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REPORT

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

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

Luxembourg's Intra-Group Financing – safe harbour rule (LU016)

I. Background

1. Based on the data communicated by Luxembourg authorities no company had used the safe-harbour simplification rules in the tax year 2017, and only one taxpayer has used the measure in 2018 and in 2019 (see annex below).

II. Preliminary assessment

2. In light of the previous information made available, the Code of Conduct Group concluded so far that the LU016 measure had not affected the business location among Member States in a significant way.

3. In light of the recent information regarding the use of the measure in 2019, 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.
4. The Group should further look into the effects in the next year's monitoring exercise, when the data for 2020 will have become available.

III. Follow-up

- i. The COCG agreed with the preliminary conclusion that the **LU016 regime** does not seem to have affected in a significant way the business location among the Member States.
- ii. The GOCCG agreed that monitoring should continue.

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

Luxembourg - LU016	2017	2018	2019
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.		
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, <i>no company has correctly communicated and applied¹ the simplification measure (2% minimum return on assets financed after tax) as described in point 4 of the financing circular.</i>	Only 1 company has correctly communicated and applied the simplification measure.	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	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.	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	1
The name of the Member States to which the relevant information was sent	n/a	PT	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.