around 40% (71/179) in 2018 and around 45% (92/206) in 2019.

- Looking in particular at the income benefitting from the regime for new entrants per each of the five categories of IP assets, trademarks' income represents the highest amounts. It is also increasing over time from 321 million EUR in 2016⁶ to 962 million EUR in 2017, to 981 million EUR in 2018 and to more than 1.1 billion EUR in 2019.

- More importantly, when it comes to the amounts of tax benefits associated with the types of taxpayers per category of IP assets, foreign or foreign-owned companies with trademark's income were the main beneficiaries of the grandfathered regime. Such foreign or foreign owned companies received almost 85 million EUR in 2016, 245 million EUR in 2017, around 255 million EUR in 2018, and more than 310 million EUR in 2019. By comparison, the amounts of tax benefits for trademarks owned by domestic companies were respectively of 5 million EUR in 2016, 23.6 million EUR in 2017, almost 18 million EUR in 2018, and around 7 million EUR in 2019.

3. *Conclusion on the (de facto) harmfulness of the rollback measure*

8. The data that Italy provided clearly show that prolonging the cut-off date by an additional six months allowed taxpayers to transfer assets - trademarks in particular - into the old IP patent box, thus affecting business location among Member States in a significant way. This impact was relevant both in terms of tax benefits granted and of categories of taxpayers that mostly benefitted from the grandfathered regime, i.e. foreign or foreign-owned companies.

9. Therefore, it should be concluded that the Italian rollback measure was (de facto) harmful. On the other hand, it is to be acknowledged that the old patent regime, and all tax benefits attached to it, are no longer in place as from 1 July 2021 and, hence, there is no further action that the Code Group could take against its harmfulness.

III. Follow-up

The COCG agreed with the conclusion that the IT017 measure had harmful effects but no further action is needed, since the old patent box regime is no longer in place.

ruling, its agreement between the concerned parties and eventually the inclusion of that income in the tax declaration.

⁶ It is likely that significantly lower amounts in 2016 compared to those recorded in 2017, 2018 and 2019 were mainly due to extended application of the old patent box regime only for part of 2016, i.e. from the second half of that year.

Italy - IT017 – Rollback OLD IP regime⁷ [2017 CoCG decision]

Italy - IT017	2016	2017	2018	2019
<p>1. Number of new entrants after the cut-off date (30.06.2016), broken down per category:</p> <ul style="list-style-type: none"> ➤ software protected by copyright, ➤ industrial patents, ➤ trademarks, ➤ designs and models capable of being legally protected, ➤ processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection . 	<p><i>software protected by copyright,</i></p> <ul style="list-style-type: none"> • 34 taxpayers • 184 assets <p><i>industrial patents,</i></p> <ul style="list-style-type: none"> • 31 taxpayers • 73 assets <p><i>trademarks</i></p> <ul style="list-style-type: none"> • 105 taxpayers • 2445 assets <p><i>designs and models capable of being legally protected,</i></p>	<p><i>software protected by copyright,</i></p> <ul style="list-style-type: none"> • 34 taxpayers • 184 assets <p><i>industrial patents,</i></p> <ul style="list-style-type: none"> • 31 taxpayers • 73 assets <p><i>trademarks</i></p> <ul style="list-style-type: none"> • 105 taxpayers • 2445 assets <p><i>designs and models capable of being legally protected,</i></p>	<p><i>software protected by copyright,</i></p> <ul style="list-style-type: none"> • 31 taxpayers • 133 assets <p><i>industrial patents,</i></p> <ul style="list-style-type: none"> • 24 taxpayers • 78 assets <p><i>trademarks</i></p> <ul style="list-style-type: none"> • 117 taxpayers • 2698 assets <p><i>designs and models capable of being legally protected,</i></p>	<p><i>software protected by copyright,</i></p> <ul style="list-style-type: none"> • 25 taxpayers • 92 assets <p><i>industrial patents,</i></p> <ul style="list-style-type: none"> • 22 taxpayers • 90 assets <p><i>trademarks</i></p> <ul style="list-style-type: none"> • 143 taxpayers • 2840 assets <p><i>designs and models capable of being legally protected,</i></p>

⁷ “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)”.

	<ul style="list-style-type: none"> • 18 taxpayers • 6123 assets <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i></p> <ul style="list-style-type: none"> • 18 taxpayers • 4181 assets 	<ul style="list-style-type: none"> • 18 taxpayers • 6123 assets <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i></p> <ul style="list-style-type: none"> • 18 taxpayers • 4181 assets 	<ul style="list-style-type: none"> • 7 taxpayers • 1802 assets <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i></p> <ul style="list-style-type: none"> • 13 taxpayers • 11 assets 	<ul style="list-style-type: none"> • 9 taxpayers • 1789 assets <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i></p> <ul style="list-style-type: none"> • 14 taxpayers • 10 asset
<p>2. How many of the companies benefitting from the regime are:</p> <ul style="list-style-type: none"> ➤ <i>domestic companies,</i> ➤ <i>Italian PE of foreign companies; and</i> ➤ <i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i> 	<p><i>domestic companies,</i></p> <p>101</p> <p><i>Italian PE of foreign companies; and</i></p> <p>0</p> <p><i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i></p>	<p><i>domestic companies,</i></p> <p>101</p> <p><i>Italian PE of foreign companies; and</i></p> <p>0</p> <p><i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i></p>	<p><i>domestic companies,</i></p> <p>108</p> <p><i>Italian PE of foreign companies; and</i></p> <p>0</p> <p><i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i></p>	<p><i>domestic companies,</i></p> <p>114</p> <p><i>Italian PE of foreign companies; and</i></p> <p>0</p> <p><i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i></p>

	31 <i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>	31 <i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>	37 <i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>	45 <i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>
	24	24	34	47
3. Aggregate amount of taxable income of new entrants and the income benefitting from the regime for new entrants per each of the five categories of IP assets;	Aggregate amount of taxable income of new entrants <i>domestic companies,</i> 98.536.532 <i>Italian PE of foreign companies; and</i> 0 <i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i> 1.308.829.168	Aggregate amount of taxable income of new entrants <i>domestic companies,</i> 99.788.254 <i>Italian PE of foreign companies; and</i> 0 <i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i> 1.088.460.404	Aggregate amount of taxable income of new entrants <i>domestic companies,</i> 129.869.346 <i>Italian PE of foreign companies; and</i> 0 <i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i> 1.021.023.048	Aggregate amount of taxable income of new entrants <i>domestic companies,</i> 373.164.350 <i>Italian PE of foreign companies; and</i> 0 <i>foreign or foreign owned companies (e.g part of a multinational group; ultimate owner abroad).</i> 1.851.577.974

	<i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>	<i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>	<i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>	<i>Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]</i>
	1.306.788.097	1.100.201.626	1.179.640.545	1.256.852.736
	income benefitting from the regime for new entrants (amount in euro) per each of the five categories of IP assets	income benefitting from the regime for new entrants (amount in euro) per each of the five categories of IP assets	income benefitting from the regime for new entrants (amount in euro) per each of the five categories of IP assets	income benefitting from the regime for new entrants (amount in euro) per each of the five categories of IP assets
	<i>software protected by copyright,</i>	<i>software protected by copyright,</i>	<i>software protected by copyright,</i>	<i>software protected by copyright,</i>
	837.505	2.506.404	2.593.960	6.305.521
	<i>industrial patents</i>	<i>industrial patents</i>	<i>industrial patents</i>	<i>industrial patents</i>
	586.696	1.755.808	4.294.300	8.410.858
	<i>trademarks</i>	<i>Trademarks</i>	<i>Trademarks</i>	<i>Trademarks</i>
	321.594.992	962.434.789	981.225.182	1.138.936.133
	<i>designs and models capable of being legally</i>	<i>designs and models capable of being legally</i>	<i>designs and models capable of being legally</i>	<i>designs and models capable of being legally</i>

	<i>protected</i> 225.661 <i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i> 0	<i>protected</i> 675.337 <i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i> 0	<i>protected</i> 15.840 <i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i> 728.497	<i>protected</i> 1.160.083 <i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i> 1.345.810
4. The amounts of tax benefits associated to the type of taxpayers mentioned under point 2 above (and not as an average) per category of IP assets: ➤ <i>software protected by copyright,</i> ➤ <i>industrial patents,</i> ➤ <i>trademarks,</i> ➤ <i>designs and models capable of being legally protected,</i> ➤ <i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection.</i>	domestic companies, <i>software protected by copyright:</i> 147.702 <i>industrial patents:</i> 103.470 <i>trademarks:</i>	domestic companies, <i>software protected by copyright:</i> 699.287 <i>industrial patents:</i> 489.870 <i>trademarks:</i>	domestic companies, <i>software protected by copyright:</i> 723.715 <i>industrial patents:</i> 250.583 <i>trademarks:</i>	domestic companies, <i>software protected by copyright:</i> 1.173.634 <i>industrial patents:</i> 119.989 <i>trademarks:</i>

	5.003.470	23.688.644	17.975.467	7.209.683
	<i>designs and models capable of being legally protected:</i>	<i>designs and models capable of being legally protected:</i>	<i>designs and models capable of being legally protected:</i>	<i>designs and models capable of being legally protected:</i>
	39.798	188.419	4.419	323.663
	<i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>	<i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>	<i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>	<i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>
	0	0	203.251	375.481
	Italian PE of foreign companies; and	Italian PE of foreign companies; and	Italian PE of foreign companies; and	Italian PE of foreign companies; and
	0	0	0	0
	Foreign or foreign owned companies (e.g. part of a multinational group; ultimate owner	Foreign or foreign owned companies (e.g. part of a multinational group; ultimate owner	Foreign or foreign owned companies (e.g. part of a multinational group; ultimate owner	Foreign or foreign owned companies (e.g. part of a multinational group; ultimate owner

	<p>abroad).</p> <p><i>software protected by copyright:</i></p> <p>0</p> <p><i>industrial patents:</i></p> <p>0</p> <p><i>trademarks:</i></p> <p>51.155.218</p> <p><i>designs and models capable of being legally protected:</i></p> <p>0</p> <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal</i></p>	<p>abroad).</p> <p><i>software protected by copyright:</i></p> <p>0</p> <p><i>industrial patents:</i></p> <p>0</p> <p><i>trademarks:</i></p> <p>99.329.444</p> <p><i>designs and models capable of being legally protected:</i></p> <p>0</p> <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal</i></p>	<p>abroad).</p> <p><i>software protected by copyright:</i></p> <p>0</p> <p><i>industrial patents:</i></p> <p>0</p> <p><i>trademarks:</i></p> <p>72.589.816</p> <p><i>designs and models capable of being legally protected:</i></p> <p>0</p> <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal</i></p>	<p>abroad).</p> <p><i>software protected by copyright:</i></p> <p>0</p> <p><i>industrial patents:</i></p> <p>0</p> <p><i>trademarks:</i></p> <p>88.617.233</p> <p><i>designs and models capable of being legally protected:</i></p> <p>0</p> <p><i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal</i></p>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<i>protection</i>	<i>protection</i>	<i>protection</i>	<i>protection</i>
	0	0	0	0
	Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]	Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]	Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]	Resident Ultimate Parent Entity [MNEs companies headquartered in Italy]
	<i>software protected by copyright:</i>	<i>software protected by copyright:</i>	<i>software protected by copyright:</i>	<i>software protected by copyright:</i>
	0	0	0	585.606
	<i>industrial patents:</i>	<i>industrial patents:</i>	<i>industrial patents:</i>	<i>industrial patents:</i>
	0	0	947.527	2.226.640
	<i>trademarks:</i>	<i>trademarks:</i>	<i>trademarks:</i>	<i>trademarks:</i>
	33.735.657	145.502.334	183.196.543	221.936.265
	<i>designs and models capable of being legally protected:</i>	<i>designs and models capable of being legally protected:</i>	<i>designs and models capable of being legally protected:</i>	<i>designs and models capable of being legally protected:</i>
	0	0	0	0
			<i>processes, formulas and</i>	<i>processes, formulas and</i>

	<i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>	<i>processes, formulas and information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>	<i>information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>	<i>information relating to experience acquired in the industrial, commercial, scientific field, capable of legal protection</i>
	0	0	0	0
5. Number of ruling requests received in connection with the IP regime. <i>(eligible requests of Patent box ruling, processed per year of filing)</i>	1,996	306	338	580 <i>(out of which, 314 are requests of renewal)</i>
6. Number of rulings granted. <i>(processed per year of agreement's conclusion)</i>	7	167	617	418