Council of the European Union

Brussels, 4 June 2021
(OR. en)

9341/21
ADD 7

FISC 91
ECOFIN 554

REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Code of Conduct Group (Business Taxation) - Report to the Council = Approval

Poland's notional interest deduction regime (PL011) – Introduction of an anti-abuse measure

1. Background

Under the Standstill review for 2019 the Code Group agreed on a draft description[1] and draft assessment[2] of the Polish Notional Interest Deduction regime[3]. The lack of specific anti-abuse provisions was criticized but the overall conclusion was that the regime is not harmful and should be monitored, as the deduction is limited to 250.000 PLN (around 55.770 EUR) which leads to a maximum tax benefit of some 10.600 €.

[1] Room document WK 5921/2019 INIT.
[2] Room document WK 7915/2019 INIT.
[3] Report to the Council, ST 14114/19, §10.

Poland however announced that they would introduce anti-abuse rules. They informed the Commission Services on 8 October 2020 on changes made to its NID regime. The introduction of an anti-abuse provision was also communicated to the Group in the 2020 standstill notifications.

2. Introduced measure

The Act of 5 June 2020 amending the Corporate Income Tax (Official Journal 2020 item 1065), entering into force on 1 January 2021, added an additional paragraph containing a specific anti-abuse measure for the NID regime. The (new) Paragraph 10 reads as follows:

"Paragraph 1 shall not apply if the taxpayer or an entity related to it within the meaning of Article 11a (1) (4) performed a legal act or related legal actions without justified economic reasons, mainly in order to recognize the amount referred to paragraph 1 as the revenue earning costs. The justified economic reasons do not include the case when the benefit obtained in the tax year or in the following years results from being classified as revenue earning costs."

As a consequence, a taxpayer cannot benefit from the NID regime if the legal act or related legal actions in order to benefit from the deduction do not correspond with justified economic reasons.

3. Evaluation of the new measure

The Group decided in its assessment in July 2019 that the Polish regime "*cannot affect in a significant way the location of business activity in the EU due to the modest benefits available through the regime ... and despite the absence of targeted anti-abuse provisions"*. As nothing has changed with regard to the available benefits of the regime, no new assessment is needed.

However, it should still be noted that the newly introduced anti abuse measure does not tackle specific issues of abuse in connection with the NID regime, like for instance specific transactions between related parties (intra-group loans, double dipping structures etc.), as they have been identified in the Polish NID assessment[4] and the Group's Guidance on Notional Interest Deduction Regimes[5]. By requesting a justified economic reason for a transaction, the new anti-abuse provision remains at a general level, which puts a higher burden on the administration to proof the abuse and cannot be regarded as sufficient under the principles established by the Group.

Consequently - in case the Polish NID regime had to be reassessed because the available benefits were increased and it could affect the location of business activity in the EU - the concerns expressed in the old assessment on the lack of targeted anti-abuse provisions would remain.

---

[4] Page 3, footnote 1.
[5] Endorsed by the Council on 5 December 2019 (doc. 13075/19).