



Situation on 18 February 2020

## Questions and answers on the EU list of non-cooperative tax jurisdictions

### **What is the EU list of non-cooperative tax jurisdictions?**

The EU list is a common tool for Member States to tackle external risks of tax abuse and unfair tax competition. It complements and reinforces the reforms introduced by the Member States in the last years to tackle tax evasion and avoidance at EU level. It was first conceived in the Commission's 2016 External Strategy for Effective Taxation [IP/16/159] which pointed out that a single EU blacklist would hold much more weight than a medley of national lists and would have a dissuasive effect on problematic third countries. The EU list is also instrumental in promoting tax good governance at international level, by encouraging and assisting third countries to meet international standards.

### **How is the EU list of non-cooperative tax jurisdictions compiled?**

The EU list of non-cooperative tax jurisdictions is composed of countries that either failed to deliver on their commitments to comply with tax good governance criteria within a specific timeline, or have not committed to do so at all.

Jurisdictions that make a high-level commitment to comply with the required criteria within an agreed timeframe remain under monitoring for that period. Jurisdictions that fulfil their commitments are completely delisted. Jurisdictions that have not delivered on their commitments are put on Annex I of the Council Conclusions. Certain jurisdictions that do not manage to deliver on time, for legitimate reasons, may be given some flexibility under specific conditions, and are kept on Annex II until they deliver.

### **Who is responsible for updating the EU list?**

The EU list is updated by EU Finance Ministers in ECOFIN, based on recommendations made by the Code of Conduct Group for Business Taxation. The Code of Conduct Group is composed of Member State experts and is responsible for monitoring fair tax competition within the EU, as well as in relation to third countries.

The Commission screens and assesses third countries, to determine if they are compliant with the good governance criteria. It also monitors the steps taken by third countries to comply with their commitments under the EU listing process. Based on the Commission's assessments, the Code of Conduct Group decides whether a jurisdiction has met its commitments or not, and makes a recommendation to EU Finance Ministers on that basis.

The Commission also liaises closely with the OECD, to ensure that the EU and international work are as aligned as possible.

## **Do the third countries have a chance to present their case?**

Yes. The Commission is determined that the EU listing process must be as fair, transparent and open as possible. It gives high priority to ensuring that the relevant countries understand the process and can seek clarifications and technical advice, whenever needed.

The Commission has extensive contacts with the jurisdictions concerned, at technical, political and diplomatic levels. The Chair of the Code of Conduct Group also engages with the jurisdictions, on behalf of the Member States. Since the launch of the EU listing process in 2016, there have been thousands of emails exchanged and hundreds of meetings and calls between the Commission and the jurisdictions. This allows jurisdictions to discuss their progress and provide any information they consider relevant, while the Commission has the chance to provide technical support and to respond to any questions. The Commission and EEAS often visit the jurisdictions and regions concerned, to allow for face-to-face dialogue on the EU listing process.

At every stage, the jurisdictions are encouraged to engage with the EU, provide any relevant information and seek any clarifications they need. Each country has a chance to present its position, address concerns and discuss how to deepen its cooperation with the EU on tax matters. The Commission relays any feedback or information from the jurisdictions to the Code of Conduct Group, for input into the final decision.

## **What criteria are used in the EU listing process to assess non-EU countries?**

The [EU listing criteria](#) are aligned with international standards and reflect the good governance standards that Member States comply with themselves. These are:

**Transparency:** The country should comply with international standards on automatic exchange of information and information exchange on request. It should also have ratified the OECD's multilateral convention or signed bilateral agreements with all Member States, to facilitate this information exchange. Until June 2019, the EU only requires two out of three of the transparency criteria. After that, countries will have to meet all three transparency requirements to avoid being listed.

**Fair Tax Competition:** The country should not have harmful tax regimes, which go against the principles of the EU's Code of Conduct or OECD's Forum on Harmful Tax Practices. Those that choose to have **no or zero-rate corporate taxation** should ensure that this does not encourage artificial offshore structures without real economic activity. They should therefore introduce specific economic substance requirements and transparency measures,

**BEPS implementation:** The country must have committed to implement the [OECD's Base Erosion and Profit Shifting](#) (BEPS) minimum standards. From 2019, jurisdictions are being monitored on the implementation of these minimum standards, starting with Country-by-Country Reporting.

## **Will the EU listing criteria change over time?**

The criteria were established by EU Economic and Finance Ministers (ECOFIN) Council in 2016. At that time, Member States recognised that some criteria could only apply at a later date, once more international progress had been made on these standards e.g. beneficial ownership information. EU Finance Ministers agreed to keep pace with international developments and to ensure that EU criteria reflect the latest global standards. This is why, for example, the EU started applying Country-by-Country Reporting as a criterion in 2019. The Commission supports an ambitious and dynamic EU listing exercise, which responds to new risks and developments as they arise, while maintaining a fair and transparent process for all jurisdictions involved.

## **What positive changes can already been seen as a result of the EU list?**

The EU list was conceived to address threats to Member States' tax bases. However, it has evolved into something much wider and far more ambitious than just a listing exercise. It has prompted unprecedented engagement between the EU and its international partners on important tax issues. It has raised the standards of tax good governance globally, both through the positive changes introduced by third countries and through its influence on international criteria for zero-tax countries.

As a result of the EU listing process, countries have taken tangible steps to improve their tax systems, in line with international standards.

Over 120 harmful regimes have been eliminated worldwide, thanks to the EU listing requirements.

Dozens of countries have implemented international transparency standards and have become part of international fora, such as the OECD's Global Forum for transparency and the Base Erosion and Profit Shifting (BEPS) Inclusive Framework.

In addition, zero tax countries have had to introduce proper economic substance requirements and information exchange measures, to prevent artificial arrangements and profit shifting through their jurisdictions.

## **Why were some countries given more time to deliver on their commitments?**

In some exceptional cases, Member States have agreed to give more time to jurisdictions that could not meet the set deadline to complete their reforms for objective reasons. These deadline extensions are subject to a set of strict conditions and are always applied equally to jurisdictions in similar situations.

For example, this has been the case for:

- Countries with constitutional/institutional constraints, such as a lack of government, which prevented them from adopting the required reforms within the deadline. In these cases, the deadline was extended if the jurisdictions in question provided credible proof of their constitutional constraint, shared acceptable draft legislation and gave a clear timeline to complete their reforms.
- Developing countries without a financial centre that have made meaningful progress in their transparency commitments, but have not managed to complete the required OECD process within the deadline. These jurisdictions were given a limited extension to finalise the work with the OECD.

Force majeure circumstances, such as hurricanes, are also taken into account, if they impact the jurisdiction's ability to deliver on its commitment on time.

## **How long can a country remain on the "grey list"?**

Countries that have undertaken a high-level commitment to comply with the required criteria within a reasonable timeframe are put on Annex II of the Council Conclusion ("grey list"). The Commission monitors these countries closely and offers technical support, where needed. The Commission liaises with these countries on the actions they need to take to ensure compliance and reports regularly to Member States on the progress achieved. Once the deadline is up, the Commission presents an assessment on whether the countries have met their commitments or not. On this basis, Member States decide whether or not to list each jurisdiction.

## **How can a country be de-listed by the EU?**

A country will be removed from the list once it has addressed the issues of concern for the EU and has brought its tax system fully into line with the required good governance criteria. The Code of Conduct is responsible for recommending to EU Finance Ministers if countries should be removed from Annex I or Annex II.

## **Why are developing countries not excluded from the EU listing process?**

The specific situation of developing countries has been taken fully into account in the EU listing process. The 48 Least Developed Countries were excluded from the very start of the process. In addition, developing countries without financial centres have been given considerable flexibility within the process, in recognition of the particular constraints they face.

The EU listing process has delivered real results in encouraging these countries to abide by international tax good governance standards. It has also encouraged many developing countries to join the international standard setting bodies, such as the Global Forum for Transparency and Information Exchange and the OECD's Inclusive Framework for Base Erosion and Profit Shifting.

By raising the global level of tax good governance, the EU list offers important benefits to developing countries too, as they are disproportionately impacted by international tax abuse and illicit financial flows.

The EU is very sensitive to the challenges that developing countries face in the area of taxation, in particular in terms of tax abuse and low revenue collection capacity. It is a high priority in the EU agenda to support these countries to enhance their tax administration. This builds on the Commission's "Collect More, Spend Better" strategy to deliver on the EU's commitments under the Addis Tax Initiative.

## **What sanctions apply to the blacklisted countries?**

The EU list has a real impact, as a result of both EU and national measures applied to blacklisted countries.

First, the EU list is linked to EU funding under specific provisions in the Financial Regulation and in the European Fund for Sustainable Development (EFSD), the European Fund for Strategic Investment (EFSI) and the External Lending Mandate (ELM). Funds from these instruments cannot be channelled through entities in listed countries. Direct investment in these countries (i.e. funding for projects on the ground) is still allowed, to preserve development and sustainability objectives.

Second, there is a direct link to the EU list in other relevant EU legislation. For example, under the EU [transparency requirements for intermediaries](#), a tax scheme routed through an EU listed country is automatically reportable to tax authorities. Countries on the EU list of non-cooperative tax jurisdictions are also prioritised for screening in the process for drawing up the EU's anti-money laundering list. The [public Country-by-Country reporting](#) proposal also includes stricter reporting requirements for multinationals with activities in listed jurisdictions. The Commission is examining legislation in other policy areas, to see where further consequences for listed countries can be introduced.

In addition to the EU provisions, Member States have agreed on sanctions to apply at national level against the listed jurisdictions. These include measures such as increased monitoring and audits, withholding taxes, special documentation requirements and anti-abuse provisions.

## **Is there a risk that a country will "back-track" once it has been delisted?**

The Commission monitors de-listed countries carefully, to ensure that they remain compliant with the good governance standards, even after they have been cleared by Member States. This is important to ensure a fair and level playing field between all countries, and to prevent new risks from emerging. Jurisdictions are also invited to share any new developments in their tax systems with the Commission and Code of Conduct Group, where relevant. If de-listed countries adopt changes that raise concerns, they will be asked to remedy the deficiency or risk being included on the blacklist.

### **How often is the EU list updated?**

Up until this year, the EU list was regularly updated to reflect the reforms undertaken by third countries as quickly as possible.

However, from 2020, Member States have agreed that the EU list will be updated no more than twice a year. This is to ensure a more stable listing process, for business certainty and so that Member States can effectively apply defensive measures against listed countries.

### **Is the EU list in line with the international agenda for tax good governance?**

Yes, the EU list firmly supports the international tax good governance agenda. The EU listing criteria reflect internationally agreed standards and countries are encouraged to meet these standards to avoid being listed. The EU also takes on board OECD assessments of countries' transparency standards and tax regimes. The Commission and Member States are in close and regular contact with the OECD throughout the listing process, to ensure that EU and international work in this area remain complementary.

The EU and international good governance agendas are mutually reinforcing. For example, the OECD has recently integrated the criterion for zero-tax jurisdictions, which was first developed for the EU listing process, into the international tax good governance standards. The Commission and the OECD also developed a common framework for exchange of information by zero-tax countries in order to minimize the administrative burden for these countries.

### **Will countries that are currently not covered by the EU listing exercise be covered in the future?**

Yes. In 2018, Member States agreed to extend the scope of the EU listing process in a gradual way. They decided to start with the G20 countries that were not yet covered, namely Russia, Mexico and Argentina. These are currently being screened to determine whether they are compliant with all criteria or not. Other countries will be brought into the scope of the listing exercise from 2020 onwards. This year, the Commission and Member States will also review the methodology for extending the scope of the EU list, to ensure that it is effective and targeting the right risks.

### **What is the difference between the EU list of non-cooperative tax jurisdictions and the EU high risk third country (anti-money laundering) list?**

The EU tax and AML lists may overlap on some of the countries they feature, but they have different objectives, criteria, compilation processes and consequences. The EU's tax list is a Council-led process, whereas the EU's anti-money laundering (AML) list is established by the Commission based on EU anti-money laundering rules.

The high-risk third country (AML) list aims to address risks to the EU's financial system caused by third countries with deficiencies in their anti-money laundering and counter-terrorist financing regimes. On the basis of this list, banks must apply higher due diligence controls to financial flows to the high risk third countries. The anti-money laundering list is compiled by the Commission [MEMO/19/782].

On the other hand, the common EU list of non-cooperative tax jurisdictions addresses the external risks to Member States' tax bases, posed by third countries that do not comply with international tax good governance standards. It is managed directly by the Member States, through the Code of Conduct Group, with the support of the Commission. The Code of Conduct Group decides which jurisdictions should be listed and makes a recommendation to EU Finance Ministers, who take the final decision.

Nonetheless, the two lists complement each other in ensuring a double protection for the Single Market from external risks. Whether a country is included on any of these two lists is a relevant – albeit not decisive – factor for compiling the other.

## **Why are EU Member States not assessed under this listing process?**

The EU list of non-cooperative jurisdictions is a tool to deal with external threats to Member States' tax bases. It is also a means to promote more dialogue and cooperation with international partners on tax issues.

It is important to note that EU Member States are fully compliant with the criteria used to assess third countries – the EU is not asking any more of its international partners than its own Member States comply with.

Within the EU, different tools are used to ensure fair and transparent taxation. For example, Member States are bound by far-reaching transparency rules and anti-avoidance measures, recently implemented under the ambitious EU agenda against tax abuse. The EU also leads by example when it comes to implementing the OECD BEPS measures and international transparency standards, which are now enshrined in EU hard law.

Member States' laws have been put in conformity with these global standards over the past years, through several pieces of legislation agreed at EU level. Thanks to these changes, the EU is now in the lead when it comes to tax standards.

Besides, Member States tax regimes are subject to a high degree of scrutiny within the EU, and are challenged if they are considered to be unfair. The Code of Conduct for Business Taxation sets out principles for fair tax competition, which all Member States abide by. The Code of Conduct Group monitors Member States' compliance with these principles and over the years has ensured a level playing field in the EU. The Commission has also launched state aid investigations when it suspected that Member States gave unfair tax advantages to certain companies. The European Semester process is another tool to address national tax schemes which may not be up to scratch when it comes to fair and transparent taxation.