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## REPORT

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

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## **I. BACKGROUND**

1. In 2019, Poland introduced two safe harbours (for low value-adding services and for certain loans transactions) in the area of transfer pricing (TP). Only the second measure is covered by the monitoring. The safe harbour for certain related party small loan transactions (up to 20 000 000 PLN of total indebtedness: around EUR 5 000 000) enables the taxpayer to reduce its TP documentation requirements by applying the pre-determined interest rate. The loans should not be granted for more than five years. The interest rate is based on the *base interest rate plus a margin announced* by the Minister of Finance<sup>1</sup>.
2. Thus, under the Polish rules, a TP local file must be prepared for a controlled financial transaction<sup>2</sup> which exceeds PLN 10 000 000 (around EUR 2 500 000) in a financial year. A safe harbour can only be used for related party loan transactions up to 20 000 000 PLN total level of liabilities and receivables of the concerned related party with all other related parties [around EUR 5 000 000 in 2019]. If the safe harbour measure is applied, then all such transactions are reported.
3. When monitoring the Guidance, the Group concluded that the use of the safe-harbour provisions should be monitored<sup>3</sup> and exchange of information should take place:
  - a. when the taxpayer makes use of the safe harbour rule<sup>4</sup>, and

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<sup>1</sup> The parameters are announced periodically by the Minister of Finance, not less frequently than once a year. For 2019 the Notice of the MF states that the base interest rate is represented by 3 months interest rate for loans in different currencies, while the margin for all above mentioned currencies is set at the level of 2% per year (which is the maximum margin for the borrower and the minimum for the lender). These parameters are monitored and updated periodically.

<sup>2</sup> That does not cover only single controlled transactions, but also a set of transactions with the same character. (anti-fragmentation rule)

<sup>3</sup> Similar to the commitment taken by Luxembourg in respect of LU016.

<sup>4</sup> The use of the safe harbour and the data regarding its use may for example be collected easily from the tax return.

- b. also, in instances where a taxpayer would apply the pre-determined net return (e.g., 2%) on financial assets in his commercial accounts and would then apply, based on a transfer pricing analysis, a downward adjustment in the tax return in order to achieve an arm's length remuneration.<sup>5</sup>
4. In the beginning of 2025, the Group supported the preliminary conclusion that - based on the data covering the years 2019-2022 - the measure did not seem to have affected in a significant way the business location among the Member States and that monitoring should continue for another year. If the trend remained stable, the monitoring could be terminated once the data covering tax year 2023 is provided.
5. Mid-November 2025, Poland provided data concerning tax year 2023 (annex).

## II. PRELIMINARY ASSESSMENT

6. With this recent data for 2023, the Group holds information on the number of taxpayers performing intra-group financing and having used the safe-harbour in the course of **five tax years**.
7. The **data for 2023 confirms the trend**, in particular that the number of companies performing intra-group financing has remained stable during the monitored period, with slight variations from year to year.
8. The **share of taxpayers having used the safe-harbour** remained also at a very low level (around 150 in 2019 to 260 taxpayers in 2022, dropping to 227 in 2023), which represents around 1.8% in the first two years, and roughly 2.5% in the last three years of the total number of taxpayers performing intra-group loans.

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<sup>5</sup> When a safe harbour is used at the beginning in a transaction and later on an adjustment is made base on transfer pricing, such information can become known by the tax authorities for example: if they perform an audit, or if there is information provided by the taxpayer, for example in its financial statements. If the tax authority encounters such a situation, then it is expected to spontaneously exchange the information with the other Member State concerned, so that a symmetrical adjustment can take place in the other Member State.

9. As in the past, although there is no information on **the actual amounts of the loans that benefit from the safe harbour**, it is recalled that according to the Polish rules, such amounts **cannot exceed the equivalent of EUR 5 000 000 per related-party transaction**.

Regarding the exchange of information on the use of safe-harbour (Question 5 - first indent)

10. As in the past, regarding the exchange of information, Poland left the question 5 unanswered. Yet, it is our understanding that such cases, if they concern transactions with related parties in another EU Member State, are covered and reported under DAC6, as raised previously in 2019 during the monitoring of the Guidance. Although the reporting may not be directly to the actual Member State concerned.

Regarding the exchange of information on the use of safe-harbour combined with a downward adjustment (Question 5 - second indent)

11. Furthermore, Poland confirmed that **fiscal audits throughout the period monitored *did not identify*** any such case where the taxpayer would have used the safe-harbour and afterwards a downward adjustment. As a result, no spontaneous exchange of information took place.

### III. CONCLUSION

12. Based on the data covering tax year 2023, the trend seems to be confirmed. It is Commission services view that, as previously supported by the Group, the monitoring can be terminated.

### IV. FOLLOW-UP

13. The Group agreed to terminate the monitoring of the Polish measure regarding the use of the safe-harbour.

**Annex 9: Poland - 2013 Guidance on intermediate companies - use of safe harbour rule [2019 CoCG decision]**

<b>Poland</b>	2019	2020	2021 <sup>1</sup>	2022	2023
Overall number of companies performing Intra-Group financing <sup>2</sup>	8 285 CIT taxpayers including 7467 companies	8 635 CIT taxpayers including 7832 companies	8 939 CIT taxpayers including 8120 companies	10 141 CIT taxpayers including 9122 companies	11 067 CIT taxpayers including 9924 companies
Number of companies having used the safe harbour provisions (pre-determined interest rate <sup>3</sup> )	152 CIT taxpayers including 146 companies <sup>4</sup>	154 CIT taxpayers including 149 companies	183 CIT taxpayers including 161 companies	264 CIT taxpayers including 237 companies	227 CIT taxpayers including 207 companies

<sup>1</sup> We included additionally information which we provided by e-mail as of 2 October 2023.

<sup>2</sup> Information about financial transactions between associated enterprises is collected on the basis on TP information form (TPR). It means that the presented number covers all CIT taxpayers (including companies) which carried out the controlled financial transactions of the homogenous nature, the yearly value of which exceeds PLN 10 Million.

<sup>3</sup> *Base interest rate plus a margin announced* by the Minister of Finance. The parameters are announced periodically by the Minister of Finance, not less frequently than once a year. For 2019 the Notice of the MF states that the base interest rate is represented by 3 months interest rate for loans in different currencies, while the margin for all above mentioned currencies is set at the level of 2% per year (which is the maximum margin for the borrower and the minimum for the lender). These parameters are monitored and updated periodically.

<sup>4</sup> Information about financial transactions between associated enterprises is collected on the basis on TP information form (TPR). It means that the presented number covers all CIT taxpayers which:

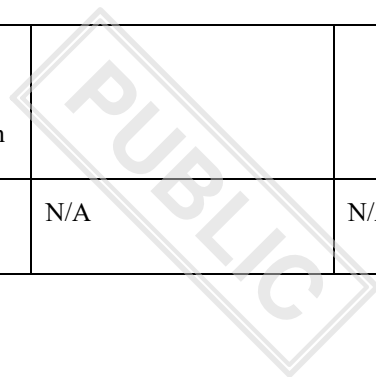
- carried out the controlled financial transactions of the homogenous nature, the yearly value of which exceeds PLN 10 Million, and
- used the safe harbour provisions.

This applies to all years.

The total values of the financial assets of the companies having used the safe harbour	Based on the information from the TPR form, there is no reliable data on the financial assets used by the companies for safe harbour purposes in 2019.	Based on the information from the TPR form, there is no reliable data on the financial assets used by the companies for safe harbour purposes in 2020.	Based on the information from the TPR form, there is no reliable data on the financial assets used by the companies for safe harbour purposes in 2021.	The total amount of liabilities or receivables of the company having used the safe harbour, in respect of principal of intercompany loan, calculated separately for loans granted and loans taken out, is no more than PLN 20 Million.	The total amount of liabilities or receivables of the company having used the safe harbour, in respect of principal of intercompany loan, calculated separately for loans granted and loans taken out, is no more than PLN 20 Million.
Number of companies having applied the safe harbour provisions (pre-determined interest rate) and afterwards made a downward adjustment	0 <sup>5</sup>				0 <sup>6</sup>
Overall number of information exchanges sent  <i>-regarding the use of safe harbour : -regarding use of safe harbour and downward adjustment:</i>	During the COCG meeting of 14 November 2019, the Polish authorities committed to spontaneously exchange information ensuring therefore that the (other) MSs concerned receive directly the relevant information. The information on safe harbour for 2020 will be available in the first half of 2023, so the spontaneous exchange of information for 2020 will be conducted afterwards. We have modified our reporting forms for 2020 on transfer prices (TPR form) in order to gather also identification data of a foreign counterparty in related parties transactions. So the information for 2020 will contain identification data that will make possible to indicate a particular foreign entity. Due to inclusion of the identification data, foreign tax administration shall be able to efficiently use the data.	N/A	N/A	N/A	

<sup>5</sup> Number of companies having applied the safe harbour provisions (pre-determined interest rate) and afterwards made a downward adjustment can be determined only through a fiscal audit. No fiscal audits for a fiscal years 2019, 2020, 2021 or 2022 revealed any such cases.

<sup>6</sup> Due to changes in the form taxpayers report transfer pricing adjustments on their own. Following a review of the available data, it was determined that no company had applied safe harbour provisions (pre-determined interest rate) and afterwards made a downward adjustment.



	It should be noted that due to the extension of deadline for taxpayers for reporting on transfer prices (i.e. submitting a TPR form) for tax year 2020, related to COVID-19 pandemic, we received the data thereon with a delay.				
The name of the MSs to which the relevant information was sent	N/A	As above.	N/A	N/A	N/A