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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 12 March 2019, including the de-listing of one jurisdiction

1. On 12 March 2019, 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 modified/updated by the Council on 23 January 2018³, 13 March 2018⁴, 25 May 2018⁵, 2 October 2018⁶, 6 November 2018⁷ and 4 December 2018⁸.

¹ OJ C 114 2019 pages 2-8.
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.

2. Furthermore, recalling paragraph 11 of the Council conclusions of 5 December 2017, the Council conclusions of 12 March 2019 confirmed that the Code of Conduct Group (hereafter "COCG") *"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"* (paragraph 16), thereby agreeing to keep a dynamic process throughout 2019.
3. The EU list of non-cooperative jurisdictions for tax purposes was subsequently modified by the ECOFIN Council on 17 May 2019⁹, 14 June 2019¹⁰ and 10 October 2019¹¹, with the delisting of Aruba, Barbados, Bermuda, Dominica, Marshall Islands and the UAE.

Further updates to Annexes I and II of the Council conclusions of 12 March 2019 were also made on the same occasion.

4. Since then, Belize has adopted on 11 October 2019 a reform of its International Business Companies - IBC regime (BZ001). The 4 legislative acts¹² were gazetted on 12 October 2019.

The COCG subgroup on external issues had examined a draft version of the above legislative acts at its meeting of 16 October 2019 and concluded that, if the reform was adopted, the new IBC regime (as amended) could be considered as not harmful. The COCG subsequently received the confirmation of its adoption and concluded at its meeting of 24 October 2019 that Belize had met its commitment to amend its old harmful IBC regime. As a result Belize could be removed from Annex I (delisting) but should remain in section 2.1 of Annex II pending implementation of its commitment to amend or abolish the harmful features of its foreign source income exemption regime (BZ006).

⁹ OJ C 176 2019 pages 2-5.

¹⁰ OJ C 210 2019 pages 8-11.

¹¹ OJ C 351 2019 pages 7-9.

¹² 1- Economic Substance Act, 2019; Act No. 15 of 2019. 2- International Financial Services Commission (Amendment) (No.2) Act, 2019; Act No. 16 of 2019. 3- International Business Companies (Amendment) (No.2) Act, 2019; Act No. 17 of 2019. 4- Stamp Duties (Amendment) Act, 2019; Act No. 18 of 2019.

The Republic of North Macedonia having ratified the OECD Multilateral Convention on Mutual Administrative Assistance ("MAC") as amended, the COCG meeting of 24 October 2019 agreed that it should be removed from section 1.3 of Annex II. The instrument of ratification was deposited with the Council of Europe on 30 September and the MAC will enter into force for the Republic of North Macedonia on 1 January 2020.

As a result, the Republic of North Macedonia would be removed entirely from Annex II.

5. The Permanent Representatives Committee is therefore invited to suggest that the ECOFIN Council in November 2019:

- adopt the updated Annexes I and II to the Council conclusions of 12 March 2019 set out in annex to the present note, which reflect the developments described 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 Council conclusions of 12 March 2019 on the revised EU list of non-cooperative jurisdictions for tax purposes¹³, as amended on 22 May 2019¹⁴, 21 June 2019¹⁵ and 17 October 2019¹⁶, 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, did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

2. 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.

¹³ OJ C 114, 26.03.2019, pp. 2-8.

¹⁴ OJ C 176, 22.05.2019, pp. 2-5.

¹⁵ OJ C 210, 21.06.2019, pp. 8-11.

¹⁶ OJ C 351, 17.10.2019, pp. 7-9.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. Vanuatu

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

**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, Marshall Islands and Curaçao.

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

Jordan, 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, Namibia, Palau, Thailand and Vietnam.

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdiction, which committed to amend or abolish its 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, was granted until end 2019 to adapt its legislation:

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 and Maldives.

The following jurisdictions are committed to amend or abolish harmful tax regimes by end 2019:

Antigua and Barbuda, Australia, Belize, Curaçao, Morocco, Namibia, Saint Kitts and Nevis, Saint Lucia and Seychelles.

The following jurisdiction is committed to amend or abolish a harmful tax regime 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, were granted until end 2019 to adapt their legislation:

Bahamas, Bermuda, British Virgin Islands and Cayman Islands.

The following jurisdiction is committed to addressing the concerns related to economic substance by end 2019:

Barbados.

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:

Jordan and Montenegro.

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.