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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 Annex II of the Council conclusions of 12 March 2019

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 OJ C 114 2019 pages 2-8.
2 OJ C 438 2017 pages 5-24.
3 OJ C 29 2018 page 2.
4 OJ C 100 2018 pages 4-5.
5 OJ C 191 2018 pages 1-3.
6 OJ C 359 2018 pages 3-5.
7 OJ C 403 2018 pages 4-6.
8 OJ 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 (hereafter "COCG") *"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. The EU list of non-cooperative jurisdictions for tax purposes was subsequently modified by the ECOFIN Council in May⁹, June¹⁰, October¹¹ and November 2019¹², with the de-listing of Aruba, Barbados, Belize, Bermuda, Dominica, Marshall Islands and the UAE.

Further updates to Annexes I and II of the Council conclusions of 12 March 2019 were also made on the same occasion.

4. Since then, Jordan having, on 29 October 2019, joined the Global Forum on transparency and exchange of information for tax purposes and the Inclusive Framework on BEPS, the COCG agreed at its meeting of 14 November 2019 that Jordan should be removed from sections 1.2 and 3.1 of Annex II.

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

- adopt the updated Annex II to the Council conclusions of 12 March 2019 set out in annex to the present note, which reflects the developments described above, as an "A" item on the agenda,
- agree on its publication in the Official Journal.

⁹ OJ C 176 2019 pages 2-5.

¹⁰ OJ C 210 2019 pages 8-11.

¹¹ OJ C 351 2019 pages 7-9.

¹² OJ C 386 2019 pages 2-4.

With effect from the day of publication in the *Official Journal of the European Union*, Annex II of the Council conclusions of 12 March 2019 on the revised EU list of non-cooperative jurisdictions for tax purposes¹³, as amended on 22 May 2019¹⁴, 21 June 2019¹⁵, 17 October 2019¹⁶ and 14 November 2019¹⁷, is replaced by the following new Annex II:

ANNEX II

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

¹³ OJ C 114, 26.03.2019, pp. 2-8.

¹⁴ OJ C 176, 22.05.2019, pp. 2-5.

¹⁵ OJ C 210, 21.06.2019, pp. 8-11.

¹⁶ OJ C 351, 17.10.2019, pp. 7-9.

¹⁷ OJ C 386, 14.11.2019, pp. 2-4.

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

Anguilla, Marshall Islands and Curaçao.

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

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, Namibia, Palau, Thailand and Vietnam.

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdiction, which committed to amend or abolish its 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, was granted until end 2019 to adapt its legislation:

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 and Maldives.

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

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

The following jurisdiction is committed to amend or abolish a harmful tax regime 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, were granted until end 2019 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:

Montenegro.

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.

