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## REPORT

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

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### Portugal's Notional interest deduction regime (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 per company at the time and the maximum NID allowance of 140 000 EUR, but that its economic effects should be monitored.

#### II. Preliminary assessment

2. Beginning November 2022, Portugal sent the relevant data concerning the effects of the measure for the tax year 2020 (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 steadily every year, both in respect of the number of taxpayers benefitting from the regime and the amount of the NID granted per company (both generally and specifically for foreign owned companies). Yet, the average NID allowance per taxpayer in the last three years (2018-2020) stabilized between 13.000 EUR and 14.000 EUR.
4. Regarding the actual use of the measure by category of taxpayer in the last three years, the ratios are comparable, both in respect of the general average of the tax benefit and of the proportion of foreign owned taxpayers using the measure.

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

5. Regarding the use of the measure by foreign owned taxpayers, in 2020, the number of foreign owned taxpayers represented only around 4% of the total taxpayers benefitting from the NID regime, while the total tax expenditure attributable to them represented 10.5% of the total tax expenditure (4.8 million EUR out of 46 million EUR). In 2019, the ratios were comparable, foreign owned taxpayers represented around 3.6% of the total taxpayers benefitting from the NID regime, while the total tax expenditure attributable to them represented 10%<sup>2</sup> of the total tax expenditure.
6. Furthermore, per company, the general average NID tax benefit amounted to 2.824 EUR in 2020, decreasing from 2.947<sup>3</sup> EUR in 2019 (21% CIT x 13.448 EUR average NID allowance; or 46.225.757 EUR/ 16.369), whereas the average NID tax benefit attributable to foreign owned taxpayers was 7.405 EUR (decreasing from 8.299 EUR in 2019, and 8.819 EUR in 2018). Despite this slight decrease for the second year in a row, the average NID benefits continue to be 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 accounted 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 per company (7.405 EUR compared to 2.824 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 7.405 EUR represents an average increase of capital (new share capital contributions) of around 500.000 EUR (500.000 EUR x 7%<sup>5</sup> x 21% CIT rate).
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 trend in the use of the measure and therefore suggest that the Group should continue to monitor its effects.

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

<sup>3</sup> Compared to EUR 2.830 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

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

- i. The Group agreed with the conclusion that the **PT018 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: Portugal – PT018 - Notional interest deduction regime (NID) [2018 CoCG decision]**

<b>Portugal PT018</b>	2013	2014	2015	2016	2017	2018	2019	2020
Total number of taxpayers benefitting from the measure	631	1440	2044	3299	5915	8922	13 162	<b>16 369</b>
Out of which directly or indirectly foreign owned companies:	0	7	13	32	144	261	475 <sup>6</sup>	<b>660<sup>7</sup></b>
Global amount of NID granted	1300948	3503749	4903392	7 530 000	63 447 187	120 239 239	184 727 819	<b>220 122 655</b>
Total tax expenditure ( <i>at 21% CIT rate</i> )	325 237	654 053	917.581	1 407 269	13 323 909	25 250 240	38 792 842	<b>46 225 757</b>
<i>Average amount of NID allowance</i>				2283	10 726	13 477	14 035	<b>13 448</b>
Total tax expenditure attributable to directly or indirectly foreign owned	0	10743	33102	64 107	1 203 084	2 301 980	3 942 250	<b>4 887 328</b>
<i>Average NID tax expenditure attributable to directly or indirectly foreign owned</i>				2 003	8 354	8 819	8 299	<b>7 405</b>

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

<sup>7</sup> 4% of the total number of taxpayers benefitting from the measure.