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REPORT

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

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

I. Background

1. Beginning 2019, the Polish authorities 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[1].

[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.

II. Preliminary assessment

1. 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 (see Annex 8).

2. Poland provided data only for the tax year 2019, while the data for tax year 2020 would only be available in the first half of 2023, once its processing is finished.

3. First, under the Polish rules, a Transfer pricing (TP) local file must be prepared for a controlled financial transaction[2] which exceeds PLN 10.000.000 (around EUR 2.500.000) in a financial year. Second, 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.

4. The **data for 2019** shows that **147 companies** performing intra-group financing used the safe harbour. This represents **2% of the total number** of companies having performed intra-group financing activities in 2019 in Poland. On the other hand, there is no information on the actual loan amounts involved and covered by the safe harbour. Yet, according to the Polish rules such amounts cannot exceed the equivalent of EUR 5.000.000 per related parties' transactions.

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

5. Out of the 147 companies having *used the safe harbour*, transactions with EU related parties took place in 32 cases (located in 14 Member States). Regarding the exchange of information, Poland left the question 5 unanswered. Yet, it is our understanding that such cases are covered and reported under the DAC6, as raised previously in 2019 during the monitoring of the Guidance. The remaining 115 companies concluded financial transactions with non-EU related parties.

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

6. Poland confirmed that fiscal audits in 2019 *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.

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

7. The **data for tax year 2020** is missing. Poland informed however that:
   a. statistics will be available in their system in the first half of 2023, once the processing of data is finished; the spontaneous exchange of information for 2020 will be conducted afterwards; and
   b. it has amended its reporting forms on TP in order to gather also identification data of a foreign counterparty in related parties' transactions, which will allow the foreign tax administration to be able to efficiently use the data.

III. Conclusions

8. The Commission services welcome the improvements taken by Poland for 2020 to allow the Polish tax authorities to collect and exchange adequate tax information regarding the use of its safe harbour by intra-group financing companies.

9. Despite incomplete data for 2019, given the low number of companies having used the safe-harbour (147), the threshold of EUR 5.000.000 for all related party transactions, and the fact that no company was identified having made a downward adjustment, it is Commissions services view that the Polish safe-harbour rule has not affected the business location among Member States in a significant way.

IV. Follow-up

i. The GOCG agreed with the preliminary conclusion that in 2019 the Polish safe-harbour rule does not seem to have affected in a significant way the business location among the Member States.

ii. The GOCG agreed that monitoring should continue, to give Poland the opportunity to complete the data for 2020 and later submit the data regarding tax year 2021. Such a set of data would allow the Group to see the trend and draw meaningful conclusions about the use of the safe-harbour rule.

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	Poland	2019	2020
1	Overall number of companies performing Intra-Group financing	8270 CIT taxpayers including 7274 companies[3]	Statistics will be available in our system in the first half of 2023, once the processing of data is finished. It should be noticed 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.
2	Number of companies having used the safe harbour provisions (pre-determined interest rate[4])	156 CIT taxpayers including 147 companies (this number includes 32 counterparties from EU member states *)[5] *DE, AT, BE, BG, CY, CZ, DE, ES, FR, IT, LU, NL, RO, SK	As above
3	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.	As above.

[3] 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 PLN.

[4] Ba*se 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**.**

[5] 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.

4	Number of companies having applied the safe harbour provisions (pre-determined interest rate) and afterwards made a downward adjustment	0 [6]	The information for the year 2020 is still unavailable.
5	Overall number of information exchanges sent *-regarding the use of safe harbour :* *-regarding use of safe harbour and downward adjustment::*	N/A	During the COCG meeting of 14 November 2019, the Polish authorities committed to spontaneously exchange information ensuring therefore that the (other) Member States 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. 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.

[6] 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 did not reveal such cases.

6	The name of the MSs to which the relevant information was sent	N/A	As above.