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REPORT

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

I. BACKGROUND

1. On 1 December 1997, the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation. This resolution provides for the establishment of a group within the framework of the Council to assess tax measures that may fall within the Code, which was established on 9 March 1998.[1] It also provides that the Code of Conduct Group (hereafter "COCG" or "Group") "*will report regularly on the measures assessed*" and that "*these reports will be forwarded to the Council for deliberation and, if the Council so decides, published*" (paragraph H).

[1] ST 6619/98.

2. In its conclusions of 8 December 2015,[2] the Council expressed the wish to improve the visibility of the work of the COCG and agreed "*that its results, in particular its 6-monthly reports, are systematically made available to the public*" (paragraph 16).

3. In its conclusions of 8 March 2016,[3] the Council furthermore called "*for having more substantial 6-monthly Group reports to ECOFIN, reflecting the main elements and views, which were discussed under specific items and reporting also on the monitoring concerning (non-) compliance with agreed guidance*" (paragraph 16).

4. This report from the COCG encompasses the work of the Group in the first half of 2023 during the term of the Swedish Presidency of the Council. The previous reports, guidelines and other documents can be found on the website of the Council of the EU (Code of Conduct Group)[4].

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II. GENERAL ASPECTS

A. Chair of the Code of Conduct Group

5. At the first meeting of the Code of Conduct Group in 2023, on the 1st of February, Ms Maria José Garde Garde, Director-General for Taxation at the Ministry of Finance of Spain, was elected as new Chair of the Code of Conduct Group to succeed Ms Lyudmila Petkova, Director of the Tax Policy Directorate at the Ministry of Finance of Bulgaria. At the same meeting, Mr. Johan Lindqvist (Sweden) was confirmed as the first vice-chair for the period up to the end of the Swedish Presidency. In accordance with the mandate of the Code of Conduct Group[5], there will be no second vice-chair until the start of 2024.

[2] ST 15148/15.
[3] ST 6900/16.
[4] https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group.
[5] ST 6619/98.

B. Work programme

6. At the meeting of the Code of Conduct Group of 1 February 2023, the Group, approved a work programme until the end of the Swedish Presidency as set out in doc. 6118/23. In the remainder of the first half of 2023, the COCG, under the new chairmanship, continued to fulfil its mandate in accordance with the agreed work programme and the guidance from the Ecofin Council, in particular of 8 November 2022[6] and 6 December 2022[7]. Meetings of the COCG were held on 1 February, 26 April and 2 June 2023. The sub-group on internal/external issues met on 12 and 24 January, 3 and 29 March and 25 May 2023.

C. Transparency

7. In the conclusions of 8 November 2022 on the reform of the Code of Conduct for Business Taxation, the Council welcomed "the steps taken enhancing the transparency of the Code of Conduct Group and improving its public communication", noted "that the revised Code of Conduct (Business Taxation) specifies that final documents, approved by the Council, will be made public and additional documents will be made public, as appropriate, in accordance with the applicable rules" and invited "the Code of Conduct Group to explore further steps in accordance with the applicable rules and report in this direction to the Council by 30 June 2023".

8. In response to this invitation, on 26 April 2023 the Group considered possible further steps to enhance visibility and transparency, including maintaining the COCG website https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group up-to-date. The Group also agreed to publish a more detailed explanation on the substantive elements and functioning of the listing criteria.

[6] 14458/22
[7] 15726/22

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II. STANDSTILL AND ROLLBACK REVIEW PROCESSES

9. A call for standstill and rollback notifications of new preferential tax measures enacted by the end of 2022 was launched in mid-November 2022, the results were presented at the COCG meeting of 1 February 2023. The following new regimes were identified[8]:

- Croatia: Investment Promotion Act (2022) (HR020);
- Poland: Amendments to the holding company regime (PL017);
- Romania: Exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA (RO013);
- Spain: Support of startup ecosystems (ES024).

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A. Standstill review process

10. The following decisions were reached by the Group:

    a. Ireland's digital games relief (IE017, notification on 2021) – the COCG agreed the description of the measure and a draft assessment is expected to be prepared by the Commission.[9]

    b. Romania's exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA (RO013) – the COCG agreed that the measure does not need to be assessed.[10]

    c. Poland's – amendment to the Holding company regime (PL017). – the COCG endorsed the agreed description, and a draft assessment is expected to be prepared by the Commission.[11]

[8] See updated compilation in doc. 8602/5/20 REV 5.
[9] See ADD 1 [WK 2490/2023, including Annex I].
[10] See ADD 2 [WK 3969/2023].
[11] See ADD 3 [WK 6546/2023, including Annex]

11. The procedure regarding Croatia (Investment Promotion Act (2022) (HR020) and Spain (Support of startup ecosystems (ES024)) will be pursued in the second half of the year.

12. The standstill review of Romania's profit tax exemption for companies with innovation and R&D activities (RO008) is kept on hold until the relevant national legislation is adopted: this regime is currently not applied because the subsequent administrative acts have so far not been adopted.

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III. MONITORING OF THE ACTUAL EFFECTS OF INDIVIDUAL MEASURES

13. During recent years, some of the measures subject to scrutiny were put under annual monitoring. Last year, delegations were requested to submit the relevant data also for the year 2020. At its meeting of 26 April 2023, the Group concluded as follows:

    a. Cyprus' measure on use of safe-harbour rule (2013 Guidance intermediate companies) – the monitoring should continue for the years 2019, 2020 and 2021. Since the measure has been abolished as of 1 January 2022, the monitoring should be discontinued once Cyprus has provided complete data for 2019, 2020 and 2021.[12]

    b. Poland's measure on use of safe-harbour rule (2013 Guidance intermediate companies) – in 2019 the measure does not seem to have affected in a significant way the business location among the Member States. The monitoring of this measure should continue, to give to 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.[13]

[12] See ADD 4 [WK 4022/2023, pages 5-8].
[13] See ADD 5 [WK 4022/2023, pages 9-12].

IV. MAPPING COOPERATIVE COMPLIANCE PROGRAMMES IN THE EU IN LIGHT OF THE CODE CRITERIA

14. On 25 May 2023 the subgroup confirmed a summary regarding the specific design and the main features of the existing cooperative compliance programmes (CCPs) in each Member State. Based on this verified summary, the Group will examine the CCPs in Member States to ensure that CCPs do not go beyond the primary aim of ensuring tax compliance and do not result in substantive benefits that may lead to paying less tax.

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V. THE EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

A. Update of the EU list of non-cooperative jurisdictions for tax purposes

15. In its conclusions of 6 December 2022[14], the Ecofin Council welcomed the progress achieved by the Code of Conduct Group with regard to the revision of the EU list of non-cooperative jurisdictions and invited the Group to continue an effective dialogue with jurisdictions and monitoring, so that jurisdictions continue to fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines.

16. The Council welcomed in particular the ongoing progress by jurisdictions engaged in reforming their foreign-source income exemption regimes (FSIE) and endorsed the guidance on foreign-source income exemption regimes set out in the Annex to the Group's December 2022 report. The Council also welcomed the monitoring of no or only nominal tax jurisdictions with regard to the enforcement of economic substance requirements under criterion 2.2, as well as the ongoing work to extend the screening to trusts and other similar legal arrangements in no or only nominal tax jurisdictions under criterion 2.2;

17. The COCG continued interactions and dialogue with the relevant jurisdictions to assess recent developments and the implementation of their commitments, with a view to the update of the EU list.

[14] 15726/22.

18. The Group mandated the Subgroup on external issues to discuss urgent issues regarding the update of the EU list at the meetings on 12 and 24 January in the run-up to its meeting on 1 February 2023. The Group mandated Fiscal Counsellors/Attachés to finalise the update of the list at the meeting on 6 February 2023. The updated EU list of non-cooperative jurisdictions was approved by the Council on 14 February 2023[15] and published in the Official Journal on 21 February 2023.[16]

19. There are 16 jurisdictions on the EU list after the update. Four jurisdictions were added to Annex I of the EU list: British Virgin Islands, Costa Rica, Marshall Islands and the Russian Federation. British Virgin Islands are listed because they received a partially compliant rating from the Global Forum on exchange of information on request (criterion 1.2). For the Marshall Islands, there are concerns that this jurisdiction, which is a zero or almost zero tax jurisdiction, is attracting profits without real economic substance (criterion 2.2 of the EU list). In particular, the Marshall Islands failed to take all necessary actions to properly enforce economic substance requirements under the standard. Costa Rica is included because it has not fulfilled its commitment to abolish or amend the harmful features of its foreign source income exemption regime (criterion 2.1). The Russian Federation is listed after the Code of Conduct Group found it had not fulfilled its commitment to address the harmful features of a regime for international holding companies (criterion 2.1). The Council also underlined that the Russian Federation's unprovoked military aggression against Ukraine, which the European Council has strongly condemned on multiple occasions, prevents the Code of Conduct Group from maintaining a dialogue with the Russian authorities.

20. Twelve jurisdictions remained listed on Annex I: American Samoa, Anguilla, Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands and Vanuatu.

21. Barbados, Jamaica, North Macedonia and Uruguay fulfilled their commitments and were removed from Annex II.

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[15] 6375/23.
[16] OJ C 064, 21.02.2023, pages 17-22.

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22. Annex II features several new commitments. Aruba and Curaçao committed to improving their Global Forum determinations (criterion 1.1). Belize and Israel also made this commitment, which was recorded in Annex II along with their previous commitment to implement the CbCR minimum standard by addressing the Inclusive Framework recommendations in due time (criterion 3.2). Albania committed to amending or abolishing its potentially harmful regime identified by the Forum on Harmful Tax Practices (FHTP) (criterion 2.1).

Deadlines for some jurisdictions were extended, taking into account the progress that they had achieved on the reforms requested to each jurisdiction, as set out hereafter. Qatar was granted until 31 March 2023 to adopt secondary legislation with a view to completing the reform of its foreign source income exemption regime. Qatar has adopted and ratified secondary legislation within the deadline, and is in the process of issuing administrative guidance clarifying the application of the new legislation to consider the reform of the Qatar FSIE regime complete. Jordan was granted until the end of April 2023 to amend or abolish a preferential tax regime in the scope of the Forum on Harmful Tax Practices (FHTP). At the FHTP meeting in April 2023 the regime was assessed "not harmful (amended)", subject to the adoption of final legislation. Assessment of the reform is ongoing.

23. Türkiye remains on Annex II for criterion 1.1 (automatic exchange of information) as it is still not fully in line with the commitments required under the conclusions of the Ecofin Council of 22 February 2021, 5 October 2021, 24 February, 4 October 2022 and 14 February 2023. Türkiye is expected to begin or continue the technical work on the effective exchange of data with all Member States to meet the agreed international standards and fully comply with the requirements set in the mentioned conclusions of the Ecofin Council.

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B. Monitoring of the implementation of commitments taken by jurisdictions

General overview

24. As of February 2023, the implementation of a total of 26 commitments[17] taken at a high political level by 23 jurisdictions[18] remains to be monitored by the Group. These are recorded in Annex II of the Council conclusions:

Criterion	Number of jurisdictions committed
1.1	7
1.2	4
2.1	7
3.2	5

25. Specifically, a total of 7 harmful tax regimes remain to be rolled back under criterion 2.1, 3 of which are under monitoring by the COCG[19] and 4 by the OECD FHTP[20]. A detailed overview can be found in the compilation[21] of preferential regimes and measures examined by the COCG under criteria 2.1 and 2.2.

Political and procedural dialogue

26. The Chair of the COCG continued to conduct political and procedural dialogues with relevant international organisations and jurisdictions, where necessary.

[17] This figure adds up the number of commitments by jurisdictions under each criterion (see table).
[18] Anguilla, Albania, Armenia, Aruba, Botswana, Belize, British Virgin Islands, Curaçao, Costa Rica, Dominica, Eswatini, Hong Kong, Israel, Jordan, Malaysia, Montserrat, Panama, Seychelles, Thailand, Trinidad and Tobago, Türkiye, Vanuatu, and Vietnam.
[19] The FSIE regimes of Hong Kong, Malaysia and Qatar.
[20] Albania's "Industrial Incentives", Jordan's "Aqaba special economic zone" regime, Eswatini's "Special economic zone", Armenia's "Free economic zones" and "Information technology projects"
[21] ST 6430/23.

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27. The Chair received a number of letters from jurisdictions and also held in-person meetings and videoconferences at a high political level with a number of them. Delegations were kept informed about these interactions, and response letters signed by the Chair were agreed by the Group.

C. Screening and scoping issues

Criterion 1.1 (peer reviews by the Global Forum with respect to the Common Reporting Standard for AEOI)

28. From the outset, criterion 1.1 has been designed to evolve in line with the peer review process on the Automatic Exchange of Financial Account Information (AEOI) by the Global Forum on tax transparency and exchange of information (Global Forum). In 2022, as part of the peer review process on AEOI, the Global Forum issued for the first time *ratings* on the effectiveness of the implementation of the AEOI standard in practice.

29. In June 2022, the Code of Conduct Group agreed on a two-step approach to implement criterion 1.1, taking stock of the evolution of the Global Forum peer reviews on AEOI, starting with the 2022 report. The Group also adopted Guidance on the implementation of the updated criterion 1.1 under the first step[22]. In particular, the Guidance clarified that the benchmark for COCG assessments for criterion 1.1 are the legal determinations attributed to jurisdictions by the Global Forum for implementing the required domestic and international legal framework. The minimum level of compliance required for jurisdictions in scope is "In place, but needs improvement" for both Core Requirement 1 and Core Requirement 2 in the AEOI Terms of Reference. Letters signed by the Chair were sent to all concerned jurisdictions to inform them about this update. At the meeting on 24 October 2022, the COCG agreed on the way forward regarding the jurisdictions that the Global Forum found to be non-compliant based on the AEOI peer reviews for 2022.

[22] Annex to 10346/22.

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30. The 2022 Global Forum peer review report on AEOI was published on 9 November 2022[23]. Letters signed by the Chair requesting commitments to address the deficiencies were subsequently sent to jurisdictions, which did not demonstrate a sufficient level of compliance in the 2022 AEOI peer review. [24] The commitments taken by jurisdictions were reflected in the update of the EU list of February 2023.

Foreign source income exemption regimes

31. In October 2019, the Ecofin Council approved guidance on foreign source income exemption (FSIE) regimes in the framework of the EU listing exercise (criterion 2.1). This guidance acknowledges that FSIE regimes are a legitimate approach to prevent double taxation, but identifies potentially harmful elements that could be present in such regimes.

32. In December 2019, the COCG Chair wrote to thirteen jurisdictions to inform them that a regime of this kind was identified in their jurisdiction. The Commission Services followed up with a questionnaire to nine jurisdictions in February 2020 with a deadline of 20 March 2020 to reply. It was agreed to screen four jurisdictions at a later stage.

33. All the jurisdictions that were contacted responded to the questionnaire. The Commission Services analysed the replies and followed up where necessary. On this basis, the Commission prepared an overview of the work carried out so far, as well as country-specific progress reports.

[23] https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2022_36e7cded-en.

[24] Aruba, Belize, Curaçao, Costa Rica, Israel and Trinidad and Tobago.

34. On 19 May 2021, the COCG agreed to send letters to six jurisdictions from which the COCG would seek commitments to repeal or amend their harmful FSIE regimes. Five jurisdictions responded and confirmed their commitment to abolish or amend their regimes[25]. One jurisdiction did not express the requested commitment[26]. The remaining three jurisdictions[27] were deemed compliant under the EU listing criteria. One jurisdiction[28] reformed its FSIE regime before the end of 2022, with effect from 1 January 2023.

35. During the technical examinations of FSIE reforms, there was a need to clarify the language of the Guidance on FSIE on certain aspects, notably on the tax treatment of capital gains. Following this clarification of the Guidance on FSIE regimes in December 2022[29], the Group decided to grant the two concerned jurisdictions[30] additional time to amend their legislation concerning the tax treatment of capital gains, i.e. by the end of 2023, with effect from 1 January 2024. One jurisdiction[31] was asked to make a commitment by 30 June 2023, to amend its FSIE regime in line with the FSIE Guidance by 30 June 2024, with effect from 1 July 2024. One jurisdiction[32] was given an extension to March 2023 to reform its FSIE regime and adopted the relevant primary and secondary legislation with effect from 22 December 2022. Assessment of the reform is ongoing and will be concluded before the October 2023 update of the EU list.

[25] Costa Rica, Hong Kong, Malaysia, Qatar and Uruguay.
[26] Panama.
[27] Maldives, Nauru and Singapore.
[28] Uruguay
[29] Doc. 14674/22.
[30] Hong Kong and Malaysia
[31] Singapore
[32] Qatar

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New criterion 1.4 on beneficial ownership information

36. In its conclusions of 6 December 2022, the Council called on the Group to continue the work to incorporate beneficial ownership (BO) information as a fourth tax transparency criterion (criterion 1.4). At its meeting on 1 February 2023, the Code of Conduct Group held a first discussion on the further strengthening of the EU listing process for tax purposes and resumed work on the design of a new criterion 1.4 and explore a more comprehensive approach to BO information. The work on the design of the new criterion continued in the subgroup meetings on 3 and 29 March and the meeting of the Group on 26 April 2023 and on 2 June 2023. Further work will be necessary on this issue.

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Monitoring under criterion 2.2

37. In July 2021, the Group decided to carry out the annual monitoring of the enforcement of economic substance requirements by 2.2 jurisdictions[33] by ensuring synergy with the parallel monitoring by the FHTP of no or only nominal tax jurisdictions.

38. At its meeting on 2 June 2022, the Group decided that, from 2023 onwards, it would take into account the FHTP conclusions reached in the last quarter of the year before, in preparation of the update of the EU list in the first quarter of the year that would follow such conclusions.

39. In addition, the Group discussed the situation of entities or arrangements which can carry out highly mobile activities in the scope of criterion 2.2 and which have not yet been included in the scope of domestic legislation on economic substance requirements in all 2.2 jurisdictions. The Group agreed to start a screening exercise for trusts and fiduciaries similar to that of 2019 on partnerships, given that criterion 2.2 has a comprehensive scope, encompassing in principle all entities or arrangements. To this aim, the Group decided to bring this work forward in close cooperation with the FHTP, which agreed to conduct a parallel mapping exercise at its meeting in November 2022. This work is ongoing, and the Group will revert to this issue after the next FHTP meeting in autumn with a view to finishing the work on including all relevant entities in the scope of criterion 2.2.

[33] These jurisdictions include the twelve no or only nominal tax jurisdictions (Anguilla, Bahamas, Barbados, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turks and Caicos Islands, United Arab Emirates) and the Republic of Marshall Islands.

40. At the 2 June 2022 meeting, the Group also agreed to take into account the recently adopted FHTP guidance on pure equity holding companies and entities claiming tax residence in another no or only nominal tax jurisdiction under criterion 2.2.

41. Following the FHTP meeting of 21-22 November 2022, which concluded the second annual monitoring of the enforcement of the substantial activities requirements in practice, the Chair sent in January 2023 letters to four jurisdictions[34] inviting them to take necessary actions in relation to the recommendations made by the FHTP. At the November 2022 meeting, Barbados was given a 'hard' recommendation on exchange of information by the FHTP. However, on 31 January 2023, the FHTP approved by written procedure an updated assessment for Barbados removing its 'hard' recommendation to this jurisdiction as part of the 2022 monitoring process. At its meeting on 1 February 2023, the Group therefore recommended to remove the reference to Barbados from the relevant section in Annex II at the update of the EU list in February 2023.

Process for the Monitoring of Economic Substance Requirements for Collective Investment Funds (CIVs) under criterion 2.2

42. In May 2018, the COCG agreed on Technical Guidance on Substance Requirements for Collective Investment Funds (CIVs) giving effect to a distinctive treatment for CIVs, in terms of economic substance requirements, in the Scoping Paper on criterion 2.2.

43. In September 2018, the COCG found that four jurisdictions (The Bahamas, Bermuda, British Virgin Islands and Cayman Islands) in the scope of the EU listing process had a "relevant" fund sector. Subsequently, the COCG asked these jurisdictions to reform their funds' framework in line with the Technical Guidance[35]. The reforms, approved by the COCG, entered into effect in these jurisdictions in 2020, i.e. one year later than other economic substance requirements (general substance requirements).

[34] Bahrain, Bermuda, British Virgin Islands and Cayman Islands
[35] The Bahamas, Bermuda, British Virgin Islands and Cayman Islands.

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Implementation of criterion 3.2

44. In 2019, the COCG agreed on a general approach for assessing compliance with criterion 3.2 on country-by-country reporting (CbCR), in particular for early adopters of the minimum standard on CbCR, i.e. jurisdictions that joined the Inclusive Framework before the end of 2017.

45. In October and November 2021, the Code of Conduct Group discussed and agreed on the assessment of the relevant jurisdictions for compliance with criterion 3.2, based on the 2021 Peer Review Report by the BEPS Inclusive Framework (IF) on CbCR. Eleven jurisdictions with identified deficiencies on CbCR were asked to undertake commitments to address these deficiencies by next year, in time to be reflected in the 2023 IF peer review report on CbCR. These commitments were recorded at the update of the EU list in February 2022.

46. Following the release of the latest IF peer review report on CbCR on 4 October 2022, the Code of Conduct Group decided at its meeting on 24 October 2022 to remove Barbados and British Virgin Islands from Annex II for criterion 3.2 and to remove the reference to criterion 3.2 in the entry of the Bahamas in Annex I, at the update of the EU list in February 2023.

47. At the meeting on 23 November 2022, the Code of Conduct Group considered the implementation of the CbCR standard by other jurisdictions within the scope of criterion 3.2, which were not deemed deficient in 2021, as well as the state of play in relation to relevant jurisdictions to which criterion 3.2 has not been applied so far, as they have joined the BEPS IF after 1 January 2018. The COCG agreed to extend the scope of criterion 3.2 to those jurisdictions, which joined the Inclusive Framework on BEPS after 1 January 2018 and are developed countries or developing countries with a financial centre. The jurisdictions concerned will be informed about the application of criterion 3.2 in a timely fashion.

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Tax defensive measures vis-à-vis third country jurisdictions

48. In line with the Guidance on tax defensive measures agreed in December 2019, the COCG resumed its work on defensive measures.

49. At the meeting of 2 June 2022, the Group agreed to continue working on effective application of the defensive measures, in accordance with the agreed Guidance in a staged approach. As a first step, an analysis could be conducted on how tax defensive measures have been effectively applied by Member States. The outcome of such analysis could serve as a basis for further discussions on whether and how coordination of the measures could be enhanced.

50. At the meeting on 20 September 2022, the Code of Conduct Group agreed the draft questionnaire on the application by Member States of defensive measures.

51. In its conclusions on 6 December 2022 the Council took note of the need for further work to assess the application by Member States of defensive measures in the tax area, as provided for by the 2019 Guidance.

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52. On 1 February 2023, the COCG agreed that Member States should update the state of play as regards defensive measures that they apply towards non-cooperative jurisdictions for tax purposes. A revised state of play of the implementation of the 2019 Guidance on Defensive Measures by EU Member States, as of 1 Janaury 2023, is attached to this report (ANNEX I).

53. The COCG at its meetings of 1 February and 26 April 2023 and the subgroup at its meetings of 3 and 29 March 2023 considered the proposal from the Commission to put in place a process for monitoring how Member States implement the defensive measures in practice in the tax area. At the COCG meeting in April, the Group concluded that further work is necessary for an efficient and flexible monitoring, including work on how to measure the effectiveness of defensive measures. The Group will revert to this issue early in the autumn.

Geographical scope

54. In March 2019 the Ecofin Council recalled "*the extensions of the geographical scope of the EU screening exercise to other jurisdictions agreed in 2018*"[36] and invited "*the Code of Conduct Group to review the economic data used for selecting jurisdictions in 2020, for application as from 2021*". This invitation was reiterated in February 2020 with a view "to focus on the most relevant jurisdictions, having regard to the agreed work on the extended geographical scope as identified in 2018".

55. The COCG at its meetings of 1 February, 26 April and 2 June 2023 and the subgroup at its meeting of 3 March 2023 had an exchange of views on a possible extension of the geographical scope of the EU list based on a proposal made by the Commission Services. Further work will be necessary on this issue, in order to decide the approach to be used for selecting jurisdictions for the geographical scope of the EU screening exercise.

[36] ST 14364/21.

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ANNEX

Revised state of play of implementation of the 2019 Guidance on Defensive Measures by EU Member States

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Introduction

In Annex to the six-month COCG report to the Council under the Slovenian Presidency of the Council in 2021, Member States published an overview of the tax defensive measures they introduced against non-cooperative jurisdictions for tax purposes as from 2021.

This Annex presents a revised state of play, as it stood on 31 January 2023.

Administrative measures

Currently, twenty-four Member States apply at least one administrative measure agreed upon in the 2019 Guidance. Among them, eleven apply at least two measures. It is noted that some Member States have implemented a phased approach, whereby information collected from the monitoring of transactions involving non-cooperative jurisdictions is used to identify risk areas and contribute to tax authorities' programmes of tax audits.

Overview of administrative measures (cut-off date: 31 January 2023)

Defensive measures	Number of Member States applying the measure	Number of Member States that apply the measure in combination with at least one other measure
Reinforced monitoring of certain transactions	16	11
Increased auditing	19	12

Administrative measures enacted by each Member State

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Member States	Administrative Measures
AT – Austria	Increased audit risks The measure applies to taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
BE – Belgium	Reinforced monitoring of certain transactions The measure applies to Belgian resident companies or legal entities, as well as Belgian based permanent establishments of non-resident companies, which have to report payments above EUR 100,000 (on a yearly basis) made to persons established in: - a non-cooperative jurisdiction for tax purposes according to the EU list criteria or the Belgian national list or - a low or not tax jurisdiction or - a jurisdiction which has not substantially implemented the international standards on exchange of information on request.
BG – Bulgaria	Reinforced monitoring of certain transactions The measure applies to corporate taxpayers benefiting from preferential tax regimes deemed harmful under criterion 2.1 of EU list. Taxpayers have to include in their annual tax return the following information: • Total amount of accounting revenues from transactions with persons resident in jurisdictions with a harmful preferential tax regime; • Total amount of accounting expenses from transactions with persons resident in jurisdictions with a harmful preferential tax regime; • Receivables from persons resident in jurisdictions with a harmful preferential tax regime. • Liabilities to persons resident in jurisdictions with a harmful preferential tax regime.

HR – Croatia	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative. Reinforced monitoring of certain transactions The measure applies to corporate taxpayers that conduct transactions with enterprises in in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
CY – Cyprus	None.
CZ – Czechia	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative Reinforced monitoring of certain transactions The measure applies to corporate taxpayers benefiting from preferential tax regimes deemed harmful under criterion 2.1 of EU list.
DK – Denmark	Reinforced monitoring of certain transactions The measure applies to all kind of taxpayers that conduct transactions with enterprises etc. in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative. Increased audit risks The measure applies to all kind of taxpayers that conduct transactions with enterprises etc. in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.

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EE – Estonia	Reinforced monitoring of certain transactions The measure applies to all kind of taxpayers that conduct transactions with enterprises etc. in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
FI – Finland	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative. Reinforced monitoring of certain transactions The measure applies to corporate taxpayers that conduct transactions with enterprises in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
FR – France	Reinforced monitoring of certain transactions The measure applies to corporate taxpayers that conduct transactions with enterprises in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
DE – Germany	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
EL – Greece	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.

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HU – Hungary	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in non-cooperative jurisdictions for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.
IE – Ireland	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative. Corporate taxpayers must declare Interest, Royalties or Dividends with persons in a non-cooperative jurisdiction for tax purposes. <u>Reinforced monitoring of certain transactions</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
IT – Italy	<u>Increased tax audit risks</u> The measure applies to multinational enterprises that put in place transactions with non-cooperative jurisdictions for tax purposes.
LV – Latvia	<u>Reinforced monitoring of certain transactions</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
LT – Lithuania	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative.[37]

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[37] This measure does not apply specifically to jurisdiction listed as non-cooperative according to the EU listing criteria but have broader application according to Lithuania's domestic tax policy.

LU – Luxembourg	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative. <u>Reinforced monitoring of certain transactions</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
MT – Malta	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions or have a link with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative. <u>Reinforced monitoring of certain transactions</u> The measure applies to corporate taxpayers that conduct transactions or have a link with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
NL – Netherlands	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
PL – Poland	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.

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PT – Portugal	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.[38]
RO – Romania	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
SK – Slovak Republic	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless the criterion for which jurisdictions are deemed non-cooperative. Reinforced monitoring of certain transactions The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.
SI – Slovenia	Increased audit risks The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative. Reinforced monitoring of certain transactions The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative.[39]

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[38] This measure does not apply specifically to jurisdiction listed as non-cooperative according to the EU listing criteria but have broader application according to Portugal's domestic tax policy.
[39] This measure does not apply specifically to jurisdiction listed as non-cooperative according to the EU listing criteria but have broader application according to Slovenia's domestic tax policy.

ES – Spain	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative. <u>Reinforced monitoring of certain transactions</u> The measure applies to transactions of securities for which the issuing entity is resident, established or the securities are negotiated in a non-cooperative jurisdiction, regardless the criterion for which jurisdictions are deemed non-cooperative.
SE – Sweden	<u>Increased audit risks</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative and jurisdictions in Annex II. <u>Reinforced monitoring of certain transactions</u> The measure applies to corporate taxpayers that conduct transactions with enterprises in jurisdictions considered as non-cooperative for tax purposes regardless of the criterion for which jurisdictions are deemed non-cooperative and jurisdictions in Annex II.

Defensive measures of legislative nature from the Guidance

As from 2023, all Member states apply at least one of the four defensive measures agreed in the 2019 Guidance. Sixteen apply at least two of the four measures. Twenty-one Member States operate to date defensive measures of both administrative and legislative nature to jurisdictions listed in the EU list, while three Member States apply defensive measures in accordance with their domestic listing process, which currently includes all or almost all non-cooperative jurisdictions (Annex I of the EU list). In detail:

- 17 MS have chosen to implement Controlled Foreign Companies (CFC) rules,
- 16 have chosen to implement a non-deductibility of costs,
- 14 have chosen to implement a withholding tax,

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- 11 have chosen to implement a limitation to the participation exemption.

Regarding the other defensive measures mentioned in the 2019 Guidance, three Member States apply a reversal of the burden of proof and one of them does it in combination with special documentation requirements.

Overview of legislative defensive measures enacted by each Member State (cut-off date: 31 January 2023)

Member State	**Defensive Measures**
AT – Austria	CFC rules apply to jurisdictions listed in Annex I. The Austrian CFC rules apply by presuming that the threshold of Article 7(1) of ATAD on the level of corporate income tax abroad is met if a company is established in listed jurisdictions. The assessment takes place on a financial-year-base, i.e. if the foreign corporation's jurisdiction of residence is listed on the financial year's balance sheet day, the foreign entity will be deemed being low taxed for that particular financial year with respect to the Austrian CFC.
BE – Belgium	Non-deductibility of costs, CFC rules and limitation of participation exemption on profit distribution apply to jurisdictions in Annex I. The non-deductibility of certain payments (Article 198, 10° BITC 92) is linked to the obligation to report certain foreign payments (Article 307, §1/2 BITC 92). Costs that are in principle deductible for the taxpayer will be refused if the Belgian taxpayer fails to report the payments or if the payments are reported but the taxpayer fails to prove that the payments were done in the framework of actual and sincere transactions carried out with a person other than (an) artificial construction(s). In those cases, the payment will not be tax deductible. The possibility of counterevidence by the taxpayer can be proven by all legal means. The Belgian CFC rules apply by presuming that the threshold of Article 7(1) of ATAD on the ownership control, level of corporate income tax abroad are met in all cases for companies established in listed jurisdictions. The Belgian participation exemption rules do not apply to dividends from companies in listed jurisdictions. No counter-evidence possible for the taxpayer.

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BG – Bulgaria	Non-deductibility of cost and withholding taxes apply to jurisdictions listed in Annex I The non-deductibility of costs applies to any expenses on interest payments charged (unless the conditions of the loan are agreed in conformity with requirements provided for in a statutory instrument) where at least three of the following conditions are fulfilled: - the loan exceeds the owners' equity of the payer of the income at the 31st day of December of the last preceding year; - the repayment of the loan or the payment of interest thereon is not limited by a fixed period; - the repayment of the loan or the payment of interest thereon depends on the existence or on the amount of profits accruing to the payer of the income; - the repayment of the loan depends on satisfaction of the claims of other creditors or on the payment of dividends. A withholding tax applies at the rate of 5% applies to dividends and boni to companies in listed jurisdictions. A withholding tax at the rate of 10% applies to all other payments.
HR – Croatia	CFC rules and a withholding tax apply to jurisdictions listed in Annex I. The Croatian CFC rules apply by denying the waivers in Article 7(3) of ATAD in relation to turnover threshold and non-trading income threshold. A withholding tax measure applies to all services and fees (listed in the article 31 of the Profit tax act) paid to persons having their headquarters or place of effective management, or supervision of business in listed jurisdictions. The measure does not apply if a double taxation treaty is in force. The withholding tax rate is 20%.
CY – Cyprus	A withholding tax applies to jurisdictions listed in Annex I. A withholding tax applies to dividends (17%), interests (30%) and royalties (10%) paid to companies resident in listed jurisdictions.

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CZ – Czechia	CFC rules apply to jurisdictions listed in Annex I. The Czech CFC rules apply by denying eligibility for the economic substance safeguard and presuming presume that the thresholds of Article 7(1) of ATAD on the level of corporate income tax abroad is met for companies established in listed jurisdictions.
DK – Denmark	Non-deductibility of costs and withholding tax measures apply to jurisdictions listed in Annex I Non-deductibility of costs applies to all payments to related parties established in listed jurisdictions. Withholding tax measures applies to all dividend payments where the shareholder is tax resident or registered in a listed jurisdiction and the shares qualify as "main shareholder shares", "subsidiary shares" or "group shares". The tax rate is 44%.
EE – Estonia	Non-deductibility of costs, a withholding tax and Limitation of participation exemption of profit distributions apply to jurisdictions listed in Annex I. The non-deductibility of costs applies to the following costs linked to listed jurisdictions: - acquisition of securities issued by a legal person located in a listed jurisdiction unless such securities meet the requirements provided for in subsection 107 (1) of the Investment Funds Act; - acquisition of a holding in a legal person located in a listed jurisdiction; payment of a fine for delay or a contractual penalty, or extra-judicial compensation for damage, to a legal person located in a listed jurisdiction; - grant of a loan or making of an advance payment to a legal person located in a listed jurisdiction or acquisition of a right of claim against a legal person located in a listed jurisdiction in any other manner; - in case of resident credit institutions, losses sustained by a credit institution when it transfers a right of claim or waives the collection of a right of claim (including loans granted and advance payments made) acquired against a legal person located in a listed jurisdiction. A withholding tax applies to payments to legal persons located in listed

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	jurisdictions in relation to services provided to an Estonian resident. The withholding tax rate is 20%. The participation exemption of profit distributions under Estonian law does not apply if a legal person distributing profits is located in a listed jurisdiction.
FI – Finland	CFC rules apply to jurisdictions listed in Annex I. The Finnish CFC rules apply by denying eligibility for the economic substance safeguard if a company is established in listed jurisdictions.
FR – France	CFC rules, non-deductibility of costs, limitation of participation exemption and a withholding tax applies to jurisdictions listed in Annex I. The non-deductibility of costs applies to payments such as interests, deposits, guarantees, debts, royalties for the transfer or concession of operating licenses, patents, trademarks, remuneration for services of any kind (salaries, fees, commissions, etc.) as well as any payment made to an account held in a financial institution established in listed jurisdictions. A withholding tax applies to payments such as dividends, royalties, capital gains, income distributed to non-resident individuals or legal entities (in particular income from shares and directors' fees) when these payments are made to jurisdictions listed in Annex I in relation to criterion 2.2. The withholding tax rate is 75%. The French participation exemption rules do not apply for income received from listed jurisdictions, such as dividends, interests and royalties.
DE – Germany	Non-deductibility of costs, CFC rules, withholding taxes, and limitation of participation exemption on profit distribution apply to jurisdictions listed in Annex I based on a number of conditions. Non-deductibility applies to all costs in relations to companies resident in listed jurisdictions. The German CFC rules apply by denying the waivers and safeguards introduced according to the ATAD directive. A withholding tax applies to income from financing relationships, insurance and reinsurance services, from the provision of other services or from trading of goods, if such income is not taxable under the

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	existing German rules of non-residents companies in so far as the remunerations constituting the income are deductible as business expenditure or income-related expenses by a resident taxpayer. The withholding tax rate is 15% The German participation exemption rules do not apply to income deriving from dividends and sale of shared from companies resident in listed jurisdictions. These measures do not apply cumulatively. CFC rules apply only to the extent that the rules on limitation of profit distributions do not apply. The limitation on participation exemption does not apply if a company resident in listed jurisdiction provides evidence that it has been subject to a withholding tax in that jurisdiction. The non-deductibility of costs applies only if the withholding tax does not apply The non-deductibility of costs and the limitation of profit distribution apply only after a jurisdiction features on Annex I for three or two years, respectively.
EL – Greece	Non-deductibility of costs applies to jurisdiction listed in Annex I. The non-deductibility of costs applies to all expenses paid to an individual or legal entity which is tax resident in a listed jurisdiction. The taxpayer can demonstrate that these expenses concern real and ordinary transactions and do not result to the transfer of profits or income or capital for the purpose of tax avoidance or tax evasion. The expenditures reformation will take place at the very time the jurisdiction is listed or delisted (i.e. amending the tax return).
HU – Hungary	CFC rules apply to jurisdictions listed in Annex I. The Hungarian CFC rules apply by denying the waivers in Article 7(3) and (4) of ATAD in relation to low profit margin and the turnover threshold if a company is established in listed jurisdictions.
IE – Ireland	CFC rules apply to jurisdictions listed in Annex I. The Irish CFC rules apply by denying the exemption based on the corporate income tax level of the CFC and the waivers in Article 7(4) of ATAD in relation to low profit margin and low accounting profit when a subsidiary of an Irish group is in a listed jurisdiction.

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IT – Italy	Non-deductibility of costs applies to jurisdiction listed in Annex I. The measure applies to all expenses paid to an individual or legal entity which is tax resident in a listed jurisdiction. Taxpayers may rebut the presumption by provide evidence that these transactions have been actually carried out and that there is an underlying reasonable economic rationale.
LV – Latvia	CFC rules, non-reduction of tax base, withholding taxes, and limitation of participation exemption apply to jurisdictions listed in Annex I. The Latvian CFC rules apply by denying the waiver in Article 7(4)(a) of ATAD on in relation to the companies' turnover. Limitation to reduce an amount of dividends that are included in taxpayers tax base by the amount of income obtained from the alienation of stocks of a person who is located, set up or established in a listed jurisdiction. In addition, any transaction with a person located or established in jurisdictions listed in Annex I shall be considered as a transaction with a related party. A withholding tax applies to payments and dividends paid to a company located in listed countries. The withholding tax rate is 20%. The limitation of participation exemption applies by including income from dividends in the tax base of the Latvia-resident companies, if the payment is made by a company located in a listed jurisdiction.
LT – Lithuania	Non-deductibility of costs, CFC rules, withholding tax measures and limitation of participation exemption apply to companies registered or otherwise organized in the target jurisdictions according to the definition provided in the Lithuanian legislation. The target jurisdictions correspond to the jurisdictions currently listed in Annex I. Non-deductibility of cost applies to payments made to foreign entities registered or otherwise organized in target territories, unless the taxpayer provides evidence that such payments are related to the usual activities of both parties or the receiving foreign entity controls the assets needed to perform such usual activities, or there is a link between the payment and a genuine economic operation. The measures apply to costs included in allowable deductions 18 months before the goods actually received from or the services actually provided by entities registered or otherwise organized in target territories. The Lithuanian CFC rules apply by presuming that the threshold of

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	Article 7(1) of ATAD in relation to the level of corporate income tax abroad is met, denying the waiver IN Article 7(4) in relation to non-trading income and denying eligibility for the economic substance safeguard. Withholding taxes apply to interests, dividends and royalties paid to foreign entities registered or otherwise organized in target territories. The withholding CIT rate for dividends is 15%; on interest and royalties is 10%. The Lithuanian participation exemption does not apply to dividends paid by a Lithuanian entity to a foreign entity registered or otherwise organized in target territories.
LU – Luxembourg	Non-deductibility of costs applies to jurisdictions listed in Annex I. The non-deductibility of costs relates to interests and royalties paid from companies established in Luxembourg to associated companies established in listed jurisdictions.
MT – Malta	Limitation of participation exemption on profit distribution applies to jurisdictions listed in Annex I The Maltese participation exemption does not apply to dividends received by a Maltese entity from entities in listed jurisdictions.
NL – Netherlands	CFC rules and a withholding tax apply to jurisdictions listed in Annex I. The CFC rules apply according to Model A as set forth by the EU Anti-Tax avoidance directive apply, as opposed to the Dutch general CFC rules, which follow model B. A withholding tax on royalties and interest on payments to listed jurisdictions applies. The withholding tax rate is 25%.
PL – Poland	CFC rules apply to jurisdictions listed in Annex I. The Polish CFC rules apply by denying eligibility for the economic substance safeguard, the threshold on control requirement and the waivers in Article 7(3) and (4) in relation to low profit margin, low accounting profit, turnover threshold and non-trading income threshold.

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PT – Portugal	Non-deductibility of costs, CFC rules, withholding tax measures and limitation of participation exemption on profit distribution apply to jurisdiction in the Portuguese national list. These jurisdictions include the jurisdictions currently listed in Annex I. Non-deductibility of costs applies to all the amounts paid, or due, to non-resident individuals or companies that are resident or established in a jurisdiction listed in the Portuguese national list or paid, as well as to amounts whose payment is made to accounts opened with financial institutions resident or domiciled in a listed jurisdiction. The taxpayer can demonstrate that such charges correspond to transactions actually carried out and that they are not abnormal in character or have an exaggerated amount. A withholding tax applies at the rate of 25% to income paid to non-residents without a permanent establishment in Portugal. A higher rate (35%) applies to investment income. Investment income comprises, inter alia, dividends, interest, income from investment fund units, income from interest-rate swaps, royalties (whenever the beneficial owner is not the author or the original holder), income from the use or concession of the use of agricultural and industrial, commercial or scientific equipment.
RO – Romania	Non-deductibility of costs applies to jurisdictions listed in Annex I. The non-deductibility of costs applies to all cost otherwise deductible according to Romanian legislation from the date in which a jurisdiction is listed. Specific rules apply if the expenses are incurred as a result of transactions that are deemed not to have an economic purpose.
SK – Slovak Republic	Non-deductibility of costs, a withholding tax and limitation of participation exemption on profit distribution apply to jurisdictions listed in Annex I. The non-deductibility of costs (in force) applies to any payments to a taxpayer from listed jurisdictions that would be otherwise deductible under Slovak legislation. The costs may be deductible only after the payment has been made. A withholding tax applies to any payment made to companies in listed jurisdictions. The withholding tax rate is 35%. The Slovak participation exemption rules do not apply to dividends derived from companies in listed jurisdictions. The dividends are taxed by applying a higher tax rate (35 %).

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SI – Slovenia	CFC rules, non-deductibility of costs, withholding tax and limitation of participation exemption on profit distribution apply to jurisdictions listed in Annex I. The Slovenian CFC rules apply by denying eligibility for the economic substance safeguard and the waiver in Article 7(3) of ATAD in relation to low accounting profit in connection to certain categories of income. A 15% withholding tax also applies on interest payments by banks and on payments for certain services.
ES – Spain	Non-deductibility of costs, CFC rules, withholding taxes and limitation of participation exemption to profit distributions apply to jurisdictions included in the Spanish national list. These jurisdictions include almost all jurisdictions the jurisdictions currently listed in Annex I. The non-deductibility of costs relates to operations carried out directly or indirectly with natural persons or companies or through natural persons or entities resident in listed jurisdictions. The Spanish CFC rules apply to listed jurisdictions. Withholding taxes apply to the following income: - interests obtained through listed jurisdictions. - capital gains obtained through listed jurisdictions. - income derived from alienation or reimbursement of shares in investment funds, provided they are obtained through listed jurisdictions. The withholding taxes apply by disallowing the exemptions foreseen under the Non-Resident Income Tax Act. The withholding tax rates are 19%. The Spanish participation exemption rules on profit distribution is denied for Spanish resident and non-resident companies in case profits are distributed by entities which are tax resident in listed jurisdictions.
SE – Sweden	Non-deductibility of costs applies to jurisdictions listed in Annex I. In specific situations, the CFC rules apply as a backstop. Non-deductibility of costs applies to interest on both intra-group and external loans in listed jurisdictions. When a double tax treaty is in force with listed jurisdictions, the general Swedish CFC rules apply.

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Synthetic overview of the measures in place

Member States	Adm. in Place	Leg. in Place	Non-Deduct. of Costs	CFC rules	Participation Exemption	WHT	Others
Austria	X	X		X			
Belgium	X	X	X	X	X		X
Bulgaria	X	X	X		X	X	
Croatia	X	X		X		X	
Cyprus		X				X	
Czech Rep	X	X		X			
Denmark	X	X	X			X	
Estonia	X	X	X		X	X	
Finland	X	X		X			
France	X	X	X	X	X	X	X
Germany	X	X	X	X	X	X	
Greece	X	X	X				X
Hungary	X	X		X			
Ireland	X	X		X			
Italy		X	X				
Latvia	X	X		X	X	X	
Lithuania	X*	X*	X	X	X	X	
Luxembourg	X	X	X				
Malta	X	X			X		
Netherlands	X	X		X		X	

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Poland	X	X		X			
Portugal	X*	X*	X	X	X	X	
Romania	X	X	X				
Slovak Rep	X	X	X		X	X	
Slovenia	X	X	X	X	X	X	
Spain	X	X**	X	X	X	X	X
Sweden	X	X	X	X			

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** Legislation is in place vis-à-vis jurisdictions defined according to the national listing process, which includes almost all jurisdictions listed in Annex I.*

*** Legislation is in place vis-à-vis jurisdictions defined according to the national listing process, which includes almost all jurisdictions listed in Annex I. A revised national list is due to be adopted in 2023 taking into account, inter alia, the EU list criteria.*

<u>Synthetic overview of the measures applied by Member States that are not mentioned in the Guidance</u>

Member States	**CIT**	**PIT**	**Sectoral restrictions**
Austria	X		
Belgium		X	
Bulgaria	X		X
Croatia			
Cyprus			
Czech Rep			
Denmark			
Estonia			
Finland			

France	X	X	X
Germany			
Greece			X
Hungary			
Ireland			
Italy			
Latvia	X	X	X
Lithuania			
Luxembourg			
Malta			
Netherlands	X		
Poland	X		
Portugal			
Romania			
Slovak Rep		X	
Slovenia			
Spain	X	X	X
Sweden			
Total	7	5	5

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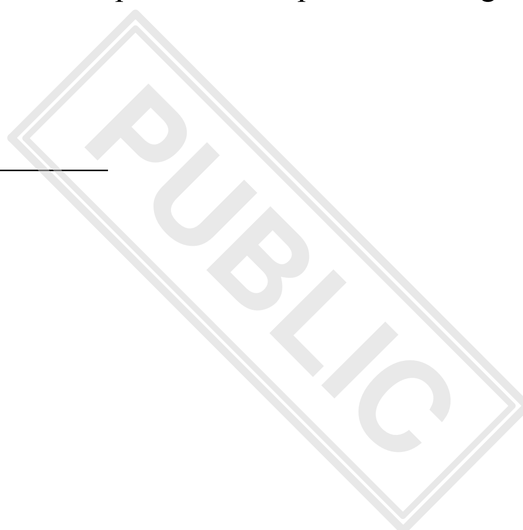
"CIT" means Member States, which apply at least one defensive measure not listed in the Guidance in the corporate tax area vis-à-vis listed jurisdictions

"PIT" means Member States, which apply at least one defensive measure not listed in the Guidance in the personal tax area, vis-à-vis listed jurisdictions

"Sectoral prohibitions" means Member States, which have adopted sectoral prohibitions against NCJs.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