European Commission - Fact Sheet

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

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

Updated on 6 December to remove Georgia from the jurisdictions who need to improve transparency standards. Georgia was included under this category in error.

Why has the EU produced a list of non-cooperative tax jurisdictions?

The new list is part of the EU's work to clamp down on tax evasion and avoidance. It will help the EU to deal more robustly with external threats to Member States' tax bases and to tackle third countries that consistently refuse to play fair on tax matters.

Up to now, Member States have had a patchwork approach to dealing with tax havens, which has had limited impact. In its External Strategy for Effective Taxation, the Commission suggested that a common EU list could be a more effective way of tackling countries that encourage abusive tax practices. Member States agreed that a single EU list would hold much more weight than a medley of national lists and would have an important dissuasive effect on problematic third countries.

The EU listing process also prompts change. It creates a positive incentive for international partners to improve their tax systems where there are weaknesses in their transparency and fair tax standards. Throughout the EU listing process, many countries engaged with Member States to address the deficiencies found in their tax systems.

Finally, the common EU list will also create a clearer and fairer environment for businesses and third countries. Divergent national approaches, with different 'triggers' and criteria for listing, send mixed messages to international partners regarding the EU's good governance expectations. A single EU listing process, based on clear criteria and an open dialogue process is much easier for international partners to understand and engage with.

Why weren't EU Member States assessed for this list?

The EU list 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.

Within the EU, different tools are used to ensure fair and transparent taxation. For example, Member States are bound by far-reaching new transparency rules and anti-avoidance measures, thanks to 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 three years, through several pieces of legislation agreed at EU level. Thanks to these changes, the EU is now is the lead when it comes to tax standards

Besides, Member States tax regimes are also 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 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. It should be noted that, when assessed against the EU list criteria, all Member States are fully compliant.

How was the list compiled?

In May 2016, EU Finance Ministers endorsed the new listing process set out in the External Strategy, and subsequently agreed on common criteria to assess selected countries. They asked the Code of Conduct Group, the body comprising of Member State taxation experts in the Council, to manage the process and to present a first EU list by the end of 2017.

The list was compiled through a three-step process:

1: *Pre-Selection:* In September 2016, the Commission pre-assessed 213 countries using over 1600 different indicators. These indicators help to classify countries according to their economic ties with the

EU, financial activity, legal and institutional stability, and tax good governance levels. This data was compiled in a Scoreboard, and helped Member States to decide which countries should be examined in greater detail. On the basis of the Scoreboard, Member States decided which countries to screen in more depth.

2: *Screening:* All jurisdictions chosen for screening were formally contacted, to explain the process and invite them to engage with the EU. Member State experts then assessed the selected jurisdictions' tax systems in-depth, using the agreed criteria. There were many contacts with the jurisdictions during the screening stage, to seek clarification, information and explanations from both sides.

3: *Listing:* Once the experts had finished the screening stage, they delivered their findings to the Code of Conduct Group. On that basis, a letter was sent to each jurisdiction, either confirming that they complied with the criteria, or highlighting deficiencies in their tax systems. Jurisdictions were asked to make high level commitments to address identified deficiencies within a set time period. Those that did not do so were put forward for listing.

The Code of Conduct Group drafted the first EU list, and submitted it to EU Finance Ministers to endorse at their monthly meeting. Member States also took note of the commitments made by various jurisdictions, and agreed on a general approach to sanctions for the listed countries.

SELECTING	**Commission** reviews third countries' risk levels	September 2016
SELECTING	**Member States** agree criteria for screening	November 2016
SCREENING	**Member States** assess third countries' tax systems and start dialogue	January – December 2017
LISTING	**Member States** list countries that did not commit to addressing identified problems	5 December 2017
MONITORING	Continuous review of all jurisdictions. **EU list** updated at least once a year.	Annually

OVERVIEW OF THE SCREENING PROCESS **213 pre-assessed for the Scoreboard**	
92 chosen for screening	
20 given all-clear	**72 asked to address deficiencies**
47 committed to: **Improve transparency** **Stop harmful tax practices** **Introduce substance requirements** **Implement OECD BEPS**	**8 Hurricane Countries have more time**
17 on EU List	

What criteria were used in the EU listing process to assess countries?

The EU listing criteria are in line 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.

- ***BEPS implementation:***The country must have committed to implement the [OECD's Base Erosion and Profit Shifting] (BEPS) minimum standards.

Who was responsible for screening the selected jurisdictions?

The process was led by Member States. They nominated national tax experts to screen the tax systems of the selected third countries. These experts were grouped into panels, which examined the jurisdictions against the agreed criteria. The expert panels were given guidance from the Code of Conduct Group and technical support from the Commission.

Did the screened countries have a chance to present their case?

Yes. Since the very beginning of the exercise, the Commission stressed that the EU listing process must be as fair, transparent and open as possible. At each subsequent stage, high priority was given to ensuring that the relevant countries understood the process and could respond. Many bilateral and multilateral meetings were held to this end, and there was extensive correspondence between Member States and the jurisdictions concerned.

The jurisdictions were sent a formal letter when they were selected for screening in January 2017. At the end of the screening process, they received another letter, either confirming that they were compliant or asking them to make specific improvements to their tax systems. At every stage, the jurisdictions were encouraged to engage with the EU, provide any relevant information and seek any clarifications they needed. Each country had a chance to present their position, address concerns and discuss how to deepen their cooperation with the EU on tax matters.

Why didn't Member States list every country that failed to meet the criteria?

The EU list was always intended as a last resort option – when all other efforts to engage with a third country had failed. Jurisdictions that were prepared to cooperate were not listed, so long as they gave a clear and concrete commitment to address the identified tax deficiencies.

For certain jurisdictions, specific factors needed to be taken into account. For example, 8 jurisdictions (Antigua and Barbuda, Anguilla, Bahamas, British Virgin Islands, Dominica, St Kitts and Nevis, Turks and Caicos, US Virgin Islands) that were badly hit by the hurricanes in summer 2017 have been given until early 2018 to respond to the EU's concerns. Special consideration was also given to the situation of developing countries. Least Developed Countries without financial centres were automatically excluded from the screening process, while other developing countries without financial centres were given more time to address their shortcomings.

What positive changes can already be seen as a result of the EU listing process?

A key benefit of the EU listing process is that it re-launched discussions on tax good governance and prompted countries to improve their tax systems, in line with international standards. Many jurisdictions cooperated closely with the EU during the listing process and made firm commitments to fix problems identified in their tax systems. Many others actually improved their standards immediately, in response to the EU listing exercise.

What is the breakdown of the commitments made by jurisdictions to improve their taxation standards?

In total 47 countries committed to improving their transparency standards. Once fulfilled, these commitments should enhance the tax good governance environment, globally. Work must now continue to review the situation throughout 2018.

What type of commitments did countries make in response to the EU listing process?

Member States agreed not to list jurisdictions if they committed to address the deficiencies that were found during the screening process. These commitments had to be made at high political level (e.g. Minister of Finance), and give a clear domestic timeline for implementing the changes. The commitments related to the good governance criteria used in the listing process.

Improve Transparency Standards	Armenia; Bosnia & Herzegovina; Botswana Cape Verde; Hong Kong SAR; Curaçao; Fiji; Former Yugoslav Republic of Macedonia; Jamaica; Maldives; Montenegro Morocco; New Caledonia; Oman; Peru; Qatar; Serbia; Swaziland; Taiwan; Thailand; Turkey; Viet Nam.
Improve Fair Taxation	Andorra; Armenia; Aruba; Belize; Botswana; Cape Verde; Cook Islands; Curaçao; Fiji; Hong Kong SAR;

	Jordan; Labuan Island; Liechtenstein; Malaysia; Maldives; Mauritius; Morocco; Niue; St Vincent & Grenadines; San Marino; Seychelles; Switzerland; Taiwan, Thailand, Turkey; Uruguay; Viet Nam.
Introduce substance requirements	Bermuda; Cayman Islands; Guernsey; Isle of Man; Jersey; Vanuatu.
Commit to apply OECD BEPS measures	Albania; Armenia; Aruba; Bosnia & Herzegovina; Cape Verde; Cook Islands; Faroe Islands; Fiji; Former Yugoslav Republic of Macedonia; Greenland; Jordan; Maldives; Montenegro; Morocco; Nauru; New Caledonia; Niue; Saint Vincent & Grenadines; Serbia; Swaziland; Taiwan; Vanuatu.

Why did the EU not exclude developing countries from the EU listing process?

The specific situation of developing countries was taken fully into account throughout the EU listing process. The Commission excluded 48 Least Developed Countries from the pre-assessment, in recognition of the particular constraints they face. In addition, developing countries without financial centres have been given an extra year to meet the expected standards, when deficiencies were found in their tax systems with respect to transparency and BEPS implementation.

The Commission is very sensitive to the challenges that developing countries face in the area of taxation. The External Strategy has a whole section on supporting developing countries in fighting tax abuse and collecting domestic revenues, which builds on the Commission's "Collect More, Spend Better" strategy. This delivers on the EU's commitments under the Addis Tax Initiative, such as increased support to low income countries in improving their revenue raising capacities. The Commission and Member States have also started to examine possible effects of EU and national tax policies on developing countries, to prevent negative spill-overs and ensure greater policy coherence.

What sanctions will apply to listed countries?

The EU list should have a real impact on the countries concerned, thanks to new EU legislative measures.

First, following Commission proposals the EU list is now linked to EU funding in the context of 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. Only direct investment in these countries (i.e. funding for projects on the ground) will be allowed, to preserve development and sustainability objectives.

Second, the Commission has made reference to the list in other relevant legislative proposals. For example, the public Country-by-Country reporting proposal includes stricter reporting requirements for multinationals with activities in listed jurisdictions. In the proposed transparency requirements for intermediaries, a tax scheme routed through an EU listed country will be automatically reportable to tax authorities. The Commission is also examining legislation in other policy areas, to see where further consequences for listed countries can be introduced.

In addition to the EU provisions, the Commission encouraged Member States to agree on coordinated sanctions to apply at national level against the listed jurisdictions. First steps have been taken in this direction. Member States have agreed on a set of countermeasures which they can choose to apply against the listed countries. These include measures such as increased monitoring and audits, withholding taxes, special documentation requirements and anti-abuse provisions. The Commission will support Member States' work to develop a more binding and definitive approach to sanctions for the EU list in 2018.

Will the list be updated?

Yes. The list will be updated at least once a year. This update will be based on the continuous monitoring of listed jurisdictions, as well as those that have made commitments to improve their tax systems. Depending on developments, Member States may also decide to screen even more countries in 2018. An interim report will be prepared by mid-2018 to assess progress made.

From June 2019, more stringent transparency criteria come into effect, which will require a re-assessment of all jurisdictions to ensure that they are in line. The EU listing criteria will also be updated in the future, to reflect new elements that Member States agreed upon, such as transparency on beneficial ownership, as well as possible evolutions at international level.

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 will be responsible for updating the EU list, and recommending countries for de-listing to the Council.

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 were encouraged to meet these standards to avoid being listed. The EU also took on board OECD assessments of countries' transparency standards and tax regimes, as part of the screening process. The Commission and Member States were in close and regular contact with the OECD throughout the listing process, to ensure that EU and international work in this area remained complementary and mutually reinforcing.

How is the EU list different from the list published by the OECD in July?

The OECD list focussed on countries that failed to meet international transparency standards, as requested by the G20. The EU list is based on a wider set of good governance criteria. In addition to transparency, it also covers fair taxation, adherence to BEPS standards, and the level of taxation, where this might encourage artificial structures and arrangements. As such, there was a wider scope to the EU listing process. This is in line with the broad spectrum of tax good governance standards that EU Member States themselves adhere to.

How does the new EU list compare to the "pan-EU list" published in 2015?

The new EU list is a fully coordinated EU project. It was conceived, developed and managed at EU level. The criteria and process were agreed by EU Finance Ministers at the ECOFIN Council, and Member States worked together to screen selected countries and to decide which ones to list. The final EU list was unanimously endorsed by Member States in Council.

The "pan-EU" list was simply a compilation of Member States' individual lists. The Commission published this consolidated version of national lists in June 2015, as a first step towards a more coordinated EU approach. The "pan-EU" list highlighted how diverse Member States' lists were, and the confusion this created for businesses and international partners. Many countries welcomed the idea of a single EU listing process, which would be clearer and easier to work with than a patchwork of different lists.

What is the difference between this list of non-cooperative tax jurisdictions and the EU anti-money laundering list?

The anti-money laundering (AML) list is focussed on countries with poor anti-money laundering and counter-terrorist financing regimes. It reflects the Financial Action Task Force (FATF) approach to dealing with countries that have not implemented internationally agreed anti-money laundering standards. Banks must apply higher due diligence controls to financial flows towards these listed countries.

The EU tax list targets external risks posed by countries that refuse to respect tax good governance standards. It has different objectives, different criteria, a different compilation process and different consequences to the AML list. Nonetheless, the two lists will complement each other in ensuring double protection for the Single Market against external good governance risks.

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