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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 amendments to the Annexes of the Council conclusions of 12 March 2019, including the de-listing of jurisdictions

1. On 12 March 2019, the ECOFIN Council adopted Council conclusions¹ that revised the EU list of non-cooperative jurisdictions for tax purposes (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II) initially endorsed by the ECOFIN Council on 5 December 2017² and subsequently modified/updated by the Council on 23 January 2018³, 13 March 2018⁴, 25 May 2018⁵, 2 October 2018⁶, 6 November 2018⁷ and 4 December 2018⁸.

¹ Official Journal of the European Union, C 114, 26.03.2019, pages 2-8.

² Official Journal of the European Union, C 438 2017 pages 5-24.

³ Official Journal of the European Union, C 29 2018 page 2.

⁴ Official Journal of the European Union, C 100 2018 pages 4-5.

⁵ Official Journal of the European Union, C 191 2018 pages 1-3.

⁶ Official Journal of the European Union, C 359 2018 pages 3-5.

⁷ Official Journal of the European Union, C 403 2018 pages 4-6.

⁸ Official Journal of the European Union, C 441 2018 pages 3-4.

2. Furthermore, recalling paragraph 11 of the Council conclusions of 5 December 2017, the Council conclusions of 12 March 2019 confirmed that the Code of Conduct Group "*should recommend to the Council to update at any time, and at least once a year, the EU list set out in Annex I as well as the state of play set out in Annex II on the basis of any new commitment taken or of the implementation thereof; but, as from 2020 onwards, such updates of the EU list should be done no more than twice a year, leaving sufficient time, where appropriate, for Member States to amend their domestic legislation*" (paragraph 16), thereby agreeing to keep a dynamic process throughout 2019.
3. Barbados' Minister for international business and industry sent letters to the Code of Conduct Group (hereafter "COCG") Chair on 2 and 9 April 2019⁹ committing to amend or abolish by the end of 2019 the measure of similar effect that replaced its harmful preferential regimes and which the COCG had identified on 30 January 2019 as falling under criterion 2.2¹⁰.

The COCG agreed at its meeting of 11 April 2019 that Barbados' commitment letters should be considered as sufficient and therefore that Barbados should be moved from Annex I to Annex II of the Council conclusions of 12 March 2019 (de-listing), in a new sub-section of section 2.2.

4. Bermuda adopted additional amendments to its Economic Substance Regulation on 4 March 2019, thereby resolving the last area of concern, i.e. the wording related to core income generating activities for intellectual property assets. This legislative change was adopted after the cut-off date agreed by the COCG (24 February 2019)¹¹ and could therefore not be examined at technical level in time for the ECOFIN Council of 12 March 2019.

The COCG subgroup on third countries examined the above legislative amendments at its meeting of 27 March 2019 and concluded that Bermuda had implemented its commitment to introduce substance requirements under criterion 2.2 and could therefore be removed from Annex I (delisting). The COCG confirmed this conclusion at its meeting of 11 April 2019.

⁹ The second letter clarified the timeline of the foreseen reform.

¹⁰ Doc. 5981/19.

¹¹ Doc. 7212/19 DCL 1.

Bermuda should however be added to section 2.2 of Annex II in relation to its commitment to address the concerns relating to economic substance in the area of collective investment funds by the end of 2019.

5. Aruba adopted on 4 April 2019 a National Ordinance introducing substance requirements for its transparency regime (AW013), whilst the respective National Decree containing the detailed substance requirements was officially published on 10 April 2019 and came into force the day following its publication.

The COCG subgroup on third countries examined the above legislative amendments at its meeting of 6 May 2019 and concluded that Aruba had implemented its commitment to remove the harmful features of its transparency regime and could therefore be removed from Annex I (delisting). The COCG confirmed this conclusion by silence procedure on 7 May 2019.

6. Morocco having joined the Inclusive Framework on BEPS in March 2019, the Code of Conduct Group agreed on 11 April 2019 that Morocco should be removed from section 3.1 of Annex II.
7. Furthermore, Dominica having ratified on 30 April 2019 the OECD Multilateral Convention on Mutual Administrative Assistance ("MAC") as amended, the COCG subgroup on third countries agreed at its meeting on 6 May 2019 that Annex I should be updated accordingly, but that Dominica should remain listed until it complies with criterion 1.1. The COCG confirmed this conclusion by silence procedure on 7 May 2019.
8. To be noted that all commitments officially taken by jurisdictions are 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 (see Annex IV of the Council conclusions of 5 December 2017 and the Procedural guidelines of 15 February 2018¹²).

¹² Doc. 6213/18.

9. The Permanent Representatives Committee is therefore invited to suggest that the ECOFIN Council in May 2019:

- adopt the amended Annexes I and II to the Council conclusions of 12 March 2019 as attached to the present note, reflecting the changes set out above, as an "A" item on the agenda,
 - agree on their publication in the Official Journal.
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With effect from the day of publication in the *Official Journal of the European Union*, Annexes I and II of the Council conclusions of 12 March 2019 on the revised EU list of non-cooperative jurisdictions for tax purposes¹³ are replaced by the following new Annexes I and II:

The EU list of non-cooperative jurisdictions for tax purposes

1. American Samoa

American Samoa does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

2. Belize

Belize has not yet amended or abolished one harmful preferential tax regime.

Belize's commitment to amend or abolish its newly identified harmful preferential tax regime by the end of 2019 will be monitored.

3. Dominica

Dominica does not apply any automatic exchange of financial information and has not yet resolved this issue.

¹³ Official Journal of the European Union, C 114, 26.03.2019, pages 2-8.

4. Fiji

Fiji has not yet amended or abolished its harmful preferential tax regimes.

Fiji's commitment to comply with criteria 1.2, 1.3 and 3.1 by the end of 2019 will continue to be monitored.

5. Guam

Guam does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

6. Marshall Islands

Marshall Islands facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.

Marshall Islands' commitment to comply with criterion 1.2 will continue to be monitored: it is waiting for a supplementary review by the Global Forum.

7. Oman

Oman does not apply any automatic exchange of financial information, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, and has not yet resolved these issues.

8. Samoa

Samoa has a harmful preferential tax regime and did not commit to addressing this issue.

Furthermore, Samoa committed to comply with criterion 3.1 by the end of 2018 but has not resolved this issue.

9. Trinidad and Tobago

Trinidad and Tobago has a “Non-Compliant” rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request.

Trinidad and Tobago's commitment to comply with criteria 1.1, 1.2, 1.3 and 2.1 by the end of 2019 will be monitored.

10. United Arab Emirates

United Arab Emirates facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.

11. US Virgin Islands

US Virgin Islands does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

12. Vanuatu

Vanuatu facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.

State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles

1. Transparency

1.1 Commitment to implement the automatic exchange of information, either by signing the Multilateral Competent Authority Agreement or through bilateral agreements

The following jurisdictions are committed to implement automatic exchange of information by end 2019:

Palau and Turkey

1.2 Membership of the Global Forum on transparency and exchange of information for tax purposes ("Global Forum") and satisfactory rating in relation to exchange of information on request

The following jurisdictions, which committed to have a sufficient rating by end 2018, are waiting for a supplementary review by the Global Forum:

Anguilla and Curaçao.

The following jurisdictions are committed to become member of the Global Forum and/or have a sufficient rating by end 2019:

Jordan, Namibia, Palau, Turkey and Vietnam.

1.3 Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) or network of agreements covering all EU Member States

The following jurisdictions are committed to sign and ratify the MAC or to have in place a network of agreements covering all EU Member States by end 2019:

Armenia, Bosnia and Herzegovina, Botswana, Cabo Verde, Eswatini, Jordan, Maldives, Mongolia, Montenegro, Morocco, Namibia, Republic of North Macedonia, Palau, Serbia, Thailand and Vietnam.

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdictions, which committed to amend or abolish their harmful tax regimes covering manufacturing activities and similar non-highly mobile activities by end 2018 and demonstrated tangible progress in initiating these reforms in 2018, were granted until end 2019 to adapt their legislation:

Costa Rica and Morocco.

The following jurisdictions, which committed to amend or abolish their harmful tax regimes by end 2018 but were prevented from doing so due to genuine institutional or constitutional issues despite tangible progress in 2018, were granted until end 2019 to adapt their legislation:

Cook Islands, Maldives and Switzerland.

The following jurisdiction is committed to amend or abolish the identified harmful tax regimes by 9 November 2019:

Namibia.

The following jurisdictions are committed to amend or abolish harmful tax regimes by end 2019:

Antigua and Barbuda, Australia, Curaçao, Mauritius, Morocco, Saint Kitts and Nevis, Saint Lucia and Seychelles.

The following jurisdictions are committed to amend or abolish harmful tax regimes by end 2020:

Jordan.

2.2. Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity

The following jurisdictions, which committed to addressing the concerns relating to economic substance in the area of collective investment funds, have engaged in a positive dialogue with the Group and have remained cooperative, but require further technical guidance, were granted until end 2019¹⁴ to adapt their legislation:

Bahamas, Bermuda, British Virgin Islands and Cayman Islands.

The following jurisdiction is committed to addressing the concerns related to economic substance by end 2019:

Barbados.

3. Anti-BEPS Measures

3.1 Membership of the Inclusive Framework on BEPS or commitment to implementation of OECD anti-BEPS minimum standards

The following jurisdictions are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards by end 2019:

Albania, Bosnia and Herzegovina, Eswatini, Jordan, Montenegro and Namibia.

¹⁴ This deadline may be reviewed depending on the technical guidance to be agreed by the Group and ongoing dialogue with the jurisdictions concerned.

The following jurisdictions are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards if and when such commitment will become relevant:

Nauru, Niue and Palau.
