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European Union

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	The Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes

Delegations will find in the Annex the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, approved by the Ecofin Council at its meeting held on 14 February 2023.

Council conclusions
on the revised EU list of non-cooperative jurisdictions for tax purposes

The Council of the European Union,

1. UNDERLINES the importance of promoting and strengthening tax good governance standards, including in the area of fair taxation and tax transparency, and of fighting against tax fraud, evasion and avoidance, both at the EU level and globally;
2. APPRECIATES the continuous productive cooperation on tax matters between the Code of Conduct Group on Business Taxation (“Code of Conduct Group”) and most jurisdictions around the world;
3. WELCOMES the progress in the relevant jurisdictions through the active steps taken by the agreed deadlines and the new commitments taken towards resolving the deficiencies that the Code of Conduct Group had identified;
4. WELCOMES the update of criterion 1.1 on the automatic exchange of financial account information and the commitments taken by the jurisdictions engaged in a dialogue with the Code of Conduct Group in the framework of this update; REGRETS that some jurisdictions failed to take a commitment to the Group within the set deadline, which has resulted in their inclusion in the EU list of non-cooperative jurisdictions for tax purposes, or were downgraded by the Global Forum in relation to their rating on exchange of information on request;

5. REGRETS that some jurisdictions remain non-cooperative for tax purposes and that a number of jurisdictions failed to fulfil their commitments to the Code of Conduct Group with regard to economic substance requirements under criterion 2.2 or the reform of harmful tax regimes under criterion 2.1; INVITES these jurisdictions to engage with the Code of Conduct Group in order to resolve the remaining issues;
6. APPROVES the assessment made by the Code of Conduct Group of the Russian Federation's amended International Holding Companies regime against the technical criteria of the Code of Conduct on business taxation in the context of the EU list, in particular the assessment of the treatment of income from intellectual property and the grandfathering provisions, and CONSIDERS that the Russian Federation has not fulfilled its commitment to amend its harmful preferential tax regime and should therefore be included in the EU list of non-cooperative jurisdictions for tax purposes; UNDERLINES that the Russian Federation's unprovoked military aggression against Ukraine, which the European Council has strongly condemned on multiple occasions¹, prevents the Code of Conduct Group from maintaining a dialogue with the Russian authorities;
7. REGRETS that Türkiye has not made any progress with one Member State on the effective automatic exchange of information; REITERATES its call on Türkiye to begin the outstanding automatic information exchange relationships with one Member State and to fully comply with the requirements set in the conclusions of the Ecofin Council of 22 February 2021, 5 October 2021, 24 February 2022 and 4 October 2022; REITERATES that the effective automatic exchange of information with all Member States is a condition for Türkiye to fulfil criterion 1.1 of the EU list; INVITES the Group to inform the Council about developments in this regard and to continue addressing the outstanding issues where no progress has been made;

(1) ¹ EUCO 18/22, EUCO 1/22, 21/22, 31/22, 34/22, as well as ST 9873/22.

8. APPROVES the Code of Conduct Group Report set out in doc. 5922/23;
 9. APPROVES accordingly the revised EU list of non-cooperative jurisdictions for tax purposes (“EU list”) set out in Annex I;
 10. ENDORSES the state of play set out in Annex II with respect to commitments taken by cooperative jurisdictions to implement tax good governance standards.
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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, has not committed to applying the minimum standards on base erosion and profit shifting (BEPS minimum standards) and has not committed to addressing these issues.

2. Anguilla

Anguilla facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

Anguilla is waiting for a supplementary review by the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) in relation to exchange of information on request (criterion 1.2).

3. The Bahamas

The Bahamas facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

4. British Virgin Islands

British Virgin Islands does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request.

5. Costa Rica

Costa Rica has a harmful foreign source income exemption regime, and has not resolved this issue yet.

Costa Rica has committed to addressing the Global Forum recommendations with regard to automatic exchange of information (criterion 1.1) in due time, so as to achieve determinations of at least “In place, but needs improvement” on core requirements 1 and 2 in the Global Forum peer review report in the autumn of 2024.

6. Fiji

Fiji is not a member of the Global Forum, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes (Exporting Companies, Income Communication Technology (ICT) Incentive, Concessionary rate of tax for regional or global headquarters), has not become a member of the Inclusive Framework nor implemented the BEPS minimum standards, and has not resolved these issues yet.

7. 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, has not committed to apply the BEPS minimum standards and has not committed to addressing these issues.

8. Marshall Islands

Marshall Islands facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

9. Palau

Palau 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 resolved these issues yet.

10. Panama

Panama does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request, has a harmful foreign source income exemption regime and has not resolved these issues yet.

Panama has committed to addressing the Inclusive Framework recommendations with regard to the implementation of criterion 3.2 on CbCR in due time, so that this is reflected in the Inclusive Framework Action 13 peer review report in the autumn of 2023.

11. Russian Federation

The Russian Federation has a harmful preferential tax regime (International Holding Companies) and has not resolved this issue.

12. Samoa

Samoa has a harmful preferential tax regime (Offshore Business) and has not resolved this issue yet.

13. Trinidad and Tobago

Trinidad and Tobago does not apply any automatic exchange of financial information, does not have a rating of at least “Largely Compliant” by the Global Forum for exchange of information on request, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes (Free Zones), and has not resolved these issues yet.

Trinidad and Tobago has committed to addressing the Inclusive Framework recommendations with regard to the implementation of criterion 3.2 on CbCR in due time, so that this is reflected in the Inclusive Framework Action 13 peer review report in the autumn of 2023.

Trinidad and Tobago has also committed to addressing the Global Forum recommendations with regard to automatic exchange of information (criterion 1.1) in due time, so as to achieve determinations of at least “In place, but needs improvement” on core requirements 1 and 2 in the Global Forum peer review report in the autumn of 2024.

14. Turks and Caicos Islands

Turks and Caicos Islands facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

15. 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 (Economic Development Programme, Exempt companies, International Banking Center Regulatory Act), has not committed to apply the BEPS minimum standards and has not committed to addressing these issues.

16. Vanuatu

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

Vanuatu is waiting for a supplementary review by the Global Forum in relation to exchange of information on request.

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

1. Transparency

1.1 Automatic exchange of information

The following jurisdiction is expected to effectively exchange information with all 27 Member States according to the timeline referred to in paragraph 6 of the Council conclusions of 22 February 2021, paragraph 4 of the Council conclusions of 5 October 2021, paragraph 4 of the Council conclusions of 24 February 2022 and paragraph 4 of the Council conclusions of 4 October 2022.

Türkiye

The following jurisdictions committed to address the Global Forum recommendations with regard to automatic exchange of information in due time, so as to achieve determinations of at least “In place, but needs improvement” on core requirements 1 and 2 in the Global Forum peer review report in the autumn of 2024.

Aruba, Belize, Curaçao and Israel

1.2 Membership of the Global Forum and satisfactory rating in relation to exchange of information on request

The following jurisdictions are waiting for a supplementary review by the Global Forum:

Botswana, Dominica and Seychelles

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdiction, which committed to amend or abolish its harmful foreign source income exemption regime by the end of 2022, faced constitutional reform constraints and demonstrated tangible progress in 2022, was granted until 31 March 2023 to adapt its legislation as regards the anti-abuse rules and the economic substance requirements. This jurisdiction committed to applying the amended legislation with effect from 1 January 2023:

Qatar

The following jurisdictions, which committed to amend or abolish their harmful foreign source income exemption regimes by the end of 2022 and demonstrated tangible progress with these reforms in 2022, were granted until the end of 2023 to adapt their legislation as regards the treatment of capital gains:

Hong Kong and Malaysia

The following jurisdictions, which committed to amend or abolish a preferential tax regimes in the scope of the Forum on Harmful Tax Practices (FHTP) by 31 December 2022, was granted until the end of April 2023 to adapt its legislation:

Jordan (Aqaba special economic zone)

The following jurisdictions committed to amending or abolishing preferential tax regimes in the scope of the Forum on Harmful Tax Practices (FHTP), by 31 December 2023:

Albania (Industrial Incentives), Armenia (Free economic zones and Information technology projects) and Eswatini (Special economic zone)

3. Prevention of base erosion and profit shifting

3.2 *Implementation of the CbCR minimum standard (BEPS Action 13)*

The following jurisdictions committed to implement the CbCR minimum standard by addressing the Inclusive Framework recommendations in due time, so that this is reflected in the Inclusive Framework Action 13 peer review report in the autumn of 2023 and/or activating CbCR exchange relationships with all EU Member States according to the agreed deadline:

Belize, Israel, Montserrat, Thailand, Vietnam
