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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 7

Romania – Reduction of income tax for maintaining or increasing own capital (RO011)

[2021 CoCG decision]

I. Background

1. In 2021, the Group concluded that Romania's reduction of income tax to maintain or increase own capital (RO011) did not need to be assessed. The measure is of a general nature, applying to all taxpayers with the aim of addressing the difficult liquidity situation caused during the COVID-19 crisis. In addition, the measure is temporary, for the tax years 2021-2025.
2. The measure RO11 pursues a similar objective as the NID measures assessed in the past, which is to encourage taxpayers to maintain or increase the company's own capital and avoid financing through debt. However, the policy reasons for its introduction and its design are different.
3. The Group agreed that its future application, and thus the economic effects should be monitored.

II. Preliminary assessment

4. For completeness, the measure – differently from a classical NID which reduces the tax base – operates as a tax credit. It provides for a reduction of the annual corporate income tax due of maximum 15%¹.
5. The reduction of tax due is only applicable if there are taxable profits. It cannot create losses, nor can it be carried forward, or refunded. Financial and banking institutions are excluded from the measure.
6. During the 2024 monitoring exercise, Romania communicated the data regarding the use of the measure for tax years 2022 and 2023. In view of such data, it appears that the measure continued to apply widely (general application), with an increase from a total of **215140 taxpayers in 2021** (the first year of application) to around **330000 taxpayers** in 2022 and 340000 taxpayers in 2023. The majority of taxpayers were micro enterprises² (90% in 2022 and 60% in 2023).
7. In addition, the **general average**³ tax benefit per taxpayer remained at a very low level range between RON 6000 and RON 7500 (year 2022 and 2023)⁴ (around EUR 1200 - 1500), while the **specific average**⁵ tax benefit per type of taxpayer⁶ for the years 2022 and 2023 (*row in italics*):
 - a. For taxpayers subject to profit tax: RON 58.000 (around EUR 11800) in 2022 and 18000 (around EUR 3600) in 2023;
 - b. For taxpayers subject to tax on Permanent Establishments (PE): RON 32000 (around EUR 6500) in 2022 and RON 20000 (around EUR 4000) in 2023;
 - c. For microenterprise income taxpayers: RON 490 (EUR 100) in 2022 and RON 560 (around EUR 115) in 2023;
 - d. For specific taxpayers: RON 4000 (EUR 800) in 2022 and RON 0 (around EUR 0) in 2023.
8. While there is an increase both in the general and the specific average tax benefit per taxpayer, the benefit remained relatively low in absolute figures.
9. During the last monitoring, the Romanian authorities engaged in providing data broken down by category of taxpayer (foreign-owned or domestic taxpayers).

¹ a. 2% for taxpayers which register a positive accounting own capital (equity capital) declared in the annual financial statements at the end of the tax year when the income tax is due;

b. 3% for taxpayers which register an annual increase of adjusted own capital above a certain level in the year in which the income tax is due compared to the reference year 2020; this measure applies as of 2022;

c. 5% - 10% for the taxpayers which register increases of adjusted own capital in the year in which the tax is due compared to the previous year, according to the percentage of increase of fiscally adjusted own capitals under the law.

The reductions in a., b. and c. are cumulative. Thus, the maximum reduction as of 2022 is 15% of the income tax due (2% + 3% + max 10%) if a taxpayer meets all the requirements regarding the increases in adjusted own capital. Before 2022, the maximum reduction was 12% (2% + max 10%), if all other requirements are met.

² Yearly revenues less than EUR 500000, according to the definition in Article 47 in the Romanian Tax Code.

³ The overall NID benefit divided by the total number of taxpayers benefitting of the measure.

⁴ From RON 5.700 in 2021.

⁵ The amount of NID benefit for a specific type of taxpayer divided by the number of taxpayers benefitting in that category.

⁶ 1 EUR: 4.9 RON.

10. The table reflects such data both for year 2021 and years 2022 and 2023. The overall number of foreign or foreign owned taxpayers – regardless of the type of tax they are subject to - represented 7% in 2021, and remained at 6% in 2022 and in 2023. The foreign (owned) taxpayers *subject to profit tax* represented 2.3%, 1.7% and 3.2% of the overall number of taxpayers in 2021, 2022 and 2023 respectively.
11. From the information provided, it arises that the measure has been used widely, mostly by taxpayers qualifying as micro-enterprises. The share of foreign (owned) taxpayers is very low.
12. In light of the data provided, and in particular the general use of the measures and the amount of the average tax benefit which ranged from EUR 100 to EUR 11800, the Commission Services are of the view that so far, the RO011 measure has not affected the business location among Member States in a significant way.
13. In order to be able to confirm whether the uptake remains stable and at a low, the measure should continue to be monitored.

I. Follow-up:

- i. The Group agreed with the preliminary conclusion that the RO011 regime does not seem to have affected in a significant way the business location among the Member States.
- ii. The Group agreed that it should continue looking into the effects of RO011 in the next year's monitoring exercise.

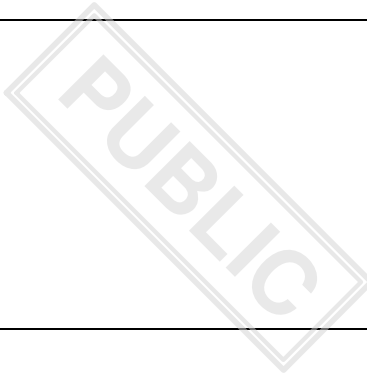
Annex: Romania – RO011 - Reduction of income tax for maintaining or increasing own capital [2021 CoCG decision]

Romania– RO011	2021	2022	2023
Total number of taxpayers benefitting from the measure	<ul style="list-style-type: none"> profit tax payers – 28 267. profit tax payers for PEs – 6. microenterprise income tax payers – 186 488. specific tax payers (Horeca) – 379. <p>TOTAL taxpayers – 215 140</p>	<ul style="list-style-type: none"> profit tax payers – 31 888 profit tax payers for PEs – 4. microenterprise income tax payers – 301 898. specific taxpayers (Horeca) – 321. <p>TOTAL taxpayers – 334 111</p>	<ul style="list-style-type: none"> profit tax payers – 133 193 profit tax payers for PEs – 5. microenterprise income tax payers – 204 871. specific tax payers (Horeca) – 0. <p>TOTAL taxpayers – 338 069</p>
Out of which directly or indirectly foreign owned companies: ⁷	<ul style="list-style-type: none"> profit taxpayers – 5 087 profit taxpayers for PEs – 0. microenterprise income taxpayers – 10 079. specific taxpayers (Horeca) - 38 	<ul style="list-style-type: none"> profit taxpayers – 5736 profit tax payers for PEs – 0. microenterprise income tax payers – 14606. specific tax payers (Horeca) - 35 	<ul style="list-style-type: none"> profit taxpayers – 10874 profit tax payers for PEs – 0. microenterprise income tax payers – 9 087 specific tax payers (Horeca) - 0
Global amount of NID granted/ reduction of income tax granted	<ul style="list-style-type: none"> profit taxpayers– RON 1 123 003 825 profit taxpayers for PEs – RON 59 009 microenterprise income tax payers – RON 98 939 684 specific tax payers – RON 997 837 	<ul style="list-style-type: none"> profit tax payers – 1 855 900 268 profit tax payers for PEs – RON 129 689 microenterprise income tax payers – RON 150 068 216 specific tax payers – RON 1 290 751 	<ul style="list-style-type: none"> profit tax payers – RON 2 444 168 020 profit tax payers for PEs – RON 101 075 microenterprise income tax payers – RON 114 443 105 specific tax payers – 0

⁷ Additional information provided subsequently by Romanian authorities, on 5 October 2023.

	TOTAL - RON 1 223 000 355	TOTAL – RON 2 007 388 924	TOTAL - RON 2 558 712 200
Total tax expenditure (at 16% CIT rate)	-		
Average amount of NID allowance/ reduction of income tax per taxpayer ⁸	<ul style="list-style-type: none"> For taxpayers subject to profit tax : RON 39700 (around EUR 8000); For taxpayers subject to tax on PEs: RON 9 800 (around EUR 2000); For microenterprise income tax payers: RON 530 (around EUR 110); For specific tax payers: RON 2 600 (around EUR 550). 	<ul style="list-style-type: none"> For taxpayers subject to profit tax : 58 000 RON (around EUR 11 800); For taxpayers subject to tax on PEs: RON 32 000 (around EUR 6 500); For microenterprise income tax payers: 490 RON (around EUR 110); For specific tax payers: 4 000 RON (around 800 EUR). 	<ul style="list-style-type: none"> For taxpayers subject to profit tax : RON 18 000 (around EUR 3 600); For tax payers subject to tax on PEs: RON 20 000 (around EUR 4 000); For microenterprise income tax payers: 560 RON (around EUR 115); For specific tax payers: 0 RON (0 EUR).
Total tax expenditure attributable to directly or indirectly foreign owned	Not provided	Not provided	Not provided

⁸ Computed by the Commission services based on the data provided: The amount of NID benefit for a specific type of taxpayer divided by the number of taxpayers benefitting in that category.



<i>Average NID tax expenditure/ reduction of income tax attributable to directly or indirectly foreign owned</i>	-		
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