

# EU Direct Tax Newsalert

## ECOFIN Council publishes EU list of third country non-cooperative jurisdictions in tax matters

### Introduction

On 5 December 2017, the ECOFIN Council published its conclusions on the EU common list of (third country) non-cooperative jurisdictions in tax matters, also referred to as the 'blacklist'. This initiative forms part of the EU's broader agenda on furthering tax transparency, fair taxation and the implementation of anti-BEPS measures with the dual aim of raising the level of good global governance and tackling tax fraud, evasion and avoidance.

### Background

In November 2016, the ECOFIN Council agreed on the process for the establishment of an EU list of non-cooperative jurisdictions in taxation matters and on the following criteria:

- i. a jurisdiction should be considered compliant on tax transparency;
- ii. a jurisdiction should be considered compliant on fair taxation;
- ii. anti-BEPS (tax base erosion and profit shifting) measures should be implemented.

On this basis, a screening process and technical dialogue was carried out with multiple countries in 2017 by the Code of Conduct Group, in coordination with the Council's High Level Working Party on Taxation (HLWP) and supported by the European Commission (EC), who is at the origin of the common blacklist. Pursuant to this process, in October 2017, the concerned third country jurisdictions were informed of the outcome of the process and where necessary, a political commitment was requested within a specified timeframe in order to resolve the identified issues by the EU. Although 47 jurisdictions chose to engage in a dialogue with the EU and made a political commitment in writing to timely address the EU's concerns, 17 jurisdictions failed to do so and as a result were ultimately included in the list, which can be accessed [here](#).

### How may the affected jurisdictions get de-listed?

In order to get de-listed, the affected jurisdictions (and those that have made a political commitment) should enhance their tax transparency by committing to:

- i. implement automatic exchange of information;
- ii. become members of the Global Forum on transparency and exchange of information for tax purposes and/or have a satisfactory rating;
- ii. sign and ratify the OECD Multilateral Convention on Mutual Administrative Assistance and/or a network of agreements covering all EU Member States.

As to fair taxation, the affected jurisdictions should amend or abolish harmful tax regimes and address the EU's concerns relating to economic substance. Finally, as regards the implementation of anti-BEPS measures, these jurisdictions should also become members of the OECD's Inclusive Framework and/or implement the BEPS minimum standards. The 47 jurisdictions that have made a political commitment are given until the end of 2018, or 2019 for developing countries without financial centres, to meet the EU's criteria, in order to avoid being listed.

As regards listed jurisdictions, Finance Ministers have agreed that EU Member States may pursue defensive measures in order to encourage these jurisdictions to comply with the three key criteria. Such defensive measures may be in the non-tax area (e.g. in relation to the European Fund for Sustainable Development) but also in the tax area (e.g. increased audits, disallowance of deductibility of costs, withholding tax measures, application of CFC rules, reversal of the burden of proof, limitation of participation exemptions and switch-over clauses among others).

### Next steps

The EU listing process will continue in 2018 with the list being reviewed at least on an annual basis. As pertains to the currently listed jurisdictions, a letter will first be sent to them outlining the decision and measures that they may take in order to be de-listed. The Commission and the Code of Conduct Group will also closely monitor all the relevant jurisdictions to guarantee that they live up to their commitments and decide on whether new countries need to be added to the list. A first progress report is expected before the summer of 2018.



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