



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Direct taxation, Tax Coordination, Economic Analysis and Evaluation  
**Company Taxation Initiatives**

Brussels, 9 December 2016  
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**Meeting Report Code of Conduct Group**  
**24 November 2016**

**I. EXECUTIVE SUMMARY**

- **1. Notification of Rollback and Standstill for year ending 31 December 2016 - COM informed the group about the agreed changes to the Group's notification procedures, starting in January 2017.**
- **2. Standstill**
  - (A) Aruba - COM informed the group about the existence of a Patent box in Aruba, and NL will now comply with the procedure for the assessment of this patent box under the modified nexus approach and agreed Code criteria.
  - (B) Croatia - COM and Croatia will now proceed on a bilateral basis to an agreed description of the new Croatian measure (Act on Investment Promotion).
- **3. Rollback: patent boxes - Member States agreed with the COM rollback table and suggested way forward, with Italy to be added to the group of pre-existing patent boxes. The group will return to the outstanding rollback issues, as well as standstill of new patent boxes, in the January meeting.**
- **4. Inbound profit transfers - there was a very brief discussion on this paper. It was agreed that the monitoring for Member States is no longer necessary, as ATAD covers the requirement of the guidance. For Dependent and Associated Territories it was agreed that the monitoring will be postponed until after the outcome of the external strategy.**
- **5. Council conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes - a list of jurisdictions to be prioritised for screening was agreed by the Group. Work on the modalities (including the clarifications of certain criteria) will continue in the subgroup.**
- **6. Report to the Council (ECOFIN) after several drafting sessions the report to ECOFIN was agreed.**
- **7. AOB - None**

## **II. REPORT**

### **1. Notification of Rollback and Standstill for year ending 31 December 2016:**

- COM reminded the group about the agreed changes to the Group's notification procedures, starting in January 2017.
- Member States are to notify the Group of any measures that related to either rollback or standstill before the first meeting of 2017 so that they can be dealt with earlier than in previous years. These changes were agreed by the Group in January 2016.

### **2. Standstill**

#### **(a) Aruba**

- COM gave an update to the Group about the Aruba IPC regime that has created a patent box.
- COM informed the Group it has asked NL to comply with the formal notification process and complete the OECD format questionnaire in order to prepare an agreed description of the regime, also reminding that NL will have to demonstrate that this patent box is modified nexus compliant.
- COM also indicated additional aspects of the regime need further consideration and proposed to return to this issue in a later meeting after internal analysis.

#### **(b) Croatia**

- COM updated the Group about Croatia Act on Investment Promotion and the possibility that it could create a risk of administrative discretion. COM asked the Group whether it should continue the procedure and prepare an agreed description.
- HR indicated its willingness to continue constructive dialogue with COM and explained having adopted, in April 2016, a regulation relating to the Act on Investment Promotion that was not provided to COM. HR indicated that, if the law does provide for tax reduction, it is not the reduction of a tax liability but rather takes the form of a state aid. As of September 2016, HR indicated that there has been no request for such aid and no aid was granted to date.
- COM recalled that its understanding of the regime is that a reduction of tax liability is granted and that it therefore falls within the scope of the Code of Conduct. COM asked the Group whether it should prepare an agreed description.
- It was agreed to prepare an agreed description on a bilateral basis with HR.

### **3. Rollback: patent boxes**

- The Commission presented briefly the state of play and the way forward regarding patent boxes in the Member States. It explained the two steps approach: verification of the rollback (of the IP regimes existing on 11 December 2014) and subsequently, the assessment as per the CoC criteria of the existing IP regimes under the standstill procedure.

- Regarding the Rollback

The Commission explained the table annexed to the room document, presenting the state of play of the implementation of the rollback obligation, under its 2 main parts: the closing of the regimes (cut-off date and abolition date) and the safeguards (enhanced cooperation and measures to prevent acquisition of certain IP assets from related parties).

- As regards the closing of regimes (columns 1 and 2 in the Annex) - with the exception of France (which does not consider they should amend their IP regime), MS show broadly positive developments.
- Commission concluded that the Rollback picture is fairly positive.
- At the very end of the discussion on this item, it was agreed that IT would be added to the rollback table as an "old" IP regime, and the Commission will start immediately with all the assessments under the standstill procedure for the next meeting.

#### **4. Inbound profit transfers:**

- The Commission services presented the room document. Delegations were asked if they agreed that it would not be useful to continue the monitoring of the 2010 guidance on inbound profit transfers as far as the Member States are concerned. In view of the adoption of the ATAD which includes CFC rules, this would satisfy the discussed criteria of the monitoring.
- After the Group agreed with the Commission proposal, the Chair asked delegations to provide him and the Council Secretariat with information on how Member States had implemented the 2010 guidance.
- Delegations were also asked whether they agreed that monitoring of Dependent and Associated territories could be postponed pending the results of the screening exercise under the External Strategy as some of those territories might be covered by that exercise.
- After some discussion delegations agreed to this way of action.

#### **5. Council conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes:**

- On 24 November 2016 the Code Group discussed the issue of jurisdictions to screen for the purpose of the EU Listing process, on the basis of a proposal made by the SK Pres. After a redrafting session the Code Group agreed on a text where it is stated that the screening process will be conducted towards the following jurisdictions:
  1. All jurisdictions in Table I of the scoreboard;
  2. All jurisdictions in table II;

3. Jurisdictions in table III to V which are financial centre according to the 2008 IMF List: Marshall Islands, Nauru, Niue, Palau, Malaysia/Labuan and Vanuatu.

- In order to reach the compromise it has been necessary to clarify in the text that the letters to be sent to jurisdictions by January 2017 should, among other things, take account of the situation of jurisdictions with regard to the screening criteria.
- With regard to the modalities (room doc # 2), there was a general agreement on the core part. However, for practical reasons, it decided to postpone the discussion on the consistency with OECD/GF work to the next meeting of the Code Subgroup (30/11).
- [REDACTED]
- [REDACTED]
- Both open issues will be discussed in detail at the next Subgroup meeting scheduled for 30 November.

**6. Report to the Council (ECOFIN) after several drafting sessions the report to ECOFIN was agreed.**

- After several drafting sessions the report to ECOFIN was agreed by the Group with the associated council conclusions.

**7. Any other Business**  
None

**ENDS.**

**Reported by** [REDACTED]

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