



Brussels, 22 September 2022
(OR. en)

12613/22

LIMITE

FISC 186
ECOFIN 886

'I/A' ITEM NOTE

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

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

1. On 24 February 2022, the Council agreed on the revision of 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.
2. In its conclusions of 17 June 2022² the ECOFIN Council welcomed the progress achieved by the Code of Conduct Group, in particular with regard to the revision of the EU list of non-cooperative jurisdictions in February 2022 and invited 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.
3. The Code of Conduct Group (Business Taxation) continued the interactions and dialogues with the relevant jurisdictions to assess recent developments and the implementation of their commitments, with a view to the revision of the EU list.

¹ OJ C 103 2022 pages 1-4.

² Doc. 10346/22.

4. The Code of Conduct Group met on 9, 15 and 20 September 2022 to take stock of developments in jurisdictions and to prepare the revision of the EU list. On 20 September 2022, the Code of Conduct Group considered and approved the texts of the draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the COCG report to the Council outlining information about updates of Annexes regarding specific jurisdictions, both listing and delisting. The High Level Working Party on Tax Questions examined the state of play on 20 September 2022.
5. The text of the draft Council conclusions is set out in the Annex.
6. The Permanent Representatives Committee is invited to:
 - confirm the agreement on the text and suggest that the Council approve the draft Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes set out in the Annex as an “A” item at its meeting on 4 October 2022;
 - suggest that the Council agree on the publication of the revised list set out in the Annex to the Council conclusions in the Official Journal.

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

The Council of the European Union,

1. UNDERLINES 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;
2. 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;
3. WELCOMES the progress in the relevant jurisdictions through the active steps taken by the agreed deadlines and new commitments taken towards resolving the deficiencies that the Code of Conduct Group had identified;
4. TAKES NOTES OF the effective automatic information exchange relationships between Turkey and the Member States; REGRETS that Turkey has not made any progress with one Member State; REITERATES ITS CALL ON Turkey 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; REITERATES 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 Turkey to fulfil criterion 1.1 of the EU list; INVITES the Group to inform the Council about developments in this regard and to continue addressing the outstanding issues where no progress has been made;

5. REGRETS that some jurisdictions remain non-cooperative for tax purposes and that a number of jurisdictions failed to fulfil their commitments to the Code of Conduct Group with regard to economic substance requirements; INVITES these jurisdictions to engage with the Code of Conduct Group in order to resolve the remaining issues;
 6. APPROVES the Code of Conduct Group Report set out in doc. 12612/22;
 7. APPROVES accordingly the revised EU list of non-cooperative jurisdictions for tax purposes (“EU list”) set out in Annex I;
 8. ENDORSES the state of play set out in Annex II with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles.
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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 facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

Anguilla is waiting for a supplementary review by the Global Forum in relation to Exchange of Information on Request (criterion 1.2).

3. The Bahamas

The Bahamas facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

The Bahamas committed to implement the CbCR minimum standard (criterion 3.2 by addressing the IF on BEPS' recommendations in due time, so that this is reflected in the IF Action 13 Peer Review Report in the autumn of 2023 and/or activating CbCR exchange relationships with all EU Member States according to the agreed deadline.

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 (Exporting Companies, Income Communication Technology (ICT) Incentive, Concessionary rate of tax for regional or global headquarters), 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. Panama has a harmful foreign-source income exemption regime and has not resolved this issue yet.

Panama committed to address the BEPS Inclusive Framework's (BEPS IF) recommendations with regard to the implementation of criterion 3.2 on Country-by-Country Reporting (CbCR), in due time, so that this is reflected in the BEPS IF Action 13 Peer Review Report in the autumn of 2023.

8. **Samoa**

Samoa has a harmful preferential tax regime (Offshore Business) and has not resolved this issue yet.

9. **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 (Free Zones), and has not resolved these issues yet.

Trinidad and Tobago committed to address the BEPS IF's recommendations with regard to the implementation of criterion 3.2 on country-by-country reporting (CbCR) in due time, so that this is reflected in the BEPS IF Action 13 Peer Review Report in the autumn of 2023.

10. **Turks and Caicos Islands**

Turks and Caicos Islands facilitates offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

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 (Economic Development Programme, Exempt companies, International Banking Center Regulatory Act), did not commit to apply the BEPS minimum standards and did not commit to addressing these issues.

12. **Vanuatu**

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

Vanuatu is waiting for a supplementary review by the Global Forum in relation to Exchange of Information on Request.

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 effectively exchange information with all 27 Member States according to the timeline referred to in paragraph 6 of the Council conclusions of 22 February 2021, paragraph 4 of the Council conclusions of 5 October 2021 and paragraph 4 of the Council conclusions of 24 February 2022.

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 are waiting for a supplementary review by the Global Forum:

Barbados, Botswana, Dominica, Seychelles, Turkey

2. Fair Taxation

2.1. Existence of harmful tax regimes

The following jurisdictions committed to amending or abolishing their harmful foreign-source income exemption regimes, by 31 December 2022:

Costa Rica, Hong Kong, Malaysia, Qatar, Uruguay

The following jurisdictions committed to amending or abolishing preferential tax regimes in the scope of the Forum on Harmful Tax Practices (FHTP) by 31 December 2022:

Jamaica (Special economic zones), Jordan (Aqaba special economic zone), North Macedonia (Technological industrial development zone)

The following jurisdictions committed to amending or abolishing preferential tax regimes in the scope of the Forum on Harmful Tax Practices (FHTP), by 31 December 2023:

Eswatini (Special economic zone), Armenia (Free economic zones and Information technology projects)

The following jurisdiction committed to amending a preferential tax regime by 31 December 2022:

Russian Federation (International Holding Companies)

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

The following jurisdiction committed to address the FHTP recommendations with regard to the effective implementation of substance requirements under criterion 2.2, in time to allow the FHTP to conclude at its next meeting in November 2022 that the recommendations have been addressed. The Council will revert to this issue at the next update of the EU list in February 2023.

Barbados

3. Prevention of tax base erosion and profit shifting

3.2 Implementation of the Country-by-Country Reporting (CbCR) minimum standard (BEPS Action 13)

The following jurisdictions committed to implement the CbCR minimum standard by addressing the IF on BEPS' recommendations in due time, so that this is reflected in the IF Action 13 Peer Review Report in the autumn of 2023 and/or activating CbCR exchange relationships with all EU Member States according to the agreed deadline:

Barbados, Belize, British Virgin Islands, Israel, Monserrat, Thailand, Vietnam
