



Euro Tax Flash from KPMG's EU Tax Centre



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Cayman Islands and Oman delisted, Barbados and Anguilla added to the EU list of non-cooperative jurisdictions,

Council – Code of Conduct Group – Harmful Tax Regimes – EU Blacklist – Tax Transparency

On October 6, 2020, the Economic and Financial Affairs Council of the EU (ECOFIN) adopted a revised EU list of non-cooperative jurisdictions for tax purposes (the EU blacklist). The EU Finance Ministers agreed to add two new jurisdictions to the list: Anguilla and Barbados, as well as to remove the Cayman Islands and Oman from the EU blacklist.

Following this latest revision, the EU blacklist includes the following twelve jurisdictions: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands, Vanuatu.

Background

The EU blacklist, first adopted on December 5, 2017, is part of the EU's efforts 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. The UAE and the Marshall Islands were removed from the list on October 10, 2019 while Belize was also removed on November 8, 2019.

Earlier this year, with effect from February 27, 2020, the Cayman Islands, Palau, Panama and Seychelles were added to the EU blacklist. These countries were unable to uphold their implementation commitments, which were due at the end of 2019 (see [Euro Tax Flash issue 424](#) for details).

EU Blacklist October 2020 Update

On October 6, 2020, in light of a Report by the Code of Conduct Group – COCG (business taxation), the EU Finance Ministers agreed to:

1. Add Anguilla and Barbados to the blacklist following the [publication](#) (September 1, 2020) of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) new peer review reports assessing compliance with the international standard on transparency and exchange of information on request:

- Anguilla received a “Non-Compliant” rating from the Global Forum for Exchange of Information on Request and was therefore added to the blacklist.
- Barbados was downgraded to a “Partially-Compliant” rating by the Global Forum for Exchange of Information on Request and was therefore added to the blacklist.

According to the EU criteria, a 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.

2. Remove the Cayman Islands and Oman from the list, following the fulfillment of their implementation commitments:

- According to the Report, the Cayman Islands has enhanced its framework on Collective Investment Funds. As a result, the Cayman Islands has delivered on its commitment on section 2.2 (tax regimes that facilitate offshore structures which attract profits without real economic activity) and was therefore removed from the blacklist.
- Oman has fulfilled its commitments under section 1.3 (OECD Multilateral Convention on Mutual Administrative Assistance) and the benchmark of commitments under section 1.1 (OECD Automatic Exchange of Information – AEOI – exchange relationships activated with all EU Member States) and was therefore removed from the blacklist.

The EU blacklist (Annex I to the Council conclusions) therefore comprises the following twelve jurisdictions: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands, Vanuatu.

3. Make the following changes to the grey list of non-cooperative jurisdictions (Annex II to the Council conclusions):

- Remove Mongolia and Bosnia and Herzegovina from the list following the deposit of the instruments of ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters by these countries;
- Extend the deadlines (due to the ongoing COVID-19 global pandemic) for the signature and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance, to December 31, 2020 and December 31, 2021, respectively. The following countries are affected: Botswana, Eswatini, Jordan, Maldives, Namibia and Thailand.
- Extend to December 31, 2020 the deadlines for the commitments made by Namibia and Saint Lucia under section 2.1 (Harmful Preferential Tax Regimes).

In relation to the existence of harmful tax regimes criterion (2.1), the following was noted:

- Saint Lucia is considered to have adopted sufficient amendments to its foreign source income exemption regime and has committed to address a remaining issue by December 31, 2020.
- Australia and Morocco were granted until the end of 2020 to amend or abolish their harmful tax regimes.
- Namibia has demonstrated tangible progress in amending or abolishing their harmful tax regimes and were granted until December 31, 2020 to adapt its legislation.
- Jordan is committed to amending or abolishing its harmful tax regimes by the end of 2020.

The grey list therefore contains ten jurisdictions: Australia, Botswana, Eswatini, Jordan, Maldives, Morocco, Namibia, Saint Lucia, Thailand and Turkey.

Next steps

These changes will take effect from the day of publication in the Official Journal of the European Union of the revised Annexes I and II.

The Code of Conduct Group will continue to monitor the implementation of commitments assumed and seek commitments from those jurisdictions that have not addressed their weak points so far.

EU Tax Centre comment

In December 2019, the Council adopted guidance on coordination of national defensive measures in the tax area towards non-cooperative jurisdictions, inviting member states to apply legislative defensive measure as of January 1, 2021 (see [Euro Tax Flash issue 419](#) for details). Tax area legislative defensive measures that Member States should apply (at least one legislative measure) are:

- (i) Non-deductibility of costs;
- (ii) Controlled Foreign Company (CFC) rules;
- (iii) Withholding tax measures;
- (iv) Limitation of participation exemption on profit distribution.

In its [November 2019 report](#), the COCG noted that some Member States that might face institutional or constitutional issues that prevent them from meeting the January 1, 2021 deadline, should ensure that this commitment is fulfilled by July 1, 2021.

The Code of Conduct Group has committed to reviewing the work on legislative defensive measures in the tax area by July 2021 at the latest and have an overview of defensive measures applied by Member States in place by the end of 2021.

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