

The compliance of jurisdictions on tax transparency, fair taxation and the implementation of BEPS measures will be assessed cumulatively in the screening process.

## 1. TAX TRANSPARENCY CRITERIA

Criteria that a jurisdiction should fulfil in order to be considered compliant on tax transparency:

**1.1. Initial criterion with respect to the OECD Automatic Exchange of Information (AEOI) standard (the Common Reporting Standard – CRS):** the jurisdiction, should have committed to and started the legislative process to implement effectively the CRS, with first exchanges in 2018 (with respect to the year 2017) at the latest and have arrangements in place to be able to exchange information with all Member States, by the end of 2017, either by signing the Multilateral Competent Authority Agreement (MCAA) or through bilateral agreements;

*Future criterion with respect to the CRS as from 2018: the jurisdiction, should possess at least a “Largely Compliant” rating by the Global Forum with respect to the AEOI CRS, and*

**1.2. the jurisdiction should possess at least a “Largely Compliant” rating by the Global Forum** with respect to the OECD Exchange of Information on Request (EOIR) standard, with due regard to the fast track procedure, and;

**1.3. (for sovereign states)** the jurisdiction should have either:

- ratified, agreed to ratify, be in the process of ratifying, or committed to the entry into force, within a reasonable time frame<sup>1</sup>, of the OECD Multilateral Convention on Mutual Administrative Assistance (MCMAA) in Tax Matters, as amended, or
- a network of exchange arrangements in force by 31 December 2018 which is sufficiently broad to cover all Member States, effectively allowing both EOIR and AEOI;

**1.3 (for non-sovereign jurisdictions)** the jurisdiction should either:

- participate in the MCMAA, as amended, which is either already in force or expected to enter into force for them within a reasonable timeframe<sup>2</sup>, or
- have a network of exchange arrangements in force, or have taken the necessary steps to bring such exchange agreements into force within a reasonable timeframe, which is sufficiently broad to cover all Member States, allowing both EOIR and AEOI.

*1.4. Future criterion: in view of the initiative for future global exchange of beneficial ownership information, the aspect of beneficial ownership will be incorporated at a later stage as a fourth transparency criterion for screening.*

Until 30 June 2019, the following exception should apply:

– A jurisdiction could be regarded as compliant on tax transparency, if it fulfils at least two of the criteria 1.1, 1.2 or 1.3.

This exception does not apply to the jurisdictions which are rated "Non Compliant" on criterion 1.2 or which have not obtained at least "Largely Compliant" rating on that criterion by 30 June 2018.

Countries and jurisdictions which will feature in the list of non-cooperative jurisdictions currently being prepared by the OECD and G20 members will be considered for inclusion in the EU list, regardless of whether they have been selected for the screening exercise.

<sup>1</sup> “within a reasonable timeframe” refers to the entry into force of the OECD Multilateral Convention on Mutual Administrative Assistance (MCMAA), as amended, for a given jurisdiction and not to the commitment.

<sup>2</sup> “within a reasonable timeframe” refers, respectively, to the entry into force of the MCMAA, as amended, for the jurisdiction, and to the entry into force for the jurisdiction of a network of exchange agreements sufficiently broad to cover all Member States.

## 2. FAIR TAXATION

Criteria that a jurisdiction should fulfil in order to be considered compliant on fair taxation:

**2.1. the jurisdiction should have no preferential tax measures that could be regarded as harmful** according to the criteria set out in the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation<sup>3</sup>, and

*Code of Conduct on Business Taxation (1997)*

*When assessing whether such measures are harmful, account should be taken of, inter alia:*

- 1. Whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, or*
- 2. Whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base, or*
- 3. Whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, or*
- 4. Whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD, or*
- 5. Whether the tax measures lack transparency, including where legal provisions are relaxed at administrative Level in a non-transparent way.*

**2.2. The jurisdiction should not facilitate offshore structures or arrangements** aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

*Clarification (20 February 2017)*

- 1. For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct).*
- 2. In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct, because of the "absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero", **then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy** to assess whether the criterion 2.2 has been met.*
- 3. In the context of criterion 2.2 **the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason** for concluding that a jurisdiction does not meet the requirements of criterion 2.2.*
- 4. **A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information** or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.*

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<sup>3</sup> OJ C 2, 6 January 1998, p. 2

### 3. IMPLEMENTATION OF ANTI-BEPS MEASURES

3.1. Initial criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures:

- the jurisdiction, **should commit, by the end of 2017, to the agreed OECD anti-BEPS minimum standards** and their consistent implementation.

*3.2 Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the Inclusive Framework of the agreed minimum standards are completed):*

*- **the jurisdiction should receive a positive assessment for the effective implementation of the agreed OECD anti-BEPS minimum standards.***

***Annex 1: LISTE OF 92 COUNTRIES WHICH RECEIVE A SCREENING LETTER IN JANUARY 2017***

Albania  
American Samoa  
Anguilla  
Antigua and Barbuda  
Armenia  
Aruba  
Australia  
Bahamas  
Bahrain  
Barbados  
Belize  
Bermuda  
Bosnia and Herzegovina  
Botswana  
Brazil  
British Virgin Islands  
Cabo Verde  
Canada  
Cayman Islands  
Chile  
China  
China, Hong Kong SAR  
China, Macao SAR  
Colombia  
Cook Islands  
Costa Rica  
Curaçao  
Dominica  
Faroe Islands  
Fiji  
Former Yugoslav Republic of Macedonia  
Georgia  
Greenland  
Grenada  
Guam  
Guernsey  
Iceland  
India  
Indonesia  
Isle of Man  
Israel  
Jamaica  
Japan  
Jersey  
Jordan  
Korea, Republic of  
Malaysia  
Maldives  
Mauritius  
Mongolia  
Montenegro  
Montserrat  
Morocco  
Namibia  
New Caledonia

Norway  
Oman  
Panama  
Peru  
Qatar  
Saint Kitts and Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
Samoa  
Saudi Arabia  
Serbia  
Seychelles  
Singapore  
South Africa  
Swaziland  
Taiwan  
Thailand  
Trinidad and Tobago  
Tunisia  
Turkey  
Turks and Caicos Islands  
United Arab Emirates  
United States  
Uruguay  
US Virgin Islands  
Viet Nam

Andorra (country with an EU tax transparency agreement)  
Liechtenstein (country with an EU tax transparency agreement)  
Monaco (country with an EU tax transparency agreement)  
San Marino (country with an EU tax transparency agreement)  
Switzerland (country with an EU tax transparency agreement)

Malaysia (developing country considered to be a financial centre)  
Marshall Islands (developing country considered to be a financial centre)  
Nauru (developing country considered to be a financial centre)  
Niue (developing country considered to be a financial centre)  
Palau (developing country considered to be a financial centre)  
Vanuatu (developing country considered to be a financial centre)