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'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

No. prev. doc.: 11054/20

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 to the Council conclusions
of 18 February 2020
- Decision to use the written procedure for adoption

1. On the occasion of the 18 February 2020 update of the EU list of non-cooperative jurisdictions for tax purposes the ECOFIN Ministers agreed that the next update would take place in the ECOFIN Council of October 2020.
2. In that spirit the Fiscal Attachés, as mandated by the Code of Conduct Group (business taxation) prepared a report suggesting amendments to the Annexes to the Council conclusions of 18 February 2020. There were no objections raised on the substance of this update at the Fiscal Attachés meeting of 21 September 2020.
3. Since the Code of Conduct Group (business taxation) works with clear deadlines for jurisdictions that are to be listed or de-listed, it is highly advisable that the revised list is adopted as soon as possible so that the EU list of non-cooperative jurisdictions for tax purposes reflecting the current situation could be published in the Official Journal.
4. In view of the above, the Permanent Representatives Committee is invited:
 - to confirm its agreement on the report by the Code of Conduct Group (business taxation) suggesting amendments to the Annexes to the Council conclusions of 18 February 2020 as set out in the Annex to this note, and
 - to decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430, as extended by Council Decision (EU) 2020/556, by Council Decision (EU) 2020/702 and by Council Decision (EU) 2020/970, that the Council uses the written procedure for its adoption.

Report by the Code of Conduct Group (business taxation) suggesting amendments to the Annexes to the Council conclusions of 18 February 2020

I. INTRODUCTION

5. On 18 February 2020, 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 revised by the Council on 23 January 2018,³ 13 March 2018,⁴ 25 May 2018⁵, 2 October 2018,⁶ 6 November 2018,⁷ 4 December 2018,⁸ 12 March 2019,⁹ 22 May 2019,¹⁰ 14 June 2019,¹¹ 17 October 2019,¹² 8 November 2019¹³ and 5 December 2019.¹⁴
6. As agreed by the Council in its conclusions of 12 March 2019 as from 2020 onwards updates of the EU list should be done no more than twice a year. On the occasion of the 18 February 2020 update it was agreed that the next update would take place in October 2020.
7. The ongoing COVID-19 public health emergency situation has had an impact on the working methods and on the ability of many jurisdictions to take on new commitments or deliver on their past commitments.

¹ OJ C 64 2020, pages 8-14;
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.
⁹ OJ C 114 2019 pages 2-8.
¹⁰ OJ C 176, 22.5.2019, p.2.
¹¹ OJ C 210, 21.6.2019, p.8.
¹² OJ C 351, 17.10.2019, p. 7.
¹³ OJ C 386, 14.11.2019, p.2.
¹⁴ OJ C 416, 11.12.2019,, p.10.

8. In that context, the ECOFIN Council adopted on 17 June 2020 conclusions on the progress achieved on tax issues during the Croatian Presidency.¹⁵ It was agreed to postpone the requests for commitments on certain issues¹⁶ until such time that circumstances allow to ask third jurisdictions to take commitments to address the deficiencies concerned.
9. Furthermore, the Ministers decided that the October 2020 update of the EU list would serve to remove jurisdictions that completed their commitments from Annex I; to extend Annex II deadlines where needed; and to take into consideration the new Global Forum peer review assessments under criterion 1.2.
10. In that spirit, the Code of Conduct Group (Business Taxation) (further referred to as "Group") through its elected Chair (Ms Lyudmila Petkova) continued interactions and dialogues with the relevant jurisdictions, supported by the General Secretariat of the Council and with the technical assistance of the Commission services. The Group mandated Fiscal Attachés to discuss urgent issues at its meetings on 15 July, 7 September and 21 September 2020.

¹⁵ 8892/20

¹⁶ See paragraph 4 of the Council conclusions:

- the screening of the jurisdictions that have foreign source income exemption regimes in place;
- the monitoring of the implementation of the country by country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2), and
- the screening of the three jurisdictions added to the geographical scope of EU listing exercise in 2019.

II. UPDATES OF ANNEX I

a) Delisting

11. The Cayman Islands has enhanced its framework on Collective Investment Funds.¹⁷ The Group examined this issue at its meetings on 15 July and 7 September and concluded on 21 September 2020 that Cayman Islands has delivered on its commitment on criterion 2.2 and can be removed from Annex I.
12. On 26 November 2019 Oman signed the OECD Convention on Mutual Administrative Assistance in Tax Matters (MAC). The Convention was ratified and the instrument of ratification was deposited with the OECD on 7 July 2020. In addition Oman enacted on 14 September 2020 legislation to enable automatic exchange of information and submitted a notification to the OECD for the activation of the exchange relationship with all EU Member States.¹⁸

The Group examined the progress of Oman at its meeting on 21 September 2020 and concluded that since Oman had fulfilled its commitments under criterion 1.3 and the benchmark of commitments required by the end of 2019 under criterion 1.1, it can be removed from Annex I.

b) Listing

13. On 15 July 2020, the Global Forum published the outcome of its peer review process to assess jurisdictions' compliance with international standards for the exchange of information on request. In that context Seychelles and Barbados were downgraded to "Partially Compliant" in the Round 2 review.¹⁹ The Group discussed this at its meeting on 15 July 2020 and agreed that Seychelles, already on Annex I for criterion 2.1, should be listed in Annex I also for criterion 1.2. whilst Barbados should be listed in Annex I for criterion 1.2.

¹⁷ WK-R 9502/2020

¹⁸ WK-R 9598/2020 REV 1

¹⁹ WK-R 7420/2020

14. Similarly on 21 September 2020 the Group took stock of the ratings published on 1 September 2020. Anguilla received a "Non-Compliant" rating²⁰ and should therefore be listed in Annex I.

c) Other

15. The Group also examined the economic substance guidelines that Bahrain adopted on 1 January 2020²¹ that it was not informed of. Bahrain adopted revised guidelines²² on 17 September 2020 that the Group assessed on 21 September 2020 as compliant with the requirements of criterion 2.2.
16. Bermuda adopted on 7 July 2020 guidance notes on economic substance requirements which raised concerns for criterion 2.2.²³ The guidance notes were amended on 18 September 2020 and the Group decided that Bermuda was compliant with the requirements of criterion 2.2.²⁴

III. UPDATES OF ANNEX II

17. Mongolia and Bosnia and Herzegovina having deposited the instruments of ratification of MAC as amended, respectively on 19 February 2020²⁵ and 21 September 2020²⁶, the Group agreed at its meetings on 15 July and 21 September 2020 that they should be removed from section 1.3 of Annex II.

²⁰ WK-R 9506/2020

²¹ WK-R 9599/2020

²² WK 9926/2020

²³ WK-R 9599/2020

²⁴ WK 9927/20

²⁵ WK 7424/2020

²⁶ WK 9928/2020

18. The Group on 21 September 2020 discussed the extension of deadlines of commitments due to the COVID-19 pandemic²⁷ and agreed to extend the deadlines for the signature and ratification of MAC respectively to 31 December 2020 and 31 December 2021 as well as for Namibia and St Lucia as regards their commitments under criterion 2.1 to 31 December 2020. These changes are reflected in Annex II. Other deadlines remain unchanged.

IV. WAY FORWARD

19. The Council is invited:
- to adopt the updated Annexes I and II to the Council conclusions of 18 February 2020 set out in Annex 1 to the present note, which reflect the developments described above, as an "A" item on the agenda,
 - to agree on the publication of the Annexes in the Official Journal.

²⁷ WK 9500/2020

With effect from the day of publication in the Official Journal of the European Union, Annexes I and II of the Council conclusions of 18 February 2020 (OJ C 64 2020, pages 8-14) on the revised EU list of non-cooperative jurisdictions for tax purposes, 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. Anguilla

Anguilla does not have a rating of at least “Largely Compliant” by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request and has not resolved this issue yet.

3. Barbados

Barbados does not have a rating of at least “Largely Compliant” by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request and has not resolved this issue yet.

4. Fiji

Fiji is not a member of the Global Forum on transparency and exchange of information for tax purposes ("Global Forum"), has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes, has not become a member of the Inclusive Framework on BEPS or implemented OECD anti-BEPS minimum standard, and has not resolved these issues yet.

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. 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.

7. Panama

Panama does not have a rating of at least "Largely Compliant" by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request and has not resolved this issue yet.

8. Samoa

Samoa has a harmful preferential tax regime and has not resolved this issue yet.

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

9. Seychelles

Seychelles has harmful preferential tax regimes and has not resolved these issues yet.

Furthermore, Seychelles does not have a rating of at least “Largely Compliant” by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request and has not resolved this issue yet.

10. Trinidad and Tobago

Trinidad and Tobago does not apply any automatic exchange of financial information, has a “Non-Compliant” rating by the Global Forum on Transparency and Exchange of Information for Tax Purposes 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, and has not resolved these issues yet.

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 does not have a rating of at least “Largely Compliant” by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request, facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not resolved these issues yet.

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

The following jurisdiction, which is expected to make tangible progress in the effective implementation of the automatic exchange of information with all EU Member States, was granted until 31 December 2020 to do so:

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 jurisdiction, which committed to have a sufficient rating by the end of 2018, is waiting for a supplementary review by the Global Forum:

Turkey

The following developing country without a financial centre, which committed to have a sufficient rating by the end of 2019, is waiting for a supplementary review by the Global Forum:

Botswana

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 developing countries without a financial centre, which have made meaningful progress in the delivery of their commitments, were granted until 31 December 2020 to sign the MAC and until 31 December 2021 to ratify the MAC:

Botswana, Eswatini, Jordan, Maldives, Namibia, Thailand

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdiction, which committed to amend or abolish its foreign source income exemption regime by the end of 2019, has adopted sufficient amendments in line with its commitments and has committed to address a remaining issue by 31 December 2020:

Saint Lucia

The following jurisdictions, which committed to amend or abolish their harmful tax regimes by end 2019 but were prevented from doing so due to a delayed process in the OECD Forum on Harmful Tax Practices, were granted until the end of 2020 to adapt their legislation:

Australia, Morocco

The following jurisdiction, which committed to amend or abolish its harmful tax regimes covering manufacturing activities and similar non-highly mobile activities by the end of 2019 and demonstrated tangible progress in initiating these reforms in 2019, was granted until 31 December 2020 to adapt its legislation:

Namibia

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

Jordan
