



# Defensive measures in the EU against non- cooperative jurisdictions for tax purposes

**KPMG's EU Tax Centre**

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Overview as at December 2021



# The EU list of non-cooperative jurisdictions for tax purposes: defensive measures adopted by the EU Member States

## Background

In January 2016, the EU Commission presented its Anti-Tax Avoidance Package, which included a commitment for a common approach to third country jurisdictions on tax good governance matters. The objective was to replace the various national tax haven lists with a single EU listing system which would provide "clear, coherent and objective criteria".

The end result was the adoption on December 5, 2017 of the initial [EU list of non-cooperative jurisdictions for tax purposes](#) (the EU List – Annex I to the Council conclusions on the EU list of non-cooperative tax jurisdictions).

The list is the result of an in-depth screening and dialogue process between the European Commission and a selection of non-EU countries that were assessed against agreed criteria for tax good governance. The current screening criteria are founded upon tax transparency, fair taxation, and the implementation of OECD anti-BEPS measures. Jurisdictions that do not comply with all criteria, but that have committed to reform are included in a state of play document – the so-called "grey list" (Annex II). The EU List is an on-going project and is regularly updated and revised. A substantive reform of the initiative, including in terms of geographical scope and listing criteria, is under discussion at EU level.

## What does being deemed non-cooperative by the EU mean?

In addition to a series of measures imposed by the EU as a whole, the EU Member States agreed in December 2017 to apply at least one of the following **administrative measures** against countries on the EU List:

- reinforced monitoring of transactions;
- increased risk audits for taxpayers who benefit from listed regimes;
- increased risk audits for taxpayers who use tax schemes involving listed regimes.

In December 2019, the Council adopted guidance on coordination of national defensive measures in the tax area towards countries on the EU List. Specifically, Member States agreed to apply at least one of the following **legislative measures**:

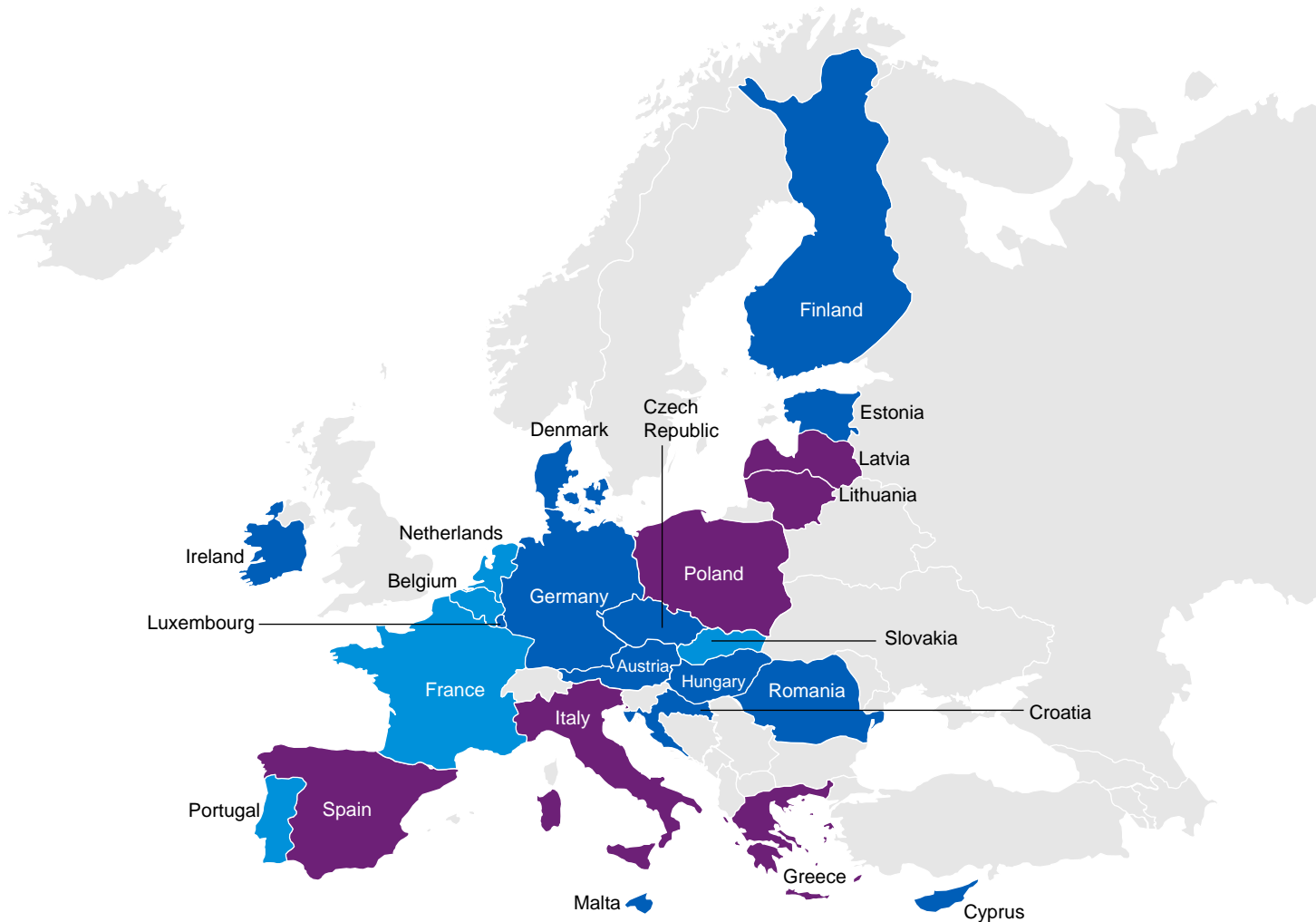
- non-deductibility of costs;
- controlled Foreign Company (CFC) rules;
- withholding tax measures;
- limitation of participation exemption on profit distribution.

Member States have committed to ensuring that at least one of these legislative defensive measures is effective from January 1, 2021 at the latest (or July 1, 2021 should they face institutional or constitutional issues). The Code of Conduct Group (COCG) has undertaken a review of defensive measures applied by Member States and the related findings were [published](#) in November 2021.

## Countries included on the EU List (as at October 12, 2021)

- |                  |          |                       |
|------------------|----------|-----------------------|
| — American Samoa | — Palau  | — Trinidad and Tobago |
| — Fiji           | — Panama | — US Virgin Islands   |
| — Guam           | — Samoa  | — Vanuatu             |

# Applicability of the EU List



**Legend - Defensive measures (existing or proposed) against countries listed on):**

- EU List (direct reference in the law) or a domestic implementation of the EU list: Austria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Luxembourg, Malta, Romania

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- Pre-existing national tax haven list, which either included or was extended to include the EU List: Belgium, France, Netherlands, Portugal, Slovakia

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- National tax haven list, not connected with the EU List (some countries on the EU List could nevertheless be included in the national tax haven list): Greece, Italy, Latvia, Lithuania, Poland, Spain

**Note:** For the purposes of this overview “EU List” refers to Annex I to the Council conclusions on the EU list of non-cooperative tax jurisdictions

**Cyprus:** Proposal. Expected to be enacted in December 2021 and to enter into force on December 31, 2022

**Estonia:** Stopped applying the domestic white list on June 30, 2021, and started to apply the EU List as of July 1, 2021

**Ireland:** Legislation makes reference to the October 2020 list and will need to be updated for 2022 (to refer to the most recent EU List at that time)

**Poland:** The national tax haven list does not include all jurisdictions on the EU List. However, the CFC measures apply to all countries on the EU List

**Latvia:** Based on information from July 2021, most countries on the EU List were included in the national tax haven list

**Lithuania:** Based on information from July 2021, most countries on the EU List were included in the national tax haven list

**Slovakia:** Uses a “white list”. Among others, countries on the EU List are excluded from the white list

**Spain:** Legislation enacted in July 2021 will reform the current list and align it to the EU List

# Overview of defensive measures - December 2021

Most EU Member States have implemented at least one defensive tax measure against countries on the EU List.<sup>1</sup>

| Country               | Non-deductibility of costs | Controlled Foreign Company rules | Withholding tax measures | Limitation of participation exemption |
|-----------------------|----------------------------|----------------------------------|--------------------------|---------------------------------------|
| Austria               |                            | Yes                              |                          |                                       |
| Belgium               | Yes                        | Yes                              |                          | Yes                                   |
| Croatia               |                            | Yes                              | Yes                      |                                       |
| Cyprus <sup>2</sup>   |                            |                                  | Yes                      |                                       |
| Czech Rep.            |                            | Yes                              |                          |                                       |
| Denmark               | Yes                        |                                  | Yes                      |                                       |
| Estonia <sup>3</sup>  |                            | Yes                              | Yes                      | Yes                                   |
| Finland               |                            | Yes                              |                          |                                       |
| France <sup>4</sup>   |                            |                                  | Yes                      | Yes                                   |
| Germany               | Yes                        | Yes                              | Yes                      | Yes                                   |
| Greece <sup>5</sup>   | Yes                        |                                  |                          |                                       |
| Hungary               |                            | Yes                              |                          |                                       |
| Iceland <sup>6</sup>  |                            |                                  |                          |                                       |
| Ireland <sup>7</sup>  |                            | Yes                              |                          |                                       |
| Italy                 |                            |                                  | Yes                      |                                       |
| Latvia                | Yes                        | Yes                              | Yes                      | Yes                                   |
| Lithuania             | Yes                        | Yes                              | Yes                      | Yes                                   |
| Luxembourg            | Yes                        |                                  |                          |                                       |
| Malta                 |                            |                                  |                          | Yes                                   |
| Netherlands           |                            | Yes                              | Yes                      |                                       |
| Poland <sup>8</sup>   | Yes                        | Yes                              | Yes                      |                                       |
| Portugal              | Yes                        | Yes                              | Yes                      | Yes                                   |
| Romania               | Yes                        |                                  |                          |                                       |
| Slovakia <sup>8</sup> | Yes                        |                                  | Yes                      |                                       |
| Spain                 | Yes                        | Yes                              |                          | Yes                                   |
| The UK <sup>6</sup>   |                            |                                  |                          |                                       |

Note 1: Bulgaria, Norway, Slovenia and Sweden were not included in the survey. For details on the administrative measures implemented by Member States please refer to the COCG's "[Revised state of play of the implementation of the 2019 Guidance on Defensive Measures by EU Member States](#)"

Note 2: Proposal. Expected to be enacted in December 2021 and to enter into force on December 31, 2022

Note 3 : Certain costs related to countries on the EU List are subject to CIT. CFC rules applicable as of January 1, 2022

Note 4: CFC rules applicable to individuals (but not to companies). Restrictions to deductibility of costs in place for low tax countries, but not directly linked to the national tax haven list.

Note 5: No CFC exemptions apply for non-EEA states (and consequently also for countries on the EU List)

Note 6: Iceland and the UK have not introduced defensive measures based on the EU List / a national tax haven list

Note 7: Additional measures expected; Note 8: Information valid as at July 2021.

# Contacts

KPMG's EU Tax Centre and the [KPMG network of EU tax specialists](#) can help you understand the complexities of the EU tax legislation and how this can impact your business.

If you would like more information about how KPMG can help you, feel free to contact one of the following advisors, or, as appropriate, your local KPMG contact.

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Further on, the document focuses strictly on measures linked to either the EU List and / or a national tax haven list with similar purposes. It does not include any general anti-abuse provisions, rules implemented based on EU Anti-Tax Avoidance Directive (ATAD) or other provisions aimed at tackling tax avoidance or tax evasion.

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