COUNCIL OF
THE EUROPEAN UNION

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LIMITE

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REPORT

From:	Code of Conduct Group (Business Taxation)
To:	Permanent Representatives Committee (Part 2)/Council
Subject:	Code of Conduct (Business Taxation) - Report to the Council

INTRODUCTION

1. On 1 December 1997, the Council and the Representatives of the Governments of the Member States, meeting within the Council, adopted a Resolution on a Code of Conduct for business taxation. This Resolution provides for the establishment of a Group within the framework of the Council to assess tax measures that may fall within the Code. In its report to the Feira European Council on 19 and 20 June 2000, the ECOFIN Council agreed that work should be pursued with a view to reaching agreement on the tax package as a whole, according to a parallel timetable for the key parts of the tax package (taxation of savings, Code of Conduct (business taxation) and interest and royalties).

2. On 9 March 1998, the Council confirmed the establishment of the Code of Conduct Group. The Group reports regularly on the measures assessed and these reports are forwarded to the Council for deliberation.

3. This report from the Code Group encompasses the work of the Code Group in 2013 under the Lithuanian Presidency.

4. In accordance with the Procedural Aspects of the Group (16410/08 FISC 174), the Group should maintain to aim at a (broad) consensus to reflect the positions of the Member States in the Group in its reports to ECOFIN, to avoid losing the effectiveness of the Group, while respecting the principle of unanimity as laid down in the Council conclusions of 9 March 1998 concerning the establishment of the Code Group. In the case broad consensus cannot be reached, the Group's reports can express the various views mentioned.

PROGRESS OF WORK

5. The Code of Conduct Group met on 11 September, 22 October and 20 November 2013 under the Lithuanian Presidency.

6. At the meeting of 11 September 2013 the Group confirmed a programme of work under the Lithuanian Presidency, agreeing to take forward work in the following areas:
   (a) continue its work on rollback;
   (b) continue existing work on standstill;
   (c) continue work on the various aspects of the Group's Work Package 2011.

APPOINTMENT OF VICE CHAIRS

7. Ms. Jurate Laurikenaite (Lithuania) and Ms. Evgenia Kokolia (Greece) were confirmed as respectively the first and the second Vice-Chairs for the period up to the end of the Lithuanian Presidency.

STANDSTILL

8. Member States have made commitments not to introduce new tax measures that would be harmful within the meaning of the Code. The Group's work programme for the Lithuanian Presidency identified the following measures where further discussion under standstill was required:
   - *UK: Isle of Man*
   - *Cyprus: Patent Box*[1]
   - *Belgium: Patent Box*
   - *UK: Patent Box*

9. As regards UK: Isle of Man retail tax, in its meeting on 22 October 2013, the Group was presented with the agreed description of this measure. After receiving the requested information on this regime by the Isle of Man and further discussion, the Group agreed that there was no need for this measure to be assessed against the criteria of the Code of Conduct. But as concerns were raised that the 0% tax rate that generally applies in the Isle of Man could facilitate tax avoidance by both digital companies and non-digital companies receiving income flows, the Group noted that this decision not to assess does not constitute a precedent, and is without prejudice to future cases or developments, such as the outcome of the OECD work on the taxation of the digital economy.

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[1] Cyprus does not consider its IP regime as a “standstill” harmful regime which constitutes a harmful tax practice in the light of the criteria of the Code of Conduct group.

10. The Group could not take a final view on the draft assessment of the three patent boxes. The main reason was about how to interpret the third code criterion of the Code of Conduct i.e. the presence of real economic activity. Against that background the Group asks ECOFIN to consider whether the Group should conduct a precise analysis of the above mentioned criterion by the end of June 2014. A number of Member States expressed the view that ECOFIN should provide political direction given the issues of equal treatment with other such regimes in operation, precedence in the context of the Group's examinations and the issue of whether all patent boxes in the EU, including those already considered or assessed before, should be considered or assessed by the end of 2014, and also against the background of international developments including those in relation to the OECD BEPS initiative.

ROLLBACK

UK: Gibraltar – Income Tax Act 2010

11. There was broad consensus that the legislation, which Gibraltar enacted, was adequate to achieve the rollback of those selected aspects of the Gibraltar Income Tax Act 2010, which were found to be harmful by the Group. The Code Group's report of 21 June 2013 indicated that a review of the nature of the regime would take place.

12. The European Commission (DG Competition) opened a formal state aid investigation procedure in order to investigate certain aspects of Gibraltar's Income Tax Act 2010 on 16 October 2013. In accordance with the Procedural Aspects of the Group (16410/08 FISC 174), the group will suspend the Code of Conduct discussion until the Commission's State aid procedure has taken its course.

13. Spain reiterated the need to examine other aspects of the Gibraltar tax regime not covered by the state aid procedure and will provide the Group with information on other potentially harmful parts of the Gibraltar tax regime. A review of the nature of this part of the regime and compliance with the Code principles will take place during the next meetings under the Greek Presidency.

WORK PACKAGE

14. The Group continued its work on the Work Package 2011 under the Lithuanian Presidency.

Anti-Abuse – Mismatches

15. Technical work on Mismatches was continued in a Code of Conduct Sub-Group, which met on 11 October and 14 November 2013. At the meeting on 20 November 2013 the Lithuanian presidency presented a report on the work of the Sub-Group, where the focus was on mismatch situations of hybrid entities and hybrid permanent establishments in the EU. It was agreed that further work on this subject is required. The Group, noting the significant progress made in addressing hybrid entity mismatches, stressed the need to coordinate its work with the OECD.

Monitoring the implementation of agreed guidance on Inbound Profit Transfers

16. The Group continued its work on Inbound Profit Transfers and agreed to consider the anti-abuse measures of all Member States after the presentation of a Commission analysis based on the toolbox approach.

Preparation of guidance or application notes

17. Further work on the preparation of guidance and application notes is required under the Greek Presidency.

Administrative Practices[2]

18. CACT and JTPF are working on a Model Instruction to improve the spontaneous exchange of information on advance interpretations of legal provisions in cross border situations ("rulings") and in the area of transfer pricing. The Group will continue to follow developments.

Links to third countries

19. As asked by the Council (ECOFIN) on 22 June 2012 (10905/12 FISC 78), the Commission continued discussions with Switzerland with the aim of reaching agreement to apply the principles and criteria of the Code. The Group was informed of the progress in the dialogue at the meetings on 11 September, 22 October and 20 November 2013.

20. The Group noted that, as part of its current corporate tax reform programme, Switzerland is prepared to withdraw the five regimes identified in the dialogue process, and wishes to see a clear statement of intent by the EU and Switzerland. However, the Group considered that, whilst progress has been made, the Swiss position on Member States' countermeasures and related anti-abuse regimes is unacceptable. The Group recognised that once the contested Swiss regimes are effectively removed, any countermeasures applied by Member States to those regimes would no longer be relevant. However, the Group could not accept any proposal to limit the Member States' general ability to protect their respective tax bases, notwithstanding their interest to ensure a sound relationship between EU Member States and Switzerland. On this basis, the Group recommends to invite the Commission to continue and conclude the dialogue by 30 June 2014.

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[2] Italy recalled the footnote on administrative practices inserted on page 6 of doc. 11465/13 of 21 June 2013.