# Defensive tax measures in Luxembourg against EU-blacklisted jurisdictions

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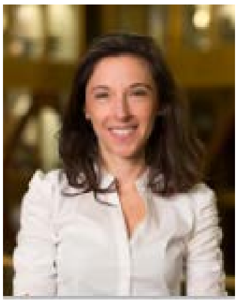
**Georges Bock**
Partner
+352 22 5151 5522
georges.bock@kpmg.lu


**Flora Castellani**
Executive Director
+352 22 5151 5353
flora.castellani@kpmg.lu



**Louis Thomas**
Partner
+352 22 5151 5527
louis.thomas@kpmg.lu


The Luxembourg tax authorities published a circular on 7 May 2018 detailing the defensive measures that will apply in relation to countries included in the EU list of non-cooperative jurisdictions for tax purposes. Currently, nine non-cooperative jurisdictions are on the EU blacklist (see list below). The Luxembourg authorities indicate that structures or arrangements involving these countries will be subject to an increased audit risk in Luxembourg, and transactions with associated enterprises in these jurisdictions will be subject to some reporting and documentation obligations.

## Background

The issuance of the EU list of non-cooperative jurisdictions for tax purposes is part of the EU's efforts to clamp down on tax avoidance and harmful tax practices following the Anti-Tax Avoidance Package presented in January 2016.

The initial list was approved at the EU level on 5 December 2017 (see Luxembourg Tax Alert 2017-22) and included 17 jurisdictions (of the 92 chosen for screening). Since its adoption, several changes have been made to the blacklist with some countries being removed from the list.

Nine jurisdictions are currently blacklisted: American Samoa, the Bahamas, Guam, Namibia, Palau, Saint Kitts and Nevis, Samoa, Trinidad and Tobago, and the US Virgin Islands.

The European Commission expected each Member State to introduce possible countermeasures — such as increased monitoring and audits, withholding taxes, special documentation requirements and anti-abuse provisions — against the blacklisted countries. The circular issued by the Luxembourg authorities fits into this framework. It does not impose any immediate downside such as non-deductibility or withholding tax, but will trigger closer tax audits.

## Luxembourg countermeasures

According to the circular issued on 7 May 2018, the Luxembourg direct tax authorities will apply the following administrative measures in the tax area for transactions, structures or arrangements involving jurisdictions included in the EU list of non-cooperative jurisdictions:

1. **Reinforced monitoring of certain transactions**

   The Luxembourg direct tax authorities will reinforce their monitoring of intra-group transactions between Luxembourg companies and associated enterprises situated in the blacklisted jurisdictions.

   Luxembourg companies will therefore have to indicate in their corporate tax returns, starting with the tax year 2018, whether they have carried out any intra-group transactions with such associated enterprises. To this end, the EU blacklist as it read at the end of their financial year will be decisive. The Luxembourg direct tax authorities will publish a consolidated EU list of non-cooperative jurisdictions following each amendment adopted by the EU Council.

Luxembourg companies will have to hold available certain information that may be requested by the Luxembourg direct tax authorities upon their assessment of the tax returns and, as the case may be, during an on-site inspection or a tax audit.

The following information should be held available and, upon request, be provided to the tax authorities:
- Details of the intra-group transactions (i.e. total amount of each transaction, and summary of income and expenses related to the transaction); and
- Summary of debt and receivables with such associated enterprises.

**2. Increased tax audit risk**

The Luxembourg direct tax authorities will reinforce their control if Luxembourg companies use structures or arrangements involving the blacklisted jurisdictions.

## KPMG Luxembourg comment

By issuing  the circular, Luxembourg has reaffirmed its commitment to tax transparency and fair taxation and to be the first — but flexible — mover when it comes to implementing the new EU and international tax standards, in line with the recommendations issued by the EU Council upon release of the EU blacklist in December last year.

Luxembourg taxpayers should therefore start assessing whether their transactions fall within the scope of the new measures and, in the affirmative, prepare the adequate supporting documentation.

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