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## REPORT

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Code of Conduct Group (Business Taxation) - Report to the Council = Approval

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### Portugal's Notional interest deduction regime (NID) (PT018)

#### I. Background

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

#### II. Preliminary assessment

2. Beginning November 2021 Portugal sent relevant data concerning the effects of the measure in the tax year 2019 (annex below)<sup>1</sup>.
3. Based on the data received over the years, one can observe that the use of the NID regime keeps increasing every year, both as regards the number of taxpayers benefitting from it and the amount of the NID granted (both generally and specifically for foreign owned companies).

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<sup>1</sup> 2013-2016 data was available in the draft assessment paper (WK 13136/18).

4. For example, in comparison to the years 2017 and 2018, in 2019:
- the global amount of NID granted rose from 63 million EUR over 120 million EUR to 184 million EUR, and
  - the number of taxpayers benefitting from the NID regime has almost doubled, from 5.915 taxpayers to more than 13.000 taxpayers, and
  - the number of taxpayers directly or indirectly owned by foreign companies has also tripled from 144 to 261 in 2018 and to 475 in 2019.
5. Although the number of foreign owned taxpayers represented only around 3.6% of the total taxpayers benefitting from the NID regime in 2019, the total tax expenditure attributable to them represented 10%<sup>2</sup> of the total tax expenditure (3.9 million EUR out of 38.8 million EUR). In other words, the foreign owned taxpayers, which represented only 3.6% of the taxpayers benefitting from the NID regime in 2019, received almost 10% of the NID granted.
6. Per company, this means that the average NID tax benefit amounted in general to 2 947 <sup>3</sup> EUR per company (21% CIT x 14 035 EUR average NID allowance; or 38.792.842 / 13 162), whereas the average NID tax benefit attributable to foreign owned taxpayers was 8.299 EUR (decreasing from 8.819 EUR in 2018). Despite this slight decrease, the NID benefits are higher for taxpayers with foreign links. Portugal explained this difference previously with the fact that taxpayers with foreign links on average have a larger business dimension than the domestic ones.<sup>4</sup> For 2018, Portugal had communicated data showing indeed that although the taxpayers with foreign links represented in 2018 only 2.9% of the total number of taxpayers benefitting from the regime, they counted for around 11.5% of the total assets, 13.5% of the total sales and 13% of the employees.
7. To conclude, the average NID tax benefit attributable to foreign owned taxpayers is almost three times higher than the general average of NID tax benefit (8.299 EUR compared to 2.947 EUR). Nonetheless, it remains rather low and significantly below the maximum tax benefit of 29.400 EUR allowed under the PT NID (CIT rate of 21% x 140.000 EUR maximum NID allowance). An average NID tax benefit of 8.299 EUR stands for an average increase of capital (new share capital contributions) of 565.000 EUR (565.000 EUR x 7%<sup>5</sup> x 21% CIT rate).

<sup>2</sup> Compared to 9.2% in 2018.

<sup>3</sup> Compared to 2830 EUR in 2018.

<sup>4</sup>

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

<sup>5</sup> Rate of interest deduction.

8. Based on the arguments above, it is our preliminary assessment that the regime does not seem to have affected in a significant way the business location among the Member States.
9. However, the Commission services take note of the ascending trends of the measure and therefore suggest that the Group should continue to monitor the effects of the measure.

### **III. Follow-up**

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

**Annex 1: Portugal – PT018 - Notional interest deduction regime (NID) [2018 CoCG decision]**

<b>Portugal - PT018</b>	2013	2014	2015	2016	2017	2018	2019
Total number of taxpayers benefitting from the measure	631	1440	2044	3299	5915	8922	13 162
Out of which directly or indirectly foreign owned companies:	0	7	13	32	144	261	475 <sup>6</sup>
Global amount of NID granted	1300948	3503749	4903392	7 530 000	63 447 187	120 239 239	184 727 819
Total tax expenditure (at 21% CIT rate)	325 237	654 053	917.581	1 407 269	13 323 909	25 250 240	38 792 842
<i>Average amount of NID allowance</i>				2283	10 726	13 477	14 035
Total tax expenditure attributable to directly or indirectly foreign owned	0	10743	33102	64 107	1 203 084	2 301 980	3 942 250
<i>Average NID tax expenditure attributable to directly or indirectly foreign owned</i>				2 003	8 354	8 819	8 299

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<sup>6</sup> 3.6% of the total number of taxpayers benefitting from the measure