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**'I/A' ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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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

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1. On 12 March 2019, the ECOFIN Council adopted Council conclusions<sup>1</sup> 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 2017<sup>2</sup> and subsequently modified/updated by the Council on 23 January 2018<sup>3</sup>, 13 March 2018<sup>4</sup>, 25 May 2018<sup>5</sup>, 2 October 2018<sup>6</sup>, 6 November 2018<sup>7</sup> and 4 December 2018<sup>8</sup>.

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<sup>1</sup> OJ C 114, 26.03.2019, pp. 2-8.

<sup>2</sup> OJ C 438, 2017, pp. 5-24.

<sup>3</sup> OJ C 29, 2018, p. 2.

<sup>4</sup> OJ C 100, 2018, pp. 4-5.

<sup>5</sup> OJ C 191, 2018, pp. 1-3.

<sup>6</sup> OJ C 359, 2018, pp. 3-5.

<sup>7</sup> OJ C 403, 2018, pp. 4-6.

<sup>8</sup> OJ C 441, 2018, pp. 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 "*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. Following the Code of Conduct Group (COCG) meeting of 11 April 2019 and some further developments early May 2019, the EU list of non-cooperative jurisdictions for tax purposes was modified by the ECOFIN Council on 17 May 2019 (doc. 8828/1/19 REV 1), with the delisting of Aruba, Barbados and Bermuda. Further updates to Annexes I and II of the Council conclusions of 12 March 2019 were also made on the same occasion. In particular, the ECOFIN Council took note of the fact that Dominica had completed its commitment in relation to criterion 1.3 (ratification of the OECD Multilateral Convention on Mutual Administrative Assistance, or "MAC") and Annex I was updated accordingly.
4. Since then, Dominica has informed the COCG that it has signed the Multilateral Competent Authority Agreement (MCAA) on 30 April 2019, completed its domestic steps on 1 May 2019 and deposited its list of intended exchange partners for CRS purposes on 9 May 2019, where all EU Member States are indicated as intended exchange partners. Dominica will exchange information as a non-reciprocal jurisdiction and start exchanging information as from December 2019.

The COCG meeting of 20 May 2019 reviewed these developments and concluded that Dominica had also implemented its commitment regarding criterion 1.1 and could therefore now be removed from Annex I (delisting).

5. The COCG meeting of 20 May 2019 furthermore agreed to update section 2.2 of Annex II of the Council conclusions of 12 March 2019, following the agreement reached on a technical guidance on substance requirements for collective investment funds (CIVs)<sup>9</sup>. This technical guidance having been agreed by mid-2019, in line with paragraph 9 of the Council conclusions of 12 March 2019, the deadline of end 2019 was confirmed for Bahamas, Bermuda, British Virgin Islands and Cayman Islands to address COCG's concerns relating to economic substance in the area of CIVs.
  
  6. The Permanent Representatives Committee is therefore invited to suggest that the ECOFIN Council in June 2019:
    - adopt the amended Annexes I and II to the Council conclusions of 12 March 2019 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.
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<sup>9</sup> See 6-month progress report by the COCG to ECOFIN: doc. 9652/19.

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 purposes<sup>10</sup>, as modified in May 2019<sup>11</sup>, are replaced by the following new Annexes I and II:

**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. Belize**

Belize has not yet amended or abolished one harmful preferential tax regime.

Belize's commitment to amend or abolish its newly identified harmful preferential tax regime by the end of 2019 will be monitored.

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<sup>10</sup> OJ C 114, 26.03.2019, pp. 2-8.

<sup>11</sup> OJ C 176, 22.05.2019, pp. 2-5.

### **3. 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.

### **4. 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.

### **5. Marshall Islands**

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

Marshall Islands' commitment to comply with criterion 1.2 will continue to be monitored: it is waiting for a supplementary review by the Global Forum.

### **6. 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.

## **7. 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.

## **8. 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.

## **9. United Arab Emirates**

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

## **10. 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.

## **11. 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 and Curaçao.**

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

**Jordan, Namibia, 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, Morocco, Namibia, Republic of North Macedonia, Palau, Serbia, Thailand and Vietnam.**

## **2. Fair Taxation**

### *2.1 Existence of harmful tax regimes*

The following jurisdictions, which committed to amend or abolish their 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, were granted until end 2019 to adapt their legislation:

**Costa Rica and 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, Maldives and Switzerland.**

The following jurisdiction is committed to amend or abolish the identified harmful tax regimes by 9 November 2019:

**Namibia.**

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

**Antigua and Barbuda, Australia, Curaçao, Mauritius, Morocco, Saint Kitts and Nevis, Saint Lucia and Seychelles.**

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

**Albania, Bosnia and Herzegovina, Eswatini, Jordan, Montenegro and Namibia.**

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.**

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