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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7212/19 FISC 151 ECOFIN 275
Subject:	The revised EU list of non-cooperative jurisdictions for tax purposes – Council conclusions (12 March 2019)

Delegations will find in the Annex the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, adopted by the Council at its meeting held on 12 March 2019.

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

The Council:

1. RECALLS the Council Conclusions of 25 May 2016 on an external taxation strategy and measures against tax treaty abuse, the Council Conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, and the Council Conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes;

2. WELCOMES the work that the Code of Conduct Group on Business Taxation ("Code of Conduct Group"), supported by the General Secretariat of the Council and with the assistance of the European Commission services, has carried out in monitoring the implementation of commitments taken by jurisdictions to implement tax good governance principles and in taking stock of the work achieved by the relevant OECD fora;

3. WELCOMES the fact that most of these jurisdictions have engaged in an open and constructive way with the Code of Conduct Group and resolved the deficiencies that had been identified in the areas of tax transparency, fair taxation and implementation of anti-BEPS standards by enacting the necessary measures within the agreed deadline;

4. REGRETS at the same time that a number of jurisdictions have not enacted by the end of 2018 all the measures to which they had committed, whilst some jurisdictions have not committed to implement any or some of the tax good governance principles for which it was determined that they are not compliant;

5. ENDORSES, accordingly, the revised EU list of non-cooperative jurisdictions for tax purposes set out in Annex I;

6. CONSIDERS that reasons put forward by some jurisdictions for not fully enacting all of the measures to which they had committed, despite tangible efforts, could in some cases be viewed as justified and AGREES therefore that the deadline for meeting their commitments should be extended as set out in Annex II;

7. TAKES THE VIEW, in particular, that:

   1. certain developing countries should be given more time to reform their harmful preferential tax regimes covering manufacturing activities and similar non-highly mobile activities considering the heavier economic impact of these reforms on such countries;

   2. jurisdictions that faced genuine institutional or constitutional issues that prevented them from fulfilling their commitments in 2018 should also be given a reasonable deadline extension to complete their reforms subject to the jurisdiction having provided adequate draft legislation;

   3. jurisdictions that evidenced litigation risks in relation to the abolition of certain harmful preferential tax regimes should be granted an extended grandfathering period;

   4. jurisdictions that are rated as partially compliant for exchange of information on request and are waiting for a supplementary review by the Global Forum should be granted an extension until the revised rating is available;

8. EXPRESSES its satisfaction that many jurisdictions under criterion 2.2 have enacted the required reforms in 2018 and are therefore removed from Annex II, but ASKS the Code of Conduct Group to monitor the proper enactment of their legislative and enforcement provisions on an annual basis;

9. ACKNOWLEDGES that further work will be needed to define acceptable economic substance requirements for collective investment funds under criterion 2.2 and INVITES the Group to continue the dialogue and provide further technical guidance to the jurisdictions concerned by mid 2019;

10. NOTES WITH CONCERN the replacement of harmful preferential tax regimes by measures of similar effect in certain jurisdictions, REGRETS that one of these jurisdiction has not taken a sufficient commitment to amend or abolish these measures by the end of 2019 and STRESSES that no further replacement with measures of similar effect or delays will be accepted when assessing at the beginning of 2020 whether the requested commitments will have been implemented;

11. NOTES the Code of Conduct Group will continue seeking commitments from the jurisdictions that have not yet committed to address the deficiencies identified;

12. NOTES that the Code of Conduct Group will continue monitoring the effective implementation by end 2019 of the commitments made by developing countries without a financial centre in respect of tax transparency and implementation of anti-BEPS minimum standards, as well as the implementation of the relevant transparency and anti-BEPS minimum standards in jurisdictions that cannot or do not wish to join the Global Forum or OECD BEPS Inclusive Framework;

13. WELCOMES the work of the Code of Conduct Group in reviewing newly identified preferential regimes in some jurisdictions and in monitoring the commitments taken by these jurisdictions to remove the harmful features of these regimes;

14. ENDORSES the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles, as set out in Annex II;

15. INVITES the Code of Conduct Group and its Chair, supported by the General Secretariat of the Council and with the technical assistance of the Commission services, to continue the interactions and dialogues with the relevant jurisdictions, including with respect to the end of the general "two out of three" approach at the end of June 2019;

16. Recalling paragraph 11 of the Council Conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes, CONFIRMS 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;

17. RECALLS the extensions of the geographical scope of the EU screening exercise to other jurisdictions agreed in 2018 and INVITES the Code of Conduct Group to review the economic data used for selecting jurisdictions in 2020, for application as from 2021;

18. CONFIRMS the start of application of criterion 3.2 (implementation of the country by country reporting – CbCR minimum standard), and REITERATES its invitation to the Code of Conduct Group to finalise discussions in respect of future criterion 1.4 (transparency of ultimate beneficial ownership);

19. WELCOMES the fact that Annex I of these Council conclusions is being taken into account by the European Commission in the implementation of EU financing and investment operations, as well as the agreements reached in respect of coordinated defensive measures in the non-tax area vis-à-vis the non-cooperative jurisdictions since the Council conclusions of 5 December 2017[1];

20. REITERATES at the same time its invitation to the Code of Conduct Group to finalise discussions on further coordinated defensive measures, without prejudice to Member States' obligations under EU and international law;

21. INVITES the EU institutions and Member States, as appropriate, to take the revised EU list of non-cooperative jurisdictions for tax purposes set out in Annex I into account in foreign policy, economic relations and development cooperation with the relevant third countries, to strive for a comprehensive approach as regards to the issue of compliance with the Criteria, without prejudice to the respective spheres of competence of the Member States and of the Union as resulting from the Treaties;

22. REITERATES that the Code of Conduct Group, supported by the General Secretariat of the Council and with the technical assistance of the European Commission services, should continue to conduct and oversee the EU screening, listing and monitoring processes, in co-ordination with the High Level Working Party on tax issues (HLWP).

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[1] Regulation (EU) 2017/2402 on a general framework for securitisation, Regulation (EU) 2017/2396 on the European Fund for Strategic Investments, Regulation (EU) 2017/2396 on the European Fund for Strategic Investments and on the European Investment Advisory Hub, Decision (EU) 2018/412 on granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the EU, and Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the EU general budget.

ANNEX I

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. Aruba

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

3. Barbados

Barbados has replaced a harmful preferential tax regime by a measure of similar effect and did not commit to amend or abolish it by the end of 2019.

4. 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.

5. Bermuda

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

Bermuda's commitment to addressing the concerns relating to economic substance in the area of collective investment funds by the end of 2019 will be monitored.

6. Dominica

Dominica 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Vanuatu

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

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

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, 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 2019[2] to adapt their legislation:

Bahamas, British Virgin Islands and Cayman Islands.

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, Morocco and Namibia.

[2] 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.