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From: General Secretariat of the Council

To: Delegations

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

Delegations will find in the Annex the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, approved by the Council at its meeting held on 22 February 2021.

Council conclusions

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

The Council of the European Union,

1. APPRECIATES the continuous productive cooperation on tax matters between the EU Code of Conduct Group on Business Taxation ("Code of Conduct Group") and most jurisdictions around the world in order to promote globally the tax good governance principles;
2. WELCOMES the progress in the relevant jurisdictions through the active steps taken by the agreed deadlines towards resolving the deficiencies that the Code of Conduct Group had identified and UNDERLINES that such steps contribute to the strengthening of tax good governance mechanisms, fair taxation, global tax transparency and fight against tax fraud, evasion and avoidance, both at the EU level and globally;
3. ACKNOWLEDGES that the ongoing COVID-19 pandemic continues to have an impact on the ability of many jurisdictions to take on new commitments or deliver on their past commitments, as well as on the overall working methods of the Code of Conduct Group;
4. INVITES the Group to continue to make progress on all the outstanding issues that have been affected by the COVID-19 pandemic with a view to completing them as quickly as possible, and to start the discussion on possible requests for commitments from jurisdictions when appropriate;
5. REGRETS that some jurisdictions have not taken sufficient steps to implement their commitments by the agreed deadline, or engaged in a meaningful dialogue that could lead to such commitments and INVITES these jurisdictions to engage with the Code of Conduct Group in order to resolve the remaining issues;

6. REGRETS in particular that Turkey has not made material progress in the effective implementation of the automatic exchange of information with all EU Member States, and has not therefore yet fulfilled all commitments it had taken to implement tax good governance principles as set out in the Report of the Code of Conduct group; TAKES NOTE that the exchange of information has been activated with 21 EU Member States and is scheduled to begin as of 2022 with 5 EU Member States; REGRETS that no evidence has been provided that effective exchange of data from Turkey took place to any of the Member States; STRESSES that no progress has been made with regard to the exchange of information with one Member State; REITERATES 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; CALLS on Turkey to fully commit on a high political level by 31 May 2021 to effectively activate its automatic information exchange relationship with the 6 remaining Member States by 30 June 2021; For all 27 Member States the information for fiscal year 2019 has to be sent no later than by 1 September 2021 and the information for fiscal years 2020 and 2021 has to be sent according to the OECD calendar for automatic exchange of information and in any case no later than by, respectively, 30 September 2021 and 30 September 2022; STATES that failure to comply with any of the five above stated deadlines would fulfil the conditions for Turkey to be listed in Annex I under criterion 1.1; INVITES the Group to notify this request to Turkey, to continue monitoring the progress concerning the effective exchange of information with all Member States and inform the Council about developments in this regard, while maintaining its dialogue with Turkey on this matter and STATES that the Council will take the necessary decision on the listing in October 2021 based on the analysis of the Group on Turkey's compliance and will reexamine this decision after the remaining above mentioned deadline;

7. APPROVES the COCG Report set out in doc. 6223/21;

8. APPROVES accordingly the revised EU list of non-cooperative jurisdictions for tax purposes ("EU list") set out in Annex I;

9. ENDORSES the state of play set out in Annex II with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles;

10. 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. 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. Anguilla

Anguilla 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 and has not resolved this issue yet.

3. Dominica

Dominica 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 and has not resolved this issue yet.

4. Fiji

Fiji is not a member of the Global Forum on transparency and exchange of information for tax purposes ("Global Forum"), has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes, has not become a member of the Inclusive Framework on BEPS or implemented OECD anti-BEPS minimum standard, and has not resolved these issues yet.

5. 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.

6. Palau

Palau 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 resolved these issues yet.

7. Panama

Panama 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 and has not resolved this issue yet.

8. Samoa

Samoa has a harmful preferential tax regime and has not resolved this issue yet.

9. Seychelles

Seychelles has harmful preferential tax regimes and has not resolved these issues yet.

Furthermore, Seychelles 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 and has not resolved this issue yet.

10. Trinidad and Tobago

Trinidad and Tobago does not apply any automatic exchange of financial information, 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, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes, and has not resolved these issues yet.

11. 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.

12. Vanuatu

Vanuatu 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, facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not resolved these issues yet.

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 jurisdiction is expected to commit at a high political level by 31 May 2021 and to effectively activate its automatic information exchange relationship with all 27 Member States by 30 June 2021 according to the timeline referred to in paragraph 6 of these Council conclusions.

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 jurisdiction, which committed to have a sufficient rating by the end of 2018, is waiting for a supplementary review by the Global Forum:

Turkey

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

Botswana

The following jurisdiction is waiting for a supplementary review by the Global Forum:

Barbados

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 have made meaningful progress in the delivery of their commitments, were granted until 31 December 2020 to sign the MAC and until 31 December 2021 to ratify the MAC:

Botswana, Eswatini, Jordan, Thailand

The following developing country without a financial centre, which has made progress in the delivery of its commitment, was granted until 30 April 2021 to sign the MAC and until 31 December 2021 to ratify the MAC:

Maldives

2. Fair Taxation

2.1. *Existence of harmful tax regimes*

The following jurisdiction, which committed to amend or abolish its harmful tax regime by end 2019 but was prevented from doing so due to a delayed process in the OECD Forum on Harmful Tax Practices, was granted until the end of 2021 to adapt its legislation:

Australia

The following jurisdiction, which has made meaningful progress in the delivery of its commitment to amend or abolish its harmful tax regime, was granted until 31 December 2021 to do so:

Jordan

The following jurisdiction, which committed to amend or abolish its harmful tax regime, was granted until 31 December 2022 to adapt its legislation:

Jamaica