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European Union

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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (business taxation meeting)
Subject:	Code of Conduct Group (business taxation) – Work Programme under the Romanian Presidency

Delegations will find attached the Work Programme under the Romanian Presidency as agreed by the Code of Conduct Group (business taxation) meeting of 30 January 2019.

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME UNDER THE ROMANIAN PRESIDENCY

1. In its conclusions of 4 December 2018 (doc. 15802/18), the Council:
 - a. invited the Group to continue its work under its multiannual work package 2018 (doc. 10420/18);
 - b. asked the Group to continue monitoring standstill and the implementation of the rollback;
 - c. urged the remaining Member State to comply with the modified nexus approach by the end of 2018;
 - d. invited the Group to develop guidance on notional interest deduction regimes for other Member States that would wish to implement a similar regime;
 - e. invited the Group to finalise discussions on further coordinated defensive measures in the tax area against non-cooperative jurisdictions, as well as on future criterion 1.4 (exchange of beneficial ownership information);
 - f. urged the jurisdictions concerned to fulfil their respective commitments in accordance with the agreed deadlines;
 - g. underlined its determination to update the EU list of non-cooperative jurisdictions for tax purposes at the beginning of 2019; and
 - h. invited the Group to report back to the Council on its work during the Romanian Presidency.
2. Against this background, this note sets out the proposed work programme under the Romanian Presidency of the Council (1st semester of 2019).

I. General aspects

3. A new Chair was appointed by common accord at its meeting of 30 January 2019. The new Chair, Ms. Lyudmila Petkova (Bulgaria), will take office as from 5 February 2019.

II. Monitoring of standstill and the implementation of rollback

4. The Group will review the tax measures notified by Member States under the standstill and rollback process in 2019 and continue reviewing those notified in 2018 for which the process is still ongoing, giving priority to the remaining notional interest deduction (CY020) and patent box (FR053) regimes.
5. Capitalising on the review of Member States' existing notional interest regimes, the Group will also start working on a draft guidance on such regimes, on the basis of a proposal by the Commission services.

III. Links with third countries

6. The Group will assess in January 2019 what has been implemented by the jurisdictions affected by the end 2018 deadline and, on this basis, recommend to the ECOFIN Council a revision of the EU list of non-cooperative jurisdictions for tax purposes.
7. The Group will also continue monitoring the implementation of the commitments made by jurisdictions in respect of other deadlines, review the end of the general "two out of three" exception for transparency criteria and continue the monitoring of standstill in respect of newly identified regimes in jurisdictions covered by the geographical scope.

8. The Group will also aim at agreeing a draft amendment to the 'Criteria for screening jurisdictions with a view to establishing an EU list of non-cooperative jurisdictions'¹ regarding future criterion 1.4 on exchange of beneficial ownership information.
9. Furthermore, the Group will start the screening of Argentina, Mexico and Russia and re-evaluate the case of Puerto Rico on the basis of existing economic data.

IV. Anti-abuse and defensive measures

10. The Group will aim at agreeing a draft guidance on further coordinated defensive measures in the tax area against listed jurisdictions.

V. Transfer pricing issues

11. Following the Council conclusions of 8 December 2015 (doc. 15150/15, paragraph 24), the Group will initiate a debate on the opportunity of developing EU guidance for coordinating the implementation of OECD BEPS conclusions on Actions 8-9-10 (aligning transfer pricing outcomes with value creation) and Action 13 (transfer pricing documentation).
12. Following the Council conclusions of 6 December 2016 (paragraph 5) and 5 December 2017 (paragraph 8) on the 6-month reports by the COCG to the ECOFIN Council, the Group will furthermore investigate the need to revise past EU guidelines on transfer pricing issues in the light of the OECD BEPS report on Actions 8-9-10 on the basis of a proposal by the Commission services.

¹ Annex I of the Council conclusions of 8 November 2016, doc. 14166/16.

VI. Monitoring the implementation of agreed guidance

13. The Group will assess Member States' compliance with the 2000 Guidance on Rollback and standstill in respect of: 1) finance branches; 2) holding companies; 3) headquarter companies, on the basis of Member States' responses to the Group's questionnaire.
14. Once this assessment will be concluded, the Group will start monitoring the implementation of the 2013 Guidance on intermediate (financing, licensing) companies by agreeing a questionnaire to Member States' delegations.
15. Once the EU list of non-cooperative jurisdictions has been revised, the Group will furthermore return to the issue of dependent and associated territories' compliance with the 2010 Guidance on inbound profits, in line with the COCG agreed priority list (doc. 6603/18).

VII. Update/revision of the 1997 mandate

16. The Group will continue discussions on a possible revision/update of its December 1997 mandate with the aim to provide a further input to the HLWP.

VIII. Organisation of work

17. It is proposed that there should be four one-day meetings (on 30 January, 27 February, 10 April and 20 May 2019) to enable the Code of Conduct Group to provide a report before the end of this Presidency.
18. The Romanian Presidency of the Council is furthermore planning to organise five meetings of the subgroup on third countries to progress work on items falling within its remit.