



Council of the
European Union

Brussels, 24 November 2022
(OR. en)

14674/22
ADD 4

LIMITE

FISC 218
ECOFIN 1154

REPORT

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

Greece's Patent tax incentive (EL015)

I. Background

1. In 2018, the Group endorsed the agreed description of the EL015 regime 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.
2. For completion, we recall that the tax advantage under the EL015 regime consists in a deferred taxation: the relevant profits must be booked in a tax-exempt reserve account, so that they are not taxed for a period of three years. In case of distribution, capitalisation or withdrawal from the reserve account within the three years, the profits are subject to tax under the general provisions of Greek ITC². The regular income tax is imposed (at a rate of 29% for business income, - art. 47 par. 1 ITC).

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

² Circular POL. 1059/18.03.2015 described the procedure when a tax-free reserve is distributed or capitalised (converted into capital of this company).

3. 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)³ concerning the EL015 regime (Patent tax incentive), to align them with the modified nexus approach, as endorsed by the Group, and thus to address potentially harmful features of the tax incentive. The new provisions entered into force on 1.1.2022, and no grandfathering is granted to taxpayers benefitting under the old provisions.

II. Preliminary assessment of the EL015 measure as in force until 31.12.2021

4. Based on the data communicated by the Greek authorities it can be noted that the trend remained rather stable between 2017 and 2019. In 2020, the number of taxpayers opting for the IP regime doubled (3 taxpayers in 2019, 6 in 2020). However, the amount of the tax-free reserve [the aggregate amount of income which could benefit from the regime] increased in average from around EUR 2.000.000/taxpayer to EUR 2.600.000/taxpayer.
5. Despite the recent increase, in light of the fact that the number of beneficiaries has remained fairly low for the last five years and that the amount of reserve per taxpayer is overall stable, the Commission's Services take the view that so far the **EL015 measure** has **not affected the business location** among Member States in a significant way.
6. The Group should further look into the effects in the next year's monitoring exercise, when the data for 2021 will have become available.
7. It should be noted that the tax provisions under monitoring are no longer in force as of 01.01.2022. Moreover, no grandfathering is granted to taxpayers that benefitted under the old provisions. On this premise, **the Commission Services hold the view that the monitoring of the IP rules as in force until 31.12.2021 can be terminated after that year.**
8. The amended tax provisions on the Patent Tax Incentive, as in force on 01.01.2022 will be the object of a separate procedure with the aim to assess their compliance with the modified nexus approach.

³ 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)".

III. Follow-up

9. The Group agreed with the conclusion that the **EL015 regime** – based on the data until 2020 - **does not seem to have affected in a significant way the business location among the Member States.**
10. The Group agreed that the monitoring of the **EL015 regime can be terminated after the monitoring for year 2021**, as it is not in force anymore.

Greece – EL015 - Patent tax incentive [2018 CoCG decision]

Greece - EL015	2016	2017	2018	2019	2020
The number of taxpayers benefitting from the regime	2	3	1	3	6
How many of the companies benefitting from the regime are domestic companies					
How many are foreign or foreign owned companies					
The aggregate amount of income benefitting from the regime.	Amount of reserve: 2.853.222,24	Amount of reserve: 5.416.813,44	Amount of reserve: 3.515.314,07	Amount of reserve: 6.353.388,85	Amount of reserve: 16.482.703,21