Council of the
European Union

Brussels, 13 June 2024
(OR. en)

11151/24

LIMITE

FISC 137
ECOFIN 714

PUBLIC

REPORT

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

I. BACKGROUND

1. On 1 December 1997, the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation. This resolution provides for the establishment of a group within the framework of the Council to assess tax measures that may fall within the Code, which was established on 9 March 1998.[1] On 8 November 2008 the Council reformed the Code of Conduct. The resolution provides that the Code of Conduct Group (hereafter "COCG" or "Group") "*will report regularly on the measures assessed*" and that "*These reports will be forwarded to the Council for deliberation. They will include the agreed descriptions and final assessments of the tax measures it has examined. Final documents, as approved by the Council, will be made public, as appropriate, in accordance with relevant rules.* (paragraph H).

2. In its conclusions of 8 December 2015,[2] the Council expressed the wish to improve the visibility of the work of the COCG and agreed "*that its results, in particular its 6-monthly reports, are systematically made available to the public*" (paragraph 16).

[1] ST 6619/98.
[2] ST 15148/15.

3. In its conclusions of 8 March 2016,[3] the Council furthermore called "*for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance*" (paragraph 16).

4. This report from the COCG encompasses the work of the Group in the first half of 2024 during the term of the Belgian Presidency of the Council. The previous reports, guidelines and other documents can be found on the website of the Council of the EU (Code of Conduct Group)[4].

PUBLIC

II. GENERAL ASPECTS

A. Organisation of work

5. In the first half of 2024, the COCG, chaired by Ms Maria José Garde Garde, Director-General for Taxation at the Ministry of Finance of Spain, has continued to fulfil her mandate in accordance with the agreed multiannual work package and the work programme and the guidance from the 2023 Ecofin Council, in particular from December 2023[5] and February 2024[6].

6. Meetings of the COCG were held on 7 February [and 10 June 2024], and the subgroup meetings were held on 19 January, 1 March, 24 April and 23 May 2024.

7. At the COCG meeting on 7 February, Mr. Christophe Vinck (Belgium) and Ms. Bernadett Gubacsi (Hungary) were appointed as the Vice-Chairs.

[3] ST 6900/16.
[4] https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group.
[5] 16361/23
[6] 6776/24

III. STANDSTILL AND ROLLBACK REVIEW PROCESS

8. A call for standstill and rollback notifications of new preferential tax measures enacted by the end of 2023 was launched in mid-November 2023, and the results were presented at the COCG meeting of 7 February 2024. The following new regimes were […] notified[7]:

- Italy: Tax credit for investments in the Single Economic Zone for the year 2024 (IT025)
- Italy: Tax credit for research and development in the microelectronics sector (IT026);
- Italy: Additional income tax deduction to encourage an increase in the employment base and open-ended employment contracts (IT027);
- Lithuania: Amendments to the CIT tax for companies implementing large-scale projects (LT010);
- Portugal: Tax Regime to Incentivize the Capitalization of Companies (PT019);
- Portugal: Madeira Free Trade Zone – IV (PT020).

A. Standstill review process

11. The following decisions were reached by the Group:

    1. Italy's Additional income tax deduction to encourage an increase in the employment base and open-ended employment contracts (IT027) – the COCG agreed that the measure does not need to be assessed by the Group.[8]

    2. Lithuania's Amendments to the CIT tax for companies implementing large-scale projects (LT010) – the COCG agreed that the measure does not need to be assessed but its effects should be monitored by the Group.[9]

[7] See updated compilation in doc. 8602/7/20 REV 7.
[8] See ADD 1.
[9] See ADD 2.

PUBLIC

3. Portugal's Madeira Free Trade Zone – IV (PT020) – the COCG agreed that the measure does not need to be assessed by the Group. However, Portugal committed to provide the Group by June 2025 with the number of entities licensed between 1 January 2021 and 31 December 2024 to operate in the MFTZ, broken down per year and by sector of activity.[10]

12. The standstill review of Romania's profit tax exemption for companies with innovation and R&D activities (RO008) is kept on hold until the relevant national legislation is adopted: this regime is currently not applied because the subsequent administrative acts have so far not been adopted.

B. Rollback review process

13. Regarding the rollback notification on Croatia's Act on Investment Promotion (HR019), the Group agreed in 2023 that the roll-back is still pending and that it should be extended to the New Investment Promotion Act (HR020)[11].

C. Focus on notifications under the standstill procedure

14. Building on work carried on in 2023, the COCG further considered possible ways to improve its working practices, to further clarify when Member States should inform the Group of measures which may fall within the scope of the Code, and that such measures are notified by reference to clear and objective criteria. On 10 June 2024 the COCG agreed on a revised Guidance on the notification of preferential tax measures under paragraph E of the Code (see Annex I).

[10] See ADD 3.
[11] 15757/23.

PUBLIC

IV. MONITORING OF THE ACTUAL EFFECTS OF INDIVIDUAL MEASURES

15. During recent years, some of the measures subject to scrutiny were put under annual monitoring. In accordance with past practice, the concerned Member States are expected to communicate to the Group the relevant data (i.e. for year 2022) by the end of June. The Group will look into the actual effects of the relevant measures in the second semester. At the same time and once relevant data is made available to it, the Group will also look into the effects of the remaining measures from the 2023 monitoring cycle, which were not dealt with due to lack of data: measure CY020, and the use of the safe-harbour rules in Cyprus and Poland.

PUBLIC

V. THE EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

A. Update of the EU list of non-cooperative jurisdictions for tax purposes

16. In its conclusions of 8 December 2023[12], the Ecofin Council welcomed the progress achieved by the Code of Conduct Group, in particular with regard to the revision of the EU list of non-cooperative jurisdictions in October 2023 and welcomed the positive effect of the Code of Conduct and the work of the Group on reducing harmful tax practices and the decrease of preferential tax regimes both in the EU and globally.

17. The Council welcomed in particular the progress made by jurisdictions that completed the reform of their foreign-source income exemption (FSIE) regimes within the suggested deadline and the ongoing dialogue with some other jurisdictions that are in the process of reforming their FSIE regime. The Council welcomed the progress made with no or only nominal tax jurisdictions in the context of monitoring the implementation of the economic substance requirements under criterion 2.2, with relevant jurisdictions regarding the implementation of the country-by-country reporting (CbCR) anti-BEPS minimum standard under criterion 3.2, as well as regarding the implementation of automatic exchange of information (AEOI) (criterion 1.1) and exchange of information on request (EOIR) under criterion 1.2.

[12] 16361/24.

18. The Council welcomed the progress concerning the future criterion 1.4 on beneficial ownership information and called on the Group to continue the work to incorporate beneficial ownership as a fourth criterion on tax transparency;

19. The Council called on the Group to keep working on the evaluation of defensive measures in the tax area towards non-cooperative jurisdictions, in accordance with the agreed Guidance, and report to the Council on further progress in this area.

20. The Council invited the Group to engage with relevant jurisdictions which have not yet been assessed for the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2).

21. The COCG continued interactions and dialogue with the relevant jurisdictions to assess recent developments and the implementation of their commitments, with a view to the periodical update of the EU list.

22. The preparation of the latest revision of the list took place at the subgroup meeting on 19 January and was finalised at the COCG meeting on 7 February 2024. The updated EU list of non-cooperative jurisdictions was approved by the Council on 20 February 2024[13] and published in the Official Journal on 26 February 2024[14].

23. There are 12 jurisdictions on the EU list after the update. Four jurisdictions were removed from the EU list of non-cooperative jurisdictions for tax purposes (Annex I): the Bahamas, Belize, Seychelles and the Turks and Caicos Islands. In the OECD Forum of Harmful Tax Practices (FHTP) most recent assessment, the recommendations to both the Bahamas and Turks and Caicos Islands on exchange of information were converted from “hard” to “soft” recommendations, which allowed the Code of Conduct Group to consider these jurisdictions compliant with the standard on economic substance. Belize and Seychelles were granted a supplementary review by the Global Forum with regard to criterion 1.2 of the EU list on exchange of information on request. Pending the outcome of this review, Belize and Seychelles have been included in the relevant section of Annex II.

24. Numerous positive developments can also be noted in the state of play of commitments (Annex II of the relevant conclusions). Two jurisdictions, Albania and Hong Kong, fulfilled their commitments by amending their harmful tax regimes, and were removed from Annex II.

---

[13] 6776/24.
[14] OJ C 2024/1804, 26.2.2024, pages 1-4.

PUBLIC

Aruba and Israel also fulfilled their pending commitments related to the automatic exchange of financial account information in the framework of the common reporting standard, so these commitments were also removed. The Global Forum gave Botswana, Dominica, positive ratings with regard to the exchange of information on request, resulting in the deletion of the reference to these jurisdictions in the relevant section of Annex II.

25. Twelve jurisdictions remain on Annex I: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

26. Türkiye remains on Annex II for criterion 1.1 (automatic exchange of information) as it is still not fully in line with the commitments as per the conclusions of the Ecofin Council of 22 February 2021, 5 October 2021, 24 February 2022, 4 October 2022, 14 February 2023, 17 October 2023 and 20 February 2024. Türkiye is expected to begin or continue the technical work on the effective exchange of data with all Member States to meet the agreed international standards and fully comply with the requirements mentioned in the conclusions of the Ecofin Council above.

B. Monitoring of the implementation of commitments taken by jurisdictions

General overview

27. As of February 2024, the implementation of a total of 17 commitments[15] taken at a high political level by 10 jurisdictions[16] remains to be monitored by the Group. These are recorded in Annex II of the Council conclusions:

Criterion	Number of jurisdictions committed
1.1	3
1.2	3
2.1	3
3.2	1

[15] This figure adds up the number of commitments by jurisdictions under each criterion (see table).
[16] Armenia, Belize, British Virgin Islands, Costa Rica, Curaçao, Eswatini, Malaysia, Seychelles, Türkiye, and Vietnam.

PUBLIC

28. Pending commitments on automatic exchange of information, exchange of information on request and implementation of the CbCR minimum standards are detailed under dedicated sections to criteria 1.1, 1.2, and 3.2 respectively.

29. Moreover, a total of three harmful tax regimes remain to be rolled back under criterion 2.1, one of which is under monitoring by the COCG[17] and 2 by the OECD FHTP[18]. A detailed overview can be found in the compilation[19] of preferential regimes and measures examined by the COCG under criteria 2.1 and 2.2.

Political and procedural dialogue

30. The Chair of the COCG continued to conduct political and procedural dialogues with relevant international organisations and jurisdictions, where necessary.

31. The Chair received a number of letters from jurisdictions and also held in-person meetings and videoconferences at a high political level with a number of them. Delegations were kept informed about these interactions, and response letters signed by the Chair were agreed by the Group.

C. Screening and scoping issues

Criterion 1.1 (peer reviews by the Global Forum with respect to the Common Reporting Standard for AEOI)

32. From the outset, criterion 1.1 has been designed to evolve in line with the peer review process on the Automatic Exchange of Financial Account Information (AEOI) by the Global Forum on tax transparency and exchange of information (Global Forum). In 2022, as part of the peer review process on AEOI, the Global Forum issued for the first time ratings on the effectiveness of the implementation of the AEOI standard in practice.

33. In June 2022, the Code of Conduct Group agreed on a two-step approach to implement criterion 1.1, taking stock of the evolution of the Global Forum peer reviews on AEOI, starting with the 2022 report. The Group also adopted Guidance on the implementation of the updated criterion 1.1 under the first step[20]. In particular, the Guidance clarified that the

[17] The FSIE regime Malaysia.
[18] Armenia's "Free economic zones" and "Eswatini's "Special economic zone".
[19] ST 6430/23.
[20] Annex to 10346/22.

PUBLIC

benchmark for COCG assessments for criterion 1.1 are the legal determinations attributed to jurisdictions by the Global Forum for implementing the required domestic and international legal framework. The minimum level of compliance required for jurisdictions in scope is "In place, but needs improvement" for both Core Requirement 1 and Core Requirement 2 in the AEOI Terms of Reference. Letters signed by the Chair were sent to all concerned jurisdictions to inform them about this update. At the meeting on 24 October 2022, the COCG agreed on the way forward regarding the jurisdictions that the Global Forum found to be non-compliant based on the AEOI peer reviews for 2022.

34. The 2022 Global Forum peer review report on AEOI was published on 9 November 2022[21]. Letters signed by the Chair requesting commitments to address the deficiencies were subsequently sent to jurisdictions, which did not demonstrate a sufficient level of compliance in the 2022 AEOI peer review [22]. The commitments taken by jurisdictions were reflected in the update of the EU list of February 2023.

35. In the 2023 peer review AEOI update report, that was published by the Global Forum on 29 November 2023[23], the determinations for Aruba, Belize and Israel were changed from "Not in place" to at least "In place, but needs improvement". The reference to the commitment taken by these jurisdictions were therefore removed from the relevant section in Annex II in the update of the EU list in February 2024.

<u>Criterion 1.2 (peer reviews by the Global Forum with respect to the standard on Exchange of Information on request)</u>

36. On 8 November 2023, the Global Forum published the outcome of its peer reviews regarding Botswana (supplementary review), Dominica (supplementary review), Serbia and Thailand. All four jurisdictions have been rated as Largely Compliant and were removed from relevant sections in Annex II in the update of the EU list in February 2024.

[21] https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2022_36e7cded-en.

[22] Aruba, Belize, Curaçao, Costa Rica, Israel and Trinidad and Tobago.

[23] https://www.oecd.org/publications/peer-review-of-the-automatic-exchange-of-financial-account-information-2023-update-5c9f58ae-en.htm

PUBLIC

New criterion 1.4 on beneficial ownership information

37. In its conclusions of 8 December 2023, the Ecofin Council welcomed the progress concerning the future criterion 1.4 on beneficial ownership information and called on the Group to continue the work to incorporate beneficial ownership as a fourth criterion on tax transparency. The meeting of the Group on 7 February 2024 provided additional guidance for the technical work required to refine the scope and terms of reference for the sub-criterion 1, in particular in terms of its applicability and consistency with the EU and international rules. The subgroup on 24 April 2024 considered the progress at the OECD (WP10) on the matter and the subgroup meeting on 23 May 2024 continued the discussion on the technical details of the re-design of sub-criterion 1.

Criterion 2.1 Regimes under FHTP monitoring

38. At its meeting on 26 and 27 October 2023, the FHTP assessed the reforms of four regimes regarding jurisdictions which made commitments to the Code of Conduct Group[24], and the Group examined these assessments at its meeting on 22 November 2023. The FHTP concluded at its meeting on 26 and 27 October 2023 that the preferential tax regimes in Albania and Armenia (Information Techology projects) are "abolished". The reference to Albania was removed from the relevant section in Annex II in the update of the EU list in February 2024. The FHTP decided at its meeting on 26 and 27 October to maintain its conclusion that Armenia's "Free economic zones" and Eswatini"'s Special economic zones" are in the process of being amended/eliminated. The FHTP decided at its meeting on 14 and 15 May 2024 that both regimes are not harmful, as amended, subject to the adoption of the relevant legislations.

Criterion 2.1 (Foreign source income exemption regimes)

39. In October 2019, the Ecofin Council approved guidance on foreign source income exemption (FSIE) regimes in the framework of the EU listing exercise (criterion 2.1). This guidance acknowledges that FSIE regimes are a legitimate approach to prevent double taxation, but identifies potentially harmful elements that could be present in such regimes.

40. In December 2019, the COCG Chair wrote to thirteen jurisdictions to inform them that a regime of this kind was identified in their jurisdiction. The Commission Services followed up

---

[24] Albania's "Industrial Incentives", Armenia's "Free economic zones" and "Information technology projects" and Eswatini's "Special economic zone".

PUBLIC

with a questionnaire to nine jurisdictions in February 2020 with a deadline of 20 March 2020 to reply. It was agreed to screen four jurisdictions at a later stage.

41. All the jurisdictions that were contacted responded to the questionnaire. The Commission Services analysed the replies and followed up where necessary. On this basis, the Commission prepared an overview of the work carried out so far, as well as country-specific progress reports.

42. On 19 May 2021, the COCG agreed to send letters to six jurisdictions from which the COCG would seek commitments to repeal or amend their harmful FSIE regimes. Five jurisdictions responded and confirmed their commitment to abolish or amend their regimes[25]. One jurisdiction did not express the requested commitment[26]. The remaining three jurisdictions[27] were deemed compliant under the EU listing criteria. One jurisdiction[28] reformed its FSIE regime before the end of 2022, with effect from 1 January 2023.

43. During the technical examinations of FSIE reforms, there was a need to clarify the language of the Guidance on FSIE on certain aspects, notably on the tax treatment of capital gains. Following this clarification of the Guidance on FSIE regimes in December 2022[29], the Group decided to grant the two concerned jurisdictions[30] additional time to amend their legislation concerning the tax treatment of capital gains, i.e. by the end of 2023, with effect from 1 January 2024. One jurisdiction[31] was asked to make a commitment by 30 June 2023, to amend its FSIE regime in line with the FSIE Guidance by 30 June 2024, with effect from 1 July 2024. This jurisdiction made a commitment to amend its FSIE regime by 31 December 2023, with effect from 1 January 2024, and adopted the relevant legislation on 3 October 2023, in line with the FSIE Guidance. One jurisdiction[32] was given an extension to March 2023 to reform its FSIE regime and adopted the relevant primary and secondary legislation with effect from 22 December 2022.

[25] Costa Rica, Hong Kong, Malaysia, Qatar and Uruguay.
[26] Panama.
[27] Maldives, Nauru and Singapore.
[28] Uruguay.
[29] Doc. 14674/22.
[30] Hong Kong and Malaysia.
[31] Singapore.
[32] Qatar.

PUBLIC

44. One jurisdiction[33] amended its FSIE regime and two jurisdictions[34] fulfilled their commitments in line with the Guidance on FSIE regimes before the October 2023 update of the EU list.

45. Hong Kong adopted its legislation amending the treatment of capital gains in the FSIE regime in November 2023 and the corresponding reference was removed from the relevant section in Annex II in the update of the EU list in February 2024.

46. At its meeting on 7 February 2024, the COCG agreed to grant additional time to Malaysia until 31 March 2024 to complete the reform of its FSIE regime, considering the substantial progress made by the jurisdiction. Primary legislation was adopted by Malaysia in December 2023 with effect on 1 January 2024, introducing a tax on foreign sourced capital gains. Secondary legislation and guidelines exempting from tax foreign sourced capital gains for entities meeting economic substance requirements were adopted by Malaysia in March 2024 and positively assessed by the subgroup at its meeting on 24 April 2024, subject to the adoption of two amendments. The jurisdiction adopted these two amendments on 26 April 2024 in line with the COCG requirements. The Group will draw a conclusion on Malaysia's FSIE reform in the context of the next update of the EU list.

Monitoring under criterion 2.2

47. In July 2021, the Group decided to carry out the annual monitoring of the enforcement of economic substance requirements by 2.2 jurisdictions[35] by ensuring synergy with the parallel monitoring by the FHTP of no or only nominal tax jurisdictions.

48. At its meeting on 2 June 2022, the Group decided that, from 2023 onwards, the annual monitoring of these jurisdictions would take into account the most recent FHTP conclusions published before the relevant update of the EU list.

49. In addition, the Group discussed the situation of entities or arrangements which can carry out highly mobile activities in the scope of criterion 2.2 and which have not yet been included in the scope of domestic legislation on economic substance requirements in all 2.2 jurisdictions.

[33] Costa Rica.
[34] Qatar and Singapore.
[35] These jurisdictions include the twelve no or only nominal tax jurisdictions (Anguilla, Bahamas, Barbados, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, [United Arab Emirates – removed from the scope]) and the Republic of Marshall Islands.

PUBLIC

The Group agreed to start a screening exercise for trusts and other similar legal arrangements to that of 2019 on partnerships, given that criterion 2.2 has a comprehensive scope, encompassing in principle all entities or arrangements. To this aim, the Group decided to bring this work forward in close cooperation with the FHTP, which agreed to conduct a parallel mapping exercise at its meeting in November 2022. This work is ongoing, and the Group will revert to this issue with a view to finishing the work on including all relevant entities in the scope of criterion 2.2.

PUBLIC

50. At the 2 June 2022 meeting, the Group also agreed to take into account the recently adopted FHTP guidance on pure equity holding companies and entities claiming tax residence in another no or only nominal tax jurisdiction under criterion 2.2.

51. Following the FHTP meeting of 21-22 November 2022, which concluded the second annual monitoring of the enforcement of the substantial activities requirements in practice, the Chair sent in January 2023 letters to four jurisdictions[36] inviting them to take necessary actions in relation to the recommendations made by the FHTP. At the November 2022 meeting, Barbados was given a 'hard' recommendation on exchange of information by the FHTP. However, on 31 January 2023, the FHTP approved by written procedure an updated assessment for Barbados removing its 'hard' recommendation to this jurisdiction as part of the 2022 monitoring process. At its meeting on 1 February 2023, the Group therefore recommended to remove the reference to Barbados from the relevant section in Annex II at the update of the EU list in February 2023.

52. The preliminary assessment of the 2023 monitoring of the enforcement of the substantial activities requirements for 2022 (the monitored year) was presented at the FHTP meeting on 26-27 October 2023. Out of 12 no or only nominal tax jurisdictions in scope of the FHTP standard, 4[37] received soft recommendations, in particular on statistical data and compliance programmes. Moreover, 4 jurisdictions[38] received hard recommendations on exchange of information. In the OECD Forum of Harmful Tax Practices (FHTP) supplementary assessment, the recommendation made to the British Virgin Islands was removed as the jurisdiction completed all required exchanges of information. Moreover, the recommendations to both the Bahamas and Turks and Caicos Islands were converted from "hard" to "soft" recommendations, which allowed the Code of Conduct Group to consider these jurisdictions

[36] Bahrain, Bermuda, British Virgin Islands and Cayman Islands.
[37] Anguilla, the Bahamas, Barbados, and Turks and Caicos Islands.
[38] Anguilla, the Bahamas, Turks and Caicos, as well as the British Virgin Islands.

compliant with the standard for jurisdictions with no or only a nominal corporate income tax and they were removed from the Annex I of the EU list following the update in February 2024. The entry for Anguilla remained unchanged since the jurisdiction did not undertake the required exchanges of information under the standard. As the FHTP concluded that since the introduction on 1 June 2023 of its corporate income tax rate of 9% the United Arab Emirates is no longer a no or only nominal tax jurisdiction and on 19 January 2024, the COCG removed this jurisdiction from the scope of criterion 2.2 and is now monitored under criterion 2.1 instead.

PUBLIC

Process for the Monitoring of Economic Substance Requirements for Collective Investment Funds (CIVs) under criterion 2.2

53. In May 2018, the COCG agreed on Technical Guidance on Substance Requirements for Collective Investment Funds (CIVs) giving effect to a distinctive treatment for CIVs, in terms of economic substance requirements, in the Scoping Paper on criterion 2.2.

54. In September 2018, the COCG found that four jurisdictions (The Bahamas, Bermuda, British Virgin Islands and Cayman Islands) in the scope of the EU listing process had a “relevant” fund sector. Subsequently, the COCG asked these jurisdictions to reform their funds' framework in line with the Technical Guidance[39]. The reforms, approved by the COCG, entered into effect in these jurisdictions in 2020, i.e. one year later than other economic substance requirements (general substance requirements).

55. In May 2022 the COCG kicked off a targeted annual monitoring of the implementation of the enhanced framework on CIVs by the four jurisdictions concerned on the basis of a specific questionnaire. Given that CIVs are out of the scope of the FHTP standard, such monitoring would be led entirely by the Group with the technical assistance of the Commission.

56. For the first relevant period of CIVs monitoring, for years 2020, 2021 and partly 2022, the Group acknowledged the substantial efforts made by all jurisdictions concerned. Soft recommendations were addressed to three out of four jurisdictions.

[39] The Bahamas, Bermuda, British Virgin Islands and Cayman Islands.

57. Furthermore, in August 2023 the Group agreed on an updated questionnaire for the second monitoring year (2023). The findings were discussed at the meeting of 22 November 2023 with a view to addressing updated soft recommendations to the jurisdictions concerned.

PUBLIC

Process for the Monitoring of Economic Substance Requirements for partnerships under criterion 2.2

58. In May 2020, the COCG assessed how different 2.2 jurisdictions treat partnerships in their legislation on economic substance. The results confirmed that only five 2.2 jurisdictions included all relevant partnerships in the scope of their legislation on economic substance[40]. The COCG asked the 2.2 jurisdictions for which this was not the case[41] to extend the scope of their legislation on economic substance to relevant partnerships by June 2021, with effect from 1 July 2021.

59. In May 2023, the COCG agreed on a yearly monitoring process to ensure a proper enforcement of economic substance requirement for partnerships over time. The first year of monitoring (2023) concerned information/data and compliance actions taken by 2.2 jurisdictions from 1 July 2021 to 31 December 2022.

60. Following coordination with the FHTP Secretariat and with a view to facilitating the process for relevant jurisdictions, a questionnaire targeting partnerships was agreed to be circulated as an annex to the questionnaire on the implementation of economic substance requirements for companies circulated by the FHTP and set to follow the same timeline.

61. The results of the first year of monitoring revealed that the majority of relevant jurisdictions was still not in a position to provide concrete data on the application of the economic substance requirements to partnerships. In its meeting of 7 February, the COCG agreed to address only soft recommendations where deficiencies have been identified[42]. It is expected that the second year of monitoring will allow Member States to better understand and assess the implementation of the requirements in this area.

[40] The Bahamas, Bahrain, the Republic of Marshall Islands, Turks and Caicos Islands, and United Arab Emirates.

[41] Anguilla, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, and Jersey.

[42] Anguilla, the Bahamas, Barbados, Bermuda, the British Virgin islands, the Cayman Islands, Guernsey, Jersey, the Isle of Man, and the Turks and Caicos Islands.

Implementation of criterion 3.2

62. In 2019, the COCG agreed on a general approach for assessing compliance with criterion 3.2 on country-by-country reporting (CbCR), in particular for early adopters of the minimum standard on CbCR, i.e. jurisdictions that joined the Inclusive Framework before the end of 2017.

63. In October and November 2021, the Code of Conduct Group discussed and agreed on the assessment of the relevant jurisdictions for compliance with criterion 3.2, based on the 2021 Peer Review Report by the BEPS Inclusive Framework (IF) on CbCR and additional assessments of bilateral exchange relations for CbCR with EU Member States. Eleven jurisdictions with identified deficiencies on CbCR were asked to undertake commitments to address these deficiencies in time to be reflected in the 2023 IF peer review report on CbCR. These commitments were recorded at the update of the EU list in February 2022.

64. Following the release of the IF peer review report on CbCR on 4 October 2022, the Code of Conduct Group decided at its meeting on 24 October 2022 to remove Barbados British Virgin Islands and Tunisia from Annex II for criterion 3.2 and to delete the reference to criterion 3.2 in the entry of the Bahamas in Annex I, at the update of the EU list in February 2023.

65. On 25 September 2023, the IF published its 2023 peer review report on CbCR. At its meeting on 3 October 2023, the Code of Conduct Group assessed the results of the IF peer reviews for the remaining jurisdictions with pending commitments on criterion 3.2. In 2023, the IF no longer addressed any general recommendations to Belize, Israel, Montserrat, Panama and Thailand. These jurisdictions had also taken the necessary steps to be able to exchange effectively CbC reports with all EU Member States. As a result, the COCG deemed their commitments on criterion 3.2 fulfilled and recommended to remove the references to these jurisdictions with regard to criterion 3.2 from the relevant Annexes. Trinidad and Tobago did not fulfil its commitment on CbCR within the agreed deadline. Accordingly, the Group recommended to update the entry on Trinidad and Tobago in Annex I to include a reference to criterion 3.2 at the update in October 2023.

66. At its meetings on 23 November 2022, 3 October 2023 and 22 November 2023 the Code of Conduct Group considered the implementation of the CbCR standard by other jurisdictions within the scope of criterion 3.2, which were not deemed deficient in 2021, as well as the state of play in relation to relevant jurisdictions to which criterion 3.2 has not been applied so far,

PUBLIC

as they have joined the BEPS IF on or after 1 January 2018. The COCG agreed to extend the scope of criterion 3.2 to relevant jurisdictions in this group.

67. At its meeting on 22 November 2023, the COCG decided to start the process by asking jurisdictions within the scope of the EU list that have joined the BEPS Inclusive Framework since 1 January 2018, except those who have fully implemented the global standard on CbCR or opted out in 2023 from the BEPS Action 13 Peer Review Process, for information about resident UPEs of multinational enterprise groups with a consolidated group revenue above the CbCR reporting threshold.

68. On 24 April 2024 the subgroup was informed about the replies provided by the 18 jurisdictions, which received information letters regarding the future application of criterion 3.2. The Inclusive Framework is expected to publish its 2024 Peer Review Reports on CbCR in late September 2024. On this basis, the COCG would take stock of progress in the relevant jurisdictions and decide on possible requests for commitments.

PUBLIC

Tax defensive measures vis-à-vis third country jurisdictions

69. In line with the Guidance on tax defensive measures agreed in December 2019, the COCG resumed its work on defensive measures.

70. At the meeting of 2 June 2022, the Group agreed to continue working on effective application of the defensive measures, in accordance with the agreed Guidance in a staged approach. As a first step, an analysis could be conducted on how tax defensive measures have been effectively applied by Member States. The outcome of such analysis could serve as a basis for further discussions on whether and how coordination of the measures could be enhanced.

71. At the meeting on 20 September 2022, the Code of Conduct Group agreed the draft questionnaire on the application by Member States of defensive measures.

72. In its conclusions on 6 December 2022 the Council took note of the need for further work to assess the application by Member States of defensive measures in the tax area, as provided for by the 2019 Guidance.

73. On 1 February 2023, the COCG agreed that Member States should update the state of play as regards defensive measures that they apply towards non-cooperative jurisdictions for tax purposes. A revised state of play of the implementation of the 2019 Guidance on Defensive Measures by EU Member States, as of 1 January 2023, was attached to the report of 2 June 2023[43].

74. Int its conclusions on 2 June 2023, the Council called on the Group to keep working on the evaluation of the application by Member States of tax defensive measures.

75. The COCG at its meetings of 1 February, 26 April and 22 November 2023 and the subgroup at its meetings of 3 and 29 March 2023 considered the proposal from the Commission to put in place a process for monitoring how Member States implement the defensive measures in practice in the tax area, including regarding the effectiveness and deterrent effect of defensive measures applied.

76. At its meetings on 1 March, 24 April and 23 May 2024, the subgroup considered a revised paper on the approach to the annual monitoring of tax defensive measures. [The COCG meeting on 10 June 2024 agreed the approach and the monitoring questionnaire (see Annex II). The first monitoring exercise will take place in 2025 as regards monitored year 2021.]

Geographical scope

77. In March 2019 the Ecofin Council recalled "the extensions of the geographical scope of the EU screening exercise to other jurisdictions agreed in 2018"[44]. This invitation was reiterated in February 2020 with a view "to focus on the most relevant jurisdictions, having regard to the agreed work on the extended geographical scope as identified in 2018". […]

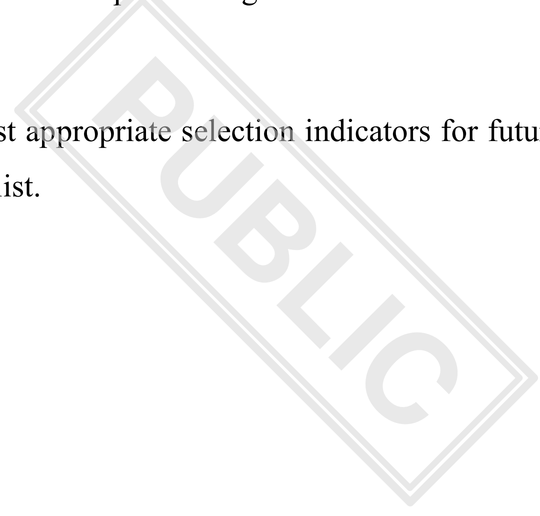
78. The COCG at its meetings of 1 February, 26 April, 2 June, 3 October and 22 November 2023 had an exchange of views on a possible extension of the geographical scope [45] and agreed to include the following jurisdictions in the geographical scope of the EU listing exercise:

[43] ST 9875/23.
[44] ST 14364/21.
[45] In this context, the Group recollected of the annual dialogue foreseen in the Joint Declaration on Countering Harmful Tax Regimes under the EU-UK Trade and Cooperation Agreement (TCA). Horizontal arrangements for structured dialogues under the TCA are under discussion in the Working Party on the United Kingdom. The annual dialogue foreseen in the Joint Declaration have not yet started.

PUBLIC

Brunei Darussalam, Kuwait and New Zealand. In December 2023, the Chair sent letters to the jurisdictions, announcing that the screening process for implementing the EU list criteria had begun.

79. The COCG will undertake a reflection on the most appropriate selection indicators for future modification of the geographical scope of the EU list.



ANNEX I

PROCEDURAL ISSUES: GUIDANCE ON THE NOTIFICATION OF PREFERENTIAL TAX MEASURES UNDER PARAGRAPH E OF THE CODE[46]

PUBLIC

1. This note provides guidance for Member States regarding the notification of existing and proposed tax measures to the Code of Conduct Group.

2. Standstill notifications should cover any new measures which potentially fall within the scope of the Code and which were enacted in the previous year. Rollback notifications should cover developments regarding measures to which the obligation in paragraph D applies.

3. The guidance deals with:

- the annual timetable for the notification of tax measures;
- the identification of measures that should be notified to other Member States;
- the identification of in which year a measure should be notified, and;
- the content of notifications.

4. The guidance covers standstill and rollback notifications. Member States should not face any difficulty in identifying measures that should be included in a rollback notification because these will already have been discussed by the Group. However, the question of when a measure has been enacted is relevant for both standstill and rollback.

5. As set out in the Code, where a proposed measure needs parliamentary approval, the information referred to in paragraph E does not have to be given to the Group until after the measure's announcement to Parliament.

Annual Timetable for the notification of tax measures

6. The Chair will ask Member States to submit their standstill and rollback notifications in time for them to be discussed at the first meeting of the following year. The Chair will set a deadline for the submission of the notifications.

7. Notifications should cover the period 1 January to 31 December of each year.

8. Member States' standstill and rollback notifications should cover all tax measures which have been enacted in the previous year.

---

[46] Agreed by the Group on 10 June 2024.

The identification of measures that should be notified to other Member States

9. The fundamental principle is that Member States will notify each other of existing and proposed tax measures which may fall within the scope of the Code. In particular, Member States should provide information on any measure which appears to fall within the scope of the Code.
10. Member States should not interpret their obligation to notify other Member States of relevant tax measures narrowly.

11. When deciding whether to notify a measure Member States must consider the scope of the Code as set out in paragraphs A and B and the breadth of opinion that exists within the Group rather than just their own view of the matter.

12. Annex I, letters A-D, to this guidance contains a list of different types of measures that have been notified to the Group in the past. As measures of this type have been previously discussed by the Group, Member States should regard the list as indicative of measures that would be notified to it in the future. Annex 1, letter E, seeks to clarify typical situations in which a Member State might have doubts as to whether a measure should be notified. The examples in Annex 1, letter E, should not be interpreted as imposing obligations on Member States that are not otherwise imposed by the mandate of the Code of Conduct or supporting guidance.

13. Amendments to existing measures should be regarded as separate measures and identified by Member States using the principles outlined above.

14. Amendments to existing measures should be notified whether or not the original measure was notified to the Group.

15. Member States could use the checklist drawn up in Annex 2 to this Guidance to decide whether a measure needs to be notified.

The identification of in which year a measure should be notified

16. In many cases a measure will be proposed and enacted in the same year. Where this is not the case a proposed measure should be notified if it is sufficiently well developed to be discussed in the Group. The presumption is that measures which have been announced in public will be sufficiently well developed to be discussed and therefore should be notified in the January following the announcement (normally the announcement to Parliament, see paragraph E, last sentence of the Code of Conduct).

17. Standstill notifications also cover measures “enacted” in the previous year. To ensure a consistent approach Member States should use the following guidance to identify when a measure should be regarded as “enacted”.

18. A measure will be regarded as “enacted” on the earliest of the following dates;

- the date on which tax advantages become available to taxpayers;
  Example: *on 7 December 2016 the government announces that a new relief will be introduced. The relief will apply to transactions taking place on or after the date of the announcement. The parliamentary processes are completed on 10 July 2017 and the measure becomes law.*

PUBLIC

This measure would be regarded as "enacted" on 7 December 2016 because that is the day on which the benefits become available to taxpayers. It should be reported to the Code Group in January 2017.

- the date on which the parliamentary processes necessary to introduce the measure are substantially completed, even if tax advantages have not become available to taxpayers;

  <u>*Example:*</u> *on 7 December 2016 the government announces that a new relief will be introduced.*
  The relief will be available from 1 April 2018. The parliamentary processes are completed on 10 July 2017 and the measure becomes law.

  This measure would be regarded as "enacted" on 10 July 2017 and should be reported to the Code Group in January 2018.

- the date on which the parliamentary processes necessary to introduce the measure are substantially completed, even if there is no fixed date on which tax advantages will become available to taxpayers or if the availability of the tax advantages depends on further action by the Member State, including the introduction of further legislation;

  <u>*Example 1*</u>*: on 7 December 2016 the government announces that a new relief will be introduced but it will not be available until certain macroeconomic conditions are met. The parliamentary processes are completed on 10 July 2017 and the measure becomes law. It is not known when tax benefits will begin to be available to taxpayers.*

  This measure would be regarded as "enacted" on 10 July 2017 and should be reported to the Code Group in January 2018.

  <u>*Example 2:*</u> *on 7 December 2016 the government announces that a new relief will be introduced but not until certain political conditions are met. Draft legislation is published on 11 January 2017 which enables the government to write regulations setting out the nature and scope of the relief. The parliamentary processes are completed on 10 July 2017 and the measure becomes law. No regulations are written and none are planned. It is not known when tax advantages will become available to taxpayers.*

  This measure would be regarded as "enacted" on 10 July 2017 and should be reported to the Code Group in January 2018, even though the detail of the relief has not been published.

- the date on which tax advantages with a retrospective effect are announced;

  <u>*Example 1:*</u> *on 7 November 2016 the government announces that a new relief will be introduced. The tax advantages will be available for accounting periods ending on or after 7 November 2016. This means that the benefits will be available to some companies during 2015, e.g. for a company with a 12 month accounting period ending on 30 November 2016 the benefits would be available from 1 December 2015.*

  This measure would be regarded as "enacted" on 7 November 2016 and should be reported to the Code Group in January 2017.

PUBLIC

Example 2: on 7 November 2016 the government announces that an existing relief will be extended as a result of a decision of the national courts. The amended relief will be backdated to 1 April 2015.

This measure would be regarded as "enacted" on 7 November 2016 and should be reported to the Code Group in January 2017.

19. An administrative practice will be regarded as enacted on the date on which it is adopted by the relevant authority in the Member State (that is the first date on which taxpayers can benefit from the practice), regardless of whether or not any relevant instruction or guidance has been made public.

PUBLIC

Content of notifications

20. Standstill notifications should enable the Group to decide whether a measure needs to be considered further. In general, clearer and more detailed notifications will make it easier for the Group to reach a decision efficiently. Member States may use the template drawn up in Annex 3 to the Guidance when notifying a measure to the Group. The template contains a field for the Member State to identify a contact person for technical assistance, to ensure the effectiveness of the procedure.

21. Member States should provide sufficient information to the Group within the deadline set by the Chair. In the event of a measure being adopted shortly before the deadline, Member States could inform the Group of the measure and provide sufficient information as soon as possible after the expiration of the deadline.

22. The relevant authorities in Member States will already have prepared summaries and briefings on new tax measures as part of the national legal and administrative processes. Member States should seek to re-use such documents when notifying the measures to the Group.

23. Rollback notifications will typically deal with the amendment or abolition of a measure. If the measure is being amended, the notification should make it clear how the changes address the harmful aspects previously identified by the Group.

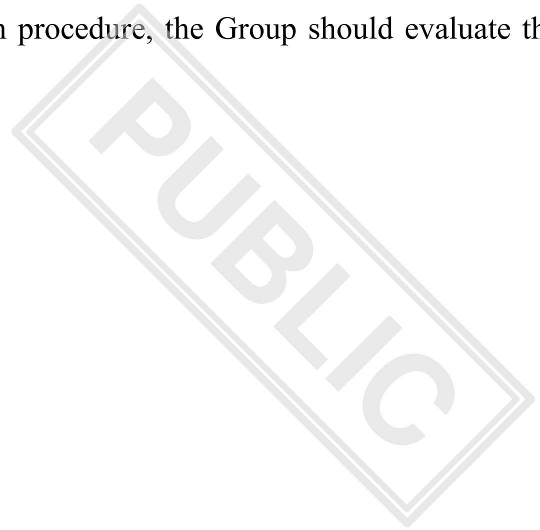
Use of horizontal mapping

24. In the consideration of a notified measure, a horizontal mapping of corresponding measures in all Member States could be carried out upon request. Such horizontal mapping should be used sparingly, i.e. only when it is deemed necessary, for example when no similar measure has ever been analysed by the Group.

25. The decision to carry on such a mapping belongs to the Group, which should consider the opportunity, the scope and procedure of a horizontal mapping on a case-by-case basis. This decision should take into account the proportionality in relation to the potential administrative burden for the Member States and the objective pursued.

Evaluation

26. To ensure the proper functioning of the notification procedure, the Group should evaluate the effectiveness of the procedure as necessary.



Annex 1

Types of measures previously discussed in the Code of Conduct Group

A. Investment incentive measures

1. Development zones

2. New business/start up reliefs

3. R&D tax credits

4. Reinvestment reliefs

5. Rules applying at a regional or local level

6. Special depreciation rules (including capital allowances)

7. Special enterprise zones, free zones, etc.

8. Tax holidays

B. Measures providing for adjustments to the tax base

1. Deductions for notional expenses

2. Downward adjustments of profits (such as "excess profits" or capital contributions)[47]

C. Measures applying to particular types of activities or profits

1. Air transport

2. Capital gains

3. Film/television industry

4. Finance branches

5. Headquarters/coordination companies

6. Holding companies

7. Insurance companies

8. Intangible assets

---

[47] As discussed in OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report* (October 2015), chapter 5.

PUBLIC

9. Interest box

10. Intra-group finance companies

11. Investment funds

12. Manufacturing or distribution activities

13. Offshore activities

14. Patent box

15. Shipping (excluding tonnage tax regimes)

D. Miscellaneous

1. "0/10" type regimes (i.e. nil or very low general rate of CT combined with higher rate for a limited number of activities)

2. Special rules affecting an entity's territory of residence

3. Personal tax measures similar to those described in the conclusions regarding the scope of the Code, as agreed by the Council High Level Working Party on 31 January 2011[48]

4. Ruling regimes

[48] 6054/11

E. Examples of cases where the notification obligation is unclear

The following examples seek to clarify the principles laid down in paragraphs 9-15 of the Guidance.

Example 1: Copying a regime which has previously been assessed as 'not harmful'
Investment incentive measure Member State X adopts legislation to introduce a Free Zone on 3 October of the year N, with effect from 1.1.N+1. The Free Zone is modelled after a Free Zone from Member State Y which was already assessed "not harmful" by the Group. Member State X did not notify the Group as it made a self-assessment and came to the conclusion that the Free Zone should be considered "not harmful" as it is modelled after a "cleared regime". The Free Zone of Member State X, nevertheless, provides for a significantly lower effective level of taxation than those levels which generally apply in Member State X. This measure should be notified for year N. Member States should not interpret their obligation to notify relevant tax measures narrowly and a self-assessment does not substitute the assessment of the Group. Although the measure was modelled after a measure, which was assessed "not harmful", it should be notified.

Example 2: Following COCG Guidance
Measures providing for adjustments to the tax base With effect from 1 January of the year N+1, a Member State introduced a notional interest deduction along the lines of the agreed Guidance on notional interest deduction (NID) regimes (WK 14114/19 Annex 2). The corresponding law was adopted on 30 December N. The Member State introduced limitations to the scope as mentioned in the agreed Guidance and also general and special anti-abuse provisions. The Member State also foresees that the burden of proof in the case of special anti-abuse provisions lies with the taxpayer and not with the tax administration. This measure should be notified for year N. - Aligning the NID to the agreed guidance does not provide a safe harbor. As the Group has previously agreed, each assessment will be based on a case-by-case approach. - Although the measure was adopted at the very end of the year, the adoption of the measure was in the year N and should be notified for the year N.

PUBLIC

<u>Example 3</u>: Amendments to existing measures
Measures applying to particular types of activities or profits A Member State has a Patent Box which complies with the modified nexus approach and was assessed "compliant" in the year N-4. The statutory rate is 15% and the effective tax rate under the regime is 5%. In the year N, the Member State adopts legislation to expressly include qualifying R&D expenditures outsourced to an unrelated-party (subject to a 30 % "up-lift" to the extent that the increased amount of qualifying expenditures does not exceed the taxpayer's overall expenditures). This measure should be notified for year N. - Despite the changes made, the Patent Box continues to be aligned with the modified nexus approach. It is nevertheless an amendment of an existing measure which can provide for a significantly lower effective level of taxation which should be notified in accordance with the Guidance on the notification of tax measures under paragraph E.

<u>Example 4</u>: Amendments to a measure which was never notified
With effect from tax year N-4, a tax credit is available in Member State A. Member State A adopted the legislation in N-5 and never notified the Group. In the year N, Member State A changes its law to comply with requirements, which the Group came up with concerning a similar tax credit which was actually notified by Member State B. The amendments to the measure should be notified for year N. - Even if the tax credit is amended to meet the requirements concerning another notified tax credit, it should still be notified. It is irrelevant that the original measure was not notified in the past. - This example demonstrates the unlevel playing field between Member States in the absence of proper and timely notification by all Member States.

PUBLIC

Example 5: A preferential measure with limited effects
A Member State adopts legislation introducing a refundable tax credit for startup companies in the digital sector in year N in order to promote innovation/modern technologies. Entering into force in year N+1, the measure enables a startup company to get a refund of the taxable value of its losses in the first three fiscal years after the establishment of the company. The refund is calculated by multiplying a loss by the corporate tax rate of 20 per cent. The refund capped at EUR 10,000 annually per startup company corresponding to a loss of EUR 50,000. Any loss exceeding EUR 50,000 will not lead to a tax benefit. This measure does not have to be notified in the standstill exercise. – The measure is only applicable to startup companies in a short, fixed period of time which limits the risk of relocation of business. – The amount of the tax benefit is capped at a relatively small amount which limits the risk of relocation of business. – Based on the Group's case practice, preferential measures with limited effects on the location of business do not have to be assessed.

PUBLIC

Annex 2

Checklist for the use of notifications to the Code of Conduct Group

PUBLIC

The checklist seeks to clarify whether a tax measure should be notified to the Group. If all questions below can be answered in the affirmative, the measure should be notified.

Checklist to determine whether a measure should be notified		Yes	No
Question 1: **Scope***	Does the measure cover business taxation?[49]		
Question 2: **Reference**	What is the general level of taxation in your country? (e.g., standard nominal corporate tax rate).		
Question 3: **Gateway criterion****	Does the measure provide for a significantly lower effective level of taxation than the general level?		
Question 4: **Impact*****	Does the measure affect, or may the measure affect, in a significant way the location of business activities in the Union?		

* The scope of the Code covers "business taxation", i.e., any tax measures which apply to entities or structures in any form which carry out economic activity.

** A preferential tax measure could take the form of, for example:

- lower tax rate than the standard nominal tax rate,
- tax base reduction (e.g., increased deduction only for specific assets, accelerated depreciation for specific assets, immediate expensing, notional tax base)
- any other relevant factor (e.g., exemption, tax credit, deferred taxation, refunds)

*** In the past, the Group did not assess certain measures which had a low economic impact, i.e., mainly measures which provide for a low tax benefit, and therefore entail a low risk of relocation of business activities in the Union (paragraph A). Based on this practice (and the risk of relocation), a distinction could be made in the notification process:

[49] Category of measures notified (see Annex 1), mainly business (corporate) type of taxation, but also personal tax measures similar to those described in the conclusions regarding the scope of the Code, as agreed by the Council High Level Working Party on 31 January 2011 (6054/11).

a) If a preferential measure concerns highly mobile activities, e.g., activities typical of the banking or insurance industry, intra-group services or activities consisting only of the holding of equity participations and earning only dividends and capital gains[50], or is open to any type of activity (thus highly mobile activities are included), it always needs to be notified, as this poses a general risk of relocation.

b) If a preferential measure does not concern highly mobile activities and it does not exceed a tax benefit of EUR 200.000 for each taxpayer over a three-year period, and there is available data, budgetary estimations or any other evidence which shows that the impact is limited, the measure does not need to be notified.[51] Other examples of measures which previously have been considered to have a limited impact are measures with a limited scope, such as SME's[52] or start-ups[53], and temporary measures which address specific issues, such as the COVID-19 pandemic[54]. Accordingly, such measures will not need to be notified when the tax benefit does not exceed EUR 200.000 for each taxpayer over a three-year period, and there is available data, budgetary estimations or any other evidence which shows that the impact is limited.

PUBLIC

[50] Agreed Guidance on Tax Privileges related to Special Economic Zones (5814/6/18 REV 6)
[51] For example, SK009: Temporary increased deduction applying to productive investments in certain fixed tangible assets (9295/22 ADD 6). PL016: Temporary additional deduction for certain robotisation costs (9295/22 ADD 4)
[52] For example, HR015: Reduction of the tax rate for small and mid-sized taxpayers (9341/21 ADD 1). PL010: Reduction of the corporate income tax for taxpayers with annual revenues not exceeding EUR 1,2 million (9652/19 ADD 4)
[53] For example, ES024: Temporary reduction of the corporate tax rate and deferral of tax payments for start-up companies (15757/23 ADD 4)
[54] For example, RO012: Temporary limited exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA during the COVID pandemic (9295/22 ADD 5)

Annex 3

Template for the use of notifications to the Code of Conduct Group

PUBLIC

Notification template
Member State:
Contact person for technical questions:
Name of the measure:
Legal provisions[55]:
Question 1: How does the measure (potentially) lead to lower taxation than the general level?
Please specify what is the general level of taxation in your country and explain how the design of the measure can lead to lower taxation than the general level[56] *Comments:*
Question 2: Which taxpayers can benefit from the measure?
Comments:
Question 3: Is the application of the measure linked to a specific geographical area/territory?
Comments:

[55] Law, regulation, administrative practices or any other legal basis.

[56] A preferential tax measure could take the form of: lower tax rate than the standard nominal tax rate, tax base reduction (e.g., increased deduction only for specific assets, accelerated depreciation for specific assets, notional tax base) or any other relevant factor (e.g., exemption, tax credit, deferred taxation).

Question 4: Is the application of the measure linked to certain activities, assets and/or investments?
Comments:
Question 5: Is the benefit limited, e.g., by a maximum amount, application period, etc.?
Comments:
Question 6: What is the envisaged or estimated budgetary impact of the measure?
Comments:

PUBLIC

ANNEX II

PROCEDURAL ISSUES: GUIDANCE FOR MONITORING THE IMPLEMENTATION OF DEFENSIVE MEASURES TOWARDS NON-COOPERATIVE JURSIDICTIONS57

1. This note provides guidance for Member States regarding monitoring the implementation and deterrent effect of defensive measures applied against jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes (ANNEX I) since the establishment of the EU list in December 2017.

2. Such a monitoring process would be designed in line with the following guidelines:
    1. The Code of Conduct Group (COCG) would monitor on a regular basis how Member States apply their domestic legislation on tax defensive measures against listed (non-cooperative) jurisdictions.
    2. It would take place annually and be based on information related to tax year N-4[58], so that Member States have sufficient time to gather the required information.
    3. It would cover all tax defensive measures in force, meaning, at least, one of the defensive measures of legislative nature and one of administrative nature, which are included in the COCG Guidance, as endorsed by the Council on 5 December 2019[59].
    4. By 30 June each year, Member States would provide the General Secretariat of the Council and the Commission Services with relevant information by replying to a common questionnaire.
    5. By the end of each year, the Commission Services would report to the Group with an assessment of the application of the tax defensive measures based on the information provided by Member States.

3. The common questionnaire referred to in point 4 above is set out in ANNEX I to the note.

---

[57] Agreed by the Group on 10 June 2024.

[58] For instance, for the 2025 monitoring year, the monitored year will be 202**1**.

[59] See Annex IV of the 6-month COCG report adopted by the Council on 5 December 2019 (doc. 14114/19).

PUBLIC

Annex I

Questionnaire – Monitoring the implementation of defensive measures against non-cooperative jurisdictions for tax purposes (Annex I)

PUBLIC

This questionnaire concerns tax defensive measures of a legislative and administrative nature enforced by Member States in application of the 2019 Code of Conduct Group Guidance[60]. When answering this questionnaire, Member States are invited to use their best endeavours to provide information on the application of such tax defensive measures by June N (the monitoring year) based on information related to tax year N-4 (the monitored year).

1. Does your Member State have any update to share regarding the legal framework on defensive measures against jurisdictions in Annex I of the EU list, including any plans to make changes in the future (such as introduce new defensive measures or remove any)?

2. Regarding the implementation of existing legislation, did your Member State apply in practice any of the legislative defensive measures in force in the monitored year?

2.1. If no, please explain the reasons (for instance, no taxpayers were identified).

2.2. If yes, where available, please indicate[61] :

a. the total number of cases of application, and if possible, the number by type of defensive measure and by listed jurisdiction.

b. the total number of taxpayers concerned, and if possible, the number by type of defensive measure and by listed jurisdiction.

c. the total amount of additional income tax (as compared to absence of defensive measures)

   or

   if applicable (depending on the measure), the total amount by which the tax base increased (as compared to the absence of defensive measures).

[60] See Annex IV of the 6-month COCG report adopted by the Council on 5 December 2019 (doc. 14114/19).

[61] If possible, from the initial year of reference (when a jurisdiction was included in Annex I, or when tax defensive measures came into force) until the monitored year.

In answering question 2.2, please explain why you believe the information indicates that defensive measures applied in your Member State had a deterrent effect.

2.3. Alternatively[62] to question 2.2, please provide, where available:

a. for withholding tax measures: data on outbound payments towards jurisdictions in Annex I, in connection to dividends, interests, and royalties. By doing so, please indicate the initial year of reference (i.e., when a jurisdiction was included in Annex I, or when defensive measures came into force) until the monitored year.

b. for other legislative measures: any other information that may demonstrate that defensive measures have been effective, including by having a deterrent effect.

3. Regarding the implementation of existing legislation, did your Member State apply in practice any of the administrative defensive measures in force in the monitored year?

3.1. If no, please explain the reasons.

3.2. If yes, where available, please indicate[63]:

a. the total number of cases of application, and if possible, the number by type of defensive measure and by listed jurisdiction.

b. the total number of taxpayers concerned, and if possible, the number by type of defensive measure and by listed jurisdiction.

c. if this led the tax authorities to apply legislative defensive measures.

In answering question 3.2, please explain why you believe the information indicates that defensive measures applied in your Member State had a deterrent effect.

3.3. Alternatively[64] to question 3.2, provide any other information that may demonstrate that administrative defensive measures have been effective, including by having a deterrent effect.

4. Please provide information on any other aspect of your Member State's legislative or regulatory framework that you deem relevant to understanding your Member State's implementation of the defensive measures against jurisdictions in Annex I of the EU list.

[62] Where data in point a) to c) above are not available.
[63] If possible, from the initial year of reference (when a jurisdiction was included in Annex I, or when tax defensive measures came into force) until the monitored year.
[64] Where data in point a) and b) above are not available.

PUBLIC