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WORKING PAPER

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MEETING DOCUMENT

From:	Chair
To:	Code of Conduct Group (Business Taxation)
Subject:	Code of Conduct Group (Business Taxation) - Work programme under the Estonian Presidency

Delegations will find attached a document from the Chair of the Code of Conduct Group (Business Taxation), in view of the meeting on 20 July 2017.

CODE OF CONDUCT GROUP (BUSINESS TAXATION)
WORK PROGRAMME UNDER THE ESTONIAN PRESIDENCY

I. Introduction

1. On 16 June 2017, the Council welcomed the progress achieved by the Code of Conduct Group during the Maltese Presidency (doc. 10047/17 FISC 133 ECOFIN 507) and invited the Group to continue the work on the basis of the 'work package 2015', which was endorsed by ECOFIN in December 2015 (doc. 14302/15 FISC 159), and report back to the Council on its work during the Estonian Presidency.
2. At the meeting of 8 June 2017, the Group agreed that the draft guidance on outbound payments should be dealt with again when new data have become available on the effectiveness of anti-abuse measures in EU directives.
3. In its conclusions of 16 June 2017 (doc. 10392/17 FISC 140 ECOFIN 550), the Council furthermore:
 - a. asked the Group to continue monitoring standstill and the implementation of the rollback;
 - b. invited the Group to continue work on the application of the principles of the modified nexus approach to non-IP regime;
 - c. asked the Group to continue work in the context of the Council conclusions of 8 November 2016 on the criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes;
 - d. reiterated that the Group should continue exploring defensive measures that could be taken in relation to the future list of non-cooperative jurisdictions;
 - e. asked the Group to continue its work on a draft guidance note on the interpretation of the fourth criterion; and
 - f. invited the Commission to continue the dialogue with Liechtenstein on the application of the principles of the Code of Conduct.
4. Against this background, this note sets out the proposed work programme under the Estonian Presidency of the Council (2nd semester of 2017).

II. Monitoring of standstill and the implementation of rollback

5. The Group will monitor developments in administrative practices of Member States. A new round of standstill and rollback notifications will be launched at the end of 2017.

Standstill

6. The Group will assess Croatia's new Act on Investment Promotion, which replaced the previous Act on Investment Promotion and Improving the Investment Climate.
7. The Group will also examine the possible intellectual property (IP) component of Lithuania's corporate tax regime for special tax zones.
8. Furthermore, the Group will aim at closing the assessment of Spain's new national and regional patent box regimes.

Rollback

9. The Group will continue monitoring the rollback of France's patent box (reduced rate for long term capital gain and profits from the licensing of IP rights).
10. It will also continue monitoring the implementation by France, Italy and Spain (Basque country and Navarra) of timing, grandfathering and reporting aspects in relation to their existing patent boxes.

III. Administrative practices

11. The Group will monitor developments in the exchange of information relating to cross-border rulings following the implementation of the directive on automatic information exchange on tax rulings (DAC3) as from 01/01/2017.

IV. Links with third countries

12. The Group will assess the four identified preferential regimes of Liechtenstein: exemption for dividends, exemption for capital gains, the Private Asset Structure, and the interest deduction on equity.
13. In relation to the dialogue with Switzerland, the Group will continue monitoring the developments of the legislative process leading to a new tax reform in line with the joint statement of 14 October 2014.

14. Though this work stream was not foreseen in the work package 2015, the Group will also continue work in the context of the Council conclusions of 8 November 2016 (doc. 10047/17) on the criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, as well as on the update of the existing EU standard provision on good governance in tax matters.
15. It is expected that following a balanced review of all information collected in the screening process, the Group will report, in co-ordination with the HLWP, to the Council in due time, so that the EU list of non-cooperative jurisdictions could be endorsed by the Council by the end of 2017 (as resolved in the above-mentioned Council Conclusions, points 79 and 80).
16. Further work will also be undertaken in exploring defensive measures, as well as a number of procedural issues related to the ongoing process (such as updates and review of the list and of the screening criteria, monitoring, de-listing process, etc.).

V. Monitoring agreed guidance

17. The Group will continue monitoring the implementation of agreed guidance, in particular:
 - a. the 2014-2015 guidance on the modified nexus approach (see above: rollback procedure);
 - b. the 2016 guidelines on the conditions and rules for the issuance of tax rulings by Member States;
 - c. OECD BEPS recommendations that are relevant to the work of the Group and not covered by EU legislation (ATAD, PSD) or ongoing legislative initiatives (mandatory disclosure rules) - for instance Actions 8-9-10.

VI. Procedural issues

18. In line with the Council conclusions of 8 March 2016, the Group will seek agreement on a guidance note on the interpretation of the fourth criterion of the Code.
19. The Group will also continue developing guidance on the application of the principles of the modified nexus approach to non-intellectual-property (IP) regimes, with a view to possible future OECD discussions on this matter.

20. In line with the work package 2015, the Group will also launch work on guidelines setting out a clear process for monitoring the results of the Group's work, and how the results of the monitoring process will be publicised.

VII. Organisation of work

21. It is proposed that there should be four one-day meetings (on 20 July, 18 September, 17 October and 21 November 2017) to enable the Code of Conduct Group to provide a report before the end of this Presidency.
22. The Estonian Presidency of the Council will also organise meetings of the subgroups on third countries and on the clarification of the third and fourth criteria of the Code to progress work on work items falling within their remit.
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