

## Luxembourg Tax Alert

### Changes to EU blacklist affecting Luxembourg entities' reporting requirements and tax measures

**8 October 2020**

On 6 October 2020, for the second time this year, the European Council revised [the list of non-cooperative jurisdictions for tax purposes](#), aiming to improve tax good governance. The European Council decided to add Anguilla and Barbados to Annex I ("the blacklist") as they were considered not to have implemented the tax reforms to which they had committed by the agreed deadline.

On the other hand, as Cayman Islands and Oman had adopted the necessary reforms to improve their tax policy framework, they were delisted from the blacklist.

- Cayman Islands was removed from the blacklist after it adopted new reforms to its Collective Investment Funds framework in September 2020.
- Oman was considered as complying with its commitments after it took all steps required to apply the necessary exchange of information measures with EU Member States.

Consequently, there are now 12 jurisdictions on the blacklist: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands, and Vanuatu. The next review of the blacklist is due in February 2021.

The Luxembourg tax authorities have imposed specific reporting requirements and measures as from the [2018 tax year](#) regarding the transactions of Luxembourg companies with related enterprises located in blacklist jurisdictions.

- Luxembourg resident companies must indicate in their annual corporate income tax returns if they have entered into any such transactions. The applicable version of the blacklist is the one that is available on the date of the Luxembourg company's financial year-end.
- As part of the review of tax returns and/or any subsequent investigation (either an on-the-spot or thorough tax audit) the Luxembourg tax authorities may ask the taxpayer company to provide details of relevant transactions, including the total amount, a statement of income and expenses, and a statement of claims and debts owed to enterprises located in blacklist jurisdictions.

At the end of 2019, the European Council issued guidelines encouraging all EU Member States to implement legislative defensive measures regarding blacklist jurisdictions. Several months ago, the Luxembourg government introduced a draft law to consider nondeductible tax expense interest and royalties paid or due to related undertakings that are established in a country or territory on the EU blacklist as from 1 January 2021. This tax measure would not apply if the Luxembourg company would provide evidence that the expense would correspond to a transaction reflecting economic reality. The draft legislation states that the government may propose the list of affected countries as from 1 January 2021 to parliament, based on the latest version of the EU blacklist on the proposal date. The draft law is currently following the legislative process and the final vote is expected before the end of this year.

Finally, the inclusion or removal of a jurisdiction may also affect the obligation, resulting from the Law of 25 March 2020 implementing DAC 6, to disclose to EU Member States' tax authorities information on cross-border arrangements that meet certain criteria, referred to as "hallmarks." One of these hallmarks (C1 b ii)), which 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 non-cooperative by the Organisation for Economic Co-operation and Development (OECD) or collectively by the EU Member States..

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