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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: The EU list of non-cooperative jurisdictions for tax purposes
• Report by the Code of Conduct Group (Business taxation) suggesting the de-listing of certain jurisdictions

1. On 25 May 2016, the ECOFIN Council agreed on the establishment by the Council of an EU list of third country non-cooperative jurisdictions for tax purposes. On 8 November 2016¹, it set out the criteria on tax transparency, fair taxation and implementation of anti-BEPS standards, as well as the guidelines for the process of screening jurisdictions with a view to achieving this objective.
2. On 5 December 2017, the ECOFIN Council adopted Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes². More specifically it endorsed the 'EU list of non-cooperative jurisdictions for tax purposes' as well as recommendations to the concerned jurisdictions on steps to take in order to get de-listed (Annex I of the Council conclusions). The Council conclusions also noted with satisfaction the meaningful commitments at high political level made by other jurisdictions (Annex II) and determined the Guidelines for further work in this area (Annex IV).

¹ Doc. 9452/16 FISC 85 ECOFIN 502.

² Doc. 15429/17 FISC 345 ECOFIN 1088.

3. Furthermore, the Council conclusions of 5 December 2017 deemed it appropriate for the Code of Conduct Group to "*engage in discussions with the listed jurisdictions, with a view to agreeing and monitoring the steps that jurisdictions are expected to take in order to be removed from the list*" (paragraph 10), noted that the Code of Conduct Group "*should recommend at any time to update the list of non-cooperative jurisdictions for tax purposes based on any new commitment taken*" (paragraph 11), and confirmed that "*a decision on modification of the list will be taken by the Council, on the basis of the relevant factual information made available to the Council by the Code of Conduct Group*" (paragraph 24).
4. Annex IV of the Council conclusions of 5 December 2017 indicates that the EU list of non-cooperative jurisdictions for tax purposes "*shall be revised by the Council at least once a year and endorsed on the basis of a report from the Code of Conduct Group on Business Taxation to the Council, indicating the starting date of application of that modification*".
5. On 23 January 2018, the ECOFIN Council adopted amendments to the Council conclusions of 5 December 2017 leading to the de-listing of 8 jurisdictions from the EU list of non-cooperative jurisdictions for tax purposes.
6. Since then, several new commitment letters signed at high political level by jurisdictions included in Annex I were received by the Code of Conduct Group. These letters were assessed and delegations agreed, on 14 February 2018, that based on the specific commitments made through these letters the following jurisdictions should be moved from Annex I to Annex II of the Council conclusions:
 - i) Bahrain;
 - ii) Marshall Islands;
 - iii) Saint Lucia.
7. The Code of Conduct Group also agreed at the same meeting that Annex II of the 5 December 2017 Council conclusions should be updated taking into account the latest commitments by Malaysia and Labuan Islands, which explicitly reiterated the commitment taken at the OECD Forum on Harmful Tax Practices to amend or abolish the identified regimes by end 2018.
8. To be noted that all commitments officially taken by jurisdictions, as well as the implementation of the recommendations made by the Council in order to address open issues,

will be carefully monitored by the Code of Conduct Group, supported by the General Secretariat of the Council, with technical assistance of the European Commission, in order to evaluate their effective implementation (Annex IV).

9. The Permanent Representatives Committee is therefore invited to suggest that the ECOFIN Council in March 2018:

- adopt the amendments to the Council conclusions of 5 December 2017 in annex to the present note, as an "A" item on the agenda,
- agree on the publication of the above-mentioned amendments in the Official Journal.

ANNEX

With effect from the day of publication in the *Official Journal of the European Union*, the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes³ are amended as follows:

In Annex I:

1. Points 2 (Bahrain), 8 (Marshall Islands) and 13 (Saint Lucia) are deleted.

In Annex II:

1. Bahrain is added to sections 1.1 (sub-section 1), 1.2 (sub-section 1), 1.3 (sub-section 1), 2.2 and 3 (sub-section 1);
2. Malaysia and Labuan Island are moved from sub-section 2 to sub-section 1 of section 2.1.
3. Marshall Islands is added to sections 1.1 (sub-section 1), 1.2 (sub-section 1), 2.2 and 3 (sub-section 1);
4. Saint Lucia is added to section 2.1 (sub-section 1) and 3 (sub-section 1).

³ Official Journal of the European Union, C 438 2017 pages 5-24.