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## **Three jurisdictions added to Annex I of the EU list of non-cooperative jurisdictions**

[Council of the EU – Code of Conduct Group – EU list – Non-cooperative jurisdictions – Tax transparency – Automatic Exchange of Information – Forum on Harmful Tax Practices – Substance requirements – Country-by-Country Reporting](#)

On October 4, 2022, the Council of the EU adopted [conclusions](#) on the list of non-cooperative jurisdictions (Annex I) and the state of play with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles (Annex II – so called “grey list”).

The Council agreed to move Anguilla, the Bahamas and Turks and Caicos Islands from the grey list (Annex II) to the list of non-cooperative jurisdictions (Annex I).

Following this latest revision, the EU list of non-cooperative jurisdictions includes the following twelve jurisdictions: American Samoa, Anguilla, the Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands, Vanuatu.

In addition, Armenia and Eswatini were added to the grey list following their commitments to amend or abolish preferential tax regimes in the scope of the OECD Forum on Harmful Tax Practices (FHTP), while Bermuda and Tunisia were removed from the grey list, having fulfilled their commitments in relation to the effective implementation of substance requirements (Bermuda) and country-by-country reporting (CbCR) exchange relationships (Tunisia).

As a result, the grey list includes the following twenty-two jurisdictions: Armenia, Barbados, Belize, Botswana, the British Virgin Islands, Costa Rica, Dominica, Eswatini, Hong Kong, Israel, Jamaica, Jordan, Malaysia, Montserrat, North Macedonia, Qatar, Seychelles, Thailand, Turkey, Uruguay, Russian Federation and Vietnam.

## 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 curb tax avoidance and harmful tax practices. The list is the result of an in-depth screening of non-EU countries that are assessed against agreed criteria for tax good governance by the Code of Conduct Group (CoCG), which is composed of high-level representatives of the Member States and the European Commission. 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 lists are an on-going project and are regularly updated and revised. Please refer to [Euro Tax Flash issue 466](#) for details of the state of play following the previous revision of the lists (February 24, 2022).

Prior to the previous revision of the lists, the CoCG had released its [work program](#) under the French Presidency of the Council (first semester of 2022) already committing to continue monitoring jurisdictions covered by the current geographical scope with a view to updating the list of non-cooperative jurisdictions in October 2022. In particular, the CoCG envisaged to focus on monitoring tax regimes that facilitate offshore structures which attract profits without real economic activity (criterion 2.2) under consideration of FHTP assessments in respect of its global standard on substantial activities for no/nominal tax jurisdictions. The global standard requires mobile business income in a low tax jurisdiction to be linked to core business functions being carried out from that jurisdiction. Furthermore, the global standard ensures that the jurisdictions of the parent entities and beneficial owners are informed about the identity, activities and ownership chain of entities established in no or only nominal tax jurisdictions that are either non-compliant with substance requirements or engage in intellectual property or other high-risk activities through a regular information exchange.

On July 27, 2022, the FHTP conclusions from the first annual monitoring process of the effectiveness in practice of the substantial activities requirements in no or only nominal tax jurisdictions were published. The conclusions noted that in relation to Anguilla, the Bahamas, Barbados and Turks and Caicos Islands areas were identified that need substantial improvements. In addition, the Forum's report included updated conclusions for twelve preferential tax regimes (including Armenia, Costa Rica and Eswatini) as part of the Forum's on-going review of the implementation of the BEPS Action 5 minimum standard on harmful tax practices. For more details, please refer to [E-News Issue 159](#).

## Annex I of the EU list of non-cooperative jurisdictions

Following the FHTP's review results of the substantial activities factor for no or only nominal tax jurisdictions, the CoCG found that Anguilla, the Bahamas and Turks and Caicos Islands did not sufficiently address the recommendations from the FHTP in respect of the effective implementation of substance requirements. Accordingly, the Council concluded that the three jurisdictions facilitate offshore structures and arrangements aimed at attracting profits without real economic substance by failing to take all necessary actions to ensure the effective implementation of substance requirements under criterion 2.2.

As a result, the Council agreed to move Anguilla, the Bahamas and Turks and Caicos Islands from the grey list (Annex II) to the list of non-cooperative jurisdictions (Annex I), expanding the list to twelve jurisdictions.

## October 2022 update to the “grey list”

The following conclusions with regard to Annex II were adopted based on the CoCG [report](#) to the Council:

- **Turkey** remains in section 1.1 of Annex II. The report notes that Turkey activated exchange of information with 26 Member States for fiscal years 2019 and 2020. However, since Turkey does not currently exchange data with Cyprus, the Council concluded that the reference to Turkey should be maintained in Annex II until Turkey is fully in line with the commitments to exchange information with all Member States.

- **Armenia** and **Eswatini** were added to section 2.1 of Annex II following commitments made to the FHTP to amend or abolish the Free Economic Zones and Information Technology Projects regimes (Armenia) and special economic zones regime (Eswatini) by December 31, 2023, which were found to be potentially harmful by the FHTP.
- **Costa Rica** was partly removed from section 2.1 of Annex II, following the amendment of its free trade zone regime. According to the FHTP assessment the regime is considered to be in line with BEPS Action 5 and is therefore no longer qualified as harmful. Costa Rica remains on the grey list due to its foreign source income exemption (FSIE) regime, which was deemed harmful by the CoCG (please refer to [Euro Tax Flash Issue 457](#)).
- **Barbados** remains in section 2.2 of Annex II following its commitments to address the FHTP conclusions from the first annual monitoring process of the effectiveness in practice of the substantial activities requirements. The Council advised that the CoCG should consider this issue at the next update of the EU list in February 2023 taking into account the FHTP conclusions from its upcoming meeting in November 2022.
- **Bermuda** was removed from section 2.2 of Annex II following the implementation of the global standard on substantial activities, which was found to be sufficient by the FHTP.
- **Tunisia** was removed from section 3.2 of Annex II following the activation of CbCR exchange relationships with all Member States as a non-reciprocal jurisdiction.

## Next steps

The revision will take effect from the day of publication in the Official Journal of the European Union of the revised Annexes I and II. The next update of the EU list of non-cooperative jurisdictions is expected to take place in February 2023.

## ETC Comment

Given the volatility of the list with certain non-EU-jurisdictions being listed and de-listed repeatedly in the past, it is important for taxpayers to monitor the evolution of the list and, in particular, taking into account defensive measures against listed jurisdictions implemented by each EU Member State, in accordance with commitments made to the EU. In this respect, please refer to KPMG's [summary](#) of defensive measures against non-cooperative jurisdictions for tax purposes for more information.

In this context, it is also important to note the CoCG has previously indicated its commitment to continue working on defensive measures against listed jurisdictions and to perform an analysis on how such measures have been effectively applied by Member States to enable discussion on whether and how coordination of the measures could be enhanced (please refer to [Euro Tax Flash Issue 478](#)).

While the CoCG has not published a work program under the Czech Presidency, there are also a number of other items that are expected to be taken forward during the second semester of 2022 in relation to the list of non-cooperative jurisdiction, based on public statements by representatives of the CoCG and the European Commission. According to the Chair of the Group, the CoCG will consider the extension of the geographical remit as well as additional criteria in respect of the screening of third countries. Additional criteria that are discussed include measures to ensure a minimum level of taxation in jurisdictions in line with the OECD Pillar Two solution, beneficial ownership and misuse of shell companies (for more information, please refer to [E-News Issue 151](#)).

Similar comments were made more recently by the Commissioner for Economy, Mr. Paolo Gentiloni, who highlighted the untapped potential of the EU listing process for tackling issues relating to beneficial ownership and substance requirements for no/nominal tax jurisdictions. According to the Commissioner, those listing criteria are considered to be effective instruments to complement the Unshell Directive proposal, which aims to tackle the misuse of shell companies for tax purposes in the EU.

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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