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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Code of Conduct Group report to the Council outlining information about updates of Annexes regarding specific jurisdictions, both listing and delisting

Code of Conduct Group report to the Council outlining information about updates of Annexes regarding specific jurisdictions, both listing and delisting

I. INTRODUCTION

1. On 22 February 2021, the Council 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)¹ 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, 5 December 2019¹⁴, 18 February 2020¹⁵ and 6 October 2020¹⁶.

1 OJ C 66 2021 pages 40-45.
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.
15 OJ C 64 2020, pages 8-14.
16 OJ C 331 2020, pages 3-5.

2. As agreed by the ECOFIN 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.
3. In its conclusions of 27 November 2020¹⁷ the ECOFIN Council reiterated the importance of the principles of tax good governance in the EU and beyond and the continuation of the successful work undertaken so far in the context of the Code of Conduct (Business Taxation) including on the EU list of non-cooperative jurisdictions for tax purposes that should be further pursued and enhanced, where necessary.
4. In its conclusions of 18 June 2021¹⁸ the ECOFIN Council invited the Code of Conduct Group (further referred to as "the Group") to continue an effective dialogue with jurisdictions and monitoring, so that jurisdictions fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines and also invited the Group to request commitments from jurisdictions where appropriate and according to a timeline agreed by the Group.
5. In that spirit, the Group continued interactions and dialogues with the relevant jurisdictions through its elected Chair (Ms Lyudmila Petkova), supported by the General Secretariat of the Council and with technical assistance of the Commission services. The Group mandated the Fiscal Attachés to discuss urgent issues at the meetings on 8 July, 8 September and 13 September 2021 in the run-up to its meeting on 21 September 2021.
6. In the light of the above, and based on an objective assessment of the most recent developments, the October 2021 update of the EU list should, as appropriate, allow the Council to:
- take necessary decisions in the context of the upcoming listing;
 - remove from Annex I jurisdictions that took sufficient steps to address the identified issues, and move them to Annex II where relevant;
 - list in Annex I jurisdictions which do not comply with the requirements of the EU list criteria for jurisdictions which are under screening;

¹⁷ Doc. 13350/20.

¹⁸ Doc. 9896/21.

- include in Annex II jurisdictions which have undertaken commitments to cooperate with the EU and to take the necessary steps towards complying with one or more EU list criteria that their tax systems have been found to be inconsistent with; and
- remove jurisdictions that completed their commitments from Annex II, also taking into consideration the latest developments concerning ratification of the OECD Mutual Assistance Convention in Tax Matters;

II. UPDATES OF ANNEX I

a) Delisting

7. After having been granted a supplementary review by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, the Group concluded that Anguilla can be removed from Annex I of the EU list for criterion 1.2 and should be included in Annex II pending the outcome of such supplementary review by the Global Forum.

8. After having been granted a supplementary review by the Global Forum, the Group concluded that Dominica can be removed from Annex I of the EU list for criterion 1.2 and should be included in Annex II pending the outcome of such supplementary review by the Global Forum.

9. After having been granted a supplementary review by the Global Forum and following the resolution of the issue concerning harmful preferential tax regimes, the Group concluded that Seychelles can be removed from Annex I of the EU list for criterion 1.2 and should be included in Annex II pending the outcome of the supplementary review by the Global Forum.

b) Listing

c) Other changes

10. Panama sent letters to the COCG Chair on 25 June¹⁹ and 27 August 2021²⁰, regrettably lacking a commitment to repeal or amend their harmful FSIE regime. The Group recommended to mention in Annex I that Panama has not resolved this issue yet²¹.

III. UPDATES OF ANNEX II

11. The Code of Conduct Group took note of the adoption of the legislation in Australia²² to reform by the end of 2019 a harmful tax regime (*Offshore Banking Units*) which had been identified in 2018. The Group agreed that it should be removed from section 2.1 of Annex II.

12. Following reforms finalised at the start of 2021, the Development Zone regime in Jordan²³ is considered “not harmful, amended” by the FHTP since April 2021. Therefore the Group recommended that it should be removed from section 2.1 of Annex II with regard to that regime.

13. Jordan deposited the instruments of ratification of the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) as amended on 11 August 2021. The Group agreed that it should be removed from section 1.3 of Annex II.

14. Eswatini deposited the instruments of ratification of the MAC as amended on 16 March 2021. The Group agreed that it should be removed from section 1.3 of Annex II.

15. Botswana deposited the instruments of ratification of the MAC as amended on 15 June 2021. The Group agreed that it should be removed from section 1.3 of Annex II.

¹⁹ WK-R 9375/21.

²⁰ WK-R 10440/21.

²¹ WK-R 11024/21.

²² WK-R 7503/21 – WK-R 7507/21.

²³ WK-R 8900/21.

16. Maldives has signed the MAC as amended and deposited the instruments of ratification²⁴. The Group agreed that it should be removed from section 1.3 of Annex II.

17. On 19 May 2021 the Group agreed to send letters to jurisdictions from which the COCG would seek commitments to repeal or amend their harmful foreign source income exemption (FSIE) regimes with a deadline by the end of 2022²⁵.

18. In reply, Hong Kong sent a letter to the COCG Chair on 24 June 2021²⁶ committing to amend its tax system in line with the guidance by 31 December 2022 such that the amended system will take effect on 1 January 2023 with no grandfathering arrangement. Therefore the Group recommended to include Hong Kong in section 2.1 of Annex II.

19. Malaysia sent letters to the COCG Chair on 3 August 2021²⁷ and 20 September 2021²⁸ to commit to repeal or amend their harmful FSIE regime. Therefore the Group recommended to include Malaysia in section 2.1 of Annex II²⁹.

20. Costa Rica sent letters to the COCG Chair on 22 July 2021³⁰ and 17 September 2021³¹ which contained a commitment to repeal or amend its harmful FSIE regime. Therefore the Group recommended to include Costa Rica in section 2.1 of Annex II³².

21. Qatar sent a letter on 28 June 2021³³ expressing its commitment to reform their FSIE regime and cooperate with the EU towards tax good governance. Therefore the Group recommended to include Qatar in section 2.1 of Annex II.

²⁴ WK-R 8367/21.

²⁵ WK-R 8369/21, WK-R 8371/21, WK-R 8031/21, WK-R 8372/21, WK-R 8374/21, WK-R 8375/21, WK-R 8378/21.

²⁶ WK-R 9371/21.

²⁷ WK-R 10284/21.

²⁸ WK-R 11104/21.

²⁹ WK-R 11024/21.

³⁰ WK-R 10088/21.

³¹ WK-R 11017/21.

³² WK-R 11024/21.

³³ WK-R 9376/21.

22. Uruguay sent a letter on 28 July 2021³⁴ indicating its willingness to address the issues raised by the COCG on Uruguay's FSIE regime. Therefore the Group recommended to include Uruguay in section 2.1 of Annex II.

23. Information on the follow-up to the OECD meeting of the Forum on Harmful Tax Practices (FHTP) on 27 April 2021 was provided at the COCG videoconference on 19 May 2021. Member States decided to send commitment letters to jurisdictions in order to commit to abolish or amend their respective preferential regimes with the aim to comply with criterion 2.1.³⁵

24. Jordan replied to the letter of the COCG Chair regarding the country's preferential tax regime in the scope of the OECD Forum for Harmful Tax Practices (FHTP) on 15 July 2021³⁶. The reply was accompanied by a commitment regarding the reform of the Aqaba Special Economic Zone (ASEZA) regime, confirming that the tax regime will be aligned with the standards of the Group in relation to the fair taxation criterion (criterion 2.1) no later than by the end of 2022. The Group recommended that the commitment should be included in section 2.1 of Annex II.

25. North Macedonia requested by a letter of 13 July 2021³⁷ a postponement of the deadline for a political commitment which was set in the letter of the COCG Chair. On 14 July 2021, the Chair of the COCG granted this request, asking North Macedonia to deliver the commitment as soon as possible. On 16 September 2021, North Macedonia delivered the commitment at high political level to amend the harmful regime³⁸. The Group therefore recommended to include North Macedonia in section 2.1 of Annex II.

26. Qatar also replied³⁹ to the COCG Chair on 7 July expressing its commitment to reform the Qatar Financial Center Science and Technology Park Free Zone and Free Zones regimes. In light of the high level commitment received and the additional confirmation expressed by Qatar the Group recommended to include Qatar in section 2.1 of Annex II.

³⁴ WK-R 9374/21.

³⁵ WK-R 8032/21, WK-R 8031/21, WK-R 8033/21.

³⁶ WK-R 10085/21.

³⁷ WK-R 10091/21.

³⁸ WK-R 10893/21.

³⁹ WK-R 9376/21.

27. In accordance with the Council conclusions agreed by Ecofin on 18 February 2020, Turkey was given a deadline until 31 December 2020 to comply with the requirements for effective exchanges of information under the OECD Common Reporting Standard (which corresponds to criterion 1.1 under the EU list). This deadline extension followed the engagement of Turkey with the EU Code of Conduct Group for business taxation in 2019 and their reassurances that progress would have been made by end of 2020.

In its Conclusions of 22 February 2021 the Council took note of the state of play and regretted that Turkey had not made material progress in the effective implementation of the automatic exchange of information with all EU Member States. The Council reiterated that the effective exchange of information with all Member States is a condition for Turkey to fulfil criterion 1.1 of the EU list in accordance with the Council conclusions of February 2020. In its conclusions of February 2021 the Council called on Turkey to fully commit on a high political level by 31 May 2021 to effectively activate automatic information exchange relationships with the 6 remaining Member States by 30 June 2021. The Council also called on Turkey to send to all Member States information for fiscal year 2019 no later than by 1 September 2021. Finally, the Council conclusions called Turkey to send such information for fiscal years 2020 and 2021 according to the OECD calendar for automatic exchange of information with all Member States and no later than by, respectively, 30 September 2021 and 30 September 2022.

In the letter of 19 May 2021 Turkey committed to effectively activate automatic information exchange relationships by 30 June 2021 with all Member States that Turkey has diplomatic relations with.

The Group noted that the progress made by Turkey is still not fully in line with the commitments required under the above mentioned conclusions with regard to the exchange of information with one Member State with which Turkey doesn't have diplomatic relations. Turkey made steps to activate the exchange of data with 26 Member States, nevertheless further engagement and technical work from Turkey will be required to meet the agreed international standards and fully comply with the conclusions of the Ecofin Council of 22 February 2021. The Group expects that information for fiscal year 2020 and onwards will be sent by Turkey according to the internationally agreed standards and calendar.

The Group will continue to regularly monitor technical progress concerning the effective exchange of information with the EU Member States and inform the Council about developments in this regard. The Group will also continue its dialogue and the technical follow-up on the implementation of effective exchange of data with Turkey in line with the agreed international standards. Member States will continue providing information to the Group on the state of play of the effective exchange of information with Turkey according to the agreed international standards. The Group expects that the upcoming effective exchange of information for fiscal years 2020 and onwards would occur smoothly with all Member States. In light of the above, the Group concluded that even though there are still further steps that need to be taken by Turkey, progress has been made. Therefore Turkey should remain in section 1.1 of Annex II.