



# Euro Tax Flash from KPMG's EU Tax Centre



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## **United Arab Emirates and Marshall Islands removed from the EU list of non-cooperative jurisdictions**

[Council – Code of Conduct Group – Harmful Tax Regimes – EU Blacklist – Tax Transparency](#)

On October 10, 2019 the Council adopted a revised EU blacklist of non-cooperative jurisdictions for tax purposes. The EU Finance Ministers agreed to remove the United Arab Emirates (UAE) and the Marshall Islands from the list. Albania, Costa Rica, Mauritius, Serbia and Switzerland were also found to be compliant with all of their commitments on tax cooperation and were therefore removed from the grey list. Finally, the Council endorsed a guidance note published by the Code of Conduct Group on foreign source income exemption regimes.

### **Background**

The EU blacklist, first adopted on December 5, 2017, is part of the EU's effort to clamp down on tax avoidance and harmful tax practices. Out of the ninety-two jurisdictions initially chosen for screening, seventeen jurisdictions were placed on the blacklist in December 2017. Over the course of 2018, most of the countries and territories on the blacklist engaged in constructive dialogue with the EU and made commitments to comply with the EU's criteria. As such, by the end of 2018 only five jurisdictions remained listed. The majority of the commitments had a deadline of the end of 2018 and their enactment into national law was carefully monitored at a technical level by the Code of Conduct Group on business taxation until the beginning of 2019. The monitoring process revealed that ten jurisdictions either failed to deliver on their commitments by the agreed deadline or made no commitment to address the EU's concerns. Consequently, Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, the Marshall Islands, Oman, the UAE and Vanuatu were added to the blacklist on March 19, 2019. On May 17, 2019, Bermuda, Aruba, and Barbados were removed from the blacklist, followed by Dominica on June 14, 2019.

## EU Blacklist Update

On October 10, 2019 the EU Finance Ministers agreed to remove the UAE and the Marshall Islands from the blacklist. According to the recommendations made by the Code of Conduct Group, both jurisdictions now fully comply with their commitment to introduce substance requirements, as they have appropriately addressed the EU's concerns on certain features of the implementing regulations, which had previously created a significant risk of circumvention. As a result, the Marshall Islands were placed on the grey list (section 1.2 on exchange of information on request) pending the result of the OECD Global Forum's review to be released in November 2019. The UAE were completely removed from the blacklist.

Nine jurisdictions now appear on the blacklist: American Samoa, Belize, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Albania, Costa Rica, Mauritius, Serbia and Switzerland were also found to be compliant with all of their commitments on tax cooperation and were therefore removed from the grey list (i.e. jurisdictions identified as cooperative, subject to successful delivery on their commitments). The EU Finance Ministers also took stock of the progress made by Niue (removed from section 1.1 of the grey list), Namibia (removed from section 1.2 and 3.1), Morocco and Serbia (removed from section 1.3), as well as Bosnia and Herzegovina and Eswatini (removed from section 3.1). As a result, 32 jurisdictions now appear on the grey list.

The Code of Conduct Group further reported on their assessment of the USA's compliance with the EU criteria on transparency. Recalling that the USA was already deemed to meet EU criteria 1.1 (automatic exchange of information) and 1.2 (exchange of information on request) in December 2017, the group concluded that the USA also meets criterion 1.3 (effective exchange of information under the OECD's Mutual Assistance Convention). In this respect, the FATCA competent authority agreements and the existing double taxation treaties between the USA and every EU Member State were deemed to be sufficient to meet the EU's requirements.

Finally, the EU Finance Ministers endorsed new guidance on 'foreign source income exemption regimes', which aims to formalize requirements set by the EU as well as providing transparency on the approach adopted by the Code of Conduct Group in respect of these regimes. The guidance clarifies that regimes are reviewed where they create situations of double-non taxation, in particular regimes that have (i) an overly broad definition of income excluded from taxation, notably foreign source passive income without any conditions or safeguards, and/or (ii) a nexus definition that deviates from the definition of a permanent establishment in the OECD Model Tax Convention.

## EU Tax Centre comment

Since the first EU blacklist was published in December 2017, it has been revised ten times. Although this illustrates that the EU blacklist is a living document and that commitments made by listed jurisdictions are taken into account, this new revision may attract further criticism, in particular regarding a lack of credibility around the screening and monitoring process. However, future Taxation Commissioner, Mr. Gentiloni, recently hinted that further work will be done to improve the transparency of the blacklisting process, as well as reaching agreement at the EU level on meaningful coordinated defensive measures to apply to the listed countries.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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