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NOTE

From: Chair of the Code of Conduct Group
To: Delegations

Subject: Code of Conduct Group (Business Taxation): work programme during the German Presidency

Delegations will find in the Annex the Code of Conduct Group (Business Taxation) work programme during the German Presidency of the Council of the EU.

CODE OF CONDUCT GROUP (BUSINESS TAXATION):

WORK PROGRAMME DURING THE GERMAN PRESIDENCY

1. In its conclusions of 17 June 2020 (doc. 8892/20), the ECOFIN Council, while acknowledging the impact of the ongoing COVID-19 public health emergency:
 - a. invited the Code of Conduct Group (hereafter "Group") to continue its work under its multiannual work package 2018 (doc. 10420/18);
 - b. took the view that the completion of the screening of the jurisdictions that have foreign source income exemption regimes in place, the monitoring of the implementation of the country by country (CbCR) anti-BEPS minimum standard (criterion 3.2) and the screening of the three jurisdictions added to the geographical scope of the EU listing exercise in 2019 **should be postponed** until such time that circumstances allow to request commitments;
 - c. invited the Group to recommend an update of the EU list of non-cooperative jurisdictions for tax purposes at the October 2020 ECOFIN that would be more limited in scope;
 - d. invited the Group to complete by the end of 2020 the review of economic data for selecting jurisdictions
 - e. invited the Group to continue discussions on future criterion 1.4;
 - f. asked the Group to complete by the end of 2020 the standstill monitoring of measures notified by Member States in 2019, the monitoring of the guidelines on the conditions and rules for the issuance of tax rulings and to continue monitoring the implementation of rollback.
 - g. invited the Group to report back to the Council on its work during the German Presidency.

2. The work of the Group is likely to be affected by further developments related to the COVID-19 public health emergency. It is proposed to follow these developments very closely and to plan the work flexibly depending on developments. In particular, if physical meetings with national delegates are impossible to organise then the Group should be ready to work via informal videoconferences and/or to task fiscal attachés to examine urgent questions.
3. Against this background, this note sets out the proposed work programme for during the German Presidency of the Council (II semester of 2020).

I. Monitoring of standstill and the implementation of rollback

4. The Group will complete the review of the tax measures notified by Member States under the standstill and rollback notifications and continue the monitoring of the actual effects of some regimes for which a regular monitoring was decided.

II. Links with third countries (EU list of non-cooperative jurisdictions for tax purposes)

5. The Group will continue monitoring in the jurisdictions covered by the current geographical scope:
 - a. the implementation of the commitments made by jurisdictions;
 - b. standstill in respect of the newly identified regimes under criterion 2.1 and measures under criterion 2.2 and
 - c. the overall compliance of jurisdictions vis-à-vis the EU listing criteria.
6. The EU list of non cooperative jurisdictions for tax purposes will be revised by the ECOFIN Council in October 2020 mainly with the following objectives:
 - a. to delist jurisdictions that completed their commitments;
 - b. to extend Annex II deadlines where needed;
 - c. to take into consideration the new Global Forum peer review assessments under criterion 1.2.

7. The Group will continue work on
 - a. screening of the jurisdictions that have foreign source income exemption regimes in place;
 - b. the monitoring of the implementation of the country by country (CbCR) anti-BEPS minimum standard (criterion 3.2) and
 - c. the screening of the three jurisdictions added to the geographical scope of the EU listing exercise in 2019

However, the completion of that work would be postponed until such time when the Group will consider that circumstances allow to ask jurisdictions to take commitments to address the deficiencies concerned.

8. Furthermore, the Group will:
 - a. complete by the end of 2020 the review of economic data for selecting jurisdictions under the EU listing process, on the basis of an updated scoreboard by the Commission services with a view to reviewing the geographical scope of the EU listing exercise by mid-2021 and taking into account the updated OECD list;
 - b. explore the options of enhancing the EU list;
 - c. continue discussions¹ on EU's future criterion 1.4 on exchange of beneficial ownership information;
 - d. review jurisdictions' responses regarding the treatment of partnerships (economic substance requirements) under criterion 2.2;
 - e. advance work on the monitoring of substance requirements for criterion 2.2 and on the legal and operational procedures for exchange of information, in coordination with the FHTP.
9. The Chair will continue the procedural/political dialogue with jurisdictions, as necessary, and schedule, as soon as circumstances allow, a coordination meeting with the Chairs and secretariats of the OECD Global Forum, Forum on Harmful Tax Practices (FHTP) and Inclusive Framework on BEPS.

¹ Note that HR work programme stated: "aim at finding agreement".

10. The Group will furthermore continue the review of classified documents that were issued in respect of the EU listing process since 2016 and assess whether some could be declassified.

III. Monitoring the implementation of agreed guidance

11. In line with its agreed priority list (doc. 6603/18), the Group will assess Member States' compliance with the 2016 'Guidelines on the conditions and rules for the issuance of tax rulings - standard requirements for good practice by Member States', on the basis of Member States' responses to a questionnaire.

IV. Update and revision of the mandate of the Group

12. The Group seeks to review the 1997 mandate in order to take stock of the achievements of the COCG so far as well as examining its impacts in the fight against harmful tax practices by taking into account the latest developments in the field of international taxation.

V. Organisation of work

13. The exact planning of meetings is pending due to the circumstances surrounding the COVID-19 public health pandemic. A certain degree of flexibility is needed.

It is not yet clear when the first physical meeting with national delegates could take place but as soon as the circumstances allow, it will be organised. If physical meetings with national delegates are impossible to organise then the Group should be ready to work via videoconferences and to task fiscal attachés to examine urgent questions.
