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Subject: Draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes

Delegations will find attached the partially declassified version of the above-mentioned document.



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RESTREINT UE/EU RESTRICTED

FISC 46

NOTE

From: Commission services
To: Code of Conduct Group (Business Taxation)
Subject: Draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes

Delegations will find in the Annex the draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, as they result from the discussions of the subgroup meetings on 16 and 24 January 2020.

Draft Council conclusions

on the revised EU list of non-cooperative jurisdictions for tax purposes

RECALLING

- the Council conclusions of 25 May 2016 on an external taxation strategy and measures against tax treaty abuse,
- the Council conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes,
- the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes,
- the Council conclusions of 12 March 2019 on the revised EU list of non-cooperative jurisdictions for tax purposes,
- the Council Conclusions of 5 December 2019 on the progress achieved by the Code of Conduct (Business Taxation) Group during the Finish Presidency,

the Council

1. WELCOMES the good cooperation on tax matters established between the EU Code of Conduct Group on Business Taxation ("Code of Conduct Group") and most jurisdictions around the world;
2. WELCOMES the fact that most of the relevant jurisdictions have taken active steps towards resolving by the agreed deadline the deficiencies that the Code of Conduct Group had identified in the areas of tax transparency and fair taxation, and CONSIDERS that these jurisdictions have delivered on their commitments;
3. REGRETS, nonetheless, that a number of jurisdictions have not taken sufficient steps to implement their commitments by the agreed deadline, nor engaged in a meaningful dialogue that could lead to such commitments;

4. ENDORSES accordingly the revised EU list of non-cooperative jurisdictions for tax purposes ("EU list") set out in Annex I;
5. ENDORSES the state of play set out in Annex II with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles;
6. RECALLS the agreement reached by the Code of Conduct Group on coordinated defensive measures;
7. RECALLS that updates of Annexes I and II will from now on be limited to maximum twice a year-and FORESEES in that spirit to update the two Annexes in October 2020;
8. INVITES the Code of Conduct Group, supported by the General Secretariat of the Council and with the technical assistance of the European Commission services to continue:
 - monitoring the implementation of commitments taken by jurisdictions to implement tax good governance principles and taking stock of the work achieved by the relevant OECD fora,
 - seeking commitments from the jurisdictions that have not yet committed to address the deficiencies identified,
 - engaging in an open and constructive dialogue with all jurisdictions concerned;
9. CONSIDERS that the constraints presented by some jurisdictions for not fully enacting all of the measures to which they had committed, despite tangible efforts by their governments, could in some cases be viewed as justified and AGREES that the deadline for meeting the commitment should be extended as set out in Annex II;
10. TAKES THE VIEW that:
 - a) as agreed at the ECOFIN Council meeting of 5 December 2019, developing countries without a financial centre that have been downgraded by the Global Forum regarding the exchange of information on request (EOIR) standard (criterion 1.2) and have committed at a high political level to request from the Global Forum a supplementary review within 18 months, should remain in Annex II until they receive such a new rating;

- b) developing countries without a financial centre that have made meaningful progress in delivering on their commitments, should also be given more time to comply with criterion 1.3, as set out in Annex II. If these jurisdictions have not signed the OECD Multilateral Convention on Mutual Administrative Assistance as amended (further referred to as "MAC") by the deadline indicated in Annex II, they will be included in Annex I in the next update. Additionally, upon signature these jurisdictions should provide from a high political level a timetable for the ratification of the MAC, to be approved by the Code of Conduct Group. If jurisdictions do not ratify the MAC at the latest by the deadline indicated in Annex II, they will be included in Annex I in the subsequent update;
- c) procedural delays due to the OECD Forum on Harmful Tax Practices (FHTP) should be taken into account in the monitoring of the implementation of commitments taken by jurisdictions to amend or abolish their harmful tax regimes (criterion 2.1);

11. **NOT DECLASSIFIED**

- 12. REITERATES that jurisdictions concerned by criterion 2.2 are encouraged to notify planned changes to their legislative framework or related guidance to the Code of Conduct Group before their adoption and RECALLS that if such changes raise concerns, then the legislative framework or related guidance should be amended and made compliant within three months following their adoption;
- 13. CONSIDERS that the Code of Conduct Group should seek convergence of its timelines for assessments and for grandfathering under criterion 2.1 with the current practice of the FHTP and to take into account possible delays in the FHTP process up to a maximum of one additional year, or as far as this does not lead to a too long extension, to be looked at on a case-by-case basis;

14. INVITES the Code of Conduct Group to continue:

- the screening of the jurisdictions that have foreign source income exemption regimes in place, in line with the approach agreed by the ECOFIN Council on 10 October and 5 December 2019,
- the monitoring of the implementation of the country by country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2),
- the screening of the three jurisdictions added to the geographical scope of EU listing exercise in 2019,

with a view to reaching a decision on the occasion of the next update of Annexes I and II;

15. INVITES the Code of Conduct Group to review [in 2020] the approach used for selecting jurisdictions in the geographical scope of the EU listing exercise, in order to focus on the most relevant jurisdictions, having regard to the [agreed] work on the extended geographical scope as identified in 2018;

16. ASKS the Code of Conduct Group to work on strengthening the EU tax good governance principles by updating them as necessary, including by working on future criterion 1.4 (exchange of beneficial ownership information) and by taking into account developments at international level;

17. INVITES the EU institutions and Member States, as appropriate, to continue taking the revised EU list set out in Annex I into account in foreign policy, economic relations and development cooperation with the relevant third countries, without prejudice to the respective spheres of competence of the Member States and of the Union as resulting from the Treaties.

The EU list of non-cooperative jurisdictions for tax purposes

1. [Name of jurisdiction 1]

[Name of jurisdiction]

- [does not apply any automatic exchange of financial information] // [does not cover all EU Member States for the purpose of automatic exchange of information],
- [is not a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes] // [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] // // [did not commit to request to the Global Forum a supplementary review within 18 months] // [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, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended],
- [has [a] harmful preferential tax regime[s]],
- [facilitates offshore structures and arrangements aimed at attracting profits without real economic substance],
- [is not a member of the Inclusive Framework] // [did not commit to apply the BEPS minimum standards],

[and did not commit to addressing these issues] // [and has not yet resolved this/these issue(s)].

[[Name of the jurisdiction]'s commitment to comply with 1.2. will continue to be monitored. It is waiting for a supplementary review by the Global Forum.]

2. [Name of jurisdiction 2]

...

ANNEX II

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 jurisdictions are committed to implement automatic exchange of information by end [date]:

[list]

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 end 2018, is waiting for a supplementary review by the Global Forum:

Anguilla

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

[list]

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 made meaningful progress in the delivery of their commitments, were granted until 1 September 2020 to sign the MAC and until 1 September 2021 to ratify the MAC:

[list]

2. Fair Taxation

2.1 Existence of harmful tax regimes

The following jurisdictions, which committed to amend or abolish their harmful tax regimes by end 2019 but were prevented from doing so due to genuine institutional or constitutional issues despite tangible progress in 2019, were granted until [date] to adapt their legislation:

[list]

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 end 2020 to adapt their legislation:

[list]

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

Jordan

The following jurisdictions are committed to amend or abolish harmful tax regimes by end 2021:

[list]

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

The following jurisdiction, which committed to addressing the concerns relating to economic substance in the area of collective investment funds by end 2019 but was prevented from doing so due to a devastating storm in September 2019, was granted until [date] to adapt its legislation:

[name of the jurisdiction]]