



# Euro Tax Flash from KPMG's EU Tax Centre

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## October 2023 update of the EU list of non-cooperative jurisdictions

**Council of the EU – Code of Conduct Group – Non-cooperative jurisdictions – Tax transparency – Automatic Exchange of Information – Exchange of Information on Request – Forum on Harmful Tax Practices – Harmful tax regimes – Substance requirements – Country-by-Country Reporting**

On October 17, 2023, the ECOFIN Council adopted [conclusions](#) on the EU 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 add Antigua and Barbuda to the list of non-cooperative jurisdictions (Annex I). In addition, Belize and the Seychelles were moved from the grey list (Annex II) to Annex I. While the British Virgin Islands, Costa Rica were moved from Annex I to Annex II, the Marshall Islands were removed completely from the EU list.

Following this latest revision, the EU list of non-cooperative jurisdictions therefore includes the following sixteen jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, the Bahamas, Belize, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, the Seychelles, Trinidad and Tobago, Turks and Caicos Islands, the US Virgin Islands and Vanuatu.

In addition to the movements between Annex I and Annex II, the Council agreed to remove four jurisdictions from the grey list, as they had fulfilled their previous commitments (Jordan, Montserrat, Qatar and Thailand).

The grey list now includes the following fourteen jurisdictions: Albania, Armenia, Aruba, Botswana, the British Virgin Islands, Costa Rica, Curaçao, Dominica, Eswatini, Hong Kong (SAR), China, Israel, Malaysia, Türkiye 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' or 'Group'), 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 updated and revised twice every year. Please refer to Euro Tax Flash [Issue 506](#) for details of the state of play following the previous revision of the lists (February 14, 2023).

According to the CoCG [work program](#) for the second half of 2023 under the Spanish Presidency as well as its [report](#) to the Council outlining the work performed during the Swedish Presidency (first half of 2023), the CoCG focused on the following criteria since the last update of the lists:

- *Automatic exchange of information (AEOI – criterion 1.1<sup>1</sup>) and exchange of information on request (EOIR – criterion 1.2<sup>2</sup>):* assessment of the progress made by jurisdictions in respect of the automatic exchange of information based on the results of the 2023 peer review by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum). Please refer to E-News [Issue 182](#), for more information on the peer review outcomes.
- *Preferential tax regimes (criterion 2.1<sup>3</sup>):* review of the progress made by jurisdictions in relation to amending or abolishing preferential tax regimes – in particular, foreign source income exemption regimes (FSIE) and harmful tax regimes in the scope of the OECD Forum on Harmful Tax Practices (FHTP). Please refer to E-News [Issue 179](#), for more information on the FHTP peer review outcomes.
- *Tax regimes that facilitate offshore structures which attract profits without real economic activity (criterion 2.2<sup>4</sup>):* monitoring in close cooperation with FHTP of economic substance requirements for collective investment funds (CIVs) and partnerships as well as for trusts and other legal arrangements.

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<sup>1</sup> Initially, this criterion was considered fulfilled when a jurisdiction had the arrangements in place to automatically exchange information on financial accounts with all EU Member States. This could be achieved either by signing up to the OECD Common Reporting Standard (CRS), or through bilateral arrangements. In addition, the CoCG decided to take into account the Global Forum's peer review assessments of jurisdictions' legal framework to implement the AEOI determinations in its listing process, asking jurisdictions to make a commitment to address these determinations when they were negative ('not in place'). Jurisdictions that do not make or do not fulfil the commitment are then proposed for inclusion on the list.

<sup>2</sup> If a report concludes that a jurisdiction is overall 'not compliant' or 'partially compliant' with the standard, that jurisdiction is then proposed to be included on the EU list of non-cooperative jurisdictions for tax purposes. If the Global Forum accepts a request for a supplementary review from a jurisdiction on the EU list, that jurisdiction can then be proposed to be removed from Annex I (and included in Annex II pending the outcome of that review).

<sup>3</sup> The screening of jurisdictions' preferential tax regimes is carried out in coordination with the OECD FHTP, which performs a very similar exercise. Unlike the FHTP, the CoCG also subjects regimes that cover manufacturing activities, regimes that exempt incomes from a foreign source from taxation and regimes that provide for notional interest deductions to a screening to determine whether these regimes have any harmful features. If either the CoCG or the FHTP finds a regime of a jurisdiction to be harmful, that jurisdiction is then asked to make a commitment to amend the regime's harmful aspects or to abolish the regime. Jurisdictions that do not make or do not fulfil the commitment are then proposed for inclusion on the EU list.

<sup>4</sup> This criterion concerns jurisdictions that have no or very low corporate income tax. The FHTP and the CoCG screen these jurisdictions' relevant legislation and the enforcement of requirements relating to economic substance – such as a minimum number of employees and other real economic ties (operating expenditures, premises, etc.) to the jurisdiction in question – and exchange of information. If significant deficiencies are identified in the legislation or the implementation framework and these are not addressed, the jurisdictions concerned are proposed for inclusion on the EU list.

- *Implementation of CbCR minimum standard (criterion 3.2<sup>5</sup>):* assessment of commitments made by jurisdictions with regards to the application of the (non-public) Country-by-Country Reporting (CbCR) minimum standard following the OECD Inclusive Framework peer review report in the autumn of 2023. Please refer to E-News [Issue 184](#), for more information on the peer review outcomes.

## Update to Annex I

According to the Council [release](#), the EU Member States adopted the following key conclusions with respect to Annex I:

- **Anguilla** was added to Annex I in respect of criterion 1.2 after being assessed as “partially compliant” in the supplementary second round review of the Global Forum’s EOIR peer review process. Previously, Annex I only included an entry for Anguilla to reflect that the Global Forum granted the country a supplementary EOIR review (after being assessed as “non-compliant” in the 2020 peer review). In addition, Anguilla remains listed in Annex I in respect of criterion 2.2.
- **Antigua and Barbuda** was added to Annex I in respect of criterion 1.2 after being downgraded to "partially compliant" in the second round of the Global Forum’s EOIR peer review process.
- **Belize** was moved from Annex II to Annex I in respect of criterion 1.2 after being downgraded to "partially compliant" in the second round of the Global Forum’s EOIR peer review process. In addition, the Council conclusions make reference to Belize’s commitments to address the Global Forum recommendations in relation to AEOI (criterion 1.1). On the other hand, the Council agreed to remove the entry for Belize in relation to its commitment with regard to the implementation of criterion 3.2 on CbCR, which was deemed fulfilled in light of the most recent BEPS Inclusive Framework peer review report on CbCR.
- **Costa Rica** was removed from Annex I with regard to criterion 2.1 following the amendments to its FSIE regime in line with the CoCG guidance. However, Costa Rica was added to section 1.1 of Annex II (please see below for more information).
- **Panama** remains on Annex I due to the fact that it does not have an EOIR rating of at least “largely compliant” by the Global Forum (criterion 1.2) and has a harmful foreign source income exemption regime (criterion 2.1). However, the Council agreed to remove the entry for Panama in relation to its commitment with regard to the implementation of criterion 3.2 on CbCR, which was deemed fulfilled in light of the most recent BEPS Inclusive Framework peer review report on CbCR.
- **The British Virgin Islands** were moved from Annex I to Annex II in respect of criterion 1.2 in light of the Global Forum’s decision to grant the British Virgin Islands a supplementary review (after being downgraded to “partially compliant” in the 2022 second round EOIR review).
- **The Marshall Islands** were removed from Annex I in respect of criterion 2.2. The release notes that the Marshall Islands’ enforcement of the economic substance requirements for the 2022 monitoring has improved sufficiently.
- **The Russian Federation** remains on Annex I in respect of criterion 2.1 (harmful preferential tax regime (International Holding Companies) that has not been resolved).
- **The Seychelles** were moved from Annex II to Annex I in respect of criterion 1.2 after maintaining the rating "partially compliant" in the second round of the Global Forum’s EOIR peer review process.

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<sup>5</sup> As a first step, jurisdictions should have in place arrangements to exchange CbC reports with all EU Member States. Additionally, they should receive positive assessments in the peer reviews on the implementation of the standard, which are issued on a yearly basis by the OECD Inclusive Framework on BEPS. If jurisdictions receive general recommendations, they are asked to make a commitment to address these recommendations by a certain deadline. Jurisdictions that do not make or do not fulfil the commitment are then proposed for inclusion on the list.

## Update to Annex II

The ECOFIN Council adopted the following conclusions with respect to Annex II:

- **Türkiye** remains in section 1.1 of Annex II. The Council conclusions note that the progress made by Turkey is still not fully in line with the commitments required in connection with the exchange of information with all Member States (Turkey does not currently exchange data with Cyprus).
- **Costa Rica** was added to section 1.1 of Annex II following its commitment to comply with the Global Forum requirements by 2024, after it failed to achieve a minimum rating of “in place, but needs improvement” in the AEOI peer review.
- **Jordan** was removed from section 2.1 (and therefore completely from the grey list) following the FHTP’s assessment that Jordan’s Economic Zone regime is not harmful.
- **Qatar** was removed from section 2.1 of Annex II (and therefore completely from the grey list) following the reforms of their FSIE regimes.
- **Hong Kong (SAR), China and Malaysia** remain in section 2.1 with respect to their commitments to amend their FSIE legislation concerning the treatment of capital gains.
- **Montserrat and Thailand** were removed from section 3.2 of Annex II (and therefore completely from the grey list) following IF peer reviews in relation to the implementation of the CbCR minimum standard.
- **Israel** was removed from section 3.2 of Annex II following IF peer reviews in relation to the implementation of the CbCR minimum standard. However, the country remains in section 1.1 of Annex II.
- **Vietnam** remains listed in section 3.2 of Annex II following the jurisdiction’s commitment to implement the CbCR minimum standard and to activate CbCR exchange relationships with all EU Member States until August 31, 2024.

## 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 2024.

## ETC Comment

It is important for taxpayers to monitor the evolution of the list in light of defensive measures that are being applied by EU Member States against listed jurisdictions in form of e.g. non-deductibility of costs, CFC rules, increased WHT or limitation of participation exemption. Taxpayers should be mindful that EU countries may apply different (local) lists, different defensive measures, different application timelines and other varying requirements in this context. The CoCG has previously indicated its commitment to performing an analysis on how defensive measures have been effectively applied by Member States to enable discussion on whether and how coordination of the measures could be enhanced. For more details, please refer to KPMG’s [summary](#) of defensive measures against non-cooperative jurisdictions for tax purposes.

The EU list of non-cooperative jurisdictions is also relevant for the purposes of the EU mandatory disclosure rules under DAC6, where recipients of cross-border payments are resident for tax purposes in a jurisdiction that is included in Annex I. Under Hallmark C1b(ii) of DAC6, such payments may trigger a reporting obligation irrespective of whether the transaction is aimed at generating a tax benefit (i.e. the main benefit test does not apply). Note that consensus has not formed among Member States on the point in time at which the list should

be tested (e.g. the triggering date, or the reporting date). For more information on DAC6 reporting requirements, please click [here](#).

In addition, the EU list has a direct impact on EU public CbCR obligations that generally apply in relation to financial years starting on or after June 22, 2024. Based on the EU Public Country-by-Country Reporting Directive, relevant data points should be made publicly available on a country-by-country basis for each EU Member State. Furthermore, country-by-country information must be separately reported for each jurisdiction listed on Annex I of the EU list of non-cooperative jurisdictions or for each jurisdiction that has been on the grey list (Annex II) for a minimum of two years (i.e. as opposed to disclosure of aggregated amounts, which is the requirement for the rest of non-EU jurisdictions). For more information on EU public CbCR, please click [here](#).

The EU list further produces effects outside the tax area, such as in respect of EU Regulation 2021/557, which provides that securitisation special purpose entities (SSPEs) should only be established in third countries that are not listed in Annex I of the EU list, or in the list of high-risk third countries which have strategic deficiencies in their regimes on anti-money laundering and counter terrorist financing.

Lastly, according to the CoCG [multiannual work package](#) (dated October 5, 2023), the CoCG will continue reflections on a possible further strengthening of the EU listing process, including:

- Incorporation of an additional criterion 1.4 on the exchange of beneficial ownership information that was already approved by the ECOFIN Council in November 2016 but delayed as a result of the Covid-19 pandemic. While the scope and application of this criterion has not yet been agreed at EU level, the European Commission has previously considered a reference to the Anti-Money Laundering (AML) listings, and ratings by the Global Forum.
- Evaluation of the possible impact of Pillar Two on the listing criteria. According to the work package, the CoCG is considering to commencing this work only after the Pillar Two rules start applying, and to potentially link the listing approach to the Inclusive Framework Pillar Two peer-review framework.
- Development of a prioritization list to expand the geographical scope of the EU list beyond the current 95 jurisdictions.

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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