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REPORT

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

Spain's national patent box regime (ES021)

The following rollback was agreed by the Code of Conduct Group on 21 September 2018:

a. Previous assessment:

"There is one main concern which deviates from the CoC criteria and it relates to:

- the **scope of the Spanish IP regime** which is broader than the scope set in the Action 5 report. IP assets such as know-how, trade secrets¹ are not covered by the latter, while they fall under the ES IP regime."

b. Rollback amendments:

➤ Know-how/trade secrets (along with trademarks and other non-qualifying IP rights) have been specifically excluded from the scope. Thus, the "harmful" feature is corrected.

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[&]quot;secret formula or process or from the assignment of information concerning industrial, commercial or scientific experience".

- New IP assets are added amongst the qualifying assets:
 - complementary protection certificates of medicine and of plant protection products,
 - designs and models legally protected;

resulting from research and development and innovation activities;

and

- <u>sophisticated copyrighted software resulting from research and development activities.</u>

The above changes are in line with paragraphs 34 to 36 of the nexus agreement² and the Group's previous decisions.

➤ Legal reference: 2018 Budget Law. Law 6/2018, 3rd of July. Articles 68 and 72 modify article 23 and the twentieth transitory provision of Law 27/2014, of November 27, of the Corporate Income Tax, in relation to the State IP regime. Publication: BOE (Spanish Official Gazette), on 4th of July 2018:

http://www.boe.es/boe/dias/2018/07/04/pdfs/BOE-A-2018-9268.pdf

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² Action 5 Report.