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European Union

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Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Draft letter in relation to the new criterion 3.2: implementation of the
Country-by-Country Reporting (CbCR) anti-BEPS minimum standard

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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NOTE

From: Chair of the Code of Conduct Group (Business Taxation)

To: Code of Conduct Group (Business Taxation)

Subject: The EU list of non-cooperative jurisdictions for tax purposes

- Draft letter in relation to the new criterion 3.2: implementation of the Country-by-Country Reporting (CbCR) anti-BEPS minimum standard

Delegations will find attached a draft template letter on the above-mentioned subject.

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[Addressee: jurisdictions screened by COCG in 2017 that have become members of the IF on BEPS until 15/11/2018¹ and have thereby been removed from section 3.1 of Annex II + Taiwan and New Caledonia]

Brussels, X December 2018

Subject: The EU list of non-cooperative jurisdictions for tax purposes

- **New criterion 3.2: implementation of the Country-by-Country Reporting (CbCR) anti-BEPS minimum standard**

[Your Excellency,] // [Dear Madam/Sir,]

We would like to inform you that, as foreseen in its conclusions of 8 November 2016, the Council of the European Union has endorsed on 4 December 2018 the application of a new criterion 3.2 in the context of the EU listing exercise.

As a first step, this new criterion relates to the effective implementation of the agreed OECD Country-by-Country Reporting (CbCR) anti-BEPS minimum standard, for which jurisdictions covered by the EU listing exercise are expected to receive a positive assessment [by the Inclusive Framework on BEPS]. It could however be extended in the future to assessing compliance with regard to the effective implementation of the three other OECD anti-BEPS minimum standards.

[In the case of jurisdictions that have joined the Inclusive Framework on BEPS [until end 2017] // [in 2018], as is the case for [name of the jurisdiction], the Council's Code of Conduct Group on business taxation (COCG) expects these jurisdictions to have effectively implemented the CbCR anti-BEPS minimum standard by the end of [2019] // [2020]. This would notably be the case if

¹ For jurisdictions that will join thereafter: a similar letter could be sent after removal from section 3.1 of Annex II to avoid confusion.

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[name of the jurisdiction] receives no recommendation on such implementation from the Inclusive Framework on BEPS, or if these recommendations do not constitute a material shortcoming - understood as a significant non-compliance relating to the confidentiality, the data safeguards and the appropriate use, or as a failure to provide timely or adequate information as requested by the CbCR minimum standard. In this case, the COCG will not recommend to the Council of the European Union to include [name of the jurisdiction] in the EU list of non-cooperative jurisdictions as long as no other criteria have been failed.]

[Alternative text for Taiwan and New Caledonia: In the case of jurisdictions that are implementing anti-BEPS minimum standards without joining the Inclusive Framework on BEPS, as is the case for [name of the jurisdiction], the Council's Code of Conduct Group on business taxation (COCG) expects these jurisdictions to have effectively implemented the CbCR anti-BEPS minimum standard by the end of 2020. In this case, the COCG will not recommend to the Council of the European Union to include [name of the jurisdiction] in the EU list of non-cooperative jurisdictions as long as no other criteria have been failed.]

You will find in annex to this letter the text of criterion 3.2 as well as the guidance related to this new EU listing criterion.

Should you have any questions or remarks on the above, we invite your services to contact us through our functional email address (Secretariat.COCG-jurisdictions@consilium.europa.eu).

We are looking forward to continue our fruitful cooperation on tax matters.

Sincerely,

+ COCG Chair signature

c.c. General Secretariat of the Council
Unit DG G 2B – Tax Policy, Export Credits and Regional Policy
secretariat.cocg-jurisdictions@consilium.europa.eu
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Criterion 3.2: extract from the Annex to the Council conclusions of 8 November 2016 on "Criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes" (doc. 14166/16)²

"3.2. Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the Inclusive Framework of the agreed minimum standards are completed):

- the jurisdiction should receive a positive assessment for the effective implementation of the agreed OECD anti-BEPS minimum standards."

COCG Guidance on criterion 3.2 of the EU listing exercise³

“With respect to the Country-by-country reporting BEPS Action 13 minimum standard (the 'CbCR minimum standard'), the jurisdiction should have arrangements in place to be able to exchange with all Member States when this is relevant either by signing the CbCR MCAA, or through bilateral agreements with those Member States. The domestic legal and administrative frameworks should be in place beforehand and should correspond to the CbCR minimum standard as detailed in the Terms of Reference.

Deadline for implementing the CbCR minimum standard:

- a) Jurisdictions that joined the Inclusive Framework on BEPS (IF) in the last years, should have effectively implemented the CbCR minimum standard by the end of 2019;
- b) Jurisdictions that committed to the CbCR minimum standard by the end of 2018 (2019) should have effectively implemented it by the end of 2020 (2021).

² <https://www.consilium.europa.eu/media/33242/nov-2016.pdf>

³ Endorsed by the Council of the European Union on 4 December 2018 (doc. 14363/18)

Furthermore, in the context of reviews by the IF:

- a) The absence of recommendations will be considered as a positive assessment.
- b) If a jurisdiction receives recommendations or if it has items being monitored, which do not consist in a material shortcoming, this will also be considered as a positive assessment.
- c) A material shortcoming concerning the implementation of the CbCR minimum standard is defined as a significant non-compliance relating to the confidentiality, the data safeguards and the appropriate use, or as a failure to provide timely or adequate information as requested by the CbCR minimum standard. In this case the jurisdiction cannot be considered as compliant with criterion 3.2.
- d) Where a jurisdiction receives a recommendation which constitutes a material shortcoming, the Code of Conduct Group will seek a commitment to address this shortcoming within 12 months.

For those jurisdictions which are not members of the IF and not part of the peer review process, the Commission services will monitor (in close consultation with the relevant OECD groups and bodies) the implementation of the CbCR minimum standard and submit draft assessments to the Code of Conduct Group."

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