Tax Policy Alert

Council of the EU approves changes to the EU list of non-cooperative jurisdictions

18 October 2023

In brief

The European Finance Ministers, sitting as the Council of the EU, approved the recommendations of the EU Code of Conduct Group in relation to the updated list of non-cooperative jurisdictions. Three jurisdictions, Antigua and Barbuda, Belize, and Seychelles were all added to Annex I (the so-called EU blacklist). British Virgin Islands, Costa Rica, and Marshall Islands were removed from the previous Annex I list (published in February 2023).

Annex II of the list (greylisted countries) was also updated with four jurisdictions removed from the state of play document: Thailand, Montserrat, Jordan and Qatar.

In detail

Following the recommendations of the EU Code of Conduct Group, and the subsequent approval during the EU Economic and Financial Affairs Council (ECOFIN) meeting on 17 October 2023, the EU Annex I list of non-cooperative jurisdictions ('blacklist') now consists of the following 16 jurisdictions:

- American Samoa
- Antigua and Barbuda
- Anguilla
- Bahamas
- Belize
- Fiji
- Guam
- Palau
- Panama
- Russian Federation
- Samoa
- Seychelles
- Trinidad and Tobago
- Turks and Caicos Islands
- US Virgin Islands
- Vanuatu

British Virgin Islands, Costa Rica and Marshall Islands were removed from the Annex I list. This follows these jurisdictions taking action to: improve exchange of information; reframe a harmful foreign source income exemption regime; or ensure effective implementation of substance requirements (respectively, for each of the three states).

As noted above, four jurisdictions were removed from Annex II after taking corrective actions:

- Jordan and Qatar amended aspects of their tax regimes that had been designated as harmful tax regimes;
- Montserrat and Thailand implemented country-by-country reporting regimes.

EU Code of Conduct Group

The EU Code of Conduct Group is responsible for assessing jurisdictions' adherence to global tax standards. If jurisdictions are found to be: insufficiently compliant with minimum agreed standards; maintaining a harmful tax practice; or unresponsive in dealing with the Group's advice, the Group will recommend to the Council that the jurisdictions be listed. The Group has been in operation for 25 years, and recently adopted its Multiannual work package from 2023 - 2028.

Having reviewed hundreds of tax regimes since 1998, the Group will continue to monitor jurisdictions' adherence to the EU Code of Conduct. The Group also will look to expand the geographical scope of the EU list and adopt additional future criteria such as beneficial ownership, fair taxation, minimum effective taxation, and more.

Consequences of listing on the non-cooperative list

The listing of a jurisdiction may result in different tax consequences, including:

- increased withholding taxes on payments to and non-deductibility of costs incurred in a blacklisted jurisdiction,
- CFC issues, or
- limitations on the participation exemption on shareholder dividends.

Beginning in 2024 there will also be implications with respect to public country-by-country reporting for both blacklisted and greylisted countries. Additional information about both the tax and non-tax defensive measures that EU Member States can take against listed jurisdictions is available here.

The takeaway: Businesses should review the updated lists and consider the potential consequences for entities located in impacted jurisdictions.

Let's talk

For a deeper discussion of how the EU list of non-cooperative jurisdictions might affect your business, please contact:

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