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REPORT

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

ADDENDUM 5

Poland – Notional interest deduction regime (PL011) [2019 CoCG decision]

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: “*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.

¹ Doc.14114 19 ADD 2, FISC 444.

2. At the end of 2020, Poland notified to the Group the adoption of the specific anti-abuse clause for the NID regime². It entered into force on 1st January 2021 (see also WK 1528/2021 INIT).

II. Preliminary assessment

3. The PL NID started to apply as of tax year 2020. The data provided this year covers the tax years 2022 and 2023. Overall, the Group has received a set of data covering **four tax years**.
4. Based on such data, the Group notices that the uptake has been increasing every year, having risen from 1,500 taxpayers in the first year (2020) to 5,000 taxpayers in year 4 (2023).
5. The average amount of the NID deduction rose to EUR 35,000, after having stabilized for three consecutive years at around EUR 24,000. However, this amount remains significantly lower than the maximum NID deduction of EUR 58,000, as allowed under the national law.
6. The Commission Services recall the importance of distinguishing beneficiaries by category – domestic companies versus foreign (owned) companies in order to ensure the proper monitoring of criteria 1(b) of the Code of Conduct. The Polish authorities informed that they are not able to extract such data from their system.
7. Despite the absence of such data, it should be taken into account that the regime provides for a **ceiling** for the NID deduction at 58,000 EUR/year³. The submitted data shows that the **average amount of NID deduction** was around **EUR 35,000** per taxpayer in year 2023. This is significantly lower than the ceiling and leads to an **average NID tax benefit** of around **EUR 6,700** (average NID tax deduction x 19% CIT).
8. Based on the aforementioned information, 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.
9. In addition, we recall that the measure was put under monitoring because it was lacking a targeted anti-abuse provision, and to also verify whether the ceiling will be maintained. An anti-abuse clause was introduced in 2021; and the ceiling of the NID tax deduction has not been increased in the last five years either; it is still set at EUR 58,000.
10. The Commission Services suggest that the Group continues monitoring the effects of the measure, in order to fulfil the 5-year monitoring period.

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 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)

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 the monitoring should continue for one more year.

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	2022	2023
Total number of taxpayers benefitting from the measure	1 597	1 705	3 641	5 301
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.	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)	425 935 465 PLN (90.819.733 EUR)	817 889 729 PLN (188.107.113 EUR)
Total tax expenditure (<i>at 19% CIT rate</i>)	34 010 000 PLN	35 266 821 PLN	80 927 738 PLN	155 399 049 PLN

		(7.666.000 EUR)	(17.255.749 EUR)	(35.740.352 EUR)
<i>Average amount of NID allowance</i>	112 085 PLN (approx. 24,369 EUR) ⁴	108 865 PLN (approx. 23,213 EUR) ⁵	116 983 PLN (approx. 24,944 EUR) ⁶	154 290 PLN (approx. 35,485 EUR)⁷
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.	We are not able to generate such data from our system.	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.	We are not able to generate such data from our system.	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 31.12.2020.

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

⁶ Average NBP (National Bank of Poland) exchange rate from 30.12.2022. (4,6899 PLN : 1 EUR)

⁷ Average NBP (National Bank of Poland) exchange rate from 29.12.2023. (4,348 PLN : 1 EUR)