



Brussels, 4 June 2015

Meeting Report Code of Conduct Group

02 June 2015

I. EXECUTIVE SUMMARY

- **At the beginning of the meeting DE asked the future of the Code of Conduct was not on the agenda. CHAIR said that he intended to dedicate a full day's meeting to this subject in the near future. Subsequent discussions with the incoming LU presidency indicated that this meeting would be held on 23 July.**
- **COM outlined recent discussions with LIE and noted that it was preparing a roadmap for the dialogue as well as descriptions of the regimes under discussion. These documents would be circulated before the October meeting, which LIE would hopefully be invited to attend.**
- **For the information of delegates the CHAIR circulated the questions sent to him by the European Parliament's Special Tax Committee. The Council and COM set out the basis on which they were responding to information requests from the Committee.**
- **The description of the IT patent box was discussed. [REDACTED]**
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- **The report of the Subgroup was agreed after modifications [REDACTED]**
[REDACTED]
- **The replies to the questionnaire on the Model Instruction were noted. COM encouraged MS to implement the instruction. The report to the Council sets a deadline of the end of the year for this.**
- **The report to the Council was agreed after discussions on the IT patent box and the subgroup report.**

II. REPORT

1. Links to Third Countries - Liechtenstein

- COM updated the Group on its recent meetings with LIE. [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

2. Relation to the European Parliament

- CHAIR introduced the room document, noting that he had received the questions following his earlier appearance before the European Parliament's Special Tax Committee.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

3. Standstill: patent box

- COM summarised the meeting of the OECD Forum on Harmful Tax Practices on 19-22 May. The main issues discussed at that meeting were the tracking and tracing of assets by taxpayers, the scope of qualifying IP and the transitional rules governing the removal of non-nexus patent boxes.
- Regarding tracking and tracing the Forum agreed that, where such tracking would be unrealistic and require arbitrary judgments, jurisdictions may also allow that the

nexus can be between expenditure, products arising from the IP and income (the so called product-based-approach).

- Regarding the scope of the qualifying IP under the nexus approach, delegates agreed to include three groups of assets. These were (1) patents defined broadly (including: “functionally equivalent” assets) (2) copyrighted software and (3) in case of small and medium-sized enterprises assets, that are useful, novel and certified by an independent Government agency. The Forum decided to define SMEs by reference to a maximum consolidated turnover of €50m and a maximum amount of IP income yet to be agreed (but between €5m and €10m).

- [REDACTED]

The OECD Secretariat had suggested that such new entrants would only benefit until 31.12.2016 from the grandfathering (i.e. shortened grandfathering period). There was no objection in general against such a provision and the end date of 31.12.2016, as it was part of the 2014 compromise. Technical discussions will continue on this matter.

- On the question of transparency, the Forum discussed the Secretariat’s proposals for the exchange of information on tax rulings. Although the OECD proposals have been widened since they were last discussed, they remain narrower than the draft directive published by the Commission. The main difference is that the OECD approach targets rulings related to preferential regimes, although other rulings such as some APAs and branch rulings are included.

- The Forum’s next meeting is 6-9 July 2015. Its 2015 Report is due to be agreed at the CFA in September.

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- **CHAIR** said it would try to find a satisfactory wording for the report [REDACTED]
[REDACTED]
- 4. Rollback: Gibraltar Income Tax Act 2010**
- **COM** introduced the description of the Gibraltar regime that it had been asked to prepare at the last meeting. **COM** noted that it would be hard to make an assessment due to the diverging views on the facts. The question for the Group therefore was who bore the burden of proof?
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- 5. Anti-Abuse – Mismatches: Subgroup report**
- **PRESIDENCY** introduced the subgroup report.
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - The report was subsequently agreed [REDACTED]
[REDACTED]
- 6. Administrative practices – Model Instruction**
- **COM** encouraged Member States to implement the Model Instruction pending agreement of the draft proposal on automatic exchange currently under discussion in the Council.
 - [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - **CHAIR** said that although he would close the discussion on this issue now, the Group would return to it in future.

7. Report to the Council

- CHAIR circulated an amended version of room document 4 reflecting the issues discussed at the meeting. Various changes to the text were suggested and agreed. With regard to the IT patent box the text reads as follows: *‘The Group noted that the Italian regime has not yet been implemented through a decree. The Group agreed that this regime, if it were to enter into force, as it is set out in the agreed description, would not be compatible with the compromise on modified nexus approach for IP regimes, as set out in Annex 1 of doc. 16553/1/14 REV 1.’* IT reserved its position via a footnote stating: *‘Italy has a reservation on the statement by the Group on its patent box regime. Italy reaffirms that such regime is modelled on the modified nexus approach as adapted by the compromise. Therefore, Italy does not accept a declaration of incompatibility which does not acknowledge the overall compliance of its regime with the modified nexus approach.’*

8. AOB

- At the beginning of the meeting DE asked why the issue of the future of the Code of Conduct was not on the agenda.
 - CHAIR said that he was planning to dedicate the next meeting entirely to this matter.
 - DE and FR both noted this.
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