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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 it should be monitored[1] for the following reasons: due to the modest deduction provided by the regime – max. 58.000 EUR/year - the Polish regime cannot affect in a significant way the location of business activity in the EU. The regime was put under 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.

2. Poland notified to the Group end of 2020 the adoption of the specific anti-abuse clause for the NID regime[2]. Such anti-abuse clause entered into force on 1st January 2021.

[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.

The NID regime does not apply, thus NID costs are not recognized as revenue earning costs, *if the taxpayer or an entity related to it within the meaning of Article 11a (1) (4) performed a legal act or related legal actions without justified economic reasons, mainly in order to recognize the amount referred to paragraph 1 as the revenue earning costs. The justified*

II. Preliminary assessment

3. The PL NID started to apply as of tax year 2020.

4. According to the data received for the second year, tax year 2021, 1 705 beneficiaries, with a slight increase from 1 597 in the previous tax year use the NID regime. However, Poland is not able to provide data according to the category of taxpayer: domestic owned companies versus foreign (owned) companies.

5. Despite the absence of such data, we recall that the legal provisions setting the Polish NID regime provide for a **ceiling** set for the NID tax deduction at around 58000 EUR/year[3]. The data provided shows that the **average amount of NID deduction** was at around **EUR 23 000** per taxpayer in year 2021, significantly below the legal ceiling. This leads to an **average NID tax benefit** of around **EUR 4.400** (average NID tax deduction / 19% CIT).

6. Based on the aforementioned information, and despite the absence of data according to the 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.

7. 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) of the Code of Conduct. Polish authorities are thus invited to explore ways of collecting such data and to communicate it to the Group next year.

8. 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 preliminary conclusion that the PL011 NID 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.

economic reasons do not include the case when the benefit obtained in the tax year or in the following years results from being classified as revenue earning costs.

[3] Maximum NID tax benefit allowed: EUR 11.020 (EUR 58.000 x 19% CIT)

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

Poland - PL011	**2020**	**2021**
Total number of taxpayers benefitting from the measure	1 597	1 705
Out of which directly or indirectly foreign owned companies:	We are not able to generate such data from our system.	We are not able to generate such data from our system.
Global amount of NID granted	179 000 000 PLN	185 614 848 PLN (40.350.000 EUR)
Total tax expenditure (*at 19% CIT rate*)	34 010 000 PLN	35 266 821 PLN (7.666.000 EUR)

Average amount of NID allowance	112 085 PLN (approx. 24.369 EUR)[4]	108 865 PLN (approx**. 23.213 EUR**)[5]
Total tax expenditure attributable to directly or indirectly foreign owned	We are not able to generate such data from our system.	We are not able to generate such data from our system.
Average NID tax expenditure attributable to directly or indirectly foreign owned	We are not able to generate such data from our system.	We are not able to generate such data from our system.

[4] Average NBP (National Bank of Poland) exchange rate from 31.12.2021.
[5] Average NBP (National Bank of Poland) exchange rate from 30.12.2022. (4,6 PLN : 1 EUR)