



EU Defensive measures against non-cooperative jurisdictions for tax purposes

KPMG's EU Tax Centre

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EU list of non-cooperative jurisdictions

EU list of non-cooperative jurisdictions - 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.

Last update of the EU list of non-cooperative jurisdictions (Oct 2024)

On October 8, 2024, the General Affairs 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 – "grey list"). Following this revision, the following countries have been listed:

List of non-cooperative jurisdictions (Annex I)

1. American Samoa
2. Anguilla
3. Fiji
4. Guam
5. Palau
6. Panama
7. Russian Federation
8. Samoa
9. Trinidad & Tobago
10. US Virgin Islands
11. Vanuatu

Grey list (Annex II)

1. Antigua and Barbuda
2. Belize
3. British Virgin Islands
4. Costa Rica
5. Curaçao
6. Eswatini
7. Seychelles
8. Türkiye
9. Vietnam

Defensive measures against non-cooperative jurisdictions

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

Member States have committed to applying at least one administrative and one tax counter-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).

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 withholding tax rates,
- 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 that benefit from listed regimes,
- increased risk audits for taxpayers that use tax schemes involving listed regimes.

The Code of Conduct Group (COCG) has undertaken a review of defensive measures applied by Member States and a **revised state of play** (as at January 31, 2023) was [published](#) in June 2023. The CoCG is currently considering whether and how coordination of the measures could be enhanced.

Other (mandatory) EU measures against non-cooperative jurisdictions include:

Mandatory Disclosure Rules (DAC6)

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

Public Country-by-Country Reporting

Stricter reporting obligations (i.e. on a jurisdiction by jurisdiction basis instead of aggregated amounts) where a jurisdiction is listed on Annex I (on March 1 of the reporting year) or on Annex II (on March 1 of the reporting year and the preceding financial year).

FASTER

Under the (pending) FASTER Directive, certain financial intermediaries will be able, or required to facilitate fast-track withholding tax relief at source or refund procedures.

Financial intermediaries established outside the EU may apply for registration as a Certified Financial Intermediary (CFI) provided that the third country of residence is neither on (i) Annex I of the EU list of non-cooperative jurisdictions, nor (ii) on the EU list of high-risk third countries (anti-money laundering list (subject to certain additional conditions)).

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

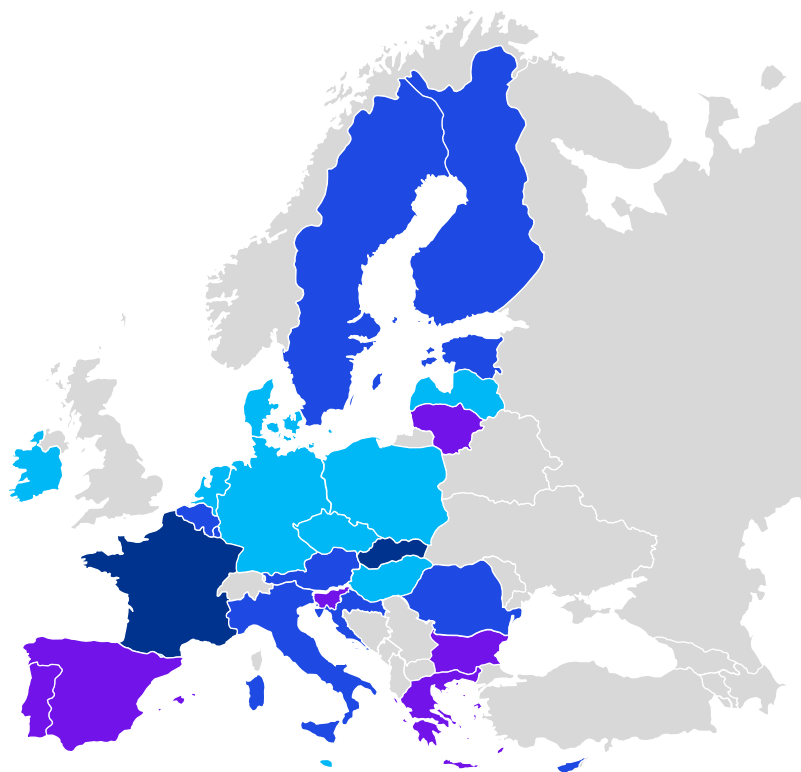
Legend - Defensive measures against countries listed on:

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): Czechia, 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, 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 on 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 – August 2024

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 ²			Yes	
Croatia		Yes	Yes	
Cyprus			Yes	
Czechia		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	Yes		
Ireland ⁵		Yes	Yes	
Italy ⁶	Yes		Yes	
Latvia		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	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: Non-deductibility of interest expenses applied under certain conditions, however, irrespective of where the lender is located.

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: Finance Act 2023 introduced withholding tax on certain payments made to associated entities established in jurisdictions on the EU list on non-cooperative jurisdictions or in "zero-tax" jurisdictions, subject to a range of complex exceptions. In addition, Finance Bill 2024 proposes to introduce a participation exemption for certain foreign dividends received on or after January 1, 2025 from companies resident for tax purposes in the EU/EEA, or jurisdictions with which Ireland has a double taxation agreement.

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: No deduction limitation but payment for certain services / royalties to residents of tax havens may increase the amount of 'minimum income tax'. In addition, different national tax defensive measures are applied depending on whether a jurisdiction is included on the national tax haven list or the Polish list of non-cooperative jurisdictions.

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. In case of individuals, a 35 percent tax on profits of the CFC (in countries not included on the white list) applies if dividends are not distributed.

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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