Council of the European Union
General Secretariat

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LIMITE

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ECOFIN

NOTE

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation) Fiscal Counsellors / Attachés
Subject:	Code of Conduct Group (Business Taxation): draft report to the Council

Delegations will find attached a revised draft Code of Conduct Group (Business Taxation) report to the Council. If no substantial comments are received from delegations by Monday 2 June, cob, the report will be considered agreed by the Code of Conduct Group and submitted to the Council (ECOFIN) for approval in June 2025.

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]. On 8 November 2008 the Council reformed the Code of Conduct. The resolution 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. They will include the agreed descriptions and final assessments of the tax measures it has examined. Final documents, as approved by the Council, will be made public, as appropriate, in accordance with relevant rules."* (paragraph H).

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 2025 during the term of the Polish 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].

II. GENERAL ASPECTS

A. Organisation of work

5. At the meeting of the Code of Conduct Group on 29 January 2025, representatives of the Member States re-appointed Ms. María José Garde as Chair of the Group, in line with the

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[1] 6619/98.
[2] 15148/15.
[3] 6900/16.
[4] https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group

Council conclusions of 9 March 1998 on the establishment of the Code of Conduct Group (Business Taxation), for a second two-year term starting on 5 February 2025.

6. Meetings of the COCG were held on 29 January and 30 April 2025, and the subgroup meetings were held on 14 and 23 January, 27 February and 22 May 2025.

7. At the COCG meeting on 29 January 2025 Ms. Dorota Wiszniewska (Poland) and Ms. Tatiana König Mortensen (Denmark) were appointed as Vice-Chairs.

III. STANDSTILL AND ROLLBACK REVIEW PROCESS

8. A call for standstill and rollback notifications of new preferential tax measures enacted by the end of 2024 was launched in mid-November 2024, and the results were presented at the COCG meeting of 29 January 2025. The following new regimes were notified[5]:

- Denmark: Interest Deduction for R&D (DK007)
- Denmark: Refundable Tax Credit for R&D costs (DK008)
- Ireland: Participation Exemption for Foreign Dividends (IE018)
- Italy: Prolongation of Tax credit for investments in the Single Economic Zone for the year 2024 (IT025)
- Italy: Prolongation of the Increased Income Tax Deduction for labour costs related to new employees with open-ended contracts (IT027)
- Italy: Tax credit for investments in capital goods within innovation projects aimed at reducing energy consumption, so-called "Transition 5.0" (IT028)
- Romania: Grant of Bonus of 3% of the annual profit tax (RO014).

A. Standstill review process

9. The following decisions were reached by the Group:

a) On Denmark's Interest Deduction for R&D (DK007)[6], the Group agreed that the measure does not need to be assessed

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[5] See updated overview in 8602/9/20.
[6] 9011/25 ADD 1.

b) On Denmark's Refundable Tax Credit for R&D costs (DK008)[7], the Group agreed that the measure does not need to be assessed;

c) On Ireland's Participation Exemption for Foreign Dividends (IE018)[8], the Group agreed that the measure does not need to be assessed;

d) On Italy's Prolongation of the Increased Income Tax Deduction for labour costs related to new employees with open-ended contracts (IT027)[9], the Group agreed that the measure does not need to be assessed;

e) On Italy's Tax credit for investments in capital goods within innovation projects aimed at reducing energy consumption, so-called "Transition 5.0" (IT028)[10], [the Group agreed that the measure does not need to be assessed];

f) On Romania's Grant of Bonus of 3% (RO014)[11], the Group agreed that the measure does not need to be assessed.

B. Rollback review process

10. On Croatia's rollback measure to eliminate the harmful features of the Investment Promotion Act (HR019) and the New Investment Promotion Act (HR020), the Group supported the assessment that the rollback measure in its amended version is sufficient and adequate to eliminate the harmful features of measures HR019 and HR020.[12]

IV. MONITORING OF THE ACTUAL EFFECTS OF INDIVIDUAL MEASURES

11. During recent years, some of the measures subject to scrutiny were put under annual monitoring. In accordance with past practice, the concerned Member States are expected to communicate to the Group the relevant data by the end of June. In the first semester of 2025, the Group has looked into the actual effects of the remaining measures from the previous 2023 monitoring cycle, which had not been dealt with due to lack of data.

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7 9011/25 ADD 2.
8 9011/25 ADD 3.
9 9011/25 ADD 4.
10 9011/25 ADD 5.
11 9011/25 ADD 6.
12 9011/25 ADD 7.

12. The following decisions were reached by the Group:

a) On Cyprus' Notional interest deduction (CY020)[13], the Group supported the preliminary assessment that the monitoring should continue and that the Cypriot authorities were invited to improve the data collection and provide the relevant data.

b) On Cyprus' measure on the use of safe-harbour rules for intra-group financing (2013 Guidance on intermediate financing or licensing activities)[14], the Group supported the preliminary assessment that the monitoring for years 2019, 2020 and 2021 can be terminated, in particular considering that the measure in question was abolished on 1 January 2022.

c) On Poland's measure on the use of safe-harbour rules for intra-group financing (2013 Guidance on intermediate financing or licensing activities)[15], 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.

Other workstreams

European Court of Auditors' special report No 27/2024: Combatting harmful tax regimes and corporate tax avoidance

13. The Group considered the recommendations of the report of the European Court of Auditors relevant to its mandate and operations, and agreed to begin work to address them - specifically, by revising the Guidance on Rollback and developing Guidance on grandfathering rules. The subgroup was tasked with the technical discussion and will report back to the main Group.

Way forward in relation to expenditure-based tax incentives (criterion 2)

14. The Group agreed to hold a preliminary discussion on the application of the nexus requirement to expenditure-based tax incentives in Special Economic Zones, with a view to promoting competitiveness in the Union.

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13 9011/25 ADD 8.
14 9011/25 ADD 9.
15 9011/25 ADD 10.

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 10 December 2024[16], the Council (ECOFIN) acknowledged the positive impact of the Code of Conduct and the Group's efforts in mitigating harmful tax practices, contributing to the reduction of preferential tax regimes both within the EU and globally. The Council welcomed the progress achieved by the Code of Conduct Group in the revision of the EU list of non-cooperative jurisdictions in October 2024 and encouraged the Group to maintain effective dialogue with jurisdictions, monitoring, and screening, to support their compliance with the EU listing criteria and fulfilment of commitments within the agreed deadline.

16. The Council appreciated the revision of the EU list of non-cooperative jurisdictions in February 2025 and invited the Group to further continue the effective dialogue with jurisdictions, so that they continue to fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed Annex II deadlines.

17. The Council welcomed the adaptation by the Group of the future monitoring for criterion 1.2 in the context of the new Global Forum monitoring and review framework on tax transparency, recognised the continuous monitoring of the relevant no or only nominal tax jurisdictions on the progress made on implementation of the legal framework on Collective Investments Vehicles (CIVs) under criterion 2.2, acknowledged the extension of the application of criterion 3.2 to jurisdictions that joined the OECD/G20 Inclusive Framework on BEPS as of 1 January 2018 and acknowledged the request for commitment from the jurisdictions concerned.

18. The Council welcomed the work on the appropriate selection indicators for future modifications of the geographical scope of the EU list and called on the Group to continue the work to incorporate beneficial ownership as a fourth transparency criterion.

19. 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 periodical update of the EU list.

20. The preparation of the latest revision of the list took place at the subgroup meeting on 14 and 23 January 2025 and was finalised at the COCG meeting on 29 January 2025. The

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16 16770/24.

updated EU list of non-cooperative jurisdictions was approved by the Council on 18 February 2025[17] and published in the Official Journal on 28 February 2025[18].

21. There are 11 jurisdictions on the EU list of non-cooperative jurisdictions for tax purposes (Annex I) after the update: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russian Federation, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

22. The majority of listed jurisdictions managed to make progress on one or more of the listing criteria, but remain listed for at least one other criterion. Anguilla and Panama made a commitment to improving their compliance with criterion 1.2 on exchange of information on request. The entries on American Samoa, Guam and the US Virgin Islands in Annex I were updated as regards criterion 3, following the conclusion by the COCG that the four BEPS minimum standards are at present not relevant for the three US territories.

23. Positive developments can also be noted in the state of play of commitments (Annex II of the relevant conclusions). Two jurisdictions, Costa Rica and Curaçao, fulfilled their commitments by addressing the deficiencies in their automatic exchange of tax information system, and were removed from Annex II. Also, Brunei Darussalam made a commitment to amend or abolish its foreign-source income exemption regime by 31 December 2025, which was included in Annex II.

24. Türkiye remains on Annex II for criterion 1.1 (automatic exchange of information) as it is still not fully in line with the commitments as per the conclusions of the Council (ECOFIN) of 22 February 2021, 5 October 2021, 24 February 2022, 4 October 2022, 14 February 2023, 17 October 2023, 20 February 2024, 8 October 2024 and 18 February 2025. 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 mentioned in the conclusions of the Council (ECOFIN) above.

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17 6322/25.

18 OJ C 2025/1473, 28.2.2025, pages 1-4.

B. Monitoring of the implementation of commitments taken by jurisdictions

General overview

25. As of February 2025, the implementation of a total of 11 commitments[19] taken at a high political level by 11 jurisdictions[20] remains to be monitored by the Group. These are recorded in Annex II of the Council conclusions:

Criterion	**Number of jurisdictions committed**
1.1	1
1.2	7
2.1	2
3.2	1

26. Pending commitments on automatic exchange of information, exchange of information on request and implementation of the CbCR minimum standards are detailed under dedicated sections to criteria 1.1, 1.2, and 3.2 respectively and in the respective entries for jurisdictions listed in Annex I.

27. Moreover, two harmful tax regimes remain to be rolled back by two jurisdictions under criterion 2.1[21]. A detailed overview can be found in the compilation[22] of preferential regimes and measures examined by the COCG under criteria 2.1 and 2.2.

Political and procedural dialogue

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

29. 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.

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[19] This figure adds up the number of commitments by jurisdictions under each criterion (see table).

[20] Anguilla, Antigua and Barbuda, Belize, British Virgin Islands, Brunei Darussalam, Eswatini, Panama, Seychelles, Türkiye, Vanuatu, Vietnam.

[21] “Eswatini’s ”Special economic zones” and Brunei Darussalam’s ”harmful foreign-source income exemption regime”.

[22] 6430/23.

Delegations were kept informed about these interactions, and response letters signed by the Chair were agreed by the Group.

C. Screening and scoping issues

New criterion 1.4 on beneficial ownership information

30. In its conclusions of 10 December 2024, the Council (ECOFIN) called on the Group to continue the work to incorporate beneficial ownership as a fourth transparency criterion.

Criterion 2.1 Regimes under FHTP monitoring

31. In 2024, the Forum on Harmful Tax Practices (FHTP) assessed several preferential tax regimes in jurisdictions that had made commitments to the Code of Conduct Group. For Eswatini, the FHTP concluded that the amended "Special Economic Zones" regime is not harmful, subject to the adoption of final legislation; Eswatini remained on Annex II after February 2025 update of the EU list. Fiji remains on Annex I, as one harmful regime is still under review and another remains unamended. For Trinidad and Tobago, the FHTP found the "Free Trade Zones" regime abolished and the new "Special Economic Zones" regime not harmful for non-IP activities; however, the jurisdiction stays on Annex I due to other unresolved concerns.

32. At the meeting on 30 April 2025 the Group held an initial exchange of views on the possible impact of the revised FHTP methodology for regime reviews and the frequency of the monitoring processes on its work. The discussion will continue in light of follow-up discussions on the matter at the FHTP.

Criterion 2.1 (Foreign source income exemption regimes)

33. In October 2019, the Council (ECOFIN) 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.

34. 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.

35. 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.

36. 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[23]. One jurisdiction did not express the requested commitment[24]. The remaining three jurisdictions[25] were deemed compliant under the EU listing criteria. One jurisdiction[26] reformed its FSIE regime before the end of 2022, with effect from 1 January 2023.

37. 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[27], the Group decided to grant the two concerned jurisdictions[28] 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.

38. At its meeting on 7 February 2024, the COCG agreed to grant additional time to Malaysia until 31 March 2024 to complete the reform of its FSIE regime, considering the substantial progress made by the jurisdiction. Primary legislation was adopted by Malaysia in December 2023 with effect on 1 January 2024, introducing a tax on foreign sourced capital gains. Secondary legislation and guidelines exempting from tax foreign sourced capital gains for entities meeting economic substance requirements were adopted by Malaysia in March 2024 and positively assessed by the subgroup at its meeting on 24 April 2024, subject to the adoption of two amendments. The jurisdiction adopted these two amendments on 26 April 2024 in line with the COCG requirements. Since the reform of the FSIE regime was completed, the reference to Malaysia was removed from Annex II during the update of the EU list in October 2024.

39. Additionally, Brunei Darussalam was found to maintain a harmful FSIE regime which is lacking substance requirements and anti-abuse rules. Following a request from the Group in November 2024, Brunei committed at a high political level in January 2025 to

[23] Costa Rica, Hong Kong, Malaysia, Qatar and Uruguay.
[24] Panama.
[25] Maldives, Nauru and Singapore.
[26] Uruguay.
[27] 14674/22.
[28] Hong Kong and Malaysia.

amending or abolishing the regime. This commitment was recorded in Annex II during the February 2025 update of the EU list.

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

40. 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.

41. 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[29]. 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).

42. In May 2022, the COCG kicked off a targeted annual monitoring of the implementation of the enhanced framework on CIVs by the four jurisdictions concerned on the basis of a specific questionnaire. Given that CIVs are out of the scope of the FHTP standard, such monitoring would be led entirely by the Group with the technical assistance of the Commission.

43. For the first relevant period of CIVs monitoring, for years 2020, 2021 and partly 2022, the Group acknowledged the substantial efforts made by all jurisdictions concerned. Soft recommendations were addressed to three out of four jurisdictions.

44. Furthermore, in August 2023 the Group agreed on an updated questionnaire for the second monitoring year (2023). The findings were discussed at the meeting of 22 November 2023 with a view to addressing updated soft recommendations to the jurisdictions concerned.

45. At the meeting on 8 November 2024, the subgroup supported the Commission proposal to communicate to three jurisdictions[30] the need to address soft recommendations in the concerned areas, which will be reviewed by the COCG in the context of the fourth (2025) monitoring year.

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[29] The Bahamas, Bermuda, British Virgin Islands and Cayman Islands.
[30] The Bahamas, British Virgin Islands and Cayman Islands.

Process for the Monitoring of Economic Substance Requirements for partnerships under criterion 2.2

46. In May 2020, the COCG assessed how different 2.2 jurisdictions treat partnerships in their legislation on economic substance. The results confirmed that only five 2.2 jurisdictions included all relevant partnerships in the scope of their legislation on economic substance[31]. The COCG asked the 2.2 jurisdictions for which this was not the case[32] to extend the scope of their legislation on economic substance to relevant partnerships by June 2021, with effect from 1 July 2021.

47. In May 2023, the COCG agreed on a yearly monitoring process to ensure a proper enforcement of economic substance requirement for partnerships over time. The first year of monitoring (2023) concerned information/data and compliance actions taken by 2.2 jurisdictions from 1 July 2021 to 31 December 2022.

48. Following coordination with the FHTP Secretariat and with a view to facilitating the process for relevant jurisdictions, a questionnaire targeting partnerships was agreed to be circulated as an annex to the questionnaire on the implementation of economic substance requirements for companies circulated by the FHTP and set to follow the same timeline.

49. The results of the first year of monitoring revealed that the majority of relevant jurisdictions was still not in a position to provide concrete data on the application of the economic substance requirements to partnerships. In its meeting of 7 February 2024, the COCG agreed to address only soft recommendations where deficiencies had been identified[33].

50. At its meetings on 14 January 2025, 23 January 2025 and 29 January 2025, the COCG discussed the information and data provided by relevant jurisdictions for the second year of monitoring. The COCG agreed to address soft recommendations to four[34] out of nine jurisdictions concerned.

Implementation of criterion 3.2

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31 The Bahamas, Bahrain, the Republic of Marshall Islands, Turks and Caicos Islands, and United Arab Emirates.

32 Anguilla, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, and Jersey.

33 Anguilla, the Bahamas, Barbados, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Jersey, the Isle of Man, and the Turks and Caicos Islands.

34 The Bahamas, the British Virgin Islands, the Cayman Islands and the Turks and Caicos.

51. 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.

52. 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 and additional assessments of bilateral exchange relations for CbCR with EU Member States. Eleven jurisdictions with identified deficiencies on CbCR were asked to undertake commitments to address these deficiencies 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.

53. Following the release of the 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, the British Virgin Islands and Tunisia from Annex II for criterion 3.2 and to delete 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.

54. On 25 September 2023, the IF published its 2023 peer review report on CbCR. At its meeting on 3 October 2023, the Code of Conduct Group assessed the results of the IF peer reviews for the remaining jurisdictions with pending commitments on criterion 3.2. In 2023, the IF no longer addressed any general recommendations to Belize, Israel, Montserrat, Panama and Thailand. These jurisdictions had also taken the necessary steps to be able to exchange effectively CbCR reports with all EU Member States. As a result, the COCG deemed their commitments on criterion 3.2 fulfilled and recommended to remove the references to these jurisdictions with regard to criterion 3.2 from the relevant Annexes. Trinidad and Tobago did not fulfil its commitment on CbCR within the agreed deadline. Accordingly, the Group recommended to update the entry on Trinidad and Tobago in Annex I to include a reference to criterion 3.2 at the update in October 2023.

55. At its meetings on 23 November 2022, 3 October 2023 and 22 November 2023 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 on or after 1 January 2018. The COCG agreed to extend the scope of criterion 3.2 to relevant jurisdictions in this group.

56. At its meeting on 22 November 2023, the COCG decided to start the process by asking jurisdictions within the scope of the EU list that have joined the BEPS Inclusive Framework since 1 January 2018, except those who have fully implemented the global standard on CbCR or opted out in 2023 from the BEPS Action 13 Peer Review Process, for information about resident UPEs of multinational enterprise groups with a consolidated group revenue above the CbCR reporting threshold.

57. On 24 April 2024 the subgroup was informed about the replies provided by the 18 jurisdictions, which received information letters regarding the future application of criterion 3.2.

58. After the publication of the IF peer reviews on CbCR in September 2024, the Group took stock of the peer review outcomes for jurisdictions which have joined the BEPS IF on or after 1 January 2018. The Group also assessed the state of bilateral exchange relations for CbCR of these jurisdictions with EU Member States and the presence of resident UPEs of MNE groups above the reporting threshold of 750 million EUR in their respective territories.

59. On this basis, the COCG decided on 20 November 2024 to request commitments on criterion 3.2 from jurisdictions with one or more outstanding general recommendations in the 2024 Inclusive Framework report and one or more resident UPE in 2022 or 2023. Jurisdictions in this category which have not yet activated relationships for CbCR exchanges with all EU Member States will be asked to commit to address this issue as well. Commitments will be recorded in Annex II at the update of the EU list in October 2025. The deficiencies should be addressed in time to be reflected in the 2026 Inclusive Framework peer review report on CbCR.

60. In addition, the COCG decided to start monitoring, as of 2025, on an annual basis, all Inclusive Framework jurisdictions which have not yet been asked for commitments on criterion 3.2 by the COCG due to non-relevance or opt-outs from the peer review process in either 2024 or preceding years, in order to check if exemptions previously granted remain justified.

61. At its meeting on 30 April 2025, the Group supported the monitoring of **the existence of in-scope ultimate parent entities in BEPS IF member** jurisdictions previously exempted from criterion 3.2 by the COCG and […] agreed to send information letters to […] **those of these** jurisdictions **which have received recommendations in the course of the IF Action 13 peer review process**. Seventeen jurisdictions with one or more general recommendations by the BEPS IF in 2024 and missing activations for CbCR

exchanges with EU Member States were asked for information about resident UPEs of MNEs captured by the CbCR reporting threshold in 2024.

[~~Geographical scope~~]

62. […]

STANDSTILL 2025 – Denmark (DK007)

Summary analysis – Increased deductions for R&D

1. Background

1. The Danish authorities notified the tax measure – increased deduction of R&D costs (a front-end tax incentive) – under the 2024 standstill exercise (DK007).

2. Relevant legal framework

2. § 8 B of the Tax Assessment Act (ligningsloven) as amended by § 2 of Law no. 1472 of 10 December 2024 (Lov om ændring af afskrivningsloven, ligningsloven og lov om indskud på etableringskonto og iværksætterkonto (Afskaffelse af muligheden for at straksafskrive på edb-software, knowhow og patentrettigheder m.v. og forhøjelse af fradraget for udgifter til forsøgs- og forskningsvirksomhed) [35].

3. The amendments to the measure entered into force on 1 January 2025.

1. Purpose of the measure

4. Denmark already has a measure which allows for a tax deduction for research and development (R&D) costs at 110%. In order to promote further investments in certain IP assets and thus supporting business growth and competitiveness, the new measure increases this deduction in progressive steps to 120%. It starts with an increase to 114% in fiscal year 2026, it goes to 116% in the fiscal year 2027, and reaches a deduction of 120% in fiscal year 2028 onwards.

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35 LOV nr. 1472 af 10/12/2024

2. Design of the measure

2.1. *Beneficiaries*

5. Taxpayers conducting business activities are entitled to the increased deduction for eligible R&D costs.

6. The increased deduction is available to resident and non-resident taxpayers, regardless of their legal form, size, or type of business activity.

2.2. *Qualifying R&D activities and eligible costs*

7. Under the measure, qualifying R&D activities primarily cover development work that is linked to the business. This means the use of scientific or technical knowledge to produce new or significantly improved materials, mechanisms and products, processes, systems, or services. Activities also cover so-called applied research, i.e., original studies with the aim of obtaining new scientific or technical knowledge and understanding, primarily aimed at practical goals and applications. Basic research is also covered, meaning original studies with the aim of obtaining new scientific knowledge and understanding, without the studies primarily being aimed at practical goals and applications.

8. Eligible costs have to be carried out in relation to qualifying R&D activities and will typically include salary costs, costs for raw materials and costs for renting laboratories or similar facilities used for experimental and research activities. Costs incurred for the acquisition of machinery, equipment and similar operating assets and ships are also included[36].

2.3. *Tax advantage*

9. The tax advantage consists in an increased deduction for the eligible R&D costs which are subtracted from the tax base at the end of the fiscal year in question. The new measure increases the existing deduction from 110% to 120%. The increase is gradually

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[36] The rule does not cover costs incurred in connection to exploration for raw materials.

introduced starting with an increase to 114% in the fiscal year 2026, 116% in the fiscal year 2027, and 120% as of the fiscal year 2028.

10. If the company is loss-making, it can choose to get a refundable tax credit for all, or a part of, the eligible R&D costs (DK008 - WKXXX) in the sense that a loss-making company, which, e.g., is entitled to an increased deduction of 120%, may choose to get a refundable tax credit on the basis of 100% of the eligible costs, while the remaining 20% may be used to get the tax deduction.

2.4. *Amount of the tax advantage*

11. The tax measure is a front-end incentive for R&D costs incurred by taxpayers and its benefit depends on the types of qualifying activities carried out and amount of R&D eligible costs actually incurred.

12. Based on the information provided by Denmark, the increase applies to costs up to DKK 1 billion[37] (2024 level)[38] of eligible costs. For groups of companies, which are taxed on a consolidated basis, the ceiling applies to the group jointly. Eligible costs that exceed the ceiling may be deducted at 110% as of the fiscal year 2026.

13. As an example, assuming that a company has eligible R&D costs of DKK 1,000,000 in 2026, the increase would amount to DKK 140,000 (extra 14% of the eligible costs). The overall deduction would amount to DKK 1,140,000 (114% of the eligible costs) for the fiscal year 2026. Given the Danish CIT rate of 22%, the tax advantage would be DKK 30,800 (140,000 x 22%) = EURO 4,127.

2.5. *Duration and exercise of the tax incentive*

14. The increased deduction can be exercised for the first time in the fiscal year 2026. The measure is not limited in time, i.e., as of 2028, the deduction will be fixed at 120%.

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37 DKK 1,000,000,000 = 134,076,000.5 Euro

38 The ceiling is indexed annually to maintain the economic value in real terms.

2.6. Budgetary impact

15. The increase in the deduction for eligible R&D costs is estimated to result in a permanent annual decrease in revenue of approx. DKK 500 million[39] after automatic and behavioural effects.

3. Conclusion

16. It is the Commission Services' opinion that the measure does not need to be assessed for the following reasons:

i. The new tax incentive is a front-end (or cost-based) incentive.
ii. As such, the front-end incentive consists in a tax relief of real R&D costs incurred by businesses.
iii. The measure is capped at a maximum amount.
iv. If the tax relief cannot be used fully in a given year because the company does not have sufficient profits, a refund under the conditions of the tax credit for R&D (DK008) is possible or the loss of the company can be carried forward according to the general rules.

17. Furthermore, the Code of Conduct Group has already cleared a number of front-end incentives[40] for R&D in the past as this kind of tax incentives is considered an economically sound and evidence-based method for encouraging R&D and innovation activities.

18. More generally, promoting research, development and innovation is an important Union objective laid down in Article 179 of the TFEU.

4. Follow-up

19. In view of the above, the Group agreed that the measure does not need to be assessed.

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39 DKK 500,000,000 = EUR 67,025,539

40 Such 'front-end' tax incentives may operate as deductions from the tax to pay or as deductions from the tax base like the present tax measure. For example, the Italian cases (IT023) in 2022, (IT022) in 2021 or the German case (DE015) in 2020, or the Croatian case (HR013) in 2019.

STANDSTILL 2025 – Denmark (DK008)

Summary Analysis – Refundable Tax Credit for R&D Costs

1. Background

1. The Danish authorities notified the tax measure – Refundable tax credit for R&D costs – under the 2024 standstill exercise (DK007).

2. Relevant legal framework

2. § 8 X of the Tax Assessment Act as amended by § 5(1-2) of Law no. 1691 of 30 December 2024 (Lov om ændring af selskabsskatteloven, aktiesparekontoloven, aktieavancebeskatningsloven, personskatteloven og forskellige andre love (Udmøntning af dele af »Aftale om Iværksætterpakken«).[41]

3. The amendments to the measure entered into force on 1 January 2025.

3. Purpose of the measure

4. Denmark already has a measure which allows for a refundable tax credit for research and development (R&D) costs. When the R&D cost result in a deficit, the company can request a refund instead of relying on the general loss carry forward rules. The measure is intended to strengthen the companies' (especially SMEs) liquidity when investing in research and development whilst being in a loss-making situation. With the new law, the ceiling for the maximum amount of refundable tax credits is increased to a tax value of up to DKK 35 million[42] annually as of the fiscal year 2027. For the fiscal years 2025 and 2026, the ceiling is covered by the previous legislation and it is set at a tax value of DKK 25 million annually (2024 level)[43].

4. Design of the measure

4.1. Beneficiaries

5. All resident and non-resident companies that are subject to tax in Denmark are entitled to the tax credit for R&D.

4.2. Qualifying R&D activities and eligible costs

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41 Lov nr. 1691 af 30-12-2024
42 The tax value is DKK 7,700,000 (CIT rat of 22% x 35,000,000) = EUR 1,031,907
43 The ceiling is indexed annually to maintain the economic value in real terms.

6. Under the tax measure, qualifying R&D activities primarily cover development work that is linked to the business. This means the use of scientific or technical knowledge to produce new or significantly improved materials, mechanisms and products, processes, systems or services. Activities also covers so-called applied research, i.e., original studies with the aim of obtaining new scientific or technical knowledge and understanding, primarily aimed at practical goals and applications. Basic research is also covered by the provision, meaning original studies with the aim of obtaining new scientific knowledge and understanding, without the studies primarily being aimed at practical goals and applications.

7. Eligible costs have to be carried out in relation to qualifying R&D activities and will typically include salary costs, costs for raw materials and costs for renting laboratories or similar facilities used for experimental and research activities. Costs incurred for the acquisition of machinery, equipment and similar operating assets and ships are also included[44].

4.3. Tax advantage

8. Companies in a loss-making situation cannot immediately benefit from the measures set out in § 8 B of the Tax Assessment Act, as these companies will not have any positive taxable income which the increased tax deduction of eligible R&D costs can be offset against (see DK007, WK-xxx/2025). The loss-making companies can, nonetheless, apply these measures and carry the loss forward according to the general rules.

9. As an alternative, upon request to the Tax Administration, a refundable tax credit may be granted to loss-making companies for R&D costs that have resulted in a deficit. The refundable tax credit is granted for an amount corresponding to 22%[45] of the incurred R&D costs (i.e., the value of the tax loss carry-forward of the incurred costs).

10. As a result, the measure consists in a cashflow advantage. According to the general rules, deficits can only be offset against the tax due in subsequent years in which there are taxable profits (tax loss carry forward). The refundable tax credit allows the tax value of the deficits to be paid out at the time of the calculation of the tax due for the fiscal year in which costs are incurred. The tax loss carry-forward is, thus, "converted" into a refundable tax credit which can increase the immediate liquidity of the company. The

44 The rule does not cover costs incurred in connection to exploration for raw materials.
45 22% is the general CIT rate in Denmark.

request for a refundable tax credit for eligible R&D costs will reduce the costs which can be used for a tax loss carry-forward accordingly.

4.4.Amount of the tax advantage

11. The deficit, i.e., negative taxable income, is calculated on the total negative income of the company. For groups of companies, which are taxed on a consolidated basis, the deficit is calculated jointly on the basis of the total negative income of the whole group.

12. Based on the information provided by Denmark, the refundable tax credit cannot exceed an amount of DKK 7.7 million[46], corresponding to a tax loss relating to R&D costs of DKK 35 million as of the year 2027. For groups of companies, which are taxed on a consolidated basis, the ceiling applies for all companies in total.

13. As an example, assuming that a company has a tax total deficit of EUR 2,000,000 of which eligible R&D costs consists of EUR 1,000,000 in 2027, the refundable tax credit would amount to EUR 220,000 (22% of the eligible costs). The tax loss carry-forward according to the general rules is accordingly decreased to EUR 1 million (corresponding to the non-eligible part of the total deficit). The overall tax advantage would thus amount to nominally DKK 0 (zero) overall for a profit-making company because the refunded amount would otherwise be re-captured over time by the loss-carry forward.

14. The amount of the refundable tax credit cannot exceed the tax value of the actual costs. The amount of the increased deduction, cf. § 8 B of the Tax Assessment Act, does not therefore qualify for the calculation of the refundable tax credit. This increased deduction will be treated as a loss and can be carried forward according to the general rules.

4.5. Duration and exercise of the tax incentive

15. The increased refundable tax credit can be applied for the first time in fiscal year 2027. For the fiscal years 2025 and 2026, the existing (lower) ceiling applies.

4.6.Budgetary impact

16. The increase of the ceiling for the refundable tax credits is estimated to result in a permanent annual decrease in revenue of approx. DKK 50 million after automatic and behavioral effects.

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46 DKK 7,700,000 = Euro 1,032,374.

5. Conclusion

17. It is the Commission Services' opinion that the measure does not need to be assessed for the following reasons:

The measure is not a tax credit in the classic sense. It does not change the total tax due but strengthens loss-making companies' liquidity when they have invested in research and development activities. The measure entails a cash flow (liquidity) advantage, as the tax value of eligible costs is paid out, rather than carried forward and offset against tax due in subsequent fiscal years. The refundable tax credits are paid out at the time on the calculation of the tax due for the fiscal year in which the eligible costs are incurred.

6. Follow-up

18. In view of the above, the Group agree that the measure does not need to be assessed.

ADDENDUM 3

STANDSTILL – IRELAND (IE018) - Participation exemption for foreign dividends

I. Background

Ireland has notified the introduction of a participation exemption for certain foreign distributions in the framework of the annual standstill exercise for 2024.

II. Description of the measure

1. Relevant legal framework

The participation exemption for certain foreign distributions (hereafter "the participation exemption") was introduced by section 50 of the Finance Act 2024. The measure is contained section 831B of the Taxes Consolidation Act 1997 (TCA). The participation exemption applies in respect of relevant distributions made on or after 1 January 2025.

2. Purpose of the measure

The policy objective of introducing a participation exemption is to simplify the redistribution of profits and other reserves from overseas subsidiaries to their parent companies by providing double taxation relief in the form of an exemption.

Ireland was the only EU Member State and one of a very small number of OECD countries that did not operate some form of participation exemption for foreign dividends. Ireland traditionally operated a worldwide tax system, whereby an Irish resident company is liable to corporation tax on all its profits wherever arising. Where income is chargeable to tax in more than one country, as is the case where a parent company receives distributions from a foreign subsidiary, the parent company receives a credit for the tax paid in respect of that income in the subsidiary's jurisdiction.

The participation exemption simplifies these rules by providing a corporation tax exemption for qualifying foreign distributions received by parent companies. Consequently, the participation exemption arrives at the same outcome, but through a less onerous system.

The tax treatment applicable to capital gains is not dealt with under the notified participation exemption of section 831B.

3. Design of the measure

The participation exemption is available to corporate taxpayers receiving a relevant distribution from a relevant subsidiary, subject to certain conditions.

A relevant distribution is a payment from a subsidiary to a parent company made out of profits or, in certain circumstances, out of assets of the subsidiary. The distribution must be made to the recipients in their capacity as shareholder.

To qualify for the exemption, the distribution must be classified as Case III income, which generally relates to investment income. A distribution which constitutes trading income for the recipient is not in scope of the exemption.

In order to avail of the exemption, the parent company must make a claim in its corporation tax return. If a claim is made to avail of the participation exemption in respect of an accounting period, all relevant distributions are exempted. A claim cannot be made on a dividend by dividend, or subsidiary by subsidiary, basis.

3.1. Beneficiaries

The parent company must be tax resident in Ireland or a non-resident company from the EEA which has a permanent establishment in Ireland. The parent company must have a holding of at least 5% of ordinary shares in the relevant subsidiary, for a continuous period of at least 12 months. In addition, the parent company must have a beneficial entitlement to at least 5% of both the (i) profits and (ii) assets on a winding up of the relevant subsidiary, that are available for distribution to equity holders of the relevant subsidiary. These holding requirements ensure there is substance and prevent contrived holdings. The relevant subsidiary must, on both the date that the distribution is made and throughout the five-year period prior to this date, have also been resident in the EEA or a country with which Ireland has a Double Tax Agreement.

3.2. Activity based exclusions

The participation exemption does not apply to certain entities based on the activity which they undertake. These activities are subject to specific rules for the computation of corporation tax. These entities are excluded from the participation exemption:

- Collective investment vehicles and securitisation companies.
- Life assurance companies generally.
- Offshore funds.

3.3. Prevention of double non-taxation or double benefit

The prevention of double non-taxation is achieved through several provisions.

- To avail of the participation exemption, the relevant subsidiary must not be generally exempt from a foreign tax which corresponds to Irish corporation tax, both at the date the distribution is made and throughout the five-year period prior to this date. A foreign tax is a tax that generally applies to income, profits and gains of a resident company, imposed at a nominal rate greater than zero per cent.

- The relevant distribution must constitute income in the hands of the recipient (parent) company for Irish tax purposes. This mirrors the requirement for double tax relief in the form of a credit whereby the dividend must be an income receipt, rather than a capital receipt.
- A distribution which is deductible for tax purposes in any jurisdiction is not eligible for exemption.
- Payments of any interest or other income from debt claims providing rights to participate in a company's profits, or payments of interest equivalents, cannot qualify for exemption.
- Only distributions from subsidiaries resident in EU/EEA Member States and tax treaty partner jurisdictions qualify. Distributions from subsidiaries resident in jurisdictions included on the EU Code of Conduct list of non-cooperative jurisdictions for tax purposes do not qualify for the participation exemption.
- Anti-avoidance measures exist to prevent the exemption of a distribution sourced from a company resident in a non-qualifying country, if this is contrived through means of a group reconstruction or merger arrangement.

3.4. Anti-abuse rules

In addition to the safeguards outlined above, the participation exemption legislation also contains a targeted anti-avoidance rule. This provides that distributions which arise in respect of an arrangement put in place to obtain a tax advantage, or in respect of an arrangement which is not genuine, do not qualify for the participation exemption.

Furthermore, the exemption will not apply where another provision takes precedence, for example, the ATAD-compliant general anti-avoidance rule (GAAR) contained in section 811C of the TCA.

Ireland transposed CFC rules, as foreseen in the ATAD Directive, via Finance Act 2018. Ireland would also highlight that subsection (1)(e) of section 50 of the Finance Act 2024 provides that a CFC's undistributed income (on which the CFC charge arises) will not be reduced where a distribution has been made to an Irish resident person and a claim for the participation exemption has been made with respect to that distribution.

4. Impact of the measure

The policy objective of the participation exemption is to simplify the current practice of providing double tax relief for tax already paid on the same profits. The tax credit system achieved this outcome but was administratively onerous.

This measure simplifies the current rules for double taxation relief, it is not expected to result in additional relief or the application of a lower level of taxation than the level which generally applies and therefore there is no anticipated budgetary impact.

III. Preliminary remarks

The Irish participation exemption provides relief from double taxation in the form of exemption. The measure does not include capital gains[47].

In the 1999 report[48], the Group decided that participation exemptions should be combined with an appropriate controlled foreign company legislation, in order to avoid that income from tax havens and other harmful regimes is received tax free in a Member State. These principles have then been laid down in the 2010 Guidance on inbound profit transfers[49], which mandates Member States that grant a corporate tax exemption on foreign source dividends to apply either effective anti-abuse provisions (e.g. CFC rules) or a switch-over provision.

The Guidance was superseded by the ATAD Directive (2016/1164), according to which EU Member States have to implement a CFC rule. As a result, by the implementation of the ATAD Directive, the 2010 guidance on inbound profit transfers was implemented as well[50].

Ireland applies CFC legislation since 2018, as foreseen in the ATAD Directive.

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47 The Irish capital gains exemption and the Irish holding company regime have been examined by the Group in 2005, and more recently in 2019. In 2019, under the monitoring of the compliance with the relevant Guidance, the holding company regime was considered compliant with the 2000 Guidance on Holding companies regime.

48 Report of 23.11.1999, SN 4901/99, para. 48. See also SI004 (9427/05 FISC 55); CYP017, (16766/10 FISC 139).

49 16766/10 FISC 139. The Guidance reads: *"Member States may opt to tax inbound profit transfers or to operate a participation exemption. Member States which operate a participation exemption should either ensure that the profits which give rise to foreign source dividends are subject to effective anti-abuse or countermeasures, or apply switch-over provisions targeted at ensuring effective taxation. The first could be achieved through a Member State having CFC-legislation or other anti-abuse provisions which ensure that profits artificially diverted from that Member State which may give rise to foreign source dividends are appropriately taxed."*

50 Room document of 6.4.2018, WK 3998/2018.

Furthermore, Ireland ensures an effective taxation of the distributed profits through several other provisions:

Firstly, through the requirements of the participation exemption, especially the following:

The distributing company should not be exempt from taxation and the distribution is not allowed to be deductible for tax purposes in any jurisdiction.

Only distributions from subsidiaries in the EU/EEA and countries which have a Double Taxation Treaty with Ireland qualify for the exemption. Distributions from subsidiaries resident in jurisdictions included in the EU list of non-cooperative jurisdictions for tax purposes do not qualify for the participation exemption.

Secondly, through anti-abuse rules:

There is a targeted anti-abuse rule (TAAR), which avoids that non-genuine arrangements qualify for the participation exemption.

Furthermore, Ireland has a general anti-abuse rule, which may be applied instead of, or in addition to, the TAAR depending on the circumstances.

IV. Conclusion

Considering that Ireland applies CFC rules and that additional, adequate anti-abuse provisions are in place, the measure does not need to be assessed.

V. Follow-up

In view of the above, the Group agreed that this measure does not need to be assessed.

ADDENDUM 4

DRAFT STANDSTILL ANALYSIS – ITALY (IT027)

Prolongation of the Increased income tax deduction for labour costs related to new employees with open-ended contracts

Background

1. Italy notified the measure IT027 – Additional income tax deduction to encourage an increase in the employment base and open-ended employment contracts - in the 2023 Standstill Notification Exercise. The measure was intended to apply only in the tax year 2024. In the Standstill Notification exercise 2024, Italy informed the Group that the measure has been prolonged for three more tax periods.

2. As the substance of the law has not been changed, the current analysis builds on the standstill analysis of 2023, as agreed by the Group.

Relevant Legal Framework

3. IT027 is laid down in Article 4 and Annex 1 of the Legislative Decree no. 216 of 30 December 2023 on the "Implementation of the first module of the reform of personal income tax and other income tax measures". Through the Budget Law 2025 paragraphs 399 and 400 the measure has been prolonged for three more tax periods (2025 – 2027) (Gazzetta Ufficiale 43/L of 31.12.2024, no. 305),

Purpose of the Measure

4. The measure provides for a tax incentive to encourage employers to hire new employees with open-ended employment contracts and to increase the employment rate in Italy.

Design of the Measure

5. The measure concerns the determination of the amount of deductible labour costs. In particular, for newly hired employees with an open-end employment contract, i.e., permanent staff, the deductible labour costs may be increased by 20%.

6. It is a condition for applying the measure that the number of employees with open-ended contracts in tax year 2024 is higher than the average number of employees with open-ended contracts in the tax year 2023. This employment increase is to be determined on a net basis, i.e., taking into account employment reductions in subsidiaries or related companies or belonging to the same taxpayer, including by intermediaries.

7. Another condition is that the overall number of employees in the tax year 2024, including employees with fixed-term contracts, is higher than the overall number of employees in the tax year 2023, including employees with fixed-term contracts.

8. The increase in deductible expenses is capped at a number equal to the lower of:

   i) the actual cost related to the new employees with open-ended contracts, or

   ii) the total increase in staff costs resulting from the profit and loss account pursuant to Article 2425(B)(9) of the Italian Civil Code compared to that for the current financial year on 31 December 2023. For persons who do not adopt such profit and loss account when drawing up their annual financial statements, the corresponding staff cost items shall be taken into account.

   In any case, the costs relating to employees shall be charged in accordance with the rules applicable to the determination of the taxpayer’s income.

9. The amount of deductible expenses is multiplied by mark-ups in cases where the new employee belongs to one of the categories of workers in need of greater protection set out in Annex 1, i.e., very disadvantaged workers, persons with disabilities and women of any age with at least two children of age less than eighteen years. In these cases, mark-ups are also used for determining the total increase in staff costs resulting from the profit and loss account within the meaning of point (B)(9) of the first paragraph of Article 2425 of the Civil Code. The mark-ups are set out by an Interministerial decree.

10. The measure is applicable to Italian taxpayers which have employees, e.g., companies, permanent establishments of non-resident persons, and self-employers. It is a condition that the taxpayer has had economic activities in the relevant tax periods for at least three hundred and sixty-five days.

11. The measure was supposed to apply only for the tax year 2024. By the Budget Law 2025 the measure has been prolonged for the tax years 2025 – 2027.

Analysis

12. By virtue of paragraph A of the Code of Conduct (Business Taxation), the Code covers preferential tax measures which affect, or may affect, in a significant way the location of business activity in the Union.

13 .The measure in question may be considered as a preferential tax measure as it entails an increased deduction from the corporate tax base for companies etc. which have hired new employees with open-ended contracts.

14. However, the benefit is not expected to potentially affect the location of business activity in the EU in a significant way for the following reasons:

i) The tax benefit is only applicable to taxpayers which are already carrying out economic activities in Italy.

ii) The tax benefit is directly liked to costs incurred upon an increase in the number of employees with an open-ended contract.

iii) The tax benefit is an increased deduction which can only be used against an amount of income generated by the taxpayer through a business activity in the tax year.

iv) The tax benefit has a temporary nature as it is only applicable in the tax years 2024 - 2027.

15. The Group has previously dealt with other temporary measures with expected limited effects that were anticipated not to have a significant impact on business activities in the past and concluded that they did not need to be further assessed.[51]

Conclusion(s)

16. In light of the aforementioned, it is the view of the Commission that the measure does not meet the criteria in paragraph A of the Code of Conduct and, consequently, that it does not need to be assessed.

Follow-up

17. In view of the above, the Group agreed that the measure does not need to be assessed.

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[51] For example, SK009: Temporary increased deduction applying to productive investments in certain fixed tangible assets (WK 9295/22 ADD 6). PL016: Temporary additional deduction for certain robotisation costs (WK 9295/22 ADD 4)

STANDSTILL – Italy: IT028 - Tax credit for investments in capital goods within innovation projects aimed at reducing energy consumption, so-called "Transition 5.0

(*Tax credits Transition 5.0)*

Preliminary analysis

A. Background:

1. Italy notified in the standstill exercise 2024 a tax credit for investments in capital goods for innovation projects aimed at reducing energy consumption, so-called "Transition 5.0" (IT028).

B. Relevant legal framework

2. The measure is provided for in Article 38 of Decree-Law No. 19 of 2 March 2024[52]. (endorsed by Law 29 April 2024, no. 56).

C. Purpose of the measure

3. The purpose of the measure is to incentivise taxpayers to invest in innovation projects that achieve a reduction in energy consumption ("green investments").

D. Description of the measure

4. The measure takes the form of a tax credit.

5. The measure is temporary covering eligible investments made from 1 January 2024 to 31 December 2025.

6. The tax credit is granted within the limits of the resources referred below under point 19 (*Impact of the measure*).

Beneficiaries and nature of the benefit

7. The measure is open to all resident companies[53] and permanent establishments of non-residents in Italy, which invest in assets (including intangibles) and capital goods used in production facilities located in Italy, in the context of innovation projects leading to a reduction in energy consumption.

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52 https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2024-03-02;19!vig

53 Undertakings in a state of voluntary liquidation, bankruptcy, compulsory administrative liquidation, arrangement with creditors without going concern, or subject to any other insolvency procedure are excluded.

8. The taxpayer can benefit of a tax credit proportional to the expenditure incurred for the investments made. The taxpayer may also benefit of an increase in the amount of the tax credit if a certain level of reduction of the energy consumption is achieved.

9. The tax credit may be used against other tax debts, including social security contributions, until 31 December 2025. The outstanding amount not yet used on that date may be used in five equal annual instalments.

Eligible expenses

10. Eligible costs are the costs of investments[54] in new tangible and intangible assets, which are both instrumental in the operation of the business (*referred to in Annexes A*[55] *and B*[56] *to the Law No 232 of 11 December 2016)* and interconnected with the production management system or the supply network. The intangibles assets must thus be related to the tangibles assets themselves.

11. The investments are eligible only if they achieve an overall reduction in the energy consumption of the production structure located in Italy to which the innovation project relates[57].

Amount of the tax credit

12. The actual amount of the tax credit is determined in several steps.

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[54] And expenditure on the training of staff.

[55] Annex A (Article 1 (9)) - Assets for the technological and digital transformation of enterprises according to the 'Industry 4.0' model
"Capital goods the operation of which is controlled by computer systems or operated by appropriate sensors and actuations:…."

[56] Annex B ((Article 1 (10))
"Intangible assets (software, systems and system integration, platforms and applications) related to investments in tangible assets "Industry 4.0"".

[57] An overall reduction in the energy consumption of the production structure located in the national territory, to which the innovation project relates, of not less than 3 % or, alternatively, a reduction in the energy consumption of the processes concerned by the investment of at least 5 %.

13. First, the eligible costs are determined. The eligible costs for the purpose of the computation of the tax credit are taken into account at 100%, except for specified eligible assets where they amount to 130 %, [58], 140 % [59] or 150 %[60] of the actual cost.

14. Second, the tax credit is granted at the rate of 35%[61] of the costs below EUR 10 million, and 5% of the costs above EUR 10 million and up to the maximum eligible costs of EUR 50 million per year per beneficiary undertaking.

15. Third, the amount of tax credit computed for each investment can be increased by a rate of 10%, 15%, 40% or 45% if the reduction in energy consumption exceeds certain thresholds. [62]

16. Finally, the actual amount of the tax credit for each beneficiary is granted to the extent that the total amount of projects allowed does not exceed the expenditure limit (see point 19 below).

17. The tax credit should be "reserved". Taxpayers should submit a "*Prior Notice*" together with an ex-ante certification declaring the reduction in energy consumption achievable by the planned investments[63]. Certification should be issued by accredited bodies. The submitted notifications are assessed and managed by the Gestore dei Servizi Energetici (Energy Services Provider) **in the chronological order** in which they are submitted, in order to verify the eligibility and the amount of the tax credit requested. The GSE sends to the Revenue Agency the list of eligible beneficiaries and the corresponding amount of "reserved" tax credits, ensuring that the budgetary limit is not exceeded.

18. At the end of the innovation project, the taxpayers submit a completion report, accompanied by an ex-post certification, containing the information necessary for the

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[58] For the investments in new tangible assets for the purpose of self-generation of energy from renewable sources for self-consumption (e.g. solar resources)

[59] Photovoltaic modules with cells, (both) produced in the Member States of the European Union, with a cell efficiency of at least 23,5 per cent.

[60] Modules produced in the Member States of the European Union consisting of bifacial silicon or tandem hetero-junction cells produced in the European Union with a cell efficiency of at least 24,0 per cent.

[61] For the share of investments of up to EUR 10 million.

[62] a) 40% and 10%, if the reduction in the energy consumption of the production structure is higher than 6 % or the reduction in the energy consumption of the processes is higher than 10 %;
b) 45% and 15%, if the reduction in the energy consumption of the production structure is higher than 10 % or the reduction in the energy consumption of the processes concerned by the investment is of more than 15 %.

[63] The GSE (Provider of Energy Services) has put in place an IT Platform "Transition 5.0" accessible from its website, for the submission of prior and completion notices.

assessment of the completed innovation project. The GSE sends to the Revenue Agency the list of beneficiaries and the amount of tax credit available. The tax credit resulting from the realisation of the investment cannot exceed the "reserved" tax credit.[64]

Example

Eligible costs incurred are of EUR 15 million. Depending on the type of asset, the costs base can amount to 100%, or be increased by 30%, 40% or 50%. If we assumed increased eligible costs by 30%, the base for the tax credit would be EUR 19.5 million; the tax credit would amount to: EUR 3.947.500 (35% x EUR 10mn + 5% x EUR 9.5 million).

Assuming further a reduction of 15% in the energy consumption due to the eligible investment, the amount of the tax credit is increased by 45% and would be EUR 5.723.875 (EUR 3.947.500 x 45%).

Reporting; tracking and tracing

19. There are specific rules requiring that taxpayers inform the fiscal authority as the investment progresses/ expenditure is incurred; and maintain documentation which proves that the eligible costs are actually incurred and correctly determined.

(Anti-)cumulation rules (paragraph 18, of Article 38)

20. The tax credit may not be combined, regarding the same eligible costs, with the tax credit for investment in new equipment[65], but can be combined with other advantages relating to the same costs, if such cumulation does not exceed the costs incurred; and without prejudice to the provisions of the previous sentence, with the investment credit in the Special Economic Zone for the Mezzogiorno-ZES[66] and into the Simplified Logistics Zone (SFZ[67]).

64 Paragraphs 10-11 art. 38 DL no.19/2024

65 referred to in Article 1 (1051) et seq. of Law No 178 of 30 December 2020

66 As per Art 16 and 16-bis of Decree-Law No 124 of 19 September 2023, converted, with amendments, into Law No 162 of 13 November 2023.

67 As per Art13 of Decree-Law No 60 of 7 May 2024, converted, with amendments, into Law No 95 of 4 July 2024.

E. Impact of the measure

21. The estimated costs[68] of the measure amount to:

a. EUR 1 039.5 million for 2024,

b. EUR 3 118.5 million for 2025 and

c. EUR 415.8 million for each of the years 2026 to 2030, which increase in net borrowing to EUR 3 118.5 million for 2024.

F. Conclusion(s)

22. The tax credit is an expenditure-based tax incentive, where the benefit depends on the amount of qualifying expenses actually incurred. It may be offset against other tax debts or social contributions due by taxpayers, if all the conditions above are fulfilled. The measure falls within the scope of the Code of Conduct only insofar as the tax credit can be offset against debts arising from corporate income tax.

23. Investments are only possible in tangible assets (and intangible assets related to such tangibles e.g. used for the functioning of the aforementioned tangible assets), which contribute to the reduction of energy consumption.

24. The tax credit is capped, and the amount of the tax credit not used by 31.12.2025, cannot be used at once in future tax years, but has to be offset against future tax debts in five equal annual instalments.

25. The measure is limited in time (two years) and it aims at incentivising investments in the reduction of energy consumption.

26. The reduction of energy consumption and/or use of clean net-zero energy are among the EU political priorities, as reaffirmed more recently[69].

27. Finally, the measure would mainly impact businesses/ production sites already established in the Italian territory, which invest in the eligible assets.

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68 The estimated costs and the relevant implementation costs shall be covered by the new measure NRRP M7–Investment 15 "Transition 5.0" financed by the Next Generation EU-Italy Fund.'

69 Communication from the Commission - The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation; Brussels, 26.2.2025 COM(2025) 85 final https://commission.europa.eu/document/download/9db1c5c8-9e82-467b-ab6a-905feeb4b6b0_en?filename=Communication%20-%20Clean%20Industrial%20Deal_en.pdf

28. The Commission Services are of the opinion that such a measure does not appear to rise concerns under the Code of Conduct criteria, regarding a possible significant relocation of business in the EU, in particular in view of its temporary application and the type of investments it applies to.

29. Therefore, it is Commission Services' view that the measure does not need to be assessed.

G. Follow-up

In view of the above, the Group agreed that the measure does not need to be assessed.

ADDENDUM 6

2024 Standstill notification exercise

RO014: Romania: Grant of bonus of 3%

I. Background

1. In 2024, Romania notified a temporary tax measure which is applicable for tax year 2024 and provides for a 3% bonus in favour of legal entities subject to profit tax and micro-enterprises subject to income tax.

II. Summary description of the measure

2. The measure provides for a bonus (reduction) of 3% computed on the profit tax[70] due in respect of tax year 2024. [71]

3. The central fiscal body shall *ex officio* grant the bonus by issuing a decision after the deadline for the submission of the tax returns. The reduction is granted if:

    a) all declarations have been submitted according to the tax vector (*all returns that a taxpayer must file, regardless whether direct, indirect taxes or social security contributions);*

    b) the annual profit tax/ income tax for year 2024[72] is fully paid within the deadlines set by law;

    c) the taxpayer does not have any other outstanding fiscal/budgetary obligation by the deadline.

4. The amount of the bonus is not reimbursed, but shall be used to offset other tax debts (other taxes, contributions) of the same taxpayer, in accordance with the provisions of the Fiscal Procedural Code[73].

5. The envisaged estimated budgetary impact of the measure is RON 0.9 billion. (i.e. EUR 180 million).

III. Preliminary remarks

6. The measure is temporary and applied to the tax due in 2024. It aims at increasing the collection of tax debts.

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[70] Income tax for microenterprises (turnover of less than EUR 500.000 in 2024).
[71] Modified fiscal year starting in 2024, as the case may be.
[72] Modified fiscal year starting in 2024.
[73] Article 167 of Law 207/2015.

7. For tax year 2024, the measure is applicable to all taxpayers who pay their tax due within the set deadlines and do not have other outstanding tax obligations.

8. In practical terms, the taxpayers will compute their CIT due under the normal tax rules and pay the full amount of income tax to the fiscal authorities. After the CIT liability has been settled, the tax authority computes the 3% bonus. The bonus is used like a "credit" to offset other taxes due by the same taxpayer and cannot be refunded.

9. For example, for a taxable profit of EUR 100,000, the CIT due is EUR 16,000 (CIT rate 16%); an amount of EUR 480 (3% of EUR 16,000) is used to offset other tax debts of the same taxpayer.

10. Firstly, the measure does not affect the corporate tax liability for the year 2024, as the CIT due has to be paid in full. Only subsequently, 3 % of the paid income tax are used as a 'credit' to reduce other taxes due in the following tax years, including any future income tax due. Therefore, the future CIT due may eventually be reduced together with other taxes, if the bonus has not been fully exhausted.

11. Secondly, in view of the amount of the bonus, the measure does not seem to lead to a significantly lower level of effective taxation in comparison to the normal level of taxation in Romania.

12. In the event that the bonus were to be used against the future CIT normally due, its impact would equal to an "effective" CIT rate of 15.52 % instead of the statutory CIT rate of 16%.

13. Finally, the measure is applicable only for tax debts of tax year 2024.

IV. Conclusion

14. Considering that the regime:

- is temporary;
- does not affect the corporate tax liability in the tax year 2024,
- its impact on any future income tax liability is either extremely low or may not occur at all if the bonus was exhausted in 2024, and
- its low amount in absolute terms,

the measure RO14 does not seem to impact the location of business in the EU in a significant way (see paragraph A of the Code of Conduct).

V. Follow-up

15. In view of the above, the Group agreed that this measure does not need to be assessed.

Rollback Assessment of HR019 AND HR020

I. Background

1. The measures HR019 and HR020 (Investment Promotion Acts) were notified under the Standstill procedure for 2020 and 2022 respectively. In substance, the two measures are the same and the Group's standstill assessment of HR019 has been applied by analogy to HR020.[74]

2. Based on the assessment, the measures did not meet the substance requirements and Croatia committed to roll-back these potentially harmful features. On 5 July 2024, the Subgroup assessed draft legislation which was intended to be introduced in Croatia to ensure compliance with the Code of Conduct requirements. The Subgroup found that the draft legislation was sufficient and adequate to eliminate the potentially harmful features of measures provided that the legislation was adopted without substantial changes.[75]

3. Along with the Subgroup assessment, it became apparent that the FHTP was also looking into the envisaged measures. The Commission contacted the FHTP Secretariat to ensure coordination and a consistent outcome of the parallel Code of Conduct and FHTP procedures. In this regard, the FHTP Secretariat informed that they have additional requirements which should be included in the draft legislation for the measures to comply with the FHTP criteria.

4. In light of this position of the FHTP, Croatia had to amend their draft legislation, which was approved by the Subgroup in July 2024, to ensure compliance with the FHTP criteria.

5. Considering this developments, the Group decided on 24 November 2024 that the rollback assessment should await the final FHTP review and the formal adoption of the legislation for amending measures HR019 and HR020 in Croatia. This would allow the Group to examine whether there have been substantial changes to the draft legislation which has already been assessed and ensure consistency between the decisions of the FHTP and the Code of Conduct Group.

II. Decision of the FHTP

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[74] WK 9304/2022 REV 1 and WK 11975/2023.

[75] WK 9303/2024.

6. On 15 November the Croatian Parliament adopted the amendments to the Investment Promotion Act. These have been in force since 28 November 2024 and took effect from 1 January 2025.

7. In its meeting on 17-18 December 2024 the FHTP analysed the regime. It concluded that the amended version of the regime is ‘not harmful’.

III. New rollback notification and its assessment

8. By e-mail of 20 January 2025, Croatia informed the Group that the rollback measure has been formally adopted by Parliament and provided a translation of the relevant parts of the legislation (WK 918/2025 ADD 4, the content of this document is annexed also below).

9. The Act amending the Investment Promotion Act was published in the Croatian Official Journal on 27 November 2024.[76]

10. In accordance with the decision of the Group in November 2024, the Group may carry out a new rollback assessment, in order to supplement or replace the assessment of 5 July 2024.

11. The assessment only concerns the changes adopted by the Croatian Parliament in November 2024 – on the substance requirements, given that the remaining aspects of the previous assessment were not affected.

12. The amendments to the text which was assessed in June 2024 are highlighted by the Commission Services in the following text in bold:

"(5) For the purposes of applying the reduced rate of profit tax from paragraph 1 of this article, the beneficiary of the state aid for each special tax period determines the profit tax obligation in the manner prescribed by the regulation on profit taxation only on the profit realized from the business activity to which the investment project relates, excluding income from capital, rent, interest and intellectual property and performs its core income generating activity of the investment project with the adequate number of full-time employees and the adequate amount of operating expenditures.

(6) In the framework of the annual report, the recipient of the support submits an overview of income based on capital, rent, interest and intellectual property from paragraph 5 of this article.

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[76] https://narodne-novine.nn.hr/clanci/sluzbeni/2024_11_136_2250.html

(7) If the beneficiary of the support simultaneously performs business activities that are not covered by the investment project, he is obliged to ensure special accounting monitoring of the activity covered by the project and to determine the amount of profit for the activity of the investment project.

(8) Core income generating activities of the investment project may vary according to the specific qualifying investment project activity, but mainly consist of those significant functions that drive the business value of the investment project, but not exclusively or mostly support activities.

(9) The beneficiary of support from paragraph 7 of this article submits an overview from paragraph 6 of this article and an overview of the special accounting monitoring of investment project activity as part of the annual report.

13. The assessment of June 2024 concluded already that the rollback is sufficient and adequate to eliminate the potentially harmful features of the Investment Promotion Act. The recently introduced amendments do not change the substance of the draft law but refine the wording, in order to make it more precise.

14. These amendments concern two changes laid down in paragraph 5:

1. In the original draft law, ‘royalties from intellectual property’ were treated as passive income and excluded from the benefits of the measure. The term ‘royalties’ was replaced by ‘income from intellectual property’.

   The replacement of the term royalties by income from intellectual property intents to widen the scope of the excluded income. The term ‘income from intellectual property’ has been chosen in order to exclude not only royalty payments in the literal sense of the word but also royalties which are included in the sales price (‘embedded royalties’), or certain service fees linked to intellectual property. Although embedded royalties could have been covered by the general term royalties, the new terminology is more precise and avoids any doubt.

   Therefore, the new wording strengthens the exclusion of passive income from the benefits of the regime and supports the rollback. The change should therefore be accepted as improving the rollback.

2. Furthermore, it was added that the core income generating activities linked to the investment project are performed with the adequate number of full-time employees and the adequate amount of operating expenditures.

The addition refers to terminology used by the FHTP and the COC Group for ensuring substance (adequate employment and adequate expenditure).

In its assessment, the Code of Conduct Group has not criticized the employment and expenditure requirements of the Croatian measure. The Investment Promotion Act requires that the number of employees be maintained throughout the use of the tax benefits (*quantitative criterion*). In addition, the investment needs to lead to an increase of the level of productivity by at least 10% per employee after three years (*qualitative criterion*). These requirements were seen as sufficient to ensure adequate employment.

The minimum investment requirement of 500,000 € in qualifying assets with further brackets at 1-3 Mio € and > 3 Mio € were seen as *adequate expenditure* with regard to the core income generating activities.

Therefore, the newly added wording does not affect the rollback assessment of the Group. It does not bring new elements into the rollback but just reflects the wording used by the FHTP and the COC Group in the assessment.

15. Based on the rollback assessment of 5 July and the supplementary assessment explained above, the Commission finds that the rollback is sufficient for eliminating the potentially harmful features of the Investment Promotion Act (HR019) and the New Investment Promotion Act (HR020).

Question for the Group

Does the Group agree that the rollback measure in its amended version is sufficient and adequate to eliminate the potentially harmful features of the Investment Promotion Act (HR019) and the New Investment Promotion Act (HR020)?

ACT ON AMENDMENTS OF INVESTMENT PROMOTION ACT

Article 1.

Article 2, paragraph 1 of the Investment Promotion Act (Official Gazette, No. 63/22) is amended to read:

"(1) This Act ensures the implementation of Commission Regulation (EU) no. 651/2014 of 17 June 2014 on the evaluation of certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014); (hereinafter: Commission Regulation (EU) 651/2014), as last amended by Commission Regulation (EU) 2023/1315 of June 23, 2023 amending Commission Regulation (EU) no. 651/2014 on the evaluation of certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the Treaty (Text relevant to the EEA) (OJ L 167, 30.6.2023).".

Paragraph 3 is amended to read:

"(3) The average annual budget funds for regional investment grants from this Act do not exceed the amount of EUR 150 million from Article 1, paragraph 2, subparagraph (a) of Commission Regulation (EU) no. 651/2014."

Paragraph 4 is amended to read:

"(4) Grants for training and regional grants on the basis of this Act are granted in accordance with the provisions of Articles 1 to 14 and Articles 31, 58 and 59 of Commission Regulation (EU) no. 651/2014. The provisions of this Act are harmonized and interpreted in accordance with Commission Regulation (EU) no. 651/2014."

Article 2.

In Article 5, paragraph 3, subparagraph 1 is amended to read:

"- contribution to the digital and green transition of the economy of the Republic of Croatia, i.e. contribution to the transition to a climate-neutral economy."

Article 3.

In Article 6, Paragraph 1, Item 2, Sub-item a), to e), the words: "Kuna equivalents" are deleted.

Item 4 is amended to read:

"4. the same or similar activity is an activity that is included in the same class (four-digit numerical code) of the statistical classification of economic activities, as determined in the Decision on the National Classification of Activities 2025 - NKD 2025 ("Official Gazette", no. 47/24).

Item 6 is amended to read:

"6. A large investment project is an initial investment whose eligible costs exceed the amount of EUR 50,000,000.00".

Item 7, sub-item a) is amended to read:

"a) adjusted aid amount = $R \times (A + 0.50 \times B + 0 \times C)$, where:

– R – the maximum aid intensity applicable in the area in question determined in the approved map of regional aid in force on the date of granting the aid, excluding the increased aid intensity for small and medium-sized enterprises

– A – initial eligible costs of up to 55,000,000.00 euros

– B – part of eligible costs between the amount of EUR 55,000,000.00 and the amount of EUR 110,000,000.00

– C – part of eligible costs that exceeds the amount of 110,000,000.00 euros"

In point 8, the words "from the equivalent value of kuna" are deleted.

In point 9, the words: "HRK 3,500.00" are replaced by the words: "665.00 euros".

In point 10 of the word: "The number of seasonally employed persons in the tourism sector is calculated in the corresponding parts of their annual work units." For seasonal employment in the tourism sector, the entrepreneur does not receive incentives to create new jobs." are deleted.

In point 11, the words: "commencement of construction specified in the application" are replaced by the words: "commencement application".

Item 13 is amended to read:

"13. eligible investment costs or justified costs in accordance with this Law are the costs of investments in tangible and intangible assets or the estimated costs of wages for jobs created as a result of the initial investment, calculated for a period of two years."

In point 14, subpoint a), the words: "in several instalments" are replaced by the words: "in the future, including subsidies paid in several instalments".

After sub-point c) sub-points d) and e) are added, which read:

"d) Eligible expenses must be accompanied by clear, concrete and up-to-date written evidence.

e) Value added tax, which is levied on eligible costs or expenses, and which is refundable in accordance with the applicable national tax law, is not taken into account for the calculation of aid intensity and eligible costs."

After point 15, point 16 is added, which reads:

"16. the value of the investment project is the eligible costs of investing in fixed assets related to the investment project or the eligible costs of creating new jobs related to the investment project."

Article 4.

In Article 7, paragraph 1, the words: "certificates of the main project" are replaced by the words: "of the main project with the obligation to report the start of construction".

In subparagraph b) the words: "tangible assets" are replaced by the words: "plants or machines"

In paragraph 2, after the word: "subsidies", the words: "and the costs of investing in other people's property" are added.

Article 5.

In Article 8, paragraph 1, point 1, the words: "HRK equivalent of 100,000,000.00 euros" are replaced by the words: "of 110,000,000.00 euros".

In point 2, the words: "2,000,000.00 euros" are replaced by the words: "3,000,000.00 euros".

Article 6.

In Article 10, Paragraph 7, Point 5, the words: "Article 1, Paragraph 4, Point (c)" are replaced by the words: "Article 2, Paragraph 18".

At the end of point 19, the point is deleted and point 20 is added, which reads:

"20. for the tourism sector, accommodation and food preparation and service activities."

In paragraph 8, after the words: "paragraph 7", the words: "items 3 and 7" are added.

Article 7.

In Article 12, paragraph 1, the words: "Kuna equivalents" are deleted.

Paragraph 4 is amended to read:

"(4) If the beneficiary of the support does not fulfill the condition of opening or reduces the number of new jobs determined by the provisions of paragraph 1 of this article before the expiration of the prescribed minimum investment preservation period from Article 6, item 12 of this Act and/or if he does not observe the minimum investment preservation period , the right to use the tax benefits for the entire period for which they were approved ceases, with the obligation to return the funds obtained by using the approved benefits increased by the amount of the basic reference rate that is determined and published on the basis of the rules on state aid, increased by 100 basis points. The act or notification of the competent ministry on the obligation to return the support is an enforceable document."

After paragraph 4, paragraphs 5, to 9 are added, which read:

"(5) For the purposes of applying the reduced rate of profit tax from paragraph 1 of this article, the beneficiary of the state aid for each special tax period determines the profit tax obligation in the manner prescribed by the regulation on profit taxation only on the profit realized from the business activity to which the investment project relates, excluding income from capital, rent, interest and intellectual property and performs its core income generating activity of the investment project with the adequate number of full-time employees and the adequate amount of operating expenditures**.**

(6) In the framework of the annual report, the recipient of the support submits an overview of income based on capital, rent, interest and intellectual property from paragraph 5 of this article.

(7) If the beneficiary of the support simultaneously performs business activities that are not covered by the investment project, he is obliged to ensure special accounting monitoring of the activity covered by the project and to determine the amount of profit for the activity of the investment project.

(8) Core income generating activities of the investment project may vary according to the specific qualifying investment project activity, but mainly consist of those significant functions that drive the business value of the investment project, but not exclusively or mostly support activities.

(9) The beneficiary of support from paragraph 7 of this article submits an overview from paragraph 6 of this article and an overview of the special accounting monitoring of investment project activity as part of the annual report.

Article 8.

In Article 13, paragraph 1, the words: "in the amount of equivalent HRK of" are replaced by the words: "in the amount of", and the words: "and in the amount of equivalent value of" are replaced by the words: "and in the amount of".

In paragraph 2, the words: "in the amount of HRK equivalent" are replaced by the words: "in the amount".

In paragraph 3, the words: "in the amount of equivalent HRK more" are replaced by the words: "in the amount more".

Paragraph 7 is amended to read:

"(7) If the beneficiary of the support does not fulfill the condition of opening or reduces the number of new jobs determined by the provisions of paragraph 1 of this article before the expiry of the prescribed minimum period of preservation of the investment in question from Article 6, item 12 of this Act and/or if he does not observe the minimum period of preservation of the investment in question, the right to use the tax benefits for the entire period for which they were approved ceases, with the obligation to return the funds obtained by using the approved benefits increased by the amount of the basic reference rate determined and published on the basis of the rules on state grants, increased by 100 basis points. The act or notification of the competent ministry on the obligation to return the support is an enforceable document."

After paragraph 7, paragraphs 8 to 12 are added, which read:

"(8) For the purposes of applying the reduced rate of profit tax from paragraph 1 of this article, the beneficiary of the state aid for each special tax period determines the profit tax obligation in the manner prescribed by the regulation on profit taxation only on the profit realized from the business activity to which the investment project relates, excluding income from capital, rent, interest and intellectual property and performs its core income generating activity of the investment project with the adequate number of full-time employees and the adequate amount of operating expenditures.

(9) In the framework of the annual report, the recipient of the support submits an overview of income based on capital, rent, interest and intellectual property from paragraph 8 of this article.

(10) If the beneficiary of the support simultaneously performs business activities that are not included in the investment project, he is obliged to ensure special accounting monitoring of the activity included in the project and to determine the amount of profit for the activity of the investment project.

(11) Core income generating activities of the investment project may vary according to the specific qualifying investment project activity, but mainly consist of those significant functions that drive the business value of the investment project, but not exclusively or mostly support activities.

(12) The beneficiary of support from paragraph 10 of this article submits an overview from paragraph 9 of this article and an overview of the special accounting monitoring of investment project activity as part of the annual report.

Article 9.

In Article 14, paragraphs 1to 3 are changed to read:

"(1) Beneficiary who ensures the creation of new jobs related to the investment project in counties where the registered unemployment rate is up to 5%, according to the data of the State Bureau of Statistics valid on the date of the start of the investment, will be granted non-refundable financial support for the eligible costs of creating new jobs related to investment in the amount of up to 10% of eligible costs for creating a new job, and in the maximum amount of EUR 5,000.00 per newly opened job.

(2) Beneficiary who ensures the creation of new jobs related to the investment project in counties where the registered unemployment rate is from 5% to 10% according to the data of the National Bureau of Statistics valid on the date of the start of the investment, will be granted non-refundable financial support for eligible costs of creating new jobs related to investment in the amount of up to 20% of the eligible costs for creating a new job, and in the maximum amount of EUR 10,000.00 per newly opened job.

(3) Beneficiaries who ensure the creation of new jobs related to the investment project in counties where the registered unemployment rate is more than 10% according to the data of the National Bureau of Statistics valid on the date of the start of the investment, will be granted non-refundable financial support for the eligible costs of creating new jobs related to investment in the amount of up to 30% of eligible costs for creating a new job, in the maximum amount of EUR 15,000.00 per newly opened job."

Article 10.

The title above Article 16 is changed to read:

"5. Grants for development-innovation activities, business support activities and activities with high added value".

In Article 16, paragraph 1, sub-paragraph 3 is amended to read:

"- Activities of high added value:

a) creative services activities are:

activities in the field of architecture, design, media communication, publicity and other creative industry activities

b) activities of strategic importance for the transition to a climate-neutral economy are:

production of batteries, solar panels, wind turbines, heat pumps, electrolyzers and equipment for capturing, storing and using carbon

c) the activities of industrial engineering services are focused on: modeling, design, restructuring and optimization of production and processing business processes.

In paragraph 2, after the words: "development and innovation activities", the words: "and activities of strategic importance for the transition to a climate-neutral economy" are added.

Paragraph 3 is amended to read:

"(3) For investments in business support activities, creative services activities and industrial engineering services activities, in addition to the support provided for in this Act, the beneficiary of the support will be granted an increase in support for the costs of creating new jobs related to the investment project, by 25% of the amount prescribed by Article 14 of this Act."

In paragraph 4, the words: "Kuna equivalents" are deleted.

Article 11.

In Article 17 are changed to read:

"(1) An investment project for which grants are approved for the capital costs of the investment project represents an investment in the long-term assets of the beneficiary of the grant in the amount of at least 5,000,000.00 euros, with the condition of opening at least 50 new jobs related to the investment project, i.e. at least 30 new jobs related to the investment project of medium and small entrepreneurs.

(2) Subsidies for capital costs refer exclusively to investment projects in production and processing activities, i.e. to investment projects in production and processing activities from Article 5, Paragraph 2 of this Act."

(3) Beneficiaries of support who implement the investment project from paragraph 1 of this article in counties where the registered unemployment rate is from 5% to 10% according to the data of the National Bureau of Statistics valid on the start date of the investment project, in addition to the support provided for in this Act, will be granted support for capital costs:

non-refundable financial support in the amount of 10% of eligible investment costs in fixed assets, namely for:

a) costs of building a new factory, industrial plant

b) costs of purchasing new machines or production equipment

in the total maximum amount of equivalent HRK up to EUR 1,000,000.00, with the condition that the share of investment in machinery or production equipment amounts to a minimum of 40% of the total investment value, and a minimum of 50% of the purchased machinery or production equipment must be high-tech equipment.

(4) The grant beneficiary who realizes the investment project referred to in paragraph 1 of this article in the counties where the registered unemployment rate is above 10% according to the data of the National Bureau of Statistics valid on the start date of the investment project, in addition to the grants provided for in this Act, will be granted a grant for capital expenses:

non-refundable financial support in the amount of 20% of eligible investment costs in fixed assets, namely for:

a) costs of building a new factory, industrial plant

b) costs of purchasing new machines or production equipment

in the total maximum amount of HRK up to EUR 2,000,000.00, with the condition that the share of investment in machines or production equipment amounts to a minimum of 40% of the total investment value, and a minimum of 50% of the purchased machines or production equipment must be high-tech equipment."

(5) If the beneficiary of the support does not preserve the investment in question in accordance with the provisions of Article 6, point 12 of this Act and does not keep the new workplaces determined by the provisions of this Article for at least five years from their first filling for large entrepreneurs, or three years for micro, small and medium entrepreneurs , the right to use support for the capital costs of the investment project ceases, with the obligation to return the funds obtained using the approved support increased by the amount of the basic reference rate determined and published on the basis of the rules on state aid, increased by 100 basis points.

(6) The total amount of non-refundable monetary, tax and other support that the beneficiary of the support can use during the period of use of the support is determined in absolute amount, respecting the maximum intensity of the support from Article 9 of this Act."

Article 12.

In Article 19, paragraph 2, the words: "Kuna equivalents" are deleted.

Article 13.

In Article 20, paragraph 6, the words: "in the amount of equivalent HRK" are deleted.

In paragraphs 7, 8 and 9, the words: "Kuna equivalents" are deleted.

Paragraph 12 is amended to read:

"(12) If the beneficiary of the support does not preserve the investment in question in accordance with the provisions of Article 6, point 12 of this Act and does not preserve the initial state of employees determined in accordance with the provisions of Article 6, point 10 of this Act for at least five years for large entrepreneurs or three years for micro, small and medium-sized enterprises, the right to use support for the modernization of business processes ceases, with the obligation to return the funds obtained through the use of approved support increased by the amount of the basic reference rate determined and published on the basis of the rules on state aid, increased by 100 basis points. The act or notification of the competent ministry on the obligation to return the support is an enforceable document."

After paragraph 13, paragraphs 14 to 18 are added, which read:

"(14)) For the purposes of applying the reduced rate of profit tax from paragraph 1 of this article, the beneficiary of the state aid for each special tax period determines the profit tax obligation in the manner prescribed by the regulation on profit taxation only on the profit realized from the business activity to which the investment project relates, excluding income from capital, rent, interest and intellectual property and performs its core income generating activity of the investment project with the adequate number of full-time employees and the adequate amount of operating expenditures.

(15) In the framework of the annual report, the recipient of the support submits an overview of income based on capital, rent, interest and intellectual property from paragraph 14 of this article.

(16) If the beneficiary of the support simultaneously performs business activities that are not included in the investment project, he is obliged to ensure special accounting monitoring of the activity included in the project and to determine the amount of profit for the activity of the investment project.

(17) Core income generating activities of the investment project may vary according to the specific qualifying investment project activity, but mainly consist of those significant functions that drive the business value of the investment project, but not exclusively or mostly support activities.

(18) The beneficiary of support from paragraph 16 of this article submits an overview from paragraph 15 of this article and an overview of the special accounting monitoring of investment project activity as part of the annual report.

Article 14.

Article 21, paragraph 1 is amended to read:

"(1) Non reimbursable grants for investment promotion from this Act are provided in the state budget of the Republic of Croatia at the position of the competent ministry from Article 10, paragraph 6 of this Act, up to the maximum amount provided for that purpose in the state budget of the Republic of Croatia for an individual year."

In paragraph 3, sub-paragraphs 1 and 2, the words: "Kuna equivalents" are deleted.

Article 15.

In Article 25, paragraph 1, after the word: "affecting" the words "promotion and encouragement of investment and" are added.

Article 16.

Article 26, is amended to read:

"(1) In order to improve the investment environment in the Republic of Croatia, the competent ministry referred to in Article 10, paragraph 6 of this Act coordinates the activities of promotion and encouragement of investments and the implementation of investment projects in cooperation with investors and competent bodies of state administration, local and regional self-government and with other legal entities involved in the promotion and encouragement of investments and the implementation of investment projects on the territory of the Republic of Croatia.

(2) The competent ministry from Article 10, paragraph 6 of this Act, in coordination with local and regional development agencies, regional coordinators and other subjects of entrepreneurial infrastructure in local and regional (regional) self-government units, provide active support to investors in all phases and activities of the investment project which affect the success and deadline of the investment project in the Republic of Croatia.

(3) The competent ministry referred to in Article 10, paragraph 6 of this Act, local and regional development agencies, regional coordinators and other entities of the entrepreneurial infrastructure competent for the promotion and encouragement of investment in local and regional (regional) self- government units, on the basis of this Act, provide administrative, professional and technical assistance in preparing the application from Article 22 of this Act."

Article 17

Article 27, paragraph 1, is amended to read:

"(1) The following will be published on comprehensive websites about state aid:

(a) summary of information from Article 11 of Commission Regulation (EU) no. 651/2014 in the standardized form established in Annex II. Commission Regulation (EU) no. 651/2014 or the link to access that summary

(b) the complete text of the support measure based on this Act and the regulation from Article 14, Paragraph 6 of this Act

(c) data from Annex III. Commission Regulation (EU) no. 651/2014 on the award of each individual grant that exceeds the amount of EUR 100,000.00.

The information from this paragraph is published within six months from the date of grant, and for grants in the form of tax relief within one year from the deadline for submitting the tax return, and is available for at least ten years from the date of grant."

TRANSITIONAL AND FINAL PROVISIONS

Article 18

The Government of the Republic of Croatia shall, within 60 days from the date of entry into force of this Act, harmonize the Regulation on Investment Promotion (Official Gazette, No. 156/22) with the provisions of this Act.

Article 19

(1) The provisions of this Act shall apply to applications for the status of investment support beneficiary pursuant to the Investment Promotion Act ("Official Gazette", number 63/22) with the start of the investment project on January 1, 2024.

(2) The provisions of Article 12, paragraphs 5 to 9, which were added by Article 7 of this Act, Article 13, paragraphs 8 to 12, which were added by Article 8 of this Act, and Article 20, paragraphs 14 to 18, which were added by Article 13 of this Act, they apply to applications for the status of investment support beneficiary with the start of the investment project from January 1, 2025.

(3) The provisions of this Act shall be applied to beneficiaries of investment subsidies and applicants for the use of investment subsidies based on the Investment Promotion Act ("Official Gazette", number 63/22), if it is more favorable for the entrepreneur.

Article 20.

This Law enters into force on the first day of its publication in the Official Gazette.

Annex 3: Cyprus – CY020 – Notional interest deduction [2020 CoCG decision]

I. Background

1. In 2020 the Code of Conduct Group agreed that the Cypriot NID regime was *Not harmful after the amendment in June 2020, but* that it should be *"further monitored, in order to establish if a high foreign use of the NID regime would appear under criterion 1b and 2b"*.

2. The 2023 annual monitoring exercise (covering data for tax year 2021) was the first monitoring exercise, but Cyprus was not able to provide the relevant data at that time. Beginning of December 2024, Cyprus provided the data for the tax years 2021 and 2022 (table below).

3. We recall that the Cypriot NID regime is an incremental regime, and is calculated as a percentage of a company's net equity increase, as follows: Reference interest rate x New Capital (NC). This is referred to as the "Basic Calculation".

4. Since the 2020 modifications to the NID regime, the reference interest rate – differently from similar regimes in other Member States where one single rate is applicable to all cases - is for the Cypriot NID the "*10-year government bonds yield of the state where the new capital is invested, increased by 5% on 31.12 of the year preceding the tax year."* In case "*the state where the new capital is invested has not issued any government bonds […] reference rate is the yield of the government bonds of the Republic increased by 5% on 31.12 of the year preceding the tax year*."[77].

The First Step

5. *The regime requires that each asset financed by NC should be identified through a tracing/matching method. The CY NID deduction cannot exceed 80% of the taxable income from each asset as determined before the application of the NID provisions. The 80% cap is calculated based on the taxable income derived from each asset financed by NC separately. This cap is then compared to the NID calculated for each asset under the Basic calculation above. The deduction for each asset is then determined as the lower of these two amounts.*

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[77] The minimum reference rate is no longer the Cyprus interest rate as was the case before, and can hence be lower or higher than the Cyprus interest rate depending on the respective jurisdiction.

The Second Step

6. *A second calculation is then made on the total taxable income from all assets financed by NC. If this amount is lower than the total deduction under the first step, this lower amount is used as the deduction. The lowest effective rate that may be achieved with the maximum deduction is 2.5% (12.5% CIT rate*(100% taxable – 80% taxable income/maximum NID deduction).*

II. Preliminary assessment

7. The CY NID applies as of January 2015. It was amended as of June 2020 and put under monitoring. The data provided and under analysis covers tax years 2021 and 2022.

8. So far, based on the data provided, and taking into account the effects of the changes in the NID rate, the Group can notice that the uptake has decreased between 2021 and 2022 from 1 400 taxpayers to 1 000 taxpayers. The overall amount of NID granted has also decreased almost proportionately. The same applies to the average amount of the NID deduction.

9. However, the data provided does not distinguish between the domestically- versus foreign-owned companies, in order to ensure the proper monitoring of criteria 1(b) of the Code of Conduct. The Cypriot authorities informed that they were not able to extract such data from their system.

10. Despite the absence of data that breaks down per category of beneficiary, the available information indicates that the average amount of the NID deduction remained rather high but relatively comparable, with a slight decrease from EUR 1 615 000 to EUR 1 255 000. This corresponds to an average NID tax benefit per taxpayer (average NID deduction x CIT 12.5%) of approximately EUR 200 000 in 2021, and of EUR 156 000 in 2022. The amount of the tax benefit per company on a yearly basis is relatively high. Therefore, it remains important that the Cypriot authorities provide the Group with data on the numbers of domestically- and (directly or indirectly) foreign-owned taxpayers.

11. Based on the aforementioned information and the lack of data regarding the domestic or foreign ownership of the beneficiaries, the Commission Services cannot draw a final conclusion whether the measure affected in a significant way the business location amongst the Member States. However, the effect of a NID is in principle positive, as the amount of the NID deduction is linked to the increase in the equity during the relevant tax year. Furthermore, in this specific case the average NID tax benefit, although relatively high, has slightly decreased.

12. The Commission Services suggest that the Group continues monitoring the effects of the measure, to verify whether the trend regarding the amount of the NID allowance is maintained. Moreover, Cypriot authorities are invited to improve the data collection and endeavour to provide the Group with a breakdown of the numbers of domestically- and foreign-owned companies which benefit from the regime.

III. Follow-up

The Group supported the preliminary assessment that the monitoring should continue and that the Cypriot authorities were invited to improve the data collection and provide the relevant data.

Annex 3: Cyprus – CY020 – Notional interest deduction [2020 CoCG decision]

Cyprus – CY020	**2021 (not provided previously)**	**2022**
Total number of taxpayers benefitting from the measure	1 409	1 018
Out of which directly or indirectly foreign owned companies:	We cannot extract such information from our database	We cannot extract such information from our database
Global amount of NID granted	€2 276 000 000	€1 278 000 000
Total tax expenditure (*at 12.5% CIT rate*)	€285 000 000	€160 000 000
Average amount of NID allowance	€1 615 000	€1 255 000
Total tax expenditure attributable to directly or indirectly foreign owned	We cannot extract such information from our database	We cannot extract such information from our database

Average NID tax expenditure attributable to directly or indirectly foreign owned	We cannot extract such information from our database	We cannot extract such information from our database

Annex 7: Cyprus - 2013 Guidance on intermediate companies - use of safe-harbour rule [2019 CoCG decision]

I. Background

1. We recall that in 2017, Cyprus published a Circular[78] which, amongst other TP issues, also provided for a simplification measure, the so called safe-harbour rule. It applied in the case of a purely intermediary entity providing financing (i.e. where an entity provides loans to a related entity and these loans are funded by loans received from other related entities). The Circular allowed that the intermediary financing entity may receive a minimum return of 2% net profit on assets[79]. The use of the simplification measure was to be notified by the entity to the tax authority in its tax return[80].

2. In the context of the monitoring of compliance with Guidance on intermediate companies, the Cypriot safe-harbour rules were put under monitoring.[81]

3. In the context of the 2022 *Annual monitoring exercise of the actual effects of certain measures*, Cyprus was invited to submit the relevant data for tax years 2019 and 2020. Following the initial request and subsequent clarifications, Cyprus provided incomplete data. The data provided for 2019 showed that 1 167 (updated data by Cyprus) companies performing intra-group financing used the safe harbour. Such data was compiled from the tax returns filed by the relevant taxpayers. This represents 5% of the total number of companies having performed intra-group financing activities in 2019 in Cyprus. On the other hand, there is no information provided on the actual loan amounts involved and covered by the safe harbour. For tax year 2020, the data covering first three questions was not provided.

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78 Circular dated 30 June 2017 with title "Tax treatment of intra group back-to-back financing transactions"

79 This percentage is regularly reviewed by the Tax Department based on relevant market analyses.

80 The taxpayer is not allowed to derogate from the minimum percentage, unless this is properly justified in transfer pricing analysis.

81 In 2019 during the Monitoring of the Guidance on intermediate companies, the Cypriot authorities confirmed that spontaneous exchange of information takes place when the taxpayer makes use of the safe harbour rule.

4. Cyprus informed that the safe harbour[82] is no longer applicable as of 1 January 2022[83]. Accordingly, as of 1 January 2022, the intra-group «back-to-back» financing transactions must be performed at arm's length pricing and conditions. Furthermore, subject to conditions, there may be an obligation to prepare a transfer pricing documentation file to document the said transactions, like all other related party transactions which fall under the provisions of the relevant legislation.

5. The data was incomplete, but in light of the abolition of the simplification measure as of 1 January 2022 the Code of Conduct Group concluded in its meeting of 26 April 2023 that the monitoring should be discontinued once Cyprus has provided complete data for years 2019, 2020 and 2021.

II. Preliminary remarks

6. In December 2024, Cyprus provided additional data for tax year 2019 and partial data for years 2020 and 2021.

7. The data only consists of the numbers of taxpayers performing intra-group loans and having made use of the safe harbour. The overall amount (of the loans) involved is not communicated, nor is there information about whether any of the concerned taxpayers made a downward adjustment.

8. However, according to the supplied data[84], the number of companies performing intra-group financing and having used the safe harbour decreased in 2020 and 2021 compared to 2019, both in nominal terms (from 1 167 taxpayers to 934 and then 741) and as ratio from 5% to 4.2% and to 3.7% of the overall number of taxpayers performing intra-group financing.

9. Regarding the tax residence of the counterparties to such loan transactions/ intra-group financing arrangements, the data collection is more burdensome and relies on each individual taxpayer to submit information on each counterparty to the

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82 The recognition of the net profit margin of 2% based on the provisions of interpretative circular 3 mentioned above.

83 https://www.mof.gov.cy/mof/tax/taxdep.nsf/All/C23F42DD0F0316E3C2258952003343ED?OpenDocument On 5 January 2023, the Tax Department issued circular 1/2023, which states that interpretive circular 3 (dated 30 June 2017) and circular 5 (dated 2 January 2019) will not be applicable as of 1 January 2022. Hence, the last date of their application was 31 December 2021.

84 Figures compiled from the tax returns field by the relevant taxpayers.

transaction. So far, only around 200-250 companies reported intra-group financing arrangements with a counterparty that is tax resident in an EU Member State although one should consider that the communicated data is not yet complete. 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.

III. Conclusions

10. Based on the received information, and in particular given the lack of data about the actual loan amounts which benefit from the safe harbour, the Commission Services cannot yet draw a conclusion on the actual effect (in nominal terms) of these safe-harbour rules.

11. The measure was abolished as of 1.1.2022. In light of the relatively low number of taxpayers having used the safe-harbour in comparison to the overall number of taxpayers performing intra-group financing and their constant reduction, the Commission Services hold the view that no further data should be requested and that the Group should consider the monitoring fully terminated.

IV. Follow-up

The Group supported the preliminary assessment that the monitoring for years 2019, 2020 and 2021 can be terminated, in particular considering that the measure in question was abolished on 1 January 2022.

Annex 7: Cyprus - 2013 Guidance intermediate companies - use of safe harbour rule [2019 CoCG decision]

Cyprus	**2019 (*numbers are updated as a result of new submissions of tax returns)***	**2020 (data provided for the first time)**	**2021 (data provided for the first time)**
Overall number of companies performing Intra-Group financing	23 249 (as per the tax returns submitted)	*21 863 (as per the tax returns submitted)*	*19 901 (as per the tax returns submitted)*
Number of companies having used the safe harbour provisions (2% net return)	1 167 (as per the tax returns submitted)	*934 (as per the tax returns submitted)*	*741 (as per the tax returns submitted)*
The total values of the financial assets of the companies having used the safe harbour	The total values according to the tax returns is available, however the value of assets for which the safe harbour rule was applied cannot be extracted.	The total values according to the tax returns is available, however the value of assets for which the safe harbour rule was applied cannot be extracted.	*The total values according to the tax returns is available, however the value of assets for which the safe harbour rule was applied cannot be extracted.*
Number of companies having applied the safe harbour provisions (2% net return) and afterwards made a downward adjustment	Such information cannot be extracted from our database	Such information cannot be extracted from our database	Such information cannot be extracted from our database
Overall number of information exchanges sent *-regarding the use of safe harbour :* *-regarding use of safe harbour and downward adjustment:*	*Information on the tax residence states of the counterparties in the intra-group financing arrangements is not available on our database. As a result, we have requested from the companies performing intra-group financing to submit the*	*Information on the tax residence states of the counterparties in the intra-group financing arrangements is not available on our database. As a result, we have requested from the companies performing intra-group financing to submit the relevant*	*Information on the tax residence states of the counterparties in the intra-group financing arrangements is not available on our database. As a result, we have requested from the companies performing intra-group financing to submit the relevant information.*

	relevant information. The collection of data is still ongoing, however, from the information collected to date, only 255 companies reported intra-group financing arrangements with a counterparty that is tax resident in an EU MS.	*information. The collection of data is still ongoing, however, from the information collected to date, only 250 companies reported intra-group financing arrangements with a counterparty that is tax resident in an EU MS.*	*The collection of data is still ongoing, however, from the information collected to date, only 206 companies reported intra-group financing arrangements with a counterparty that is tax resident in an EU MS.*
The name of the MSs to which the relevant information was sent	*From the information collected to date, the tax residency of the counterparties to intra-group financing arrangements is not concentrated in particular MS, but it is instead spread across a number of MS. The collection of data is still ongoing.*	*From the information collected to date, the tax residency of the counterparties to intra-group financing arrangements is not concentrated in particular MS, but it is instead spread across a number of MS. The collection of data is still ongoing.*	*From the information collected to date, the tax residency of the counterparties to intra-group financing arrangements is not concentrated in particular MS, but it is instead spread across a number of MS. The collection of data is still ongoing.*

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

I. BACKGROUND

13. 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 Finance[85].

14. Thus, under the Polish rules, a TP local file must be prepared for a controlled financial transaction[86] 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

15. 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.

16. In November and December 2024, Poland submitted data for tax year 2021 and updates for tax year 2022.

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[85] 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.

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

17. 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.

18. 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.

19. 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.

20. 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, 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)

21. 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)

22. 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

23. 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[87]	2022
Overall number of companies performing Intra-Group financing[88]	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[89])	152 CIT taxpayers including 146 companies[90]	154 CIT taxpayers including 149 companies	183 CIT taxpayers including 161 companies	264 CIT taxpayers including 237 companies
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	Based on the information from the TPR form, there is no reliable data on the financial assets used	Based on the information from the TPR form, there is no reliable data on the financial	The total amount of liabilities or receivables of the company having used the safe harbour, in respect of

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

[88] 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.

[89] 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.

[90] 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.

	by the companies for safe harbour purposes in 2019.	by the companies for safe harbour purposes in 2020.	assets used by the companies for safe harbour purposes in 2021.	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 [91]	0[92]	0[93]	0[94]
Overall number of information exchanges sent *-regarding the use of safe harbour :* *-regarding use of safe harbour and downward adjustment:*	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. 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.		N/A	N/A

91 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.

92 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.

93 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.

94 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.

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