



Council of the
European Union

Brussels, 21 November 2018
(OR. en)

14380/18

FISC 482
ECOFIN 1060

'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 5 December 2017

1. On 5 December 2017, the ECOFIN Council adopted Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes¹. More specifically it endorsed the 'EU list of non-cooperative jurisdictions for tax purposes' as well as recommendations to the concerned jurisdictions on steps to take in order to get de-listed (Annex I). They also noted with satisfaction the meaningful commitments at high political level made by other jurisdictions (Annex II) and determined the Guidelines for further work in this area (Annex IV).

¹ Doc. 15429/17 FISC 345 ECOFIN 1088.

2. Furthermore, the Council conclusions of 5 December 2017 deemed it appropriate for the Code of Conduct Group to "engage in discussions with the listed jurisdictions, with a view to agreeing and monitoring the steps that jurisdictions are expected to take in order to be removed from the list" (paragraph 10), noted that the Group "should recommend at any time to update the list of non-cooperative jurisdictions for tax purposes based on any new commitment taken" (paragraph 11), and confirmed that "a decision on modification of the list will be taken by the Council, on the basis of the relevant factual information made available to the Council by the Code of Conduct Group" (paragraph 24).
3. Annex IV of the Council conclusions of 5 December 2017 indicates that the EU list of non-cooperative jurisdictions for tax purposes "*shall be revised by the Council at least once a year and endorsed on the basis of a report from the Code of Conduct Group on Business Taxation to the Council, indicating the starting date of application of that modification*".
4. On 23 January², 13 March³, 25 May⁴, 2 October⁵ and 6 November⁶ 2018, the ECOFIN Council adopted several amendments to Annexes I and II of the Council conclusions of 5 December 2017⁷.

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

³ Official Journal of the European Union, C 100 2018 pages 4-5.

⁴ Official Journal of the European Union, C 191 2018 pages 1-3.

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

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

⁷ Official Journal of the European Union, C 438 2017 pages 5-24.

5. Since then, the Code of Conduct Group agreed at its meeting of 15 November 2018 on the following amendments to Annex II of the Council conclusions of 5 December 2017:
- a) Macao SAR signed the Common Reporting Standard (CRS) Multilateral Competent Authority Agreement (MCAA)⁸, indicated all EU Member States as intended exchange partners⁹ and should therefore be removed from section 1.1;
 - b) Oman has joined the Global Forum on Transparency and Exchange of Information for Tax Purposes¹⁰ and should therefore be removed from section 1.2;
 - c) Andorra and San Marino have amended/abolished their harmful preferential tax regimes¹¹ (respectively: regimes AD001, AD002, AD003 and AD004 for Andorra, and SM003 and SM004 for San Marino¹²) and should therefore be removed from section 2.1;
 - d) Antigua and Barbuda, Dominica, Grenada and Saint Vincent and the Grenadines have joined the Inclusive Framework on BEPS¹³ and should therefore be removed from section 3.1.
6. As a consequence, Andorra and San Marino would be removed completely from Annex II of the Council conclusions of 5 December 2017.

⁸ <http://www.oecd.org/tax/exchange-of-tax-information/MCAA-Signatories.pdf>

⁹ <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>

¹⁰ <http://www.oecd.org/tax/transparency/about-the-global-forum/members/>

¹¹ <http://www.oecd.org/tax/beps/update-harmful-tax-practices-2017-progress-report-on-preferential-regimes.pdf>

¹² For more details: see doc. 9639/1/18 REV 1.

¹³ <https://www.oecd.org/ctp/beps/inclusive-framework-on-beps-composition.pdf>

7. The Permanent Representatives Committee is therefore invited to suggest that the ECOFIN Council in October 2018:

- adopt the amended Annex II to the Council conclusions of 5 December 2017 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*, Annex II of the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes¹⁴, as amended in January¹⁵, March¹⁶, May¹⁷, October¹⁸ and November¹⁹ 2018, is replaced by the following:

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 2018:

Antigua and Barbuda, Curaçao, Dominica, Grenada, Marshall Islands, New Caledonia, Oman, Palau, Qatar and Taiwan.

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

Turkey.

¹⁴ Official Journal of the European Union, C 438 2017 pages 5-24.

¹⁵ Official Journal of the European Union, C 29 2018 page 2.

¹⁶ Official Journal of the European Union, C 100 2018 pages 4-5.

¹⁷ Official Journal of the European Union, C 191 2018 pages 1-3.

¹⁸ Official Journal of the European Union, C 359 2018 pages 3-5.

¹⁹ Official Journal of the European Union, C 403 2018 pages 4-6.

1.2 Membership of the Global Forum on transparency and exchange of information for tax purposes and satisfactory rating

The following jurisdictions are committed to become member of the Global Forum and/or have a satisfactory rating by 2018:

Anguilla, Curaçao, Marshall Islands, New Caledonia and Palau.

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

Fiji, Jordan, Namibia, Turkey and Vietnam.

1.3 Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance 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 2018:

Antigua and Barbuda, Dominica, New Caledonia, Oman, Palau, Qatar and Taiwan.

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 2019:

Armenia, Bosnia and Herzegovina, Botswana, Cabo Verde, Eswatini, Fiji, Former Yugoslav Republic of Macedonia, Jamaica, Jordan, Maldives, Mongolia, Montenegro, Morocco, Namibia, Serbia, Thailand and Vietnam.

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdictions are committed to amend or abolish the identified regimes by 2018:

Antigua and Barbuda, Aruba, Barbados, Belize, Botswana, Cabo Verde, Cook Islands, Curacao, Dominica, Fiji, Grenada, Hong Kong SAR, Jordan, Korea (Republic of), Labuan Island, Macao SAR, Malaysia, Maldives, Mauritius, Morocco, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Switzerland, Taiwan, Thailand, Tunisia, Turkey and Uruguay.

The following jurisdiction is committed to amend or abolish the identified regimes within 12 months after the day of publication in the *Official Journal of the European Union*:

Namibia.

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

The following jurisdictions are committed to addressing the concerns relating to economic substance by 2018:

Anguilla, Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Marshall Islands, Turks and Caicos Islands, United Arab Emirates and Vanuatu.

3. Anti-BEPS Measures

3.1 Membership of the Inclusive Framework on BEPS or implementation of BEPS minimum standards

The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard by 2018:

Cook Islands, Faroe Islands, Greenland, Marshall Islands, New Caledonia, Palau, Taiwan and Vanuatu.

The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard by 2019:

Albania, Armenia, Bosnia and Herzegovina, Cabo Verde, Eswatini, Fiji, Jordan, Montenegro, Morocco and Namibia.

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

Nauru, Niue.