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# Global Tax Alert

News from EY Americas Tax

## Panama included on EU list of non-cooperative jurisdictions for tax purposes

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Panama was included on the revised [European Union \(EU\) list](#) of non-cooperative jurisdictions for tax purposes, which the Council of the European Union (the Council) adopted on 18 February 2020.

### Methodology used by the Code of Conduct Group

The Code of Conduct Group (COCG) issues the list of non-cooperative jurisdictions as part of its on-going monitoring process. That process includes:

1. Monitoring commitments made, as well as changes to legislation
2. Updating its screening criteria as international standards develop
3. Screening countries again in light of updated criteria
4. Adding new countries to the screening process
5. Regularly reporting to the Economic and Financial Affairs Council

To determine whether a jurisdiction should be included on the list, the COCG uses the following three criteria: (i) tax transparency (i.e., standard on fiscal transparency); (ii) fair taxation (i.e., not having any preferential tax measures that could be regarded as harmful); and (iii) implementation of anti-base erosion and profit shifting (BEPS) standards.

Because this is a dynamic monitoring and revision process, on 25 November 2019, the COCG amended the scope for the first criteria (i.e., tax transparency), so that it could consider the results obtained from the second-round evaluation of the Standard of Exchange of Information on Request (EOIR), carried out by the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum).

### Background for the inclusion of Panama in the list of non-cooperative jurisdictions

On 12 November 2019, the Global Forum published the results of the second-round review of the EOIR on Panama, which included revised criteria. Panama received an overall rating of partially compliant.

Because Panama does not have a rating of at least “Largely Compliant” from the Global Forum and has not resolved that issue yet,<sup>1</sup> it was included in the EU list of non-cooperative jurisdictions for tax purposes. The COCG did not find that Panama had any other deficiencies with regard to the other criteria related to tax transparency, fair taxation, or lack of commitment with BEPS standards.

### Implications

Even though the list was adopted by the Council, there are no immediate consequences for Panama as a result of its inclusion on the list of non-cooperative jurisdictions. The Council updates the list up to two times a year and is expected to update the list in October 2020.<sup>2</sup>

Because of Panama’s inclusion on the EU list of non-cooperative jurisdictions, however, EU Member States may include Panama on their lists of non-cooperative jurisdictions for tax purposes under their domestic laws and may apply defensive measures. Under the COCG’s “Guidance on

defensive measures in the tax area towards non-cooperative jurisdictions” and Council Conclusions previously issued as part of a list of non-cooperative jurisdictions, Member States should apply at least one of the following administrative measures in the tax area:<sup>3</sup>

Reinforced monitoring of certain transactions:

- a) Increased audit risks for taxpayers benefiting from the regimes at stake
- b) Increased audit risks for taxpayers using structures or arrangements involving these jurisdictions

Additionally, Member States should apply at least one of these specific legislative measures:<sup>4</sup>

- a) Non-deductibility of costs: deny deductions for otherwise deductible costs and payments when those costs and payments are treated as directed to entities or persons in listed jurisdictions
- b) Controlled foreign corporation (CFC) rules: include in the tax base of the taxpayer the income of an entity resident or a permanent establishment situated in a listed jurisdiction. Member States could apply this measure in accordance with the Anti-Tax Avoidance Directive CFC rules
- c) Withholding tax measures: apply a withholding tax at a higher rate on payments such as interest, royalties, service fee or remuneration, when these payments are treated as received in listed jurisdictions
- d) Limitation of participation exemption on profit distribution: for Member States with rules that permit excluding or deducting dividends or other profits received from foreign subsidiaries, deny or limit such participation exemptions if the dividends or other profits are treated as received from a listed jurisdiction

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### Endnotes

1. 6129/20, FISC 63, ECOFIN 87, Outcome of Proceeding from General Secretariat of the Council to Delegations, Brussels, February 18, 2020, Annex I, page 8.
2. 6129/20, FISC 63, ECOFIN 87, Outcome of Proceeding from General Secretariat of the Council to Delegations, Brussels, February 18, 2020, page 3, paragraph 7.
3. 14114/19, FISC 444, ECOFIN 1005, Report from General Secretariat of the Council to the Permanent Representatives Committee/Council, Brussels, November 25, 2019, ANNEX 4, paragraph 11, page 45.
4. 14114/19, FISC 444, ECOFIN 1005, Report from General Secretariat of the Council to the Permanent Representatives Committee/Council, Brussels, November 25, 2019, ANNEX 4, paragraph 12, page 45.

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