



Council of the
European Union

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'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 5 October 2021, 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 7 December 2021² the ECOFIN Council invited the Code of Conduct Group (CoCG) 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 supported the preparatory work done with a view to assessment of relevant jurisdictions for compliance with criterion 3.2 on country-by-country reporting (CbCR) in view of the update of the EU list in the first quarter of 2022 and invited the Group to request commitments from jurisdictions where appropriate and according to a timeline agreed by the Group.

¹ OJ C 413 I, 12.10.2021, p. 1

² 14814/21

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 commitments and considered their new commitments, with a view to the revision of the EU list.
 4. The Fiscal Attachés met on 17 November and 6 December 2021 and the CoCG on 22 November 2021. The CoCG subgroup met on 14 January 2022 to take stock of developments in jurisdictions and to prepare the revision of the EU list. On 24 January 2022, the Code of Conduct Group considered 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, and mandated the CoCG subgroup meeting on 2 February 2022 to finalise the texts.
 5. All delegations support the compromise text of the draft Council conclusions set out in the Annex and the CoCG Report.
 6. The Permanent Representatives Committee is invited to:
 - confirm the agreement on the texts and suggest that the Council approves 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 24 February 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.
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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 NOTE OF the effective activation of automatic information exchange relationships between Turkey and all Member States except one; CONSIDERS that the progress made by Turkey is still not fully in line with the commitments required under the conclusions of the ECOFIN Council of 22 February 2021 and 5 October 2021; CALLS ON Turkey to begin or continue the technical work on the effective exchange of data from Turkey 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 Council; REITERATES that the effective automatic exchange of information with all Member States according to the OECD calendar and standards is a condition for Turkey to fulfil criterion 1.1 of the EU list and to fully comply with the requirements set out in the above mentioned Council conclusions; INVITES the Group to inform the Council about developments in this regard and to continue maintaining and strengthening the dialogue on the implementation of effective exchange of data between Turkey and all Member States and to address the outstanding issues where no progress has been made;
5. REGRETS that some jurisdictions remain non-cooperative for tax purposes and INVITES these jurisdictions to engage with the Code of Conduct Group in order to resolve the remaining issues;
6. APPROVES the CoCG Report set out in doc. 5723/22;
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. 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.

3. 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.

4. 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.

5. 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.

6. Samoa

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

7. 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.

8. 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.

9. 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:

Anguilla, 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:

Costa Rica (Free Trade Zone), Jamaica (Special economic zones), Jordan (Aqaba special economic zone), North Macedonia (Technological industrial development zone)

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 jurisdictions 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 2022 that the recommendation/s has/have been addressed:

Anguilla, The Bahamas, Barbados, Bermuda, Turks and Caicos Islands

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:

The Bahamas, Barbados, Belize, British Virgin Islands, Israel, Monserrat, Thailand, Tunisia, Vietnam
