

Luxembourg: Reporting implications of revised EU list of non-cooperative jurisdictions for tax purposes

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On 18 February 2020, the Council of the European Union (the Council or ECOFIN) adopted revised conclusions on the European Union (EU) list of non-cooperative jurisdictions for tax purposes (the EU List).¹

The Council added the Cayman Islands, Palau, Panama and Seychelles to Annex I (the so-called "Black" list) of the EU List as these jurisdictions did not implement the tax reforms to which they had committed by the agreed deadline.

Background

The EU published its list of non-cooperative jurisdictions for the first time on 5 December 2017, comprising in Appendix I at that time 17 jurisdictions deemed to have failed to meet the tax transparency, fair taxation and implementation of anti-base erosion and profit shifting measures (BEPS) criteria established by the European Commission. Since the release of the EU List, there have been multiple changes to its composition based on recommendations made by the Code of Conduct Group for Business Taxation. By the end of 2019, only eight jurisdictions remained listed; with the adoption of the revised EU list, the total number of jurisdictions now included in Annex I of the EU List is raised to 12.

Luxembourg reporting implications

Starting from tax year 2018, the Luxembourg tax authorities have imposed specific reporting requirements in relation to transactions of Luxembourg companies with related enterprises² located in jurisdictions that are included in Annex I of the EU List. As per Circular L.G. - A n°64,³ Luxembourg resident companies are required to state in their tax return if they have entered into transactions with related enterprises located in listed jurisdictions. Details of those transactions, such as the amount of the transaction, income and expenses linked to the transaction and the detail of receivables and debts towards such related enterprises, must be provided upon request by the tax administration. As per the Circular, reinforced control will generally be applied if taxpayers rely on structures or arrangements involving non-cooperative jurisdictions for tax purposes that are included in Annex I of the EU List.

For the disclosure requirement as mentioned above, Appendix I of the EU List as it stands at the end of the financial year concerned needs to be consulted. For Luxembourg companies whose financial year closes on or after the date of publication in the *Official Journal of the European Union* of the revised EU List as adopted on 18 February 2020, being 27 February 2020, the following jurisdictions are currently relevant: American Samoa, Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands and Vanuatu. Given that the EU List is constantly evolving, further changes may occur during the course of the year. Accordingly, taxpayers should consult the latest version on the European Commission's webpage⁴ for 2020 tax compliance purposes.

Endnotes

1. See EY Global Tax Alert, [ECOFIN publishes revised list of non-cooperative jurisdictions for tax purposes and adopts two reforms of existing VAT rules](#), dated 19 February 2020.
2. "Related enterprise" as per the definition of article 56 of the Income Tax Law: "When an enterprise participates, directly or indirectly in the management, control or capital of another enterprise, or where the same individuals participate, directly or indirectly, in the management, control or capital of two enterprises (...)."
3. Circular L.G. - A n°64 of 7 May 2018 on counter-measures in relation with the EU list on non-cooperative countries and territories in tax matters.
4. https://ec.europa.eu/taxation_customs/tax-common-eu-list_en.

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