Fitting the puzzle pieces in the latest update of the EU list of non-cooperative jurisdictions for tax purposes

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On 20 February, the European Union updated, for the first time in 2024, the EU list of non-cooperative tax jurisdictions. The list was previously updated on 17 October 2023.

Background

The EU list of non-cooperative jurisdictions for tax purposes is designed to be part of the European Union's work to fight tax evasion and avoidance. The list is published as an annex to the conclusions adopted by the Ecofin Council (known as Annex I). It includes jurisdictions that either have not engaged in a constructive dialogue with the European Union on tax governance or have failed to deliver on their commitments to enact the necessary reforms to implement tax transparency, fair taxation or international standards designed to prevent tax base erosion and profit shifting.

Jurisdictions that do not yet comply with all international tax standards but have committed to implementing related reforms are included in a state-of-play document (known as Annex II).

The Code of Conduct Group (business taxation), assisted by the General Secretariat of the Council (GSC), conducts the technical work, screenings and assessments of third-country jurisdictions on the basis of various criteria and the agreed geographical scope in order to prepare revisions of the list. The work is a dynamic process – since 2020, the Council has updated the list twice a year. The next revision of the list is scheduled for October 2024.

Annex I

The Annex I list as revised on 17 October 2023 included the following 16 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, the Bahamas, Belize, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Seychelles, Trinidad and Tobago, the Turks and Caicos Islands, the US Virgin Islands and Vanuatu.

According to the revision of 20 February 2024:

- **two** jurisdictions were delisted: **the Bahamas and the Turks and Caicos Islands**. In the OECD Forum on Harmful Tax Practices' most recent assessment, the recommendations to both jurisdictions to remedy the relevant deficiencies were converted from "hard" to "soft" recommendations, which allowed the Code of Conduct Group to consider these jurisdictions compliant with the standard for jurisdictions with no or only a nominal corporate income tax.

- **two** jurisdictions were moved from Annex I to Annex II: **Belize and Seychelles**. In October 2023, these jurisdictions were included in Annex I after a negative assessment from the OECD Global Forum with regard to exchange of information on request. Following changes to the applicable rules in these jurisdictions, the Global Forum has granted them both a supplementary review, which will be undertaken in the near future. Pending the outcome of this review, Belize and the Seychelles have been included in the relevant section of Annex II.

Consequently, Annex I currently comprises the following 12 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, Fiji, Guam, Palau, Panama, the Russian Federation, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Annex II

The Annex II list as revised on 17 October 2023 included the following 14 jurisdictions: Albania, Armenia, Aruba, Botswana, the British Virgin Islands, Costa Rica, Curaçao, Dominica, Eswatini, Hong Kong, Israel, Malaysia, Türkiye and Vietnam.

According to the revision of 20 February 2024:

- **two** jurisdictions are added from Annex I to Annex II: **Belize and Seychelles** (*see above* under Annex I)
- **six** jurisdictions were removed from Annex II: **Albania and Hong Kong** fulfilled their commitments by amending a harmful tax regime, and **Aruba and Israel** fulfilled all of their pending commitments (related to the automatic exchange of financial account information in the framework of the common reporting standard); The Global Forum gave **Botswana** and **Dominica** positive ratings with regard to the exchange of information on request, resulting in the deletion of the reference to these jurisdictions in the relevant section.

Consequently, Annex II now comprises 10 jurisdictions: Armenia, Belize, the British Virgin Islands, Costa Rica, Curaçao, Eswatini, Malaysia, Seychelles, Türkiye and Vietnam.

Relevance

The EU list of non-cooperative jurisdictions for tax purposes is used by Member States, among other purposes, as a working anti-avoidance tool at the domestic level. As examples of national measures:

- from 1 January 2024, conditional withholding tax (CWHT) is levied in the Netherlands on dividend payments to jurisdictions that are included on the EU list of non-cooperative jurisdictions;
- Luxembourg legislation provides for non-tax deductibility of interest and royalty payments made to entities located in jurisdictions appearing on the list;
- a higher rate of 20% applies in Croatia to royalties paid to legal entities situated in countries that are on the EU list of non-cooperative jurisdictions and that do not have a tax treaty in force with Croatia; and
- in Malta, the participation exemption regime does not apply to dividend income derived from a participating holding in a body of persons resident for tax purposes in a jurisdiction that is included on the EU list for a minimum period of 3 months during the year immediately preceding the year of assessment.

The EU list is also used as reference in EU tax legislation, the most relevant examples being the specific hallmarks related to cross-border transactions in DAC6, the ATAD and the CbCR Directive.

IBFD references

- For more details on the EU list of non-cooperative jurisdictions, *see* T. Morales Gil & S. Kale, Direct Taxation, Global Topics IBFD
- For specific Member States' measures, see the IBFD Country Tax Guides.
- EU tax law developments are reported in the daily IBFD Tax News Service.