



Euro Tax Flash from KPMG's EU Tax Centre



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Cayman Islands, Palau, Panama and Seychelles added to the EU list of non-cooperative jurisdictions

[Council – Code of Conduct Group – Harmful Tax Regimes – EU Blacklist – Tax Transparency](#)

On February 18, 2020 the Economic and Financial Affairs Council of the EU (ECOFIN) adopted a revised EU blacklist of non-cooperative jurisdictions for tax purposes. The EU Finance Ministers agreed to add four new jurisdictions to the list: Cayman Islands, Palau, Panama and Seychelles.

Following this latest revision, as at February 18, 2020, the EU blacklist comprises the following twelve jurisdictions: American Samoa, the Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Background

The EU blacklist, first adopted on December 5, 2017, is part of the EU's effort to clamp down on tax avoidance and harmful tax practices. Out of the ninety-two jurisdictions initially chosen for screening, seventeen jurisdictions were placed on the blacklist in December 2017. Over the course of 2018, most of the countries and territories on the blacklist engaged in constructive dialogue with the EU and made commitments to comply with the EU's criteria. As such, by the end of 2018 only five jurisdictions remained listed. The majority of the commitments had a deadline of the end of 2018 and their enactment into national law was carefully monitored at a technical level by the Code of Conduct Group on business taxation until the beginning of 2019.

The monitoring process revealed that ten jurisdictions either failed to deliver on their commitments by the agreed deadline or made no commitment to address the EU's concerns. Consequently, Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, the Marshall Islands, Oman, the UAE and Vanuatu were added to the blacklist on March 19, 2019. On May 17, 2019,

Bermuda, Aruba, and Barbados were removed from the blacklist, followed by Dominica on June 14, 2019. The UAE and the Marshall Islands were removed from the list on October 10, 2019 while Belize was also removed on November 8, 2019.

EU Blacklist Update

On February 18, 2020, EU Finance Ministers agreed to add the Cayman Islands, Palau, Panama and Seychelles to the blacklist, after making assessments of the implementation commitments made by each jurisdiction at the end of 2018. The deadline for implementing the commitments was the end of 2019 and the Code of Conduct Group's assessment was that:

- The Cayman Islands does not have appropriate measures in place relating to economic substance requirements for collective investment vehicles.
- Palau failed to implement any automatic exchange of financial information measures, including signing and ratifying the OECD Multilateral Convention on Mutual Administrative Assistance and has therefore been re-added to the blacklist. Palau had previously been moved from the blacklist to the grey list, but was re-instated to the blacklist due to its failure to fulfill its commitments within the agreed deadline.
- Panama failed to obtain at least a "Largely Compliant" rating from the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) for Exchange of Information on Request.
- Seychelles was moved from the grey list to the blacklist, for failure to address issues in relation to existing harmful preferential tax regimes.

As at February 18, 2020, the EU blacklist comprises the following twelve jurisdictions: American Samoa, the Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

In total, nineteen jurisdictions were removed from the grey list of non-cooperative jurisdictions since it was last published in December 2019. While three of the jurisdictions (the Cayman Islands, Palau and Seychelles) were added to the blacklist, sixteen jurisdictions were found to have fulfilled their commitments within the 2019 deadline. The jurisdictions which were removed from the grey list are: Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cabo Verde, Cook Islands, Curacao, Marshall Islands, Montenegro, Nauru, Niue, Saint Kitts and Nevis and Vietnam.

The Council re-iterated its conclusion from its meeting in December 2019 that updates to the black and grey lists will be limited to maximum twice per year going-forward. This change is intended to allow sufficient time for Member States to amend defensive measures against non-cooperative jurisdictions in their domestic law. The next update is scheduled for October 2020.

Next steps

As at February 18, 2020, the grey list contains thirteen jurisdictions, twelve of which have been given extensions to previous deadlines: Anguilla, Australia, Bosnia and Herzegovina, Botswana, Eswatini, Jordan, Maldives, Mongolia, Morocco, Namibia, Saint Lucia, Thailand and Turkey.

The Council noted that given that Turkey has internal legislation in place enabling automatic exchange of information and that it notified all EU Member States, with the exception of

Cyprus, to OECD, it will be given more time to solve all open issues for the automatic exchange of information to be implemented effectively with all EU Member States. Turkey is expected to make progress in solving its issues, but if it fails to put arrangements in place for the effective implementation of the automatic exchange of information with all EU Member States by December 31, 2020, it will be moved to the blacklist.

Anguilla, Botswana and Turkey will remain on the grey list pending a supplementary review by the Global Forum on their rating in relation to exchange of information on request (EOIR).

Developing countries without a financial centre that have made meaningful progress in delivering on their commitments with regard to the OECD Multilateral Convention on Mutual Administrative Assistance (criterion 1.3) are granted until August 31, 2020 to sign the Convention and until August 30, 2021 to ratify it. Failure to do so will lead to inclusion on the blacklist. The following countries are affected: Bosnia and Herzegovina, Botswana, Eswatini, Jordan, Maldives, Mongolia, Namibia and Thailand.

In relation to the existence of harmful tax regimes criterion (2.1), the following was noted:

- Saint Lucia is considered to have adopted sufficient amendments to its foreign source income exemption regime and has committed to address a remaining issue by August 31, 2020.
- Australia and Morocco were granted until the end of 2020 to amend or abolish their harmful tax regimes.
- Namibia was granted until August 31, 2020 to finalize reforms initiated in 2019 in relation to its harmful tax regimes.
- Jordan is committed to amending or abolishing its harmful tax regimes by the end of 2020.

The Code of Conduct Group will continue to monitor the implementation of commitments assumed and seek commitments from those jurisdictions that have not addressed their weak points so far. In addition, the Code of Conduct Group will continue to monitor the implementation of the country by country reporting minimum standard (CbCR) and will track jurisdictions that have foreign source income exemption regimes in place.

EU Tax Centre comment

Since the first EU blacklist was published in December 2017, it has been revised twelve times. The decision to only review the list twice a year may be a welcome development in terms of certainty but will mean that any progress achieved by listed jurisdictions will be reflected with some delay. Given the new timeline (next revision planned for October 2020), each of the four jurisdictions that were added in February 2020 will be blacklisted for more than seven months.

In December 2019, the Council produced guidance on coordination of national defensive measures in the tax area towards non-cooperative jurisdictions, inviting member states to apply legislative defensive measure as of January 1, 2021 (see [Euro Tax Flash issue 419](#) for details). It remains to be seen what (if any) measures individual Member States introduce.

In parallel to developments at Council level, the European Parliament included in its Motion for a Resolution (adopted on February 12, 2020) on the proposed mandate for negotiations for a new partnership with the UK, a note that the European Parliament believed that the UK should

address the respective situation of its Overseas Territories and Crown Dependencies and – what was referred to as – their non-compliance with EU good governance criteria and transparency requirements.

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