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REPORT

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

Poland's Notional interest deduction regime (PL011)

I. Background

1. In 2019 the Code of Conduct group agreed that the Polish NID regime did not need to be assessed, but should be monitored¹ for the following reasons: *a NID regime such as the Polish regime at issue cannot affect in a significant way the location of business activity in the EU, in the sense of paragraph A of the Code of conduct. This due to the modest benefits available through the regime – 58.000 EUR/year - and despite the absence of targeted anti-abuse provisions. The regime will be subject to monitoring by the COCG with regard to its economic effects. If the allowed maximum amount should be raised in the future the COCG should be informed and carry out a new assessment. It should also be noted that the Polish authorities have indicated that targeted anti-abuse provisions would be introduced through the regulations implementing the law and rendering it applicable.*

II. Preliminary assessment

2. In line with its engagement, Poland notified the adoption of an anti-abuse clause for the NID regime to the Group at the end of 2020². Such anti-abuse clause entered into force on 1st January 2021 and was assessed by the Group in February 2021³.

¹ Doc.14114 19 ADD 2, FISC 444.

² By *Act of 5 June 2020* adding paragraph 10 in Art. 15 cb, in the Polish Corporate Income Tax Act.

3. Based on the data received concerning tax year 2021, one can observe that the use of the NID regime is rather widespread (with 1.597 beneficiaries). However, Poland could not provide separate data by category of taxpayer: domestic owned companies versus foreign (owned) companies.
4. Despite the absence of such data, we recall that the legal provisions setting the Polish NID regime provide for a ceiling set at around 60.000 EUR/year. The data shows that the average amount of NID deduction was around EUR 25.000 per taxpayer in year 2021 and therefore significantly below the legal ceiling.
5. Based on the aforementioned information and despite the absence of data by category of taxpayer, it is our preliminary assessment that the Polish NID regime does not seem to have affected in a significant way the business location among the Member States.
6. However, the Commission services recall the importance of the distinction of beneficiaries by category – domestic companies versus foreign (owned) companies in order to ensure a proper functioning of criteria 1(b) and 2(b) of the Code of Conduct. Polish authorities are thus invited to explore ways for collecting such separate data and communicate it to the Group next year.
7. The Commission services therefore suggest that the Group should continue to monitor the effects of the measure.

III. Follow-up:

- i. The Group agreed with the conclusion that the **PL011 regime** does not seem to have affected in a significant way the business location among the Member States.
- ii. The Group agreed that the monitoring should continue.

³ Doc. WK1528/2021.

Annex 6: Poland – PL011 - Notional interest deduction regime (in force as of 2019, applicable as of tax year 2020) [2019 CoCG decision]

Poland - PL011	2021⁴
Total number of taxpayers benefitting from the measure	1 597
Out of which directly or indirectly foreign owned companies:	We are not able to generate such data from our system.
Global amount of NID granted	179 000 000 PLN
Total tax expenditure (<i>at 19% CIT rate</i>)	34 010 000 PLN
<i>Average amount of NID allowance</i>	112 085 PLN (approx. 24.369 EUR) ⁵
Total tax expenditure attributable to directly or indirectly foreign owned	We are not able to generate such data from our system.
<i>Average NID tax expenditure attributable to directly or indirectly foreign owned</i>	We are not able to generate such data from our system.

⁴ For 2020 Poland only has aggregated data for all tax deductible expenses and were not able to extract the data regarding NID. This is due to the fact that in tax returns filed for this period there was no separate field regarding this issue. Poland thus presented data already for 2021, as from that time onwards taxpayers do report the data on NID separately.

⁵ Average NBP (National Bank of Poland) exchange rate from 31.12.2021.