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REPORT

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

Luxembourg's measure on Intra-Group Financing – use of safe harbour rule (LU016)

I. Background

1. Based on the data communicated by Luxembourg authorities, for the second year in a row, no company used the safe-harbour simplification rules in 2021. Moreover, we recall that in past years, no company had used the safe-harbour simplification rules in tax year 2017, and only one taxpayer used the measure in 2018 and in 2019 (see annex).

II. Preliminary assessment

2. Based on the information made available previously, the Code of Conduct Group had concluded that until then, the LU016 measure had not affected the business location among Member States in a significant way.
3. In light of the recently communicated information regarding the absence of the use of the measure in both years 2020 and 2021 and also of the data regarding past use which did not reveal significant frequency in the application of the safe-harbour rules, the Commission's Services maintain their view that so far, the LU016 measure has not affected the business location among Member States in a significant way.
4. Given the constant low uptake over the monitoring period (2017-2021) and the absence of the use of the measure during the last two years, the Commission Services propose that the

monitoring be terminated. The Group can nonetheless re-open the monitoring, if new information or facts justify such an action.

III. Follow-up:

- i. The Group agreed with the preliminary conclusion that the **LU016 regime** does not seem to have affected the business location among the Member States in a significant way.
- ii. The Group agreed that the monitoring of the measure can be terminate

Annex: Luxembourg - LU016 Intra-Group Financing - safe harbour rule [2017 CoCG decision]

Luxembourg - LU016	2017	2018 + 2019	2020	2021
Overall number of companies performing Intra-Group financing	Statistics on the number of companies performing intra-group financing activities are not available as the commitment provided by Luxembourg and accepted by the Code of Conduct did not refer to the necessity to compile this type of statistics.	Statistics on the number of companies performing intra-group financing activities are not available as the commitment provided by Luxembourg and accepted by the Code of Conduct did not refer to the necessity to compile this type of statistics.	Statistics on the number of companies performing intra-group financing activities are not available as the commitment provided by Luxembourg and accepted by the Code of Conduct did not refer to the necessity to compile this type of statistics.	Statistics on the number of companies performing intra-group financing activities are not available as the commitment provided by Luxembourg and accepted by the Code of Conduct did not refer to the necessity to compile this type of statistics.
Number of companies having used the safe harbor provisions (2% net return)	Until 30/09/2019 and on the basis of the files already taxed for fiscal year 2017 and 2018, no company has correctly communicated and applied ¹ the simplification measure (2% minimum return on assets financed after tax) as described	Only 1 company has correctly communicated and applied the simplification measure.	No company has correctly communicated and applied the simplification measure (2% minimum return on assets financed after tax) as described in point 4 of the financing circular.	No company has correctly communicated and applied the simplification measure (2% minimum return on assets financed after tax) as described in point 4 of the financing circular.

¹ In his annual tax return, the taxpayer has to tick a specific box in order to inform the Luxembourg tax authority that he used the simplification measure. In providing our answer, we also considered those cases where a taxpayer that could prima facie be subject to the simplification measure, ticked this box in his tax return, but did not apply the 2% net return in the taxed accounts and was neither in scope of the "simplification regime together with a 2% downward adjustment based on a transfer price analysis". Accordingly, those taxpayers cannot be considered as having "used the safe harbor provisions" as referred to in the European Commission's questionnaire on monitoring of 26 July 2019.

	in point 4 of the financing circular.			
The total values of the financial assets of the companies having used the safe harbor	n/a	500 000 EUR	n/a	n/a
Number of companies having applied the 2% net return and afterwards made a downward adjustment	Until 30/09/2019 and on the basis of the files already taxed for the fiscal year 2017 and 2018, no company was identified that opted for the simplification regime (i.e. return of 2%) together with a 2% downward adjustment based on a transfer price analysis.	No company was identified that opted for the simplification regime (i.e. return of 2%) together with a 2% downward adjustment based on a transfer price analysis.	No company was identified that opted for the simplification regime (i.e. return of 2%) together with a 2% downward adjustment based on a transfer price analysis.	No company was identified that opted for the simplification regime (i.e. return of 2%) together with a 2% downward adjustment based on a transfer price analysis.
Overall number of information exchanges sent	n/a	1	n/a	n/a
The name of the Member States to which the relevant information was sent	n/a	PT	n/a	n/a