Euro Tax Flash from KPMG's EU Tax Centre



# Code of Conduct Group's report to ECOFIN on work performed during the Austrian EU Presidency

Code of Conduct Group (Business Taxation) – Harmful Tax Practices – Preferential Tax Regimes – EU Blacklist - Patent Box – Interest Deduction Regime – Future Screening Criteria – Extension of Geographical Scope – Multiannual Work Package

On November 20, 2018, the Code of Conduct Group released a report to the Economic and Financial Affairs Council of the EU (ECOFIN) on the work performed by the Group during the second half of 2018. It is expected that the ECOFIN will endorse the report and adopt the corresponding conclusions on December 4, 2018, in which the Member States particularly welcome the progress achieved on the monitoring of the commitments taken by third countries in the context of the EU blacklisting exercise.

## Background

The Code of Conduct Group (the "Group") was set up in 1998 to examine potentially harmful tax measures in EU Member States. The Group initially focused on the Member States' commitment to eliminate existing harmful tax practices (rollback process), while refraining from implementing new ones (standstill process). Nevertheless, Member States also agreed on promoting the adoption of transparency and good governance principles by third countries. Accordingly, the ECOFIN Council invited the Code of Conduct Group in May 2016 to start work on an EU list of non-cooperative jurisdictions and on exploring defensive measures at the EU level. On December 5, 2018, conclusions on the EU list of non-cooperative jurisdictions for tax purposes ("EU Blacklist") were adopted by ECOFIN and, on the basis of the work performed by the Group, several amendments to the list were further approved.

## Activity under the Austrian Presidency

On November 20, 2018, the Code of Conduct Group (Business Taxation) presented to ECOFIN its report on the work performed during the Austrian EU Presidency[1]. The report details in particular the review process applied on the Member States' patent boxes and notional interest deduction regimes, and recalls the work performed by the Group on the EU Blacklist.

With respect to standstill review processes, the Group concluded that the notional interest deduction regimes of Belgium[2], Italy[3], Malta[4], and Slovakia[5] are not harmful while it was decided that the Portuguese[6] and Cyprus regimes should remain under review. Against this backdrop, the Group agreed to develop guidance for Member States that wish to implement similar legislation and to further analyze the possible risks of abuse arising from the combined cross-border use of such regimes.

As regards Lithuania and Romania, the Group acknowledged that the legislative reform of their respective patent box regimes is still ongoing, and therefore postponed their review. The Group also approved the rollback of patent boxes in Spain[7], the Basque country[8], and Navarra[9] and was informed that France's reform of its patent box regime is still ongoing. Finally, the Group welcomed the changes made to Gibraltar's tax treatment of asset holding companies[10].

The Group is also monitoring the Member States' compliance with the 2000 Guidance on Rollback and Standstill in respect of finance branches, holding companies and headquarter companies and the results of the survey are expected to be made public in early 2019.

A significant part of the activities performed by the Group was also dedicated to the EU Blacklist, in particular with respect to following-up on the listing, delisting and scoping procedures, investigating possible coordinated defensive measures, monitoring the commitments taken by the relevant jurisdictions, introducing future EU listing criteria and a revision of the geographical scope of the list. The report therefore contains a consolidation of listing and de-listing updates, as well as a summary table of the commitments taken by the 92 jurisdictions initially screened. As a consequence, the Group has been monitoring - in accordance with the guidelines agreed upon in February 2018[11] - a total of 116 commitments taken by 65 jurisdictions, and made available in November 2018 a revised consolidated version

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[1] Code of Conduct Group (Business Taxation) Report to the Council Endorsement (doc. 14364/18)
[2] Belgium's notional interest deduction regime (BE018) (doc 14364/18 ADD 1)
[3] Italy's notional interest deduction regime (IT019) ) (doc 14364/18 ADD 4)
[4] Malta's notional interest deduction regime (MT014) ) (doc 14364/18 ADD 6)
[5] Slovakia's patent box regime (SK007) ) (doc 14364/18 ADD 9)
[6] Portugal's notional interest deduction regime (PT018) ) (doc 14364/18 ADD 8)
[7] Spain's national patent box regime (ES021) (doc 14364/18 ADD 11)
[8] Spain's regional Basque country patent box regime (ES023) (doc 14364/18 ADD 12)
[9] Spain's regional Navarra patent box regime (ES022) (doc 14364/18 ADD 14)
[10] Gibraltar's treatment of asset holding companies (UK020) (doc 14364/18 ADD 13)
[11] Code of Conduct Group (Business Taxation) Procedural guidelines for carrying out the process of monitoring commitments concerning the EU list of non-cooperative jurisdictions for tax purposes (doc. 6213/18)

of the ‘State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles’[12].

The Group also paid attention to the approaching expiration (June 30, 2019) of the general “two out of three exception” for sub-criteria 1.1. (automatic exchange of information), 1.2. (exchange of information on request) and 1.3. (international exchange arrangements). This exception already does not apply to the jurisdictions which are rated "Non-Compliant" on criterion 1.2 or which have not at least obtained a “Largely Compliant” rating based on that criterion by 30 June 2018. The Group also reviewed a proposal to introduce the exchange of information on beneficial ownership as a future transparency criterion (1.4.) for screening and will continue discussions on this issue early 2019. On the other hand, the implementation of anti-BEPS minimum standards as a future criterion (3.2.) was agreed by the Group with the intention to start applying it as soon as possible, and the corresponding guidance was made available in Annex 3 to the Group’s report.

Additionally, the Code of Conduct Group reached an agreement on the extension of the geographical scope of the screening. Starting from 2020, all jurisdictions that rank high in at least one of the two categories (economic ties with the EU and importance of their financial sector) will be screened. Moreover, one particular jurisdiction will be re-evaluated on the basis of the existing economic data and, as a result, screened in case it meets the new selection indicators.

## Next steps

Under the incoming Romanian presidency, the Code of Conduct Group will continue to follow the multiannual work program published on June 22, 2018.

Within the framework of the EU blacklisting process, dialogue with third countries will continue and the implementation of the commitments taken by the various jurisdictions will be closely monitored. Taking into account the approaching deadline set by the Member States to implement commitments by the end of 2018, ECOFIN further underlines in the conclusions to be approved on December 4, 2018 its determination to update the EU Blacklist in 2019.

In parallel, the Group will continue political discussions on possible legislative defensive measures against listed jurisdictions, with a majority of Member States supporting draft guidance on further coordination.

## EU Tax Centre comment

Although the details of the discussions performed within the Group remain confidential, the Group’s continued efforts to make the results of its work available to the public provide a valuable insight into the group’s most recent work, in particular as to the national regimes reviewed and the EU blacklisting process. The report also makes it possible to follow the direction the Group will be taking for the future.

Should you have any queries, please do not hesitate to contact KPMG’s EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

[12] The EU list of non-cooperative jurisdictions for tax purposes. State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles (doc. 6236/5/18)

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