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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: Croatia's Ordinance on the procedure of concluding advance pricing agreements (HR012)

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

Croatia's Ordinance on the procedure of concluding advance pricing agreements (HR012)

The Ordinance on the procedure of concluding advance pricing agreement details the procedure for concluding the Agreement which includes a prior interview, submission of a statement and the content of the statement of intent of concluding the Agreement, communication with other tax authorities, conclusion of the Agreement and taking on obligations, monitoring of the implementation of the Agreement, duration of the Agreement, termination and the administrative costs.

The internal instructions on the procedure of concluding advance pricing agreement and contractual relations with the Tax Administration, envisaged that the aforementioned tasks are performed by experts in the field of transfer pricing and it is mandatory to involve the person responsible for double taxation treaties and a person from local tax office responsible for a tax payer who is a party of the agreement (Office for Large Taxpayers is responsible for the current open case) .

The internal instructions on the procedure defines that at least 7 people jointly work on each request. All persons involved in process are participating in the previous interview, making decisions on accepting the initiative and working on the documentation provided by the taxpayer (Article 8 of the Ordinance prescribes mandatory documentation to be delivered). Persons working on the Agreement are checking the facts, examining, analyzing and evaluating the data from the statement and, if necessary, organize joint meetings with taxpayer to provide explanations.

The Agreement is concluded in a written form (no agreement has yet been signed, we expect the first to be signed by October 2018). The agreement will be binding for the Tax Administration. The content of the Agreement is stipulated in Article 10 of the Ordinance and have to include the description of the transactions that are the subject of the Agreement, the description of the agreed methodology and other similar issues such as agreed comparisons and range of expected results, critical assumptions based on methodology, all agreed procedures in a case of change in facts which does not require re-negotiation of the Agreement, obligations and deadlines that must be met by the parties and the consequences of non-fulfillment, the beginning of the implementation and duration of the Agreement.

The EU Guidelines for Implementing APA COM 2007 71 (EU Guidelines for APA published in the Commission Communication of 26 January 2007 (COM(2007) 71 final)) were taken into account for drafting the Ordinance as well as the OECD Guidelines for transfer pricing. However, the Ordinance applies equally to all taxpayers, large, middle or small. We consider that the costs of

concluding the Agreement are appropriate for taxpayers due to fact that it depends on the realized income (Article 15 of the Ordinance).

According to the Ordinance, the Agreement shall be concluded for a maximum period of five years, the taxpayer may submit a request for renewal of the Agreement six months before the expiry of the deadline. However, the Agreement does not extend automatically, procedure for concluding the Agreement would be repeated but in a convenient and customized manner.

The taxpayer is required to submit annual reports on the implementation of the Agreement in order to ascertain whether it complies with the terms of the Agreement, whether the information contained in the statement, in the annual reports and any accompanying documentation still apply, whether there has been any significant change in the facts or circumstances having an impact on the foreseeable result of the Agreement, whether the methodology is applied accurately and consistently in accordance with the terms of the Agreement and whether the critical assumptions underlying the transfer pricing methodology still apply (Article 12 of the Ordinance).

An internal instruction defines that those persons who were involved in the conclusion of the Agreement check and verify the facts in the submitted annual report. After analyzing the annual report, it is decided whether the Agreement will remain in force or will be terminated or revoked.

In case that tax authority of another country is participating in the procedure (this is decided in accordance with Article 3 of the Ordinance) the report shall also be submitted to that tax authority.

In case of termination or recall of the Agreement, the Tax Administration should timely inform and consult with the taxpayer and other tax authorities, which are included in the agreement (Article 13 and 14).

At its meeting of 21 September 2018, the Code of Conduct Group (business taxation) agreed that the regime falls out of scope .