

## Tax Alert

# EU's ECOFIN Council releases updated list of non-cooperative jurisdictions for tax purposes

February 2023

### In brief

On 14 February 2023, the EU's ECOFIN Council approved the [latest list](#) of non-cooperative jurisdictions for tax purposes. Four jurisdictions, Russia, British Virgin Islands, Costa Rica and Marshall Islands were all added to Annex I (the so-called blacklist). No countries were removed from the [previous list](#) (published in October 2022). Annex II of the list (greylisted countries) was also updated with Albania, Aruba and Curaçao added, while North Macedonia, Barbados, Jamaica and Uruguay have been removed from the greylist.

### In detail

The list of jurisdictions in Annex I now includes:

American Samoa	Antigua	Bahamas	British Virgin Islands
Costa Rica	Fiji	Guam	Marshall Islands
Palau	Panama	Russia	Samoa
Trinidad and Tobago	Turks and Caicos Islands	US Virgin Islands	Vanuatu

The EU Code of Conduct Group is responsible for assessing jurisdictions adherence to global tax standards, and if jurisdictions are found to be insufficiently compliant, maintain a harmful tax practice, or are unresponsive in dealing with the Group's advice, the Group will recommend to the Council that the jurisdictions be listed.

It was widely rumoured that Russia would be blacklisted in this latest review, given the political situation and given that it previously had been greylisted. We note that the Council underlines Russia's *"unprovoked military aggression against Ukraine... prevents the Code of Conduct Group from maintaining a dialogue with the Russian authorities"*. Russia's listing more formally centres around its international holding company tax regime, which is regarded as a harmful tax practice by the EU Code of Conduct Group.

The British Virgin Islands is listed as a result of the findings of the OECD peer review process, which reviewed the state's historical compliance with the international standard on transparency and exchange of information on request (EOIR), in addition to completing an assessment of the jurisdiction's legal and regulatory framework.

Observation: Notably, the British Virgin Islands' Minister for Finance is hopeful that recent reform of the state's rules should see its status move from 'partially compliant' to 'largely compliant' (see [this statement](#)). He has sought a supplementary review by the OECD Global Forum to expedite this process. Nonetheless, the classification as an Annex I country will likely remain until at least October 2023.

## Consequences

Listing a country under Annex I may result in tax consequences, including increased withholding taxes, non deductibility of payments to blacklisted jurisdictions, inclusion under CFC regimes, or limiting the participation exemption on shareholder dividends. Different consequences are imposed by different EU Member States. Additional information about both the tax and non-tax defensive measures that EU Member States take against listed jurisdictions is available [here](#).

## Greylisted countries and consequences

Annex II, showing so-called 'greylisted' countries has also been amended and the list now includes Albania, Aruba and Curaçao. Greylisting a country has not come with significant consequences to date, however public country-by-country reporting rules will shortly enter into effect in EU Member States. This will require publicly reporting certain information in the coming years. A consequence of being listed on Annex II over a two-year period is that public disclosures of certain corporate tax information are required on a disaggregated basis (i.e., country by country), rather than aggregated with worldwide disclosures.

**Observation:** Businesses should consider how best to approach such public disclosures to ensure alignment with their tax strategy.

## The takeaway

Businesses should review the updated lists and consider the consequences for entities located in impacted jurisdictions. While the British Virgin Islands may expect to be removed from the list if recent changes are recognised as part of the next review, Russia is unlikely to be removed given the ongoing war in Ukraine.

## Let's talk

For a deeper discussion on the updated list of non-cooperative jurisdictions for tax purposes, please contact:



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