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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 6 December 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Comission Staff Working Document
Impact Assessment
Accompanying the document
the Communication from the Commission to the European Parliament and the
Council - An Action Plan to strenghten the fight against tax fraud and tax
evasion
the Commission Recommendation regarding measures intended to encourage
third countries to apply minimum standards of good governance in tax matters
the Commission Recommendation on aggressive tax planning

Delegations will find attached Commission document SWD(2012) 403 final - Volume 9/14.

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

**the Communication from the Commission to the European Parliament and the Council -
An Action Plan to strengthen the fight against tax fraud and tax evasion**

**the Commission Recommendation regarding measures intended to encourage third
countries to apply minimum standards of good governance in tax matters**

the Commission Recommendation on aggressive tax planning

{COM(2012) 722 final}
{SWD(2012) 404 final}

ANNEX 9- Tables extracted from the Study including a data collection and comparative analysis of information available in the public domain on existing and proposed tax measures of the 14 EU Member States in relation to non-cooperative jurisdictions and aggressive tax planning

- **Table 1: definition of non-cooperative jurisdictions in the 14 MS reviewed by the PWC study**

MS	YES/NO	REMARKS
BELGIUM	No	However, in Belgian tax law several notions or terms occur that could be linked to the notion of NCJ (e.g. "tax regime that is substantially more advantageous", "tax regime which is different than the common tax regime, country which "is considered by the OECD Global Forum on Transparency and Exchange of Information as a State that has not substantially and effectively applied the OECD exchange of information standard").
CYPRUS	No	Although in the Cyprus tax legislation there are references which may be linked to the concept of NCJ ("substantially lower tax burden than Cyprus tax burden")
DENMARK	No	Several of the anti-abuse measures are only targeted to jurisdictions outside the EU/EEA with which Denmark has not concluded a tax treaty.
ESTONIA	Yes	The Estonian tax legislation defines the concept of "Low Tax Territory" (i.e. territory with no taxation or a substantially lower taxation than in Estonia Considering the tax rate for personal income tax is flat 21%, a low tax rate territory is the territory where the applicable tax rate is below 6,93% ¹¹). Note that: <ul style="list-style-type: none"> • a country can be partially considered as "Low Tax Territory" if taxation regimes differ from one entity to another; • a company can be deemed not to be located in a "Low Tax Territory" if 50% of its annual income is derived from an actual economic activity (the latter concept is not defined in Estonian tax law); • a white list exists.
FRANCE	Yes	A state or territory is defined as non-cooperative if it meets several criteria (i.e. (i) if it is not a member of the European Union, (ii) if its situation as regards transparency and exchange of information has been scrutinised by the OECD, (iii) if it has concluded less than 12 Tax Information Exchange Agreements before 1 January 2010 and (iv) if it has not signed such agreement with France) ¹² . A list of non-cooperative states/territories ("NCST") exists and is subject to strict rules (e.g. adding to or withdrawal from the list).
GERMANY	No	Some measures with regard to entities resident in a list of uncooperative countries/non-cooperative jurisdictions that do not adhere to the OECD standards on tax information exchange were introduced in 2009 by way of a tax act aimed at combating "tax evasion and harmful tax practices". Measures can only be applied if the country has been black-listed by the federal Ministry of Finance (i.e. no single country for the moment).
HUNGARY	No	A similar concept is however approached through the CFC regime (i.e. the requirement of the Hungarian private person ownership or income from Hungary was recently – in 2010 – incorporated in the CFC definition, resulting in the fact that it practically refers to Hungarian capital located in offshore territories).
IRELAND	No	There are however particular provisions in Irish tax law that provide for the tax benefits in relation to payments to and from Ireland on the basis that the income is subject to tax in the recipient foreign territory.
LUXEMBOURG	No	However, the concept of NCJ could be indirectly derived from several provisions of Luxembourg income tax law ("LITL"). Indeed, various provisions of the LITL are applicable to joint stock companies resident in Third Countries (i.e. non-MSs) to the extent that "[these companies] are fully liable in ([their] state of residence) to a tax corresponding to Luxembourg corporate income tax".
MALTA	No	The only approach of this concept can be found in the "other jurisdictions exchanging information" regime (e.g. Malta does not exchange information with countries which do not enter in an agreement).
NETHERLANDS	No	Several notions could however be linked to the concept of NCJ, in particular the notion of "profit or income tax that is reasonable according to Dutch standards" provided in several dispositions.
SPAIN	No	However, similar concepts such as "tax havens" or "jurisdictions with nil taxation" are defined in Spanish tax law.
SWEDEN	No	Indirect effect of the definition of the term "foreign corporation" (i.e. "entity subject to taxation similar to Swedish corporation income tax")
UK	No	None

¹¹ Cfr. Appendix 2, Estonia, Definition of NCJ, p 86.

¹² Cfr. Appendix 2, France, Definition of NCJ, p 102.

Table 2: Comparison of existing lists

Third Countries	Black (and Grey) Lists						White Lists		
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous ²³	No or low tax burden ²⁴	Low Tax Rate Territories (white list exclusions) ²⁵	NCSTs	Tax Havens	Low-taxed persons ²⁶	CFC apportionment (qualified countries) ²⁷	Low Tax Rate Territories (white list)	CFC apportionment exemptions ²⁸
Abu Dhabi		X							
Afghanistan	X								
Ajman		X							
Aldemey	X								
Andorra		X				X			
Anguilla		X	X		X				
Antigua and Barbuda					X				
Argentina							X ²⁹		
Aruba			X						
Australia						X ³⁰			X
Bahamas		X							
Bahrain		X			X	X			
Belize	X					X ³¹			
Bermuda		X	X		X				
Bosnia - Herzegovina	X								
Botswana				X					X
British Virgin Islands	X	X	X		X				
Brunei				X	X	X ³²	X ³³		
Burundi	X								
Canada						X ³⁴			X
Cap Green	X								

²³ That is to say a nominal or effective tax rate below 15%.

²⁴ That is to say a nominal tax rate below 10%.

²⁵ In case of countries not belonging to, or being excluded ("excepted") from the "white list", there is a burden on the taxpayers to prove that the entities there are not considered to be located on the "low tax rate territory" (i.e. taxpayer has to prove that the tax rate there is higher than 1/3 of the tax applicable to individuals in Estonia, more than 50% of the income of the entity there is derived from actual economic activity, etc.).

²⁶ That is to say an effective tax rate on the income below 14.5%.

²⁷ It should be noticed that the UK CFC legislation is currently undergoing reform and the list might be amended in a near future.

²⁸ Companies obtaining exemption from tax on income from transactions, activities or operations carried on in, or from goods located in, tax free areas in accordance with Law 19640 of 16th May 1972.

²⁹ Only for income from banking operations that are not taxed under the ordinary income tax regime.

³⁰ Only for income not taxed under the ordinary income tax regime.

³¹ Only for income not taxed under the ordinary income tax regime.

³² Companies qualifying as "pioneer companies" under the Investment Incentives Enactment 1975.

³³ Only for income from banking operations that are not taxed under the ordinary income tax regime.

Legend:

- To ease the reading, territories listed on black lists (left part of the table) by,
 - two MSs are highlighted as follows: X
 - three MSs are highlighted as follows: X
 - more than three are highlighted as follows: X
- Territories listed on the right part of the table are territories mentioned on existing white lists and mentioned on other MSs' black or grey lists.

Third Countries	Black (and Grey) Lists						White Lists		
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous ³⁴	No or low tax burden ³⁴	Low Tax Rate Territories (white list exclusions) ³⁵	NCSTs	Tax Havens	Low-taxed persons ³⁶	CFC apportionment (qualified countries) ³⁷	Low Tax Rate Territories (white list)	CFC apportionment exemptions ³⁷
Cayman Islands		X	X		X				
Central African Republic	X								
Chile							X ³⁸		
Comoros	X								
Cook Islands	X				X				
Costa Rica						X ³⁹			
Cuba	X								
Djibouti						X			
Dominican Republic	X				X				X
Dubai		X							
Dutch Antilles			X						
Egypt							X ⁴⁰		
Equatorial Guinea	X								
Falkland Islands					X				X
Faroe Islands							X ⁴¹		
Federation of Micronesia	X	X							
Fiji					X				X
Fujairah		X							
Gibraltar	X		X		X	X			
Granada	X				X				
Guatemala				X					
Guernsey	X	X	X		X	X			
Guinea									
Bissau	X								
Haiti	X								
Herm Island	X								
Hong Kong			X			X ⁴²	X ⁴³		
Iran	X								
Iraq	X								

³⁴ Companies obtaining exemption from tax under Law 16,441 of 1st March 1966 on income from property located in the Department of Isla da Pascoa or from activities developed in that Department.

³⁵ Only for income considered to arise in another territory and not subject to tax.

³⁶ Companies which do not fall within the scope of Article 111, Book 2 of Law 157 of 1981 because they do not operate in Egypt.

³⁷ Companies deriving interest from Faroese financial institutions from which tax is deducted at source under Law 4 of 26th March 1953.

³⁸ Only for income considered to arise in another territory and not subject to tax.

³⁹ Companies deriving income in or from the Hong Kong Special Administrative Region and submitting tax returns to the authorities of that Region.

Third Countries	Black (and Grey) Lists						White Lists		
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous ⁴⁰	No or low tax burden ⁴⁰	Low Tax Rate Territories (white list exclusions) ⁴¹	NCSTs	Tax Havens	Low-taxed persons ⁴²	CFC apportionment (qualified countries) ⁴³	Low Tax Rate Territories (white list)	CFC apportionment exemptions ⁴³
Isle of Man	X	X			X	X		X	
Jersey	X	X	X		X	X		X	
Jethou		X							
Jordan					X				
Kenya							X ⁴⁴		
Kiribati	X								
Laos	X								
Lebanon					X	X ⁴⁵			
Liberia	X				X	X			
Liechtenstein (EEA)	X				X	X			
Macao	X		X		X	X	X ⁴⁶		
Malaysia							X ⁴⁷		
Maldives	X	X				X			
Mariana Islands					X				
Marshall Islands	X		X	X					
Mauritius					X				
Mayotte	X								
Moldavia		X						X	
Monaco	X	X			X	X			
Montenegro		X				X ⁴⁸			
Montserrat	X		X	X	X				
Morocco						X ⁴⁹	X ⁴³		
Namibia	X								
Nauru		X		X	X				
Niue	X			X					
North Korea	X								
Oman	X				X				
Pakistan							X ⁴³		

⁴⁰ Companies having income exempted from tax under paragraph 11 of Schedule 1 to the Income Tax Act 1973.

⁴¹ Only for income from banking and finance, other financial and insurance services.

⁴² From 20th December 1999, companies deriving income in or from the Macao Special Administrative Region and submitting tax returns to the authorities of that Region.

⁴³ (1) Companies exempt from tax in accordance with section 54A of the Income Tax Act 1967 (shipping). (2) Companies subject to tax at 5 per cent in accordance with sections 60A and 60B of the Income Tax Act 1967 (inward reinsurance and offshore insurance). (3) Companies deriving dividends from a company or companies deriving income from one or more of the activities referred to in paragraphs (1) and (2) above. (4) Companies obtaining a tax benefit under the Offshore Companies Act (Island of Labuan) 1990.

⁴⁴ Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.

⁴⁵ Only for income from banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime as well as income from coordination centres.

⁴⁶ Companies receiving a tax benefit under Law 53-90 of 1992 (offshore financial centres).

⁴⁷ Companies deriving royalties, commissions or fees which are exempt from tax under paragraph 130 in Part I of the second Schedule to the Income Tax Ordinance 1970.

Third Countries	Black (and Grey) Lists						White Lists		
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous ⁴⁹	No or low tax burden ⁴⁸	Low Tax Rate Territories (white list exclusions) ⁵⁰	NCSTs	Tax Havens	Low-taxed persons ⁵¹	CFC apportionment (qualified countries) ⁵²	Low Tax Rate Territories (white list)	CFC apportionment exemptions ⁵³
Falau		X							
Panama	X					X ⁵⁴			
Philippines				X			X ⁵⁵		
Puerto Rico							X ⁵⁶		
Ras al Khaimah		X							
Saint - Vincent and the Grenadines	X				X				
Saint Christopher and Nevis	X								
Saint Lucia	X				X				
Saint-Barthélemy		X							
Saint-Pierre-et-Miquelon	X								
Samoa	X								
San Marino						X ⁵⁷			
Sao Tome and Principe	X								
Sark		X							
Seychelles	X				X	X			
Sharjah		X							
Singapore						X ⁵⁸	X ⁵⁹	X	
Solomon Islands					X				X
Somalia	X								
Sri Lanka							X ⁶⁰		

⁴⁸ Only for income considered to arise in another territory and not subject to tax.

⁴⁹ (1) Companies authorised under Presidential Decree 1034 of 30th September 1976, or under Presidential Decree 1035 of 30th September 1976, to operate an offshore Banking Unit or a Foreign Currency Deposit Unit as defined in those Decrees. (2) Companies receiving interest on deposits with a Foreign Currency Deposit Unit, or other interest subject to the reduced rates of tax under section 27(D) of the National Internal Revenue Code 1997.

⁵⁰ (1) Companies obtaining a tax benefit under section 2(o) of the Industrial Incentive Act 1978 (designated service industries). (2) Companies obtaining a tax benefit under section 25 of the International Banking Centre Regulatory Act 1989 (International Banking Entities).

⁵¹ Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.

⁵² Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.

⁵³ (1) Any company obtaining tax concessions under Ministry of Finance Regulations pursuant to section 43A, and sections 43C to 43K, of the Income Tax Act. (2) Companies obtaining exemption from tax on the income of a shipping enterprise in accordance with section 13A of the Income Tax Act. (3) Companies obtaining relief from tax in accordance with sections 45 to 55 (international trade incentives), and sections 75 to 84 (warehouse and service incentives), of the Economic Expansion Incentives (Relief from Income Tax) Act. (4) Companies deriving dividends from a company or companies deriving income from one or more of the activities falline within paragraphs (1) to (3) above.

Third Countries	Black (and Grey) Lists						White Lists		
	Belgium		Estonia	France	Spain	Sweden	United Kingdom	Estonia	United Kingdom
	Common tax regime substantially more advantageous ⁵⁴	No or low tax burden ⁵⁴	Low Tax Rate Territories (white list exclusions) ⁵⁵	NCSTs	Tax Havens	Low-taxed persons ⁵⁶	CFC apportionment (qualified countries) ⁵⁷	Low Tax Rate Territories (white list)	CFC apportionment exemptions ⁵⁸
Switzerland						X ⁵⁹		X	
Tanzania							X ⁶⁰		
Thailand						X ⁶¹	X ⁶²		
Tunisia							X ⁶³		
Turkey						X ⁶⁴		X	X
Turks and Caicos Islands		X	X		X				
Turkmenistan	X								
Umm al Qaiwain		X							
United Arab Emirates						X			
USA							X ⁶⁵		
US Samoa	X								
US Virgin Islands			X		X				
Uzbekistan	X								
Vanuatu		X			X				
Virgin Islands	X								
Wallis and Futuna		X							

⁵⁴ Companies obtaining relief or exemption from income tax under any of the following provisions of the Inland Revenue Act 1979- (a) section 8(c)(iv) (foreign currency banking units); (b) sections 10(d) and 15(b) (income derived from approved bank accounts); (c) section 10(e) (interest of newly resident companies); (d) section 15(cc) (services rendered outside Sri Lanka); (e) section 15(p) (re-export of approved products).

⁵⁵ Only for income from banking and finance, other financial and insurance services

⁵⁶ Companies relieved or exempted from income tax under section 15(1) or (1A) of the Income Tax Act 1973.

⁵⁷ Only for income from banking operations that are not taxed under the ordinary income tax regime.

⁵⁸ Companies obtaining a tax benefit under Royal Decree 280 of 22nd September 1992 (offshore banking units).

⁵⁹ Companies obtaining exemption from, or reduction of, tax under Law 76/63 of 12th July 1976 (financial and banking institutions dealing with non-residents).

⁶⁰ Only for income from such banking and finance, other financial and insurance services that are not taxed under the ordinary income tax regime.

⁶¹ Domestic International Sales Corporations as defined in section 902(a) of the Internal Revenue Code 1954.