



Euro Tax Flash from KPMG's EU Tax Centre



[EU list of non-cooperative jurisdictions February 2021 update](#)

[EU Tax Centre comment on the EU list of non-cooperative jurisdictions](#)

[Other updates](#)

[EU Tax Centre comment on other updates](#)

Updates to the EU list of non-cooperative jurisdictions and possible re-launch of EU FTT and public CbC Reporting proposals

[Council – Code of Conduct Group – Harmful Tax Regimes – EU list – Tax Transparency – Financial Transaction Tax – Country-by-Country Reporting](#)

On February 22, 2021, the Council [adopted conclusions](#) on a revised EU list of non-cooperative jurisdictions for tax purposes. The Council agreed to add Dominica to the list and to move Barbados to the “grey list”. Namibia, Morocco and Santa Lucia were removed from the document, having fulfilled all their commitments.

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

In other news, the Portuguese Presidency of the Council of the EU is seeking opinions from Member States on two on-going files: the EU Financial Transaction Tax and the public Country-by-Country Reporting (CbCR) proposals.

EU list of non-cooperative jurisdictions

Background

The EU list of non-cooperative jurisdictions, first adopted in the Council conclusions of 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, 2019 and 2020, in light of commitments made by listed jurisdictions to comply with the EU's criteria,

both Annex I (the EU blacklist) and Annex II (the EU grey list) to the Council conclusions) were amended several times. Please refer to [Euro Tax Flash issue 435](#) for details of the state of play following the previous revision of the lists (October 7, 2020).

February 2021 Update

On February 22, 2021, the Council agreed to:

1. Add Dominica to the blacklist following the [publication](#) (December 11, 2021) of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) 2020 peer review report assessing compliance with the international standard on transparency and exchange of information on request, whereby Dominica received a “Partially-Compliant” rating.

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. Move Barbados to the grey list, pending a supplementary review by the Global Forum.

As a result of this review, the EU blacklist (Annex I to the Council conclusions) now comprises the following twelve jurisdictions: American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands, Vanuatu.

3. Make the following changes to the grey list (Annex II to the Council conclusions):

- Remove Namibia, Morocco and Santa Lucia from the list;
- Add Barbados, as detailed above;
- Add Jamaica, which committed to amend or abolish its harmful tax regime (special economic zone regime) and was granted until December 31, 2022 to adapt its legislation;
- Extend to December 31, 2021 the deadline for Australia and Jordan to amend the tax regimes identified as harmful.

Under the Transparency criteria, the report notes that:

- Turkey has not made material progress in the effective implementation of the automatic exchange of information and needs to make tangible progress under this criterion by December 31, 2021. Turkey is expected to commit at a high political level by May 31 2021 and to activate the automatic information exchange relationship with all Member States by June 30, 2021.
- Extend the deadline by which Maldives has to sign the OECD Multilateral Convention on Mutual Administrative Assistance, to April 30, 2021.

As a result of this review, the grey list therefore contains nine jurisdictions: Australia, Barbados, Botswana, Eswatini, Jamaica, Jordan, Maldives, 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

As previously reported (see KPMG's EU Tax Centre [ETF 435](#) for more details), in December 2019, the Council issued guidance on coordination of national tax defensive measures against non-cooperative jurisdictions, whereby Member States were invited to apply legislative defensive measure as of January 1, 2021 (or July 1, 2021 should they face institutional or constitutional issues). Furthermore, in July 2020 the European Commission issued a [recommendation](#) for Member States to not grant COVID-19 financial support to companies with links to countries on the EU list of non-cooperative jurisdictions.

Several EU countries have already introduced or proposed measures targeted at jurisdictions on the EU list, such as non-deductibility of costs for certain payments made to companies based in a listed jurisdiction (Romania – effective January 1, 2021; Luxembourg – effective March 1, 2021; Denmark – proposal, if enacted effective July 1, 2021), increased withholding tax rates on dividends paid to non-cooperative jurisdictions (Denmark – proposal to increase withholding tax rate to 44 percent from the standard 27 percent), controlled foreign company rules and other measures (Belgium, effective January 1, 2021). Most recently, on February 15, 2021, a draft law was submitted to the German parliament aimed at introducing defensive measures targeted at companies on the EU list. It is expected that other Member States will follow suit, in advance of the Code of Conduct Group's review of defensive measures, which is scheduled to start by July 2021.

In parallel, on January 21, 2021, the European Parliament adopted a resolution asking the Council and the European Commission to reform the EU list of non-cooperative jurisdictions for tax purposes (the EU blacklist). The members of European Parliament recognized the "positive impact" the list has had since its introduction but expressed concerns regarding the transparency and efficiency of the current process and requested an update of the listing criteria and a more coordinated approach to defensive measures (for further details, please refer to KPMG's EU Tax Centre [ETF 440](#)). Following the February revision of the list, the Chair of the European Parliament's subcommittee on tax matters [commented](#) that the list does not live up to its full potential as "countries with no corporate income tax remain off the list, leaving the door wide open to tax avoidance on a massive scale."

Other updates

Financial Transaction Tax

Taxation of the financial sector has been under discussion at the European level since 2011, when the European Commission first proposed implementing a financial transactions tax (FTT) at EU level. After initial discussions, it became apparent that unanimous support amongst EU Member States did not exist and eleven Member States decided to move ahead with the initiative under the so-called enhanced cooperation procedure. Since then, work on the file in the Council working groups has been ongoing, despite Estonia's withdrawal from the group. The most recent significant development came in the form of a proposal from the German Finance Minister in December 2019 for a revised FTT Directive to be adopted by the ten

remaining states under enhanced cooperation. The revised proposal includes an optional exemption for pension schemes and a new system for mutualization of the FTT revenues. For further information on the evolution of the EU FTT, please refer to KPMG's EU Tax Centre's previous alerts (see [ETF 419](#) and [ETF 420](#)).

In parallel, the FTT was mentioned as a possible new EU own resource as part of the Union's long-term budget, whereby the European Commission committed to put forward a proposal by June 2024. In the meantime, several Member States (e.g. France, Italy, Spain) have introduced unilateral financial transaction taxes.

In an attempt to move the file forward, in February 2021, the Portuguese Presidency of the Council proposed an inclusive discussion among all Member States on tax design issues of the FTT at EU level.

The approach suggested by the Presidency would be to start a gradual implementation of the tax based on the models developed and already tested by France and Italy, where unilateral FTTs have been introduced.

In the Presidency's view, a step-by-step approach, potentially structured on the basis of a review clause, would allow:

- Member States and the Commission to methodically evaluate the economic impact of the FTT;
- tax administrations to progressively develop efficient and effective collection procedures; and
- market structures and financial institutions to gradually build up the knowledge and infrastructure required to facilitate tax compliance.

Member States are invited to provide views on the proposed approach to the FTT design, as to whether the French and Italian experience would represent a solid basis for the gradual European approach on the FTT (either in the context of the enhanced co-operation or EU wide) and on the proposal to include the transactions in equity derivatives in the scope of the FTT (in line with the Italian FTT model). Member States not participating in the enhanced cooperation initiative are also asked whether the need to find additional sources for financing the EU recovery effort, coupled with the proposed technical approach to FTT design, might increase their interest in further work on an inclusive compromise proposal, i.e. for an EU-wide FTT.

[Public Country-by-Country Reporting](#)

The European Commission's proposal on public Country-by-Country Reporting, which has been on the table since 2016, would require multinational groups exceeding a certain revenue threshold to report publicly certain information on items such as activities, number of employees, net turnover, profit or loss before tax, tax accrued and paid, etc.

The proposal has been in deadlock ever since, due to disagreements on its legal basis, which determines whether the proposal should be subject to the ordinary legislative procedure – requires qualified majority voting in the Council, or based on the special legislative procedure – the common procedure used in tax matters and subject to unanimous approval at Council level.

The Portuguese Presidency intends to hold a policy debate on the proposal during an [informal video conference](#) of internal market and industry ministers (COMP) on February 25, 2021, which could clarify the state-of-play and potentially, the extent to which progress can be made.

EU Tax Centre comment

The EU FTT and public CbCR proposals have been on the agendas of most Council Presidencies in the past few years, so far with limited success. The Portuguese Presidency seems committed to make progress. It remains to be seen if or which countries have changed previously expressed positions and whether agreement on either of the two proposals is within reach.

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