European Commission

Direct Taxation: Code of Conduct (business taxation)

Explanatory meeting – Albania, North Macedonia

TAXUD D1

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Work of the Code of Conduct Group

I. Code of Conduct and the Member States

II. Code of Conduct and the Third Countries External Strategy of the EU - EU List of Non-Cooperative Jurisdictions

[*for completeness only*]

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Code of Conduct (Group)

and the Member States

Harmful Tax Competition

- Negative effects of tax competition:
  - *Tax losses for all jurisdictions*
  - *Higher tax burden on non-mobile factors (labour)*
  - *Tension in international relations*
- 1997: Resolution of Member States meeting within the Council
- No legislation/harmonisation, **but a political commitment:**
  - *Abolish harmful tax measures:* ***rollback***
  - *No introduction of new harmful measures:* ***standstill***

Code of Conduct (business taxation)

- Covers **business** taxation and concerns *"tax measures which affect, or may affect, the location of business activity"*

- Laws, regulations and administrative practices

- Methodology:
  1. *Measures are potentially harmful if they provide for a significantly lower effective level of taxation than the general level in the MS concerned [**Gateway criterion**]*
  2. *Potentially harmful measures are assessed on the basis of **five** criteria*

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Code of Conduct: What is harmful?

1. Advantages are accorded only to non-residents or in respect of transactions with non-residents
2. Advantages are ring-fenced from the domestic market (does not affect national tax base)
3. Advantages are granted even without real economic activity and substantial economic presence
4. Rules on profit determination deviate from internationally accepted principles (notably OECD)
5. Tax advantages lack transparency

Code of Conduct: Organisation

- Code Group was established 1998
- All Member States represented at high level
- Fixed chair (2 year term)
- Around six to eight meetings a year
- Decision making by 'broad consensus'
- Reports to ECOFIN at the end of every Presidency
- Commission: supporting and advisory role

https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/

Code of Conduct: main results

Overall results since its establishment:

- More than 450 measures assessed or looked into
- More than 100 found harmful.

- Either following:
  - **Assessments after annual standstill notifications, or**
  - **Assessments during the enlargements process.**

Code of Conduct: main results

Upon its establishment:

Code Group report of November 1999 found 66 harmful tax measures (40 in the old 15 MS, 26 in dependent or associated territories).

- Enlargements:
  - 2003 – 30 measures of the 10 new MS found harmful;
  - 2006 – 8 measures of the 2 new MS found harmful;
  - no Croatian measures found harmful.
- For all measures, the Code Group agreed a timetable for rollback:
  - abolish measures by X; no benefits beyond Y

Code of Conduct: Current activities

Code Group also works on other issues, e.g.

- Monitor rollback & standstill in Member States
- Drafting Guidance notes on regimes such as beneficial regimes for holding companies, interest, royalties and free zones, NID, interpretation of criteria etc.
- Monitoring compliance with such Guidance
- Extend the work towards third countries
- Review mismatches (hybrid entities)
- Review patent box measures in the EU

Code of Conduct: Accession Process

1. General screening of national tax law (CH 16)
2. Specific screening to identify harmful tax regimes
   - COM sends questionnaire
   - COM- (Albania, North Macedonia) agree on description of potentially harmful measures
   - Assessment of measures by COM based on Code criteria
   - Dialogue COM- (Albania, North Macedonia) to agree the timing and content of rollback of harmful measures
   - Report of harmful regimes and the agreed rollback to the Council Enlargement Group
3. Accession
4. Monitoring: rollback and standstill by Code Group

Code of Conduct (Group)

and the Third Countries

II. External Strategy of the Code

- External dimension: EU promotes principles in third countries
- EU dialogue with LIE and CH: leading to the EU - CH Joint Statement in 2014.
- CH agreed: abolish 5 harmful tax measures
- Referendum 2/2017 postponed reforms

II. EU list of non-cooperative jurisdictions

- Good Governance criteria need to be respected beyond the EU
- ECOFIN Council requested Code of Conduct Group to establish list of non-cooperative jurisdictions
- 4-step procedure
  - COM scoreboard: Sept 2016
  - Screening of jurisdictions by COC Group started 1.3.2017
  - End of 2017 ECOFIN Council decided on list
  - Monitoring process

II. EU list of non-cooperative jurisdictions

- Screening criteria: transparency, fair taxation and BEPS implementation

- Transparency: AEOI (CRS), EOIR, MC on administrative assistance
- Fair tax: no harmful tax regimes/if no corporate tax or zero rate: **CoC by analogy**
- BEPS implementation: commitment to BEPS minimum standards

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II. EU list of non-cooperative jurisdictions

- List of 5 December 2017:
  - **17 jurisdictions non cooperative**
  - **47 jurisdiction provided commitments**
  - **8 jurisdictions postponed due to hurricane**
  - **20 jurisdictions were compliant**
- January 2018: 8 'listed jurisdictions' provided commitments and were 'de-listed'
- March 2019: 10 jurisdictions added to the revised EU list of non-cooperative jurisdictions