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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 on the update of the EU list**I. INTRODUCTION**

1. On 4 October 2022, the Council updated 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 2019 ¹⁴, 18 February 2020¹⁵, 6 October 2020¹⁶, 22 February 2021¹⁷, 5 October 2021¹⁸ and 24 February 2022¹⁹.
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.

¹ OJ C 391, 12.10.2022, p. 2-5.

² OJ C 438 2017, p. 5-24.

³ OJ C 29 2018, p. 2.

⁴ OJ C 100 2018, p. 4-5.

⁵ OJ C 191 2018, p. 1-3.

⁶ OJ C 359 2018, p. 3-5.

⁷ OJ C 403 2018, p. 4-6.

⁸ OJ C 441 2018, p. 3-4.

⁹ OJ C 114 2019, p. 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, p. 8-14.

¹⁶ OJ C 331 2020, p. 3-5.

¹⁷ OJ C 66, 26.2.2021, p. 40-45.

¹⁸ OJ C 413I, 12.10.2021, p. 1-4.

¹⁹ OJ C 103, 3.3.2022, p. 1-4.

3. In its conclusions of 4 October 2022²⁰ the Ecofin Council underlined the importance of promoting and strengthening tax good governance mechanisms, fair taxation, global tax transparency and fight against tax fraud, evasion and avoidance, both at the EU level and globally, and appreciated the continuous productive cooperation on tax matters between the EU Code of Conduct Group on Business Taxation and most jurisdictions around the world.
4. In its conclusions of 6 December 2022²¹, the Ecofin Council welcomed the positive effect of the Code of Conduct and the work of the Group on reducing harmful tax practices and the decrease of preferential tax regimes both at the EU level and globally, and invited the Code of Conduct Group (further referred to as "the Group") to continue an effective dialogue with jurisdictions and monitoring, so that jurisdictions continue to fulfil their respective commitments and comply with the EU listing criteria in accordance with the agreed deadlines. The Council also welcomed the ongoing progress made by jurisdictions engaged in reforming their foreign source income exemption regimes (FSIE), as well as the monitoring of no or only nominal tax jurisdictions on the implementation of economic substance requirements under criterion 2.2 and the screening of relevant jurisdictions regarding the implementation of the country-by-country reporting (CbCR) anti-BEPS minimum standard (criterion 3.2). The Council also took note of the results of the peer review process by the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") as regards the assessment of the implementation of automatic exchange of information (AEOI) according to the OECD common reporting standard (CRS).
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 Subgroup to discuss urgent issues at meetings on 9 December 2022, 12 and 24 January 2023 in the run-up to its meeting on 1 February 2023.

²⁰ Doc. 13092/22.

²¹ Doc. 15726/22.

6. In the light of the above, and based on an objective assessment of the most recent developments, the February 2023 update of the EU list should, as appropriate, allow the Council to:

- take the 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 EU listing criteria for jurisdictions which are under screening;
- 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 listing criteria that their tax systems have been found to be inconsistent with; and
- remove jurisdictions that completed their commitments from Annex II.

II. UPDATES OF ANNEX I

Listing

1. On 9 November 2022, the Global Forum published the outcome of its peer review process to assess the British Virgin Islands' compliance with international standards for the exchange of information on request. In that context, British Virgin Islands was downgraded to "Partially Compliant" in the Round 2 review²². The Group therefore recommends including British Virgin Islands in Annex I with regard to criterion 1.2.
2. Costa Rica failed to fulfil its commitment, made in September 2021, to amend its foreign source income exemption regime by the end of 2022, with effect from 1 January 2023. As per the letter to the Chair of the Group of 22 December 2022²³, Costa Rica is still working on an amendment to its tax legislation that will amongst others include new rules on foreign source income in line with the EU list requirements. The draft legislation has still not been communicated to the Group. The Group therefore recommends also including this jurisdiction in Annex I with respect to criterion 2.1.
3. On 9 November 2022, the Global Forum published the outcome of its peer review process to assess Costa Rica's compliance with the international standards for the automatic exchange of information. In that context, Costa Rica received the overall preliminary rating "Non-Compliant" as regards the effectiveness of its framework. By later dated 23 January 2023, Costa Rica committed at a high level to address this rating in due time so as to be reflected in the Autumn 2024 Peer Review report of the Global Forum. The Group therefore recommends to reflect this commitment in the entry on the jurisdiction in Annex I.

²² [Global Forum on Transparency and Exchange of Information for Tax Purposes: British Virgin Islands 2022 \(Second Round\)](#)

²³ WK-R 19/23.

4. In September 2021, the Russian Federation committed to amending the harmful features of its International Holding Companies regime in the special administrative regions of Oktyabrskiy Island in the Kaliningrad region and Russkiy Island in Primorsky Krai. While the Russian Federation did amend its legislation in 2022, the Group has, after a thorough technical examination, determined that the amended legislation still has features that are not in line with internationally agreed principles. In particular, the substance requirements relating to the tax exemption of royalty income from intellectual property rights are not in line with the modified nexus approach, which is the international standard when it comes to this type of income. Furthermore, the Russian Federation has not properly implemented the rules on grandfathering when rolling back its preferential tax regime, by providing for the possibility for companies to benefit from the regime after the cut-off date (i.e. the date when the commitment to address the harmful aspects of the regime was made). The International Holding Companies preferential tax regime should consequently be deemed harmful. The Group therefore considers that the Russian Federation has not fulfilled its commitment and recommends to include this jurisdiction in Annex I with respect to criterion 2.1.
5. Regarding the monitoring of the implementation of the economic substance requirements under criterion 2.2, in July 2021 the Group agreed to take stock of the assessment by the Forum on Harmful Tax Practices (FHTP) of no or only nominal tax jurisdictions to the extent that the EU criterion 2.2 and the FHTP standard overlap in terms of scope and jurisdictions concerned. At its meeting on 21 and 22 November 2022, the FHTP found a number of jurisdictions to be deficient in the implementation of the economic substance requirements in the context of the 2022 monitoring. On 9 December 2022, the Group discussed the FHTP 2022 monitoring outcomes and on [1 February 2023], the Group decided to recommend maintaining Anguilla, the Bahamas and Turks and Caicos Islands in Annex I at the update of the EU list in February 2023.

6. Under the FHTTP 2022 monitoring, Anguilla was in particular urged to further develop its compliance monitoring mechanism and undertake compliance actions and the required exchanges of information with respect to all relevant entities. The jurisdiction was also encouraged to verify its statistical data. The Code of Conduct Group therefore recommends maintaining the reference to this jurisdiction in Annex I with regard to criterion 2.2.
7. The Bahamas was in particular urged to continue to undertake compliance actions and the required exchanges of information with respect to all relevant entities, and encouraged to verify its statistical data. The Group therefore recommends maintaining the reference to this jurisdiction in Annex I with regard to criterion 2.2.
8. Since the general recommendation that was addressed to the Bahamas in the 2021 BEPS Inclusive Framework Action 13 peer review report on country-by-country reporting was removed in the most recent report, the commitment the Bahamas made to the Group in January 2022 with regard to criterion 3.2 is deemed fulfilled. The Group therefore recommends to delete the reference to this commitment from the entry on the Bahamas in Annex I.
9. Under the FHTTP 2022 monitoring, Turks and Caicos Islands was in particular urged to provide complete statistical data and further develop its compliance monitoring mechanism. The jurisdiction was also urged to undertake compliance actions and the required exchanges of information with respect to all relevant entities. The Group therefore recommends maintaining Turks and Caicos Islands in Annex I with regard to criterion 2.2.

10. Since the Marshall Islands is not a member of the BEPS Inclusive Framework, the Group has been monitoring the enforcement of substantial activities by this jurisdiction with no or only a nominal corporate income tax independently from the FHTP, while still considering the commonalities between the two monitoring exercises. On the basis of the data provided by the Marshall Islands on the reporting period 2022, the Group considers that this jurisdiction does not comply with the standard for no or only nominal corporate tax jurisdictions, in particular as regards its compliance framework, the provision of statistical data, and the exchange of information. The Group therefore recommends including the Marshall Islands in Annex I with regard to criterion 2.2.
11. The entry of Trinidad and Tobago in Annex I should be updated by including a reference to criterion 1.1 to reflect its commitment at a high political level, made by letter dated 17 November 2022²⁴, as regards addressing the Global Forum determinations on the implementation of the required domestic and international legal framework for automatic exchange of information²⁵.

²⁴ Doc. WK-R 16118/22.

²⁵ See paragraph 19.

III. UPDATES OF ANNEX II

a) Automatic exchange of information (criterion 1.1)

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

12. In accordance with the Council conclusions agreed by Ecofin on 18 February 2020, Türkiye 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).
13. This deadline extension followed the engagement of Türkiye with the Code of Conduct Group for business taxation in 2019 and their reassurances that progress would be made by end of 2020. In its Conclusions of 22 February 2021, the Council took note of the state of play and regretted that Türkiye 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 Türkiye to comply with 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 Türkiye to fully commit at 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 Türkiye to send to all Member States information for fiscal year 2019 no later than by 1 September 2021. Finally, the Council conclusions called on Türkiye to send such information for fiscal years 2020 and 2021 in accordance with the OECD calendar for the automatic exchange of information with all Member States and no later than by, respectively, 30 September 2021 and 30 September 2022.

14. In its conclusions of 5 October 2021, the Council took note of the commitment that Türkiye undertook on 19 May 2021 to effectively activate automatic information exchange relationships by 30 June 2021 with all Member States with which Türkiye has diplomatic relations and underlined that further engagement and technical work on effective exchange of data from Türkiye towards all Member States will be required to meet the agreed international standard and fully comply with the conclusions of the Ecofin Council of 22 February 2021.
15. In its conclusions of 24 February 2022, the Council considered that the progress made by Türkiye is still not fully in line with the Conclusions of the Ecofin Councils of 22 February 2021 and 5 October 2021 and called on Türkiye to begin or continue the technical work on the effective exchange of data from Türkiye with all Member States to meet the agreed international standards and fully comply with the requirements set in the above mentioned conclusions of the Ecofin Councils. The Council reiterated that the effective automatic exchange of information with all Member States according to the OECD calendar and standard is a condition to fulfil criterion 1.1 of the EU list and to fully comply with the requirements set out in the above mentioned Council conclusions.
16. In its conclusions of 4 October 2022, the Council took note of the effective automatic information exchange relationships between Türkiye and the Member States, regretted that Türkiye has not made any progress with one Member State, reiterated its call on Türkiye to begin or continue the effective exchange with all Member States and to fully comply with the requirements set in the Conclusions of the Ecofin Council of 22 February 2021, 5 October 2021 and 24 February 2022. The Council reiterated that the effective automatic exchange of information with all Member States in accordance with the OECD calendar and international standards and as set in the relevant Ecofin Council conclusions is a condition for Türkiye to fulfil criterion 1.1 of the EU list.
17. The Group notes that Türkiye is still not in line with the commitments required under the above mentioned Council conclusions with regard to the exchange of information with all Member States. Therefore, the reference to Türkiye should be maintained in section 1.1 of Annex II.

– *Implementation of automatic exchange of information (AEOI) according to the OECD common reporting standard (CRS)*

18. As envisaged in the 2016 Council conclusions establishing the EU listing process²⁶, the Ecofin Council decided in its conclusions of June 2022²⁷ to align criterion 1.1 with the evolution of the Global Forum peer review process for AEOI in two steps. In a first step, the Group would start taking into account the determinations of the Global Forum included in its peer review reports as regards the implementation of the required domestic and international legal frameworks, with as minimum level of compliance “In place, but needs improvement” for both core requirements²⁸.
19. In the results of the 2022 Global Forum peer review process, approved in November 2022, six jurisdictions (Aruba, Belize, Costa Rica, Curaçao, Israel and Trinidad and Tobago) failed to achieve the minimum compliance level, and were consequently invited by the Code of Conduct Group to commit to improve their legal framework, so that this can be reflected in the Global Forum peer review report to be issued in the autumn of 2024.
20. By letter dated 6 January 2022²⁹, Aruba committed at a high political level to comply with the Global Forum requirements by 2024. The Group therefore recommends including this commitment in Annex II under criterion 1.1.
21. By letter dated 7 December 2022³⁰, Belize committed at a high political level to address the deficiencies identified by the Global Forum so as to improve the relevant determinations in the Global Forum peer review report to be issued in the autumn of 2024. The Group therefore recommends including this commitment in Annex II under criterion 1.1.

²⁶ Doc. 14166/16.

²⁷ Doc. 10346/22.

²⁸ The second step, consisting of the integration of the Global Forum ratings on the effectiveness of exchanges into the Code of Conduct Group assessment, will only be taken at a later stage.

²⁹ WK-R 430/23.

³⁰ WK-R 17459/22.

22. By letter dated 20 December 2022³¹, Curaçao committed at a high political level to address the deficiencies identified by the Global Forum so as to improve the relevant determinations in the Global Forum peer review report to be issued in the autumn of 2024. The Group therefore recommends including this commitment in Annex II under criterion 1.1.
23. By letter dated 3 January 2023³², Israel committed at a high political level to address the deficiencies identified by the Global Forum, so as to improve the relevant determinations in the Global Forum peer review report to be issued in the autumn of 2024. The Group therefore recommends including this commitment in Annex II under criterion 1.1.

b) Exchange of information on request (criterion 1.2)

24. In its supplementary peer review report on the exchange of information on request issued in November 2022, the Global Forum rated Barbados “Largely Compliant” with the OECD standard on exchange of information on request, an improvement in comparison with its previous “Partially Compliant” rating. The Group therefore recommends deleting the reference to Barbados from the relevant section of Annex II.
25. In November 2022, the Global Forum also issued a peer review report on Türkiye, issuing an improved rating of “Largely Compliant”. Based on this supplementary report, the Group recommends deleting the reference to Türkiye from the relevant section of Annex II.

³¹ WK-R 18/23.

³² WK-R 26/23.

c) Existence of harmful tax regimes (criterion 2.1)

– *Harmful tax regimes in the scope of the FHTP*

26. On 24 November 2022 the Group sent a letter to Albania requesting this jurisdiction to commit to the Group to amend or abolish its Industries Incentives (software production / development) regime by 31 December 2023³³, after the FHTP deemed the regime potentially harmful. In light of the high-level commitment letter received from Albania on 20 January 2023³⁴, the Group recommends including this commitment in Annex II under criterion 2.1.
27. On 2 February 2021, Jamaica reiterated to the Group the commitment to the FHTP to amend or abolish the Special Economic Zones regime by the end of December 2022. In November 2022, the FHTP concluded that the regime was not harmful (amended), considering Jamaica’s commitment fulfilled. The Group therefore recommends removing the reference to Jamaica from the relevant section of Annex II.
28. On 15 July 2021, Jordan committed to address the harmful features of its Aqaba Special Economic Zone regime, a preferential tax regime in the scope of the FHTP. As Jordan is currently in the process of amending its regime in line with the commitment made to the FHTP and the Code of Conduct Group, the Group recommends to take stock of the outcome of the FHTP review of the regime in April 2023.
29. On 16 September 2021, North Macedonia reaffirmed to the Group that it was committed to amend its law on the Technological Industrial Development Zone, a commitment made also to the FHTP. On 30 November 2022, the FHTP concluded that the regime was amended (not harmful), subject to the adoption of the final legislation as reviewed by the FHTP. The legislation was approved by the Government of North Macedonia on 16 December 2022 and submitted to Parliament on 19 December 2022. ¶The final legislation was adopted on 23 January 2023. Therefore, the Group recommends removing the reference to North Macedonia from the relevant section of Annex II.

³³ WK-R 17455/22.

³⁴ WK-R 920/23.

– *Foreign source income exemption (FSIE) regimes*

30. On 24 June 2022, Hong Kong made a commitment to reform its FSIE regime in line with the Code of Conduct Group Guidance on FSIE regimes by 31 December 2022, with effect from 1 January 2023. Hong Kong adopted its law amending the regime on 14 December 2022. The Group welcomes this positive development, which brings the regime fully in line with criterion 2.1 with regard to the treatment of dividends, interest and royalties. However, following a clarification of the Guidance on FSIE regimes in December 2022³⁵, the Group decided to grant Hong Kong additional time to amend the legislation concerning the treatment of capital gains, i.e. by the end of 2023, with effect from 1 January 2024. The Group therefore recommends reflecting this in the relevant section of Annex II.
31. On 20 September 2021, Malaysia committed to reform its FSIE regime in line with the Code of Conduct Group Guidance on FSIE regimes by 31 December 2022, with effect from 1 January 2023. Malaysia approved its legislation amending the regime in December 2022. The Group welcomes this positive development, including on the amended implementing guideline that sets out the economic substance requirements in line with the FSIE Guidance. However, following a clarification of the Guidance on FSIE regimes in December 2022³⁶, the Group decided to grant Malaysia additional time to amend the legislation concerning the treatment of capital gains, i.e. by the end of 2023, with effect from 1 January 2024. The Group therefore recommends reflecting this in the relevant section of Annex II.

³⁵ Doc. 14674/22.

³⁶ Ibid.

32. On 7 July 2021, Qatar made a commitment to the Group to implement the necessary reforms to address the issues identified by the Group. In the first quarter of 2022, the Group assessed positively a draft legislative proposal provided by Qatar with a view to introducing the requested reform. On 16 June 2022 Qatar requested an extension of the deadline for amending the foreign source income exemption regime applicable in Qatar, on account of constitutional changes to the legislative procedure needed to approve the reform. The Group took note of this request and encouraged the Qatari authorities to continue to work on the implementation of the FSIE regime reform and to provide the Group with additional information on the calendar and the substance of the reform. On 27 December 2022, Qatar communicated by virtue of a letter to the Chair of the Group the progress made with the legislative adoption of the reform. On 23 January 2023, Qatar affirmed³⁷ that the ratification of primary legislation had been concluded in January 2023 with provisions into effect from 1 January 2023. On 2 February 2023, Qatar committed to completing the reform by means of secondary legislation to specify the economic substance requirements and anti-abuse rules, with effect from 1 January 2023. Against this background, the Group recommends to grant Qatar additional time, i.e. until 31 March 2023, to complete the reform as agreed with the Group, and to revert to this issue after the March deadline, with a view to the next update of the EU list in October 2023.
33. On 26 July 2021, Uruguay committed to address the concerns of the Group on its FSIE regime by 31 December 2022. Uruguay approved the legislation on the reform of the regime before the end of 2022, with effect from 1 January 2023. The Group welcomes that Uruguay has fulfilled its commitment on this reform and recommends removing the reference to Uruguay from the relevant section of Annex II.

³⁷ WK-R 918/23.

d) *Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity (criterion 2.2)*

34. In October 2022 the Council decided to maintain Barbados in Annex II and to revert to its situation with regard to the enforcement of substantial activities requirements at the update of the EU list in February 2023, also to allow the Group to take into account the FHTP assessment at its meeting in November 2022. While at that meeting, Barbados was initially given a ‘hard’ recommendation on exchange of information, on 31 January 2023, the FHTP approved by written procedure an updated assessment for Barbados for the annual monitoring of the substantial activities requirements in no or nominal tax jurisdictions for the monitoring year 2021, removing its ‘hard’ recommendation to this jurisdiction. The Group therefore recommends to remove the reference to Barbados from the relevant section in Annex II.

e) *Implementation of country-by-country reporting (criterion 3.2)*

35. On 4 January 2022, Barbados committed to address the general recommendation received in the 2021 BEPS Inclusive Framework Action 13 peer review report on country-by-country reporting. Since the recommendation concerned was removed in the most recent BEPS IF peer review report, Barbados has completed its commitment and the reference to it should therefore be removed from the relevant section in Annex II.
36. On 4 January 2022, British Virgin Islands committed to address the general recommendation received in the 2021 BEPS Inclusive Framework Action 13 peer review report on country-by-country reporting. Since the recommendation concerned was removed in the most recent BEPS IF peer review report, British Virgin Islands has completed its commitment and the reference to this jurisdiction should therefore be removed from the relevant section in Annex II.