

Luxembourg Tax Alert

Changes to EU black list affect reporting requirements for Luxembourg entities

19 February 2020

On 18 February 2020, the European Council revised the [list of non-cooperative jurisdictions for tax purposes](#), whose objective is to improve tax good governance. The Council has included four more jurisdictions—Cayman Islands, Palau, Panama, and Seychelles—in annex I (“black list”), in addition to the eight jurisdictions already listed.

The four jurisdictions were considered not to have implemented the tax reforms to which they had committed by the agreed deadline.

There are now 12 jurisdictions on the black list: American Samoa, Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands, and Vanuatu. The next revision to the list is expected by October 2020.

EU member states may apply both tax and non-tax defensive measures against black list jurisdictions with a view to preventing the erosion of the tax bases of the member states, and it is necessary to confirm what the relevant measures are in each member state.

In Luxembourg, the tax authorities have imposed specific reporting requirements as from tax year 2018 in relation to transactions of Luxembourg companies with related enterprises located in jurisdictions that are included on the EU black list.

Luxembourg resident companies must indicate in their annual corporate income tax return if they have entered into any such transactions. The relevant version of the black list is the list available as at the date of the Luxembourg company’s financial year-end.

Additionally, as part of the review of tax returns and/or any subsequent investigation, the Luxembourg tax authorities may request the taxpayer company to provide details of relevant transactions, including the total amount involved, a statement of income and expenses, and a statement of claims and debts owed to enterprises located in black list jurisdictions.

The inclusion of a jurisdiction on the black list also may affect the obligation, linked to the implementation of [EU directive 2018/822](#) (commonly referred to as DAC 6 or the “tax intermediaries directive”), to disclose to the tax authorities of the EU member states information on cross-border arrangements that meet certain criteria, referred to as “hallmarks.” One of the hallmarks (C1 (b) ii)) that is not subject to the main benefit test refers to deductible cross-border payments made between two or more associated enterprises where the recipient is resident for tax purposes in a jurisdiction listed as being non-cooperative.

The draft law transposing DAC 6 into Luxembourg’s domestic legislation currently is being reviewed by the Luxembourg parliament. It is expected to be approved and enacted before the end of March, with the first reporting required as from the summer of 2020.

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