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WORKING PAPER

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	(Draft) Progress Report by the Code of Conduct Group (Business Taxation) to the ECOFIN Council of December 2018 - Annex: Spain's regional Basque country patent box regime (ES023)

Delegations will find attached a document in view of the meeting of the Code of Conduct Group (Business Taxation) on 15 November 2018.

Spain's regional Basque country patent box regime (ES023)

The following rollback was agreed by the Code of Conduct Group on 21 September 2018:

a. Previous assessment:

"The main concern which deviates from the CoC criteria relates:

- to the scope of the IP assets that can benefit from the IP regimes. The three subnational laws state that eligible IP assets are "intellectual and industrial property to be defined by a regulation of the Administration". Thus, the scope defined by the law is broader than the categories covered by Action 5 report. Subsequently, possible further definition and clarifications are envisaged through administrative regulations, if the Administration considers it appropriate¹. So far, the regulations were not adopted leaving a degree of uncertainty and non-transparency and of discretion from the part of the administration to adopt them and thus apply the IP regime to a wide category of IP assets. "

b. Rollback amendments:

➤ An exhaustive list of eligible IP assets is included:

- patent,
- utility model,
- complementary protection certificates of medicines and of plant protection products,
- and
- sophisticated copyrighted software resulting from development and research activities.

The listed assets are in line with the nexus agreement (paragraphs 34 to 36) and the Group's previous decisions.

➤ Official legal references:

Alava

- Legal reference: Article 3. Section 1, Number 8 of the Foral Regulation 2/2018, 7th of March, to amend several norms and taxes of the Alava, tax system .
- Publication: B.O.T.H.A. (Official Gazette of Alava). 16th of March 2018.

¹ The three Spanish regional laws do not oblige the administration to adopt a clearer definition of eligible IP assets, but only states that the administration has the possibility to do so.
Literal wording of the three Spanish laws: "Se podrán establecer reglamentariamente los activos intangibles que den derecho a la aplicación de la presente reducción." [informal translation: it can be established by regulation which IP assets are eligible for the tax reduction...]

- Link: http://www.araba.eus/botha/Boletines/2018/032/2018_032_00980_C.pdf

Bizkaia

- Legal reference: Article 1, Number 8 of the Foral Regulation 2/2018, 21st of March, of which certain European long-term investment funds are characterized for tax purposes and amendments to the Foral Regulations of the Physical Persons Income Tax, Wealth Tax, Corporation Tax, Property Transfer Tax and Stamp Duty, Inheritance and Gift Tax, Cooperative Tax Regime and the General Tax Regulation of the Historical Territory of Bizkaia.
- Publication: B.O.B. (Official Gazette of Bizkaia). 27th of March 2018
- Link: http://www.bizkaia.eus/lehendakaritza/Bao_bob/2018/03/27/I-336_cas.pdf

Gipuzkoa

- Legal reference: : Article 2. Section 2, Number 8 of the Foral Regulation 1/2018 of 10th May, which introduces amendments to several tax regulations,
- Publication: B.O.G. (Official Gazette of Guipuzkoa). 17th of May 2018.
- Link: <https://ssl4.gipuzkoa.net/castell/bog/2018/05/17/c1803339.pdf>