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REPORT

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

Annex 8: Poland - 2013 Guidance intermediate companies - use of safe harbour rule [2019 CoCG decision]

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 Finance¹.

¹ 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.

2. Thus, under the Polish rules, a TP local file must be prepared for a controlled financial transaction² 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]. Thus, if the safe harbour measure is applied, then all such transactions are reported.

II. PRELIMINARY ASSESSMENT

3. In the context of the 2022 *Annual monitoring exercise of the actual effects of certain measures*, Poland was invited to submit the relevant data for tax years 2019 and 2020. Following the initial request and subsequent clarifications, Poland provided incomplete data. The data only referred to tax year 2019, while regarding tax year 2020, data would only be available in the first half of 2023, once its processing is finished.
4. In November and December 2024, Poland submitted data for tax year 2021 and updates for tax year 2022.
5. With this recent data and since the beginning of the monitoring, the Group holds information on the number of taxpayers performing intra-group financing and having used the safe-harbour in the course of tax years 2019 to 2022.
6. Such data reveals that the number of companies performing intra-group financing has remained stable during 2019-2021, with a slight increase from 8 939 to 10 141 between 2021 and 2022. The share of taxpayers having used the safe-harbour however remained at a very low level (around 150 to 260 taxpayers), which represents 2.6% in 2022 from 2% in 2021, and around 1.8% in the previous two years.
7. On the other hand, there is no information on the actual amounts of the loans that benefit from the safe harbour. According to the Polish rules, such amounts cannot exceed the equivalent of EUR 5 000 000 per related-party transaction.
8. For tax year 2022, Poland confirmed that the total amount of liabilities or receivables of a company having used the safe harbour, in respect of the principal of an intercompany loan,

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

calculated separately for loans granted and loans taken out, is no more than PLN 20 Million (EUR 5 000 000).

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

9. 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 this may not be reported 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)

10. Same as for 2019, Poland confirmed that fiscal audits throughout the period of 2020 to 2022 *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. CONCLUSIONS

11. Despite incomplete data for 2019, given the low number of companies having used the safe-harbour (147 to 260), the threshold of EUR 5 000 000 for all related-party transactions, and the fact that no company was identified as having made a downward adjustment, the Commission Services hold the view that the Polish safe-harbour rule has not affected the business location among Member States in a significant way.

IV. FOLLOW-UP

The Group supported the preliminary conclusion that between 2019 and 2022, this measure does not seem to have affected in a significant way the business location among the Member States and that monitoring should continue for another year, and if the trend remained stable, the monitoring could be terminated after the data covering tax year 2023 be communicated to the Group.

Annex 8: Poland - 2013 Guidance on intermediate companies - use of safe harbour rule [2019 CoCG decision]

Poland	2019	2020	2021 ³	2022
Overall number of companies performing Intra-Group financing ⁴	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
Number of companies having used the safe harbour provisions (pre-determined interest rate ⁵)	152 CIT taxpayers including 146 companies ⁶	154 CIT taxpayers including 149 companies	183 CIT taxpayers including 161 companies	264 CIT taxpayers including 237 companies

³ We included additionally information which we provided by e-mail as of 2 October 2023.

⁴ 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.

⁵ *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.

⁶ 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.
Number of companies having applied the safe harbour provisions (pre-determined interest rate) and afterwards made a downward adjustment	0 ⁷	0 ⁸	0 ⁹	0 ¹⁰
Overall number of information exchanges sent <i>-regarding the use of safe harbour :</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.		N/A	N/A

- ⁷ 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 year 2019 revealed any such cases.
- ⁸ 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 year 2020 revealed any such cases.
- ⁹ 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 year 2021 revealed any such cases.
- ¹⁰ 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. We were not informed about any audit for a fiscal year 2022 which would reveal such cases.

<p><i>-regarding use of safe harbour and downward adjustment:</i></p>	<p>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.</p> <p>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.</p> <p>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.</p>			
<p>The name of the MSs to which the relevant information was sent</p>	<p>N/A</p>	<p>As above.</p>	<p>N/A</p>	<p>N/A</p>