Council of the
European Union

Brussels, 5 June 2020
(OR. en)

8374/20

FISC 117
ECOFIN 405

REPORT

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

1. Delegations will find in the Annex a report to the Council, as approved by the Code of Conduct Group (Business Taxation).
2. The procedure for final approval is described in docs. 8446/20 and 8375/20.

ANNEX

I. BACKGROUND

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, which was established on 9 March 1998 (doc. 6619/98). It also provides that the Group "*will report regularly on the measures assessed*" and that "*these reports will be forwarded to the Council for deliberation and, if the Council so decides, published*" (paragraph H).

2. In its conclusions of 8 December 2015 (doc. 15148/15), the Council expressed the wish to improve the visibility of the work of the Code of Conduct Group (hereafter "COCG" or "Group") and agreed "*that its results, in particular its 6-monthly reports, are systematically made available to the public*" (paragraph 16).

3. In its conclusions of 8 March 2016 (doc. 6900/16), the Council furthermore called "for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance" (paragraph 16).

4. This report from the COCG encompasses the work of the Group in the first half of 2020 under the Croatian Presidency of the Council.

II. GENERAL ASPECTS

1. Organisation of work

5. The COCG met twice during the Croatian Presidency of the Council, on 4 February and 2 March 2020, whilst its subgroup on external issues met on 16 and 24 January 2020.

6. The COCG meetings planned on 1 April and 3 June 2020, as well as the subgroup meetings of 20 March and 13 May, were cancelled due to the COVID-19 crisis. They were replaced by a fiscal attachés meeting on 26 May 2020.

7. At the COCG meeting of 4 February 2020, Ms. Ana Marija Holzer Werft (Croatia) and Mr Sebastian Walz (Germany) were confirmed respectively as the first and the second Vice-Chairs for the period up to the end of the Croatian Presidency.

8. At the same meeting, in line with its new work package, the Group approved a work programme until the end of the Croatian Presidency as set out in doc. 5815/20. However, the implementation of this work programme was directly impacted by the COVID-19 crisis: several work items were postponed to (at least) July 2020 given the current circumstances.

2. Impact of the COVID-19 crisis on the work ahead

9. Due to the ongoing COVID-19 public health emergency situation, options for reorganising the work ahead were discussed with delegations. As a matter of principle, some delegations considered work on EU listing issues as a priority and therefore suggested postponing work items only on a case-by-case basis. The following orientations were in the end agreed:

- The short-term priorities (until the ECOFIN Council of 12 June 2020) were limited to discussing the impact of the COVID-19 crisis on the work ahead, a shorter draft 6-month progress report to June ECOFIN, and accompanying draft Council conclusions;

- All other work items were postponed to (at least) July 2020, when the COCG is due to approve its work programme under the German Presidency of the Council, without affecting ongoing bilateral contacts with jurisdictions by the COCG chair (procedural/political issues) and Commission services (technical monitoring): Member States' delegations are kept regularly informed about these interactions;

- The update of the EU list at the ECOFIN Council meeting in October 2020 should be maintained mainly in order to:

    1. delist jurisdictions that completed their commitments;

    2. extend Annex II deadlines where needed (in particular those expiring end August 2020); and

    3. take into consideration the new Global Forum peer review assessments under criterion 1.2.

10. Furthermore, it was agreed to recommend to the ECOFIN Council of 12 June 2020 to postpone the deadline for completing:

- the screening of the three jurisdictions added to the geographical scope of EU listing exercise in 2019 (Argentina, Mexico and Russia);
- the screening of the jurisdictions that have foreign source income exemption regimes in place; and
- the monitoring of the implementation of the country by country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2);

until such time when the Group will consider that circumstances allow to ask third jurisdictions to take commitments in order to address the deficiencies concerned.

11. It was also agreed to recommend to the ECOFIN Council of 12 June 2020 to postpone the end 2020 deadline for reviewing the approach used for selecting jurisdictions in the geographical scope of the EU listing exercise to mid-2021.

3. Transparency issues

12. Considering the volume and rapid accumulation of classified information, the Group agreed, for transparency purposes, to check whether the EU RESTRICTED documents issued by the Group in 2017 and 2018 could be declassified already now, whereas such a review is normally undertaken by the General Secretariat of the Council only after 5 years.

13. At the COCG meeting of 2 March 2020, the Group reviewed, as a start, the 91 classified documents issued in 2017 and agreed to declassify most of them.

III. STANDSTILL AND ROLLBACK REVIEW PROCESSES

14. A new call for standstill and rollback notifications of new preferential tax measures enacted by end 2019 was launched mid November 2019: the results were presented at the COCG meeting of 4 February 2020.

15. The following new regimes were identified[1]:

- Germany: Regulation for the promotion of R&D (DE015);
- Denmark: amendments to the rules on taxing investment vehicles (DK006);
- Croatia: amendments to the Law on Corporate Income Tax (HR014);
- Italy: amendments to the patent box regime (IT020);
- Italy: amendments to the notional interest deduction regime (IT021);
- Poland: Co-operative compliance programme for large taxpayers (PL014).

1. Standstill review process

16. The following decisions were reached by the Group:

- Croatia's amendments to the Law on Corporate Income Tax (HR014) does not need to be assessed as it is a measure of general nature: see agreed description in Annex 1.
- Germany's Regulation for the promotion of R&D (DE015) does not need to be assessed as such "front-end" tax regimes are an economically sound and evidenced based method of encouraging research and development, and the accompanying innovation: see agreed description in Annex 2.

[1] See updated compilation set out in doc. 8602/20 (note: a separate compilation will now be issued in relation to the EU listing process).

- Italy's amendments to its patent box regime (IT020) do not need to be assessed as it is an amendment of procedural nature: see agreed description in Annex 3.
- Italy's amendments to its notional interest deduction regime (IT021) are not harmful: see agreed description and final assessment in Annex 4.

17. The standstill review of the DK006 and PL014 measures were postponed to the 2nd semester of 2020 following the COVID-19 crisis.

2. Rollback review process

18. At its meeting of 2 March 2020, the Group reviewed the state of play concerning the rollback of Lithuania's holding company regime (LT008) and Poland's Investment Zone (PL013) and notional interest deduction (PL011) regimes, the process of which is still ongoing. Follow-up on these issues will be necessary in the coming months.

IV. COCG GUIDANCE NOTES

19. A preliminary overview of Member States' responses to the questionnaire for monitoring the implementation of the 2016 'Guidelines on the conditions and rules for the issuance of tax rulings - standard requirements for good practice by Member States' [2] was presented at the COCG meeting of 2 March 2020.

20. A complete overview of Member States' responses and draft assessment by the Commission services were due to be tabled at the subsequent COCG meeting of 1 April 2020, for approval before the end of the Croatian Presidency, but this work item was in the end postponed following the COVID-19 crisis.

[2] See updated compilation of COCG agreed guidance in doc. 5814/5/18, pages 80-83.

V. THE EU LIST OF NON COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

1. Revision of the EU list of non-cooperative jurisdictions for tax purposes

21. In view of the end of 2019 deadline for the implementation of many commitments taken by jurisdictions, the Group mandated its subgroup on external issues to assess the commitments and to prepare draft Council conclusions to revise the EU list of non-cooperative jurisdictions.

22. The subgroup met on 11 December 2019, 16 January and 24 January 2020. The Group met on 4 February 2020 to take stock of developments and discuss open issues, followed by a meeting of the Fiscal Attachés on 12 February 2020.

23. COREPER agreed on certain adaptations to Annexes I and II at its meeting on the same day and the Council conclusions[3] were subsequently adopted without discussion by the ECOFIN Council on 18 February 2020. On this occasion, the German and Austrian delegations entered statements in the minutes of the meeting[4].

24. As a result of this revision, four jurisdictions (Cayman Islands, Seychelles, Palau, Panama were added to the EU list of non-cooperative jurisdictions for tax purposes, whilst 8 jurisdictions remained listed (American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu) - bringing the total number of jurisdictions on the EU list to 12 jurisdictions.

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[3] Doc. 6129/20.
[4] Doc. 6050/20 ADD 1 REV 1 COR 1 and ADD 2 + COR 1.

25. On this occasion, the Council notably took the view that:

a) "*given that Turkey has internal legislation in place enabling automatic exchange of information and that it notified all EU Member States, with the exception of Cyprus, to OECD, it should be given more time to solve all open issues for the automatic exchange of information to be implemented effectively with all EU Member States. If Turkey does not put arrangements in place for the effective implementation of the automatic exchange of information with all EU Member States, it should be included in Annex I in the subsequent update;*

b) *(...) developing countries without a financial centre that have been downgraded by the Global Forum regarding the exchange of information on request (EOIR) standard (criterion 1.2) and have committed at a high political level to request from the Global Forum a supplementary review within 18 months, should remain in Annex II until they receive such a new rating;*

c) *developing countries without a financial centre that have made meaningful progress in delivering on their commitments, should also be given more time to comply with criterion 1.3, as set out in Annex II. (...)*

d) *procedural delays due to the OECD Forum on Harmful Tax Practices (FHTP) should be taken into account in the monitoring of the implementation of commitments taken by jurisdictions to amend or abolish their harmful tax regimes (criterion 2.1)*".

26. Furthermore, the Council recalled that updates of Annexes I and II would be limited to maximum twice a year and foresaw in that spirit to update the two Annexes in October 2020.

27. In respect of the preferential regimes and measures under criteria 2.1 and 2.2 and under COCG monitoring, outcomes of proceedings were issued in order to explain the reasons why the jurisdictions concerned were removed from Annex II and ensure the transparency of the process. As for other criteria (1.1, 1.2, 1.3 and 3.1) and preferential regimes under FHTP monitoring, the relevant information can already be found on the OECD website.

2. Monitoring the implementation of commitments taken by jurisdictions

General overview

28. As of end May 2020, the implementation of a total of 17 commitments[5] taken at high political level by 13 jurisdictions[6] remains to be monitored by the Group. These are recorded in Annex II of the Council conclusions of 18 February 2020:

Criterion	Number of jurisdictions committed
1.1	1
1.2	3
1.3	8
2.1	5

29. Furthermore, a total of 12 harmful tax regimes[7] remain to be rolled back under criterion 2.1, 9 of which are under monitoring by the COCG[8] and 3 by the OECD FHTP[9]. A detailed overview may be found in the new compilation[10] of preferential regimes and measures examined by the COCG under criteria 2.1 and 2.2.

[5] This figure adds up the number of jurisdictions committed under each criterion (see table).
[6] Anguilla, Australia, Bosnia and Herzegovina, Botswana, Eswatini, Jordan, Maldives, Mongolia, Morocco, Namibia, Saint Lucia, Turkey and Thailand.
[7]These figures don't include the harmful tax regimes of the US Virgin Islands (3) and Samoa (1), for which no sufficient high-level commitments to be monitored have been received yet.
[8] Regimes FJ001, FJ002, FJ003, LC005, NA001, NA002, SC010, SC011 and TT001.
[9] Regimes AU001, JO002 and MA006.
[10] Doc. 8603/20 (it will be issued in June 2020).

30. Even though the number of commitments to monitor - as recorded in Annex II - has decreased steadily, the EU listing process is a dynamic process that goes beyond the implementation of past commitments considering notably:

- the continuous identification of new harmful preferential regimes/measures under criteria 2.1 and 2.2;
- the possible further extension of the geographical scope;
- the link with the OECD/G20 list of non-cooperative jurisdictions; and
- the possible screening for tax purposes of jurisdictions included in the EU anti-money laundering blacklist.

Identification of new measures under criteria 2.1 and 2.2

31. No new preferential regime was identified by the COCG since the last 6-month progress report under criterion 2.1 but one new measure was identified under criterion 2.2:
    - MH002: new guidance issued by the Marshall Islands on 17 October 2019 and notified to the COCG in February 2020.

32. In respect of the regulatory changes that occurred in the British Virgin Islands (VG007), the revised guidance adopted by the British Virgin Islands on 10 February 2020 was examined by the COCG and its subgroup, which concluded that it addressed all concerns raised with its October 2019 Guidance and remains compliant with EU criterion 2.2. This conclusion was endorsed by the ECOFIN Council at its meeting of 18 February 2020.

Procedural and political aspects of the monitoring process

33. The Group agreed that the Chair should hold, together with the General secretariat of the Council and the Commission services, a coordination meeting with the Chairs and Secretariats of the OECD Global Forum, Forum on Harmful Tax Practices (FHTP) and Inclusive Framework on BEPS to discuss a number of issues of mutual interest[11], but this meeting was postponed due to the COVID-19 crisis.

34. The Group also discussed the procedural consequences of the postponement of FHTP meetings (from December 2019 to October 2020).

35. Furthermore, the COCG Chair received a number of letters from jurisdictions and also held meetings and telephone conferences at political level with a number of them. Delegations were kept informed about these interactions, and in many cases response letters signed by the Chair were agreed by the Group.

[11] In particular the expected revision this year of the OECD/G20 list of non-cooperative jurisdictions, the capacities of developing countries without a financial centre to meet certain international standards, the expected GF calendar in respect of AEOI ratings (future criterion 1.1), the areas where the EU went further than the OECD (e.g. foreign source income exemption regimes under criterion 2.1, treatment of partnerships, CIVs and further transparency requirements under criterion 2.2), the expected consequences of a possible agreement on the GloBE initiative on the future mandate of the FHTP; and OECD's calendar as regards the monitoring of the implementation of the three other anti-BEPS minimum standards than CbCR.

4. Screening and scoping issues

Screening process

36. The subgroup on external issues was regularly updated on the progress of the screening of Argentina, Mexico and Russia against EU criteria and a final technical report on each of these jurisdictions was submitted to the COCG at the beginning of November 2019. However, it appeared that further discussion was needed on this issue at the beginning of 2020.

37. At the March 2020 COCG, the Commission presented a horizontal note, suggesting an approach for the assessment of ring-fencing elements in manufacturing regimes in third country jurisdictions, relevant for these three assessments. The COCG endorsed the suggested approach and the Commission revised and circulated the three screening reports accordingly.

38. The completion of the screening of Argentina, Mexico and Russia, which was due in April 2020, was postponed, due to the ongoing COVID-19 crisis. The Group will take forward this work under the incoming Presidency.

39. As regards the screening of Azerbaijan, Guyana, Kazakhstan, Kuwait, Lebanon, Moldova, New Zealand and Ukraine agreed in 2018, the way forward still has to be decided as the approach used for selecting jurisdictions in the geographical scope of the EU listing exercise is being reviewed.

Foreign source income exemption regimes

40. The ECOFIN Council endorsed in October 2019 a guidance on foreign source income exemption (FSIE) regimes in the framework of the EU listing exercise (criterion 2.1). This guidance acknowledges that FSIE regimes are a legitimate approach to prevent double taxation but identifies potentially harmful elements that could be present in such regimes.

41. In December 2019, the COCG Chair wrote to nine jurisdictions to inform them that a regime of this kind was identified in their jurisdiction. The Commission services followed up with a questionnaire to these jurisdictions in February 2020 with a deadline of 20 March 2020 to reply. It is worth recalling that four other jurisdictions' FSIE regimes were already assessed in 2019 and that the dialogue is still ongoing with two of them on this regime.

42. All the jurisdictions that have been contacted have now responded to the questionnaire. The Commission services are currently analysing the replies. Follow-up questions have been sent and the Commission services are in contact with the jurisdictions to address outstanding issues.

43. When all the elements are available, draft assessments will be submitted to the COCG for approval. However, as mentioned above, this objective was postponed until such time when the Group will consider that circumstances allow to ask these jurisdictions to take commitments to address the identified deficiencies (see above).

Implementation of the new criterion 3.2

44. No commitments have been sought yet from any jurisdiction under the new criterion 3.2 and for this reason it is not covered by Annex II of the Council conclusions of 18 February 2020.

45. In 2019, the COCG agreed on a general approach for assessing compliance with criterion 3.2 on country-by-country reporting (CbCR), in particular for jurisdictions that joined the Inclusive Framework before the end of 2017. The assessment would comprise two main elements:

- Jurisdictions should have arrangements (multilateral or bilateral qualifying competent authority agreement) in place to exchange CbCR reports with all Member States with whom they already have an international agreement in effect (MAC or bilateral DTC/TIEA that provides for the automatic exchange of tax information) by the end of 2019.

- Jurisdictions should be assessed positively in the Inclusive Framework's Phase 3 peer reviews, due in the second half of 2020.

46. It was furthermore agreed that the COCG would make an assessment on this basis as soon as the Inclusive Framework's Phase 3 peer review report is published. Jurisdictions found to be non-compliant would be asked to commit to fulfil the criterion by a certain deadline, still to be decided by COCG. However, the release of the Phase 3 peer review reports, expected to be published in September 2020, could end up being delayed due to the COVID-19 crisis.

47. The objective to complete this monitoring before the next update of the EU list was postponed until such time when the Group will consider that circumstances will allow to ask these jurisdictions to take commitments to address the identified deficiencies (see above).

Future criterion 1.4 (beneficial ownership)

48. The EU listing criteria approved by the ECOFIN Council in November 2016 (doc. 14166/16) included the following reference: "*1.4 Future criterion: in view of the initiative for future global exchange of beneficial ownership information, the aspect of beneficial ownership will be incorporated at a later stage as a fourth transparency criterion for screening*".

49. At its meeting of 24 October 2019, the COCG agreed to resume discussions at subgroup level at the beginning of 2020 on criterion 1.4 and to consider on this occasion whether standalone beneficial ownership transparency requirements should be established under criterion 2.2 or whether a comprehensive approach could be found under future criterion 1.4.

50. These issues were due to be discussed at the subgroup meeting of 20 March 2020 but this meeting was cancelled due to the COVID-19 crisis.

Follow-up scoping issues under criterion 2.2

51. The ECOFIN Council endorsed in December 2019 the activity-based approach for partnerships under criterion 2.2, set out in annex to the Group's 6-month report, as well as a common approach for activating exchange of information with jurisdictions under criterion 2.2.

52. In December 2019, the Commission services wrote to the 2.2 jurisdictions concerned to inform them of this decision and share with them the questionnaire. Jurisdictions were asked to reply by 15 February 2020. All jurisdictions replied and the Commission services sent follow-up questions where needed. The Commission services are in contact with the jurisdictions to address outstanding issues.

53. When all the elements are available, draft assessments will be submitted to the COCG for approval. However, this objective was postponed to the second semester of 2020.

Impact of COVID19 on substance requirements under criterion 2.2

54. The Fiscal Attachés meeting of 26 May 2020 took note of the fact that certain substance requirements are being temporarily adapted by some jurisdictions under criterion 2.2, due to COVID-19 related restrictions (e.g. on travelling and physical meetings).

55. The Commission services are engaging with the jurisdictions concerned, to collect information and assess any regulation or guidance they may have issued on this matter. The Group will continue discussions on this basis in July 2020, also in liaison with the OECD FHTP, with a view to issuing clear guidelines on the issue to the jurisdictions in question.

56. Follow-up discussions on this issue will be required during the incoming Presidency.

Review of the economic data used for selecting jurisdictions

57. The ECOFIN Council invited in March 2019 "*the Code of Conduct Group to review the economic data used for selecting jurisdictions in 2020, for application as from 2021*". This invitation was reiterated in February 2020 with a view "*to focus on the most relevant jurisdictions*".

58. An exchange of views on this issue was organized at the COCG meeting of 2 March 2020. On this occasion, the Commission services confirmed that they would present an update of the 2016 Scoreboard, to assist this discussion, in the second half of 2020.

59. This issue will require follow-up during the incoming Presidency.

Results of the EU listing process

60. The Danish delegation tabled a document on the occasion of the December 2019 ECOFIN (doc. 14699/19). An exchange of views on this issue was organized at the COCG meeting of 2 March 2020. In general, delegations expressed support to take stock of the effect of the EU list so far and consider how it can be strengthened. The Group will reflect on the way forward.

ANNEX 1

Croatia's amendments to the Law on Corporate Income Tax (HR014)

1. Agreed description

In Croatia the standard CIT rate is 18%, while for taxpayers with an annual revenue below a certain threshold a reduced rate of 12% applies. The adopted amendments increased the threshold for the rate of 12% from HRK 3 million to HRK 7.5 million annually income (approximately EUR 1 million). It is aimed as an incentive for small and medium taxpayers and to reduce the tax burden[12]. From 2020 approximately 93% of the taxpayers are taxed at the rate of 12%. Only 7% of the taxpayer have an annual income that makes them fall under the 18% rate.

2. Conclusion

The effect of the measure is lowering the CIT rate from 18% to 12% for a larger amount of taxpayers. As the measure is limited to companies with an income of EUR 1 million /year, it is targeted at small and medium size taxpayers. The Group has dealt with similar measures in the past[13] and concluded that they did not need to be assessed.

The COCG agreed that no action is required, as it is a general measure.

[12] Similar measures were adopted for self-employed, or for non-profit sector engaged in economic activities.
[13] See COCG report to ECOFIN ST 9652 2019 INIT and in particular measure PL010 (Poland: reduction of the standard CIT rate of 19% to 15% CIT rate and subsequently to 9% CIT rate for taxpayers with revenues not exceeding EUR 1.2 million).

Germany's Regulation for the promotion of R&D (DE015)

1. Agreed description

Relevant provisions

A new **tax credit (‘Forschungszulage’) for the promotion of R&D** entered into force in Germany in the beginning of 2020[14]. The law has been circulated as room document WK 1036/2020 ADD 1.

Design of the measure

With effect from 1 January 2020, a tax credit for qualifying research and development (R&D) expenses is **available to resident and non-resident taxpayers with domestic sourced business income** who are not tax exempt, regardless of their actual size or business activity, provided that they carry on qualifying activities. The tax incentive is intended to stimulate research activities, in particular of small and medium-sized companies.

Qualifying activities are basic research, industrial research and experimental development. The tax credit is also available for expenses incurred for third-party professionals who perform the qualifying R&D services, provided the contract research company is resident in an EU Member State or in an EEA country, which allows an adequate exchange of information with Germany.

Qualifying expenses are the costs of personnel engaged in the qualifying activities or 60% of the fees paid to an independent contract research company, with a maximum of EUR 2 million in a given financial year.

The **tax credit amounts to 25% of the qualifying expenses**.

[14] Gesetz zur steuerlichen Förderung von Forschung und Entwicklung, 14 December 2019.

The amount is credited against the tax assessment of the following year and paid out if it exceeds the tax to pay.

2. Conclusion

The tax credit is a 'front-end' incentive for R&D activities, and depends on the amount of qualifying expenses actually incurred. The tax advantage takes the form of a tax credit, thus a deduction from the tax to be paid and it is limited to EUR 500 000 (25% x max. EUR 2 000 000).

The Group had dealt in the recent years with 'front-end' tax incentives for R&D[15]. The German measure appears to be largely similar to the R&D incentives which were cleared by the Group. The only difference is that the German measure is designed as a deduction from the tax to pay, whereas the other measures were deductions from the tax base.

The COCG agreed that these "front-end" tax regimes are an economically sound and evidenced based method of encouraging research and development, and the accompanying innovation. There is a similar provision in the Commission's proposal for the CCTB.

In light of the aforementioned precedents, the COCG agreed that the measure does not appear to cause concerns under the Code of Conduct criteria and does not need to be assessed.

[15] See Poland (PL008); decision *considered as out of scope as it did not meet the gateway criterion* (doc. 9637/18 para. 18); Croatia (HR013); decision *Not to assess* (doc. 9652/19 ADD 6 REV).

ANNEX 3

Italy's amendments to its patent box regime (IT020)

1. Background

The Italian patent box regime (IT018) was assessed *Not harmful* by the Group in 2017[16].

One of the main features was that in order to benefit from the preferential regime the taxpayers had to opt for it and, where it uses the IP asset directly (i.e. the IP asset is incorporated in the production) he had to submit a ruling request with the tax administration to calculate the embedded royalties.

2. Agreed description

Relevant provisions

The patent box regime was recently amended by Law Decree No. 34 of 30 April 2019 (article 4), converted, with amendments, by Law No. 58 of 28 June 2019. On 9 September 2019, the Italian Revenue Agency issued Resolution No. 81/E (the IRA resolution) in order to specify the procedure.

[16] doc. 10047/17

Content of the amendment

After the amendment, in order to receive the benefit of the patent box, the taxpayers have to choice either to apply for a ruling or to receive the benefit directly via their tax return by self-calculation.

This stems from article 4 of the Law Decree. It provides that, as of the tax period in progress on 1 May 2019, **taxpayers opting for the patent box regime** and directly exploiting the IP asset, in order to determine of relevant qualifying income, **may now opt to directly calculate the amount of such income instead of filing tax ruling request.** In this respect, taxpayers should keep all the information for such determination in appropriate supporting documentation, available for the assessment of the Italian Revenue Agency. Rules regarding how taxpayers may apply the patent box benefit without a tax ruling, and information that must be included in the relevant documentation are publicly available.

This choice must be indicated in the tax return related to the fiscal year in which the patent box regime applies, and it is irrevocable and renewable. The IRA resolution provides for specific instructions on such indication in the case of taxpayers which do not adopt the calendar year as their fiscal year.

As a consequence of the self-calculation, the taxpayer must then spread the overall deduction resulting from the application of the patent box regime in three equal amounts over the fiscal year in which the choice is exercised and the following two fiscal years.

Taxpayers which already applied for a tax ruling, without having concluded an agreement with IRA yet, may withdraw their applications and choose to apply this new option.

Furthermore, in the case of a subsequent assessment, the penalties for filing an inaccurate or unfaithful tax return may not apply, provided that the taxpayer submits appropriate supporting documentation with respect to the criteria and methods adopted in the calculation of the relevant benefit. Moreover, as in the case of transfer pricing documentation, in order to benefit from this penalty protection, the taxpayer must state in the tax return relating to the fiscal year in which the patent box regime applies that it has prepared and kept the required supporting documentation.

3. Conclusion

The amendment is of a procedural nature. It merely sets that the taxpayers wishing to apply for the benefit of the patent box regime have as of now two procedural ways to do it: either by applying for a tax ruling, or by self-calculating the benefit in its annual tax return.

In light of the aforementioned information, the COCG agreed that the measure does not need to be assessed.

Italy's amendments to its notional interest deduction regime (IT021)

1. Agreed description

The Italian notional interest deduction regime was assessed by the Code of Conduct Group in 2018. The conclusion of the Group was that the regime was not harmful (14364/18 ADD 4).

Italy abolished its notional interest deduction regime by Budget Law n. 145 of 30 December 2018.

Through the Budget Law for 2020 Italy repealed Law L 145. The outcome of the repeal is that the notional interest deduction regime is applicable again without any change in substance. The provisions of the Budget Law 2020 state that the regime is to be applied retroactively from 1 January 2019, which removes any gap between the two decisions and ensures a seamless application.

2. Assessment

The regime was abolished by the Budget Law 2019 from 1 January 2019 and reintroduced without any substantial change through the Budget Law 2020 on 30 December 2019.

In between those two decisions the Code of Conduct Group agreed the guidance on notional interest deduction regimes[17].

[17] Endorsed by the Council on 5 December 2019 (doc. 14114/19).

The question arises what effect to give to the guidance in this case where a regime which has been assessed as not harmful is abolished and then reintroduced after an intermittent adoption of a guidance.

In the Commission services' view the regime should be viewed as a new regime and therefore assessed in a case such as this. A regime should be assessed on the basis of the guidance that was applicable at the time of its adoption.

However, in this case the re-introduction of the regime was decided before the agreed date of applicability of the guidance (1 January 2020). Therefore the guidance is not applicable to the Italian regime at issue.[18]

3. Conclusion

The COCG agreed that the reintroduced Italian notional interest deduction regime should be assessed as <u>not harmful</u> on the same basis as the assessment made by the Group in 2018.

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[18] In addition the guidance does not introduce any new elements that could have an effect on the original assessment made for the Italian notional interest deduction regime.