

EU Defensive measures against non-cooperative jurisdictions for tax purposes

KPMG's EU Tax Centre

Overview as at April 2023



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

Background – EU list of non-cooperative jurisdictions

EU list of non-cooperative jurisdictions

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.

Defensive measures against non-cooperative jurisdictions

The EU imposes a series of measures as a whole against non-cooperative jurisdictions.

In addition, Member States have committed to apply at least one administrative and one legislative defensive measure against non-cooperative jurisdictions with effect 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. The CoCG currently considers whether and how coordination of the measures could be enhanced.

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

Which jurisdictions are currently listed on the EU list of non-cooperative jurisdictions?

List of non-cooperative jurisdictions (Annex I)

- | | |
|---------------------------|------------------------------|
| 1. American Samoa | 9. Palau |
| 2. Anguilla | 10. Panama |
| 3. The Bahamas | 11. Russian Federation |
| 4. British Virgin Islands | 12. Samoa |
| 5. Costa Rica | 13. Trinidad & Tobago |
| 6. Fiji | 14. Turks and Caicos Islands |
| 7. Guam | 15. US Virgin Islands |
| 8. Marshall Islands | 16. Vanuatu |

List of jurisdictions currently monitored in respect of their commitments to implement tax good governance principles (Annex II)

- | | |
|---------------------------|----------------|
| 1. Albania | 10. Israel |
| 2. Armenia | 11. Jordan |
| 3. Aruba | 12. Malaysia |
| 4. Belize | 13. Montserrat |
| 5. Botswana | 14. Qatar |
| 6. Curaçao | 15. Seychelles |
| 7. Dominica | 16. Thailand |
| 8. Eswatini | 17. Turkey |
| 9. Hong Kong (SAR), China | 18. Vietnam |

Tax counter-measures

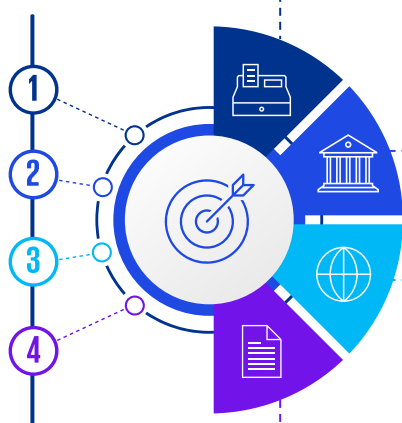
In December 2019, the Council adopted guidance on coordination of national defensive measures in the tax area towards countries on the EU List. Specifically, Member States agreed to apply at least one of the following legislative measures:

- Non-deductibility of costs,
- CFC rules,
- Increased WHT,
- Limitation of participation exemption.

Administrative counter-measures

EU Member States agreed in December 2017 to apply at least one of the following administrative measures against countries on annex I of the EU list of non-cooperative jurisdictions:

- 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.



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- Reporting obligation where recipients of cross-border payments are resident for tax purposes in a jurisdiction that is included in Annex I.
- Under Hallmark C1b(ii)), such payments may trigger a reporting obligation irrespective of whether the transaction is aimed at generating a tax benefit

Country-by-Country Reporting

- Stricter EU public CbyC disclosure obligations (i.e. on a jurisdiction by jurisdiction basis instead of aggregated amounts).
- CbyC information must be separately reported for each jurisdiction listed on Annex I on March 1 of the reporting year or for each jurisdiction that has been on the Annex II on March 1 of the reporting year and the preceding financial year.

Application of the EU list and/or national tax haven lists

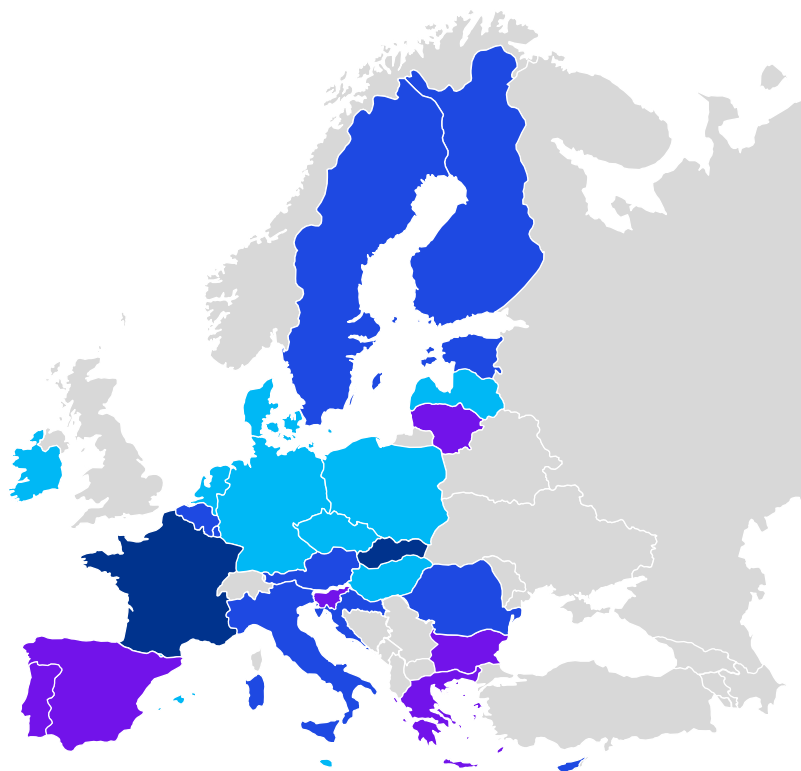
Legend - Defensive measures against countries listed on:

EU List (direct reference in the law, local implementation of changes to the EU list not required): Austria, Belgium, Croatia, Cyprus, Estonia, Finland, Italy, Luxembourg, Malta, Romania, Sweden

EU List (domestic implementation of Annex I, updates need to be adopted through a separate legislative act / ministerial regulation before they become applicable): Czech Republic, Denmark, Germany, Hungary, Ireland, Latvia, Netherlands, Poland

National tax haven list, which refers to EU List but also includes additional jurisdictions: France, Slovakia

National tax haven list, not connected with the EU List (countries may apply criteria similar to the ones applied by the EU CoCG): Bulgaria, Greece, Lithuania, Portugal, Slovenia, Spain



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

Belgium: Uses EU list for CFC and participation exemption limitation purposes and national tax haven list for deduction limitation purposes.

France: The participation exemption limitation and the increased French WHT rates only apply where the jurisdiction is listed because it does not provide for an effective information exchange or due to non-compliance with EU criterion 2.2.

Italy: Uses EU list for deduction limitation purposes and white list for withholding tax purposes.

Netherlands: Conditional WHT also applies to jurisdictions included in Dutch tax haven list (i.e. jurisdictions without profit taxes or with a statutory rate of less than 9 percent).

Poland: Uses EU list as well as national tax haven list. The latter provides for a broader scope of defensive measures and includes some of the countries included in the EU list, as well as additional ones.

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

Spain: Following a reform, a new list was published in February 2023.

Sweden: Uses EU list for deduction limitation purposes and white list for CFC purposes.

Overview of defensive measures – February 2023

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

Countries	Non-deductibility of costs	Controlled Foreign Company rules	Withholding tax measures	Limitation of participation exemption
Austria		Yes		
Belgium	Yes	Yes		Yes
Bulgaria			Yes	
Croatia		Yes	Yes	
Cyprus ²			Yes	
Czech Rep.		Yes		
Denmark	Yes		Yes	
Estonia ³		Yes	Yes	Yes
Finland		Yes		
France ⁴	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes
Greece	Yes			
Hungary		Yes		
Ireland ⁵		Yes		
Italy ⁶	Yes		Yes	
Latvia	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes
Luxembourg	Yes			
Malta				Yes
Netherlands		Yes	Yes	
Poland ⁷		Yes	Yes	Yes
Portugal	Yes	Yes	Yes	Yes
Romania	Yes			
Slovakia ⁸	Yes		Yes	
Slovenia	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	Yes
Sweden ⁹	Yes			

Note 1: 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: Enacted in December 2021, and entered into force on December 31, 2022

Note 3: Certain costs related to countries on the EU List are subject to CIT. Specific CFC rules apply to individuals.

Note 4: The application of defensive measures depends on the criterion based on which a jurisdiction was listed.

Note 5: Under Ireland's worldwide system of taxation, Irish taxation of foreign dividends provides the protection that would be offered by a limitation of the participation exemption. A public consultation was carried out in 2021 to determine if additional defensive measures were required, changes may be made in future Finance Acts if they are considered necessary (no changes were made in

Finance Act 2022).

Note 6: Deduction limitations enacted in 2023 apply to countries on the EU list of non-cooperative jurisdictions while the withholding tax measure applies to countries that are not included on the white list.

Note 7: Payment for certain services/royalties to residents of tax havens may increase the amount of 'minimum income tax'.

Note 8: Costs paid to non-cooperative countries (not on the white list) are tax deductible after their actual payment and only if applicable WHT has been withheld. Specific CFC rules in relation to non-white-listed jurisdictions apply to individuals.

Note 9: Sweden applies a white list of countries where income is not considered to be subject to low taxation for CFC purposes. Not related to the EU list

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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