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REPORT

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

Greece's amended tax provisions on Patent Tax Incentive (EL015 REV)

A. BACKGROUND

1. In 2018, the Group endorsed the agreed description of the EL015 regime, as in force at that time, and decided¹ not to assess it, but to monitor it. Greece also had to notify the Group on an annual basis of any developments relating to the use of the measure.

B. AMENDED TAX PROVISIONS (EL015 REV)

2. In this year's Standstill and rollback exercise, Greece informed the Group that it has amended the provisions of article 71 A of Law 4172/2013 (ITC)² concerning the EL015 regime (Patent tax incentive), to align them with the modified nexus approach endorsed by the Group, and thus

¹ ST 9637/18; FISC <https://data.consilium.europa.eu/doc/document/ST-9637-2018-INIT/en/pdf>

² The new provisions were adopted by way of article 89 of Law 4864/21; published in the Governmental Gazette n. A' 237 / 02.12.2021. and the relevant Ministerial decision: Joint Ministerial Decision (KYA) No 79628/2022 "Determining the terms, conditions and procedures for the application of art. 71 A "Patent Incentives" of Law 4172/2013 (A' 167), as amended by art. 89 of Law 4864/2021 (A' 237)".

to address potentially harmful features of the tax incentive. The new provisions entered into force as of 1.1.2022.

3. The Code of Conduct Group agreed in its report of 24 November 2016 that for the standstill procedure of new patent boxes, it will use the OECD descriptions and assess the measures on the basis of the modified nexus approach and against all Code criteria. In line with this approach, the OECD description of the Greek Patent tax incentive (EL015 REV) – as provided by the Greek authorities in July 2022 – is enclosed in this document, so that the Group can endorse it as "agreed description".
4. The Commission Services will prepare on this basis a draft assessment for the upcoming meetings.

C. FOLLOW-UP

The Group agreed to treat the enclosed description of the OECD as ‘agreed description’ for the assessment of the Greek Patent tax incentive.

D. ANNEXES

1. OECD IP questionnaire (agreed description) - Greece Patent Tax Incentive

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1. Please provide below the basic information about your regime	a. Name of the regime		Tax Patent Incentives
	b. Year of introduction/r elevant legislation	Year	2021
	<p>Please attach to this template (or provide a link to) the legislation which introduces your new IP regime (if in a language other than English or French, please provide a translation).)</p>		<p>Article 89 Incorporation of criteria of the Forum on Harmful Tax Practices of the OECD, for the exemption from income tax of company profits from the exploitation of patents. Replacement of Article 71A of Law 4172/2013.</p> <p>The article 71A of Law 4172/2013 (A ‘ 167) is replaced as follows:</p> <p>“Article 71A Patent incentives</p> <p>The profits that a company derives from the exploitation of an internationally recognised patent in its name, developed by it, are exempt from income tax for up to three consecutive years, starting from the year in which these profits were first derived. The exemption is granted under the condition that there is a connection with the R& D expenditures incurred by the company for the development of the patent.</p> <p>The amount of the exemption is calculated as follows:</p>

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			<p>Qualifying R&D expenditures</p> <hr/> <p>exempted amount of the patent</p> <p>Overall R&D expenditures</p> <p>x profits from the exploitation =</p> <p>The numerator may be increased by thirty percent (30%), under the condition that it does not exceed the amount of the overall R&D expenditures.</p> <p>For the implementation of the provisions of this article, the following definitions are given:</p> <p>“Internationally recognised patent”: the patent for which a Patent Diploma has been granted that falls within at least in one of the following cases:</p> <p>aa) “European Patent Diploma”, issued by the European Patent Office and patented in Greece.</p> <p>ab) ‘Patent Diploma’, patented by the Industrial Property Organization, excluding the Utility Model Certificates, that has also been registered in one more country, which :</p> <p>has joined in the European Patent Convention or cooperates under the framework of this Convention, or</p> <p>is an OECD member or is a candidate for accession country or in under an enhanced engagement regime.</p>

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			<p>The income tax exemption is provided under the condition that Patent Diplomas are valid at least until the last day of the year for which the exemption is requested.</p> <p>“Qualifying R&D Expenditures”: the amount of R&D expenditures incurred during the current and the previous fiscal years by the enterprise itself or outsourced to non – related third parties according to the meaning of case g of article 2 (Law 4172/2013), and directly related to the creation, development or improvement of the patent.</p> <p>“Overall R&D Expenditures”: The total amount of qualifying and non-qualifying R&D expenditures that are directly related to the creation, development or improvement of the patent, which have been incurred during the current and the previous fiscal years. Non qualifying expenditures term includes patent acquisitions and R&D expenditures assigned to third parties related to the company, within the meaning of case g of article 2, which are directly linked to the creation, development or improvement of the patent.</p> <p>“Profits arising from the exploitation of the patent” : income acquired in return for the use or the right of use of patents , as well as income from the sale of patents, after deducting qualifying R& D expenditures, corresponding to income which was acquired during the current year. Profits from the exploitation of the patent are also considered the profits from the sale of products of the company, regardless of whether they were produced in the premises of the company or in third parties’ premises , for which the patent was used, regarding the part corresponding to the use of the patent.</p> <p>4. The exempted amount, that is calculated according to paragraph 2, appears in a special reserve account and is subject to taxation in accordance with the</p>

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			<p>general provisions of the Income Tax Code (ITC), for the part that is distributed or capitalized each time.</p> <p>5. A joint decision of the Minister of Finance, the Minister of Development and Investments and the Governor of the Independent Authority of Public Revenue defines the competent authorities for patent certification, the criteria for designation of qualifying and non qualifying expenditures, in accordance with the general principles and guidelines of the OECD, the terms, the conditions, the procedure and any other issue for the application of this article.</p> <p>6. A decision of the competent body of the Ministry of Development and Investment approves the company's falling under the provisions of this article for the specific profits from the exploitation of the patent, following the application submitted to the competent authority of the above mentioned Ministry.</p> <p>7. The provisions of this article apply to income acquired for fiscal years beginning from the 1st January 2022 and onwards.</p>
	c. Benefits under your regime (e.g. a reduced rate or a deduction, an exception, or some other reduction in the taxable base)		<p>Tax exemption</p> <p>The IP regime provides for a tax exemption of profits derived from the exploitation of internationally recognised patents, subject to the nexus ratio. The nexus ratio is calculated by dividing Qualifying R&D Expenditure by Total R&D Expenditure.</p>
	d. Effective tax rate under your regime		0% (Tax exemption)
	e. Statutory rate in your jurisdiction that would apply		22%

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	in the absence of the regime		
	f. Stated purpose of your regime		The creation of a legal framework that provides incentives for companies to develop and improve patents, while ensuring the requirement of substantial economic activity in line with action 5 of BEPS 2015 project
2. Please describe the scope of qualifying taxpayers under your regime.			The IP regime is available to all taxpayers (enterprises) that develop qualifying IP assets and profit from them
3. What types of IP assets can qualify for benefits under your regime?			Internationally recognised patents, as defined in point a of paragraph 3 of article 71A of Law 4172/2013
4. Third category of IP assets	a. Are you planning on allowing the third category of IP assets described in paragraph 37 of the Action 5 Report to qualify for benefits?	Yes/no	No
		(i) Please describe how you will limit the taxpayers benefiting from the third category.	-
		(ii) Please describe what IP assets will qualify under this category, and the reason why they will fit with the specific requirements in paragraph 37 of the Action 5 Report.	-
		(iii) Please describe the transparent certification process (undertaken by a competent government	-

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		agency that is independent from the tax administration) under your regime.	
		(iv) Please describe the procedures you have implemented to ensure annual reporting to the FHTP and spontaneous exchange of information.	-
5. What income will qualify for benefits? Please describe how you are ensuring that the amount of income is not equal to the gross income from IP assets.			Income acquired in return for the use or the right of use of patents, income from the sale of patents, as well as after deducting qualifying R&D expenditures, corresponding to income which was acquired during the current year and embedded IP income (point d, par. 3, art. 72A of Law 4172/2013).
6. Embedded IP income	a. Does your regime allow embedded IP income to qualify for benefits?	Yes/No	Yes
	b. If yes, please describe how you are ensuring that non-IP income (e.g. marketing and manufacturing returns) does not also qualify for benefits.		In order to calculate the embedded IP income the enterprise shall apply the general principles and guidelines of the OECD on intra-group transactions (i.e. OECD transfer pricing Guidelines), as explicitly defined in the Joint Ministerial Decision No.79628/ 8.6.2022 (Governmental Gazette B' 2928)
7. Tracking and tracing	a. Have you designed tracking and tracing requirements to ensure that income that is not from qualifying IP assets or that is not qualifying IP income	Yes/No	Yes

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	does not qualify for benefits?		
	b. If yes, please describe your regime's tracking and tracing requirements.		Eligible and non-eligible research and development costs, profits from the operation, as well as any losses from the same cause are recorded separately in the enterprise's accounting books for each patent as defined in the Joint Ministerial Decision No.79628/ 8.6.2022 (Governmental Gazette B' 2928)
8. Please explain how losses associated with the IP income will be treated under your regime. The explanation should include how your regime ensures that the requirement under footnote 14 to paragraph 47 of the Action 5 Report is met.			Losses associated with the IP income are not recognized and losses arising from the same cause in any of the two (2) years following the fiscal year in which the enterprise first received this benefit for the particular patent will not be deducted when determining the profit from the business activity, as defined in the Joint Ministerial Decision No.79628/ 8.6.2022 (Governmental Gazette B' 2928)
9. If you are not a Member State of the European Union, have you designed your regime to be consistent with footnotes 16 and 19 on page 42 of the Action 5 Report?			-
10. Related-party outsourcing	a. Does your regime limit benefits based on outsourcing to related parties?	Yes/No	Yes
	b. If yes, please explain how your regime limits benefits based on outsourcing to related parties.		As defined in point c of paragraph 3 of article 71A of Law 4172/2013, R&D expenditures assigned to third parties related to the enterprise , within the meaning of case g of article 2 on definition of related persons (Law 4172/2013), are treated as non qualifying expenditures, thus they are included in the denominator but not in the nominator of the nexus ratio.

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11. Acquisitions of an IP asset	a. Does your regime limit benefits based on acquisitions?	Yes/No	Yes
	b. If yes, please explain how your regime limits benefits based on acquisitions. Following this question, please proceed to Question 13.		As defined in point c of paragraph 3 of article 71A of Law 4172/2013, patent acquisitions expenditures are treated as non qualifying expenditures, thus they are included in the denominator but not in the nominator of the nexus ratio.
12. Related-party outsourcing and acquisition of an IP asset in line with footnotes 16 and 19 on page 42 of the Action 5 report	a. Does your regime limit benefits based on the location of the R&D activities in the case of related-party outsourcing and acquisitions?	Yes/No	-
	b. If yes, please explain how your regime limits benefits based on the location of R&D activities.		-
13. Rebuttable presumption	a. Does your regime treat the nexus ratio as a rebuttable presumption?	Yes/No	No
	b. If yes, please answer to the following questions (i) through (iii)	(i) Please describe how departures from the application of the nexus ratio will be limited to the exceptional circumstances described in paragraph 48 of the	-

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		Action 5 Report.	
		(ii) Please provide examples of situations where your jurisdiction expects taxpayers to rebut the presumption.	-
		(iii) Please describe the procedures you have implemented to ensure annual reporting to the FHTP and spontaneous exchange of information.	-