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TAX & EXCHANGE CONTROL ALERT

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Naughty or nice: Recent updates to EU's Blacklist of non-cooperative third countries on tax

The EU's list of non-cooperative jurisdictions on tax aims to encourage countries to adopt tax regimes that are more transparent and implement BEPS principles.

Naughty or nice: Recent updates to EU's Blacklist of non-cooperative third countries on tax

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The first European Union (EU) list of non-cooperative tax jurisdictions (EU Blacklist) was agreed to by the Council of Ministers of Finance of EU Member States (ECOFIN) in 2017 and has been amended a number of times since. It is aimed at encouraging non-EU states to amend their tax regimes in three main areas:

- Transparency and automatic information exchange;
- Fairer tax competition, reflecting economic realities and discouraging artificial structures; and
- The implementation of the Organisation for Economic Cooperation and Development's (OECD) base erosion and profit shifting (BEPS) countermeasures.

A jurisdiction's tax regime will be assessed for specific indicators of whether it meets the above tax policy criteria. These indicators can be grouped under the following broad themes:

- Nature of the revenue authority's international information exchange rules;
- Existence and nature of preferential tax regimes; and
- There being a 0% corporate income tax rate or no corporate tax.

The listing process followed by the European Commission and ECOFIN is an assessment of a particular state's tax regime against a range of specific indicators under the above themes. States whose tax regimes the ECOFIN decides are a cause for concern are 'grey listed' and diplomatically engaged by individual EU member states regarding proposed tax reforms.

EU member states are expressly excluded from consideration for listing, and are deemed to meet the abovementioned transparency, tax competition and BEPS implementation standards through compliance with instruments such as the Code of Conduct for Business Taxation and the state aid doctrine.

Jurisdictions which agree to amend their regimes are removed from the grey list and implementation of the agreed reforms monitored. If a state does not implement the reforms, or no reforms are agreed to, such state is placed on the EU Blacklist by ECOFIN.

Where a state is placed on the EU Blacklist, as a non-cooperative third country for tax purposes, that state is subjected to a number of sanctions which include –

- being barred from accessing certain EU funding, including funding provided by the European Fund for Sustainable Development, the European Fund for Strategic Investment and the External Lending Mandate;
- transactions or structures which route through blacklisted jurisdictions trigger automatic reporting requirements under certain EU legislation, including EU transparency requirements for intermediaries; and
- EU member states also apply domestic sanctions against those blacklisted countries, including automatic reporting and increased scrutiny of withholding taxes or anti-avoidance provisions.

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Taxpayers involved in trade in the EU and blacklisted jurisdictions should monitor the evolution of the EU Blacklist and its effect on existing structures or planned transactions.

The current EU Blacklist can be accessed [here](#).

Recent updates

The most recent amendments to the list were effected on 27 February 2020. ECOFIN made the following changes, amongst others:

- Armenia, Antigua and Barbuda, Bahamas, Bermuda, Belize, British Virgin Islands, Cabo Verde, Cook Islands, Marshall Islands, Montenegro, St Kitts and Nevis, and Vietnam were completely delisted; and
- Panama was added to the EU Blacklist.

It was also decided that the European Commission should begin assessing G20 countries not yet covered by the process, including Russia, Mexico and Argentina. Further, that amendments to the list would be made bi-annually going forward.

Commentary

The EU Blacklist is an important consideration for local taxpayers with operations and offshore corporate

structures located in both the EU and blacklisted jurisdictions.

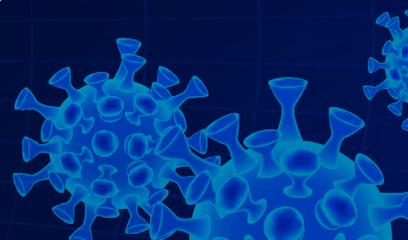
Multinational entities with corporate presence in blacklisted jurisdictions, will be vulnerable to the punitive measures imposed under the EU Blacklist. In instances where those multinational entities route financial flows through a blacklisted jurisdiction, into or via an EU member state, that structure or transaction will be subject to increased scrutiny and the EU Blacklist sanctions noted above.

Considering the growing international pressure on countries to conform with tax transparency practices, together with the bi-annual updates to the EU Blacklist and the possibility of reversion by "green lighted" states; taxpayers involved in trade in the EU and blacklisted jurisdictions should monitor the evolution of the EU Blacklist and its effect on existing structures or planned transactions.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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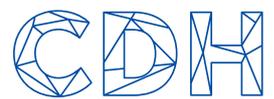
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