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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	16554/14 FISC 226 ECOFIN 1167
Subject:	Code of Conduct (Business Taxation) - Council Conclusions

1. During the ECOFIN on 9 December 2014, the following Council Conclusions were endorsed¹:

"With regard to the Code of Conduct Group (Business Taxation), the Council:

- welcomes the progress achieved by the Code of Conduct Group during the Italian Presidency as set out in its report (doc. 16553/1/14 REV 1 FISC 225 ECOFIN 1166);*
- asks the Group to continue monitoring standstill and the implementation of the rollback as well as its work under the Work Package 2011;*
- invites the Commission to resume the dialogue with Liechtenstein on harmful tax regime, as set out in the report;*
- invites the Group to continue its consideration of the draft guidance on Hybrid Permanent Establishments;*

¹ Together with the Code of Conduct report (doc. 16553/1/14 REV 1)

- *takes note of the agreement reached on the interpretation of the third criterion of the Code of Conduct with regard to patent boxes as contained in the existing mandate;*
- *emphasises the need to start already in 2015 the legislative process necessary to change the patent box regimes and asks the Group to monitor this process;*
- *invites the Group to report back on its work to the Council by the end of the Latvian Presidency."*

2. The General Secretariat of the Council will enter the following NL statement in relation to the Council conclusions in the minutes of the ECOFIN Council on 9 December 2014:

"The Netherlands fully supports the objective of ending aggressive tax planning and to put a stop on innovation/patent boxes that encourage profit shifting and on the trading of patents only for the purpose to move them to the most favourable tax regime. The Netherlands therefore welcomes the German-British proposal on the modified nexus approach and supports stricter rules on IP regimes among others the formula for the level of qualified expenditure (lift up), a tracking and tracing system and excluding trademarks and marketing from the IP regime.

An inclusive definition of 'IP assets', meaning patent and non patent research & development, would help to promote innovation in the EU, enabling the EU to compete in the global arena for knowledge and ideas and to achieve our Europe2020 goals. The EU's aim is to boost real innovation including innovation in SMEs. SMEs would in practice be excluded from pure patent boxes, as an application for patents is in many cases too expensive for SMEs. It is evident that SMEs have enough 'nexus' with the Member State. Such an inclusive definition of 'IP assets' has to be elaborated in the OECD.

For the Netherlands it is important that IP regimes are not limited to patents, but could also cover other innovations derived from R&D, provided that such activities have been certified by a competent government authority (not being the tax authorities), so that the linkage between R&D, IP-assets and profits (tracking and tracing) can be ensured."