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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 the Annexes of the Council conclusions of 5 December 2017, including the de-listing of one jurisdiction

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*".
4. On 23 January², 13 March³, 25 May⁴ and 5 October⁵ 2018, the ECOFIN Council adopted several amendments to Annexes I and II of the Council conclusions of 5 December 2017⁶.
5. Namibia's Minister of Finance sent a commitment letter to the Code of Conduct Group on 3 October 2018 which commits to:
 - implement the necessary reforms in respect of criterion 2.1 (two harmful preferential regimes: 'Export Processing Zones' - NA001 and 'Exporters' - NA002) within 12 months after the publication of the de-listing decision in the Official Journal of the EU, with a grandfathering period until maximum 31 December 2021;
 - comply with criteria 1.2, 1.3 and 3.1 by 31 December 2019.
6. Considering the particular situation of Namibia, which is a developing country without a financial centre and has been listed as non-cooperative since December 2017, as well as the lack of effective time to implement reforms on criterion 2.1 by the end 2018 deadline, and as a pragmatic solution at this point of the year, the Code of Conduct Group agreed at its meeting of 12 October 2018 that Namibia's commitment letter should be considered as

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 438 2017 pages 5-24.

sufficient and therefore Namibia should be moved from Annex I to Annex II of the Council conclusions of 5 December 2017 (de-listing) and, as a consequence, added to sections 1.2 (sub-section 2), 1.3 (sub-section 2), 2.1 (new sub-section) and 3.1 (sub-section 2) of Annex II.

7. Furthermore, Aruba having joined the Inclusive Framework on BEPS on 27 September 2018, the Code of Conduct Group agreed at the same meeting that Aruba should be removed from section 3.1 of Annex II.
8. To be noted that all commitments officially taken by jurisdictions, as well as the implementation of the recommendations made by the Council in order to address open issues, will be carefully monitored by the Code of Conduct Group, supported by the General Secretariat of the Council, with technical assistance of the European Commission, in order to evaluate their effective implementation (Annex IV).
9. The Permanent Representatives Committee is therefore invited to suggest that the ECOFIN Council in November 2018:
 - adopt the amended Annexes I and 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.

With effect from the day of publication in the *Official Journal of the European Union*, Annexes I and II of the the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes⁷, as amended in January⁸, March⁹, May¹⁰ and October¹¹ 2018, are replaced by the following new Annexes I and II:

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, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

2. 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, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

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

⁸ Official Journal of the European Union, C 29 2018 page 2.

⁹ Official Journal of the European Union, C 100 2018 pages 4-5.

¹⁰ Official Journal of the European Union, C 191 2018 pages 1-3.

¹¹ Official Journal of the European Union, C 359 2018 pages 3-5

3. Samoa

Samoa has a harmful preferential tax regime and did not commit to addressing this issue by 31 December 2018.

Samoa's commitment to comply with criterion 3.1 will be monitored.

4. Trinidad and Tobago

Trinidad and Tobago has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended, has a harmful preferential tax regime and did not commit to addressing these issues by 31 December 2018.

Trinidad and Tobago's commitment to comply with criteria 1.1 and 1.2 will be monitored.

5. 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 and did not clearly commit to amending or abolishing it, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

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, Macao SAR, Marshall Islands, New Caledonia, Oman, Palau, Qatar and Taiwan.

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

Turkey.

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, Oman 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:

Andorra, 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, San Marino, 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:

Antigua and Barbuda, Cook Islands, Dominica, Faroe Islands, Greenland, Grenada, Marshall Islands, New Caledonia, Palau, Saint Vincent and the Grenadines, 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.