European Commission - Fact Sheet

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

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Why is the Commission proposing a common EU system for listing non-EU jurisdictions?

The new EU listing process is part of the EU's campaign to clamp down on tax evasion and avoidance and promote fairer taxation, within the EU and globally. It was proposed by the Commission in the External Strategy for Effective Taxation in January 2016, and endorsed by EU Finance Ministers in May. The European Parliament has also repeatedly expressed support for an EU listing process.

Member States agree that a single EU list of non-cooperative jurisdictions will carry much more weight than the current patchwork of national lists when dealing with non-EU countries that refuse to comply with international tax good governance standards. An EU list will also prevent aggressive tax planners from abusing mismatches between the different national systems.

A single EU listing system – based on clear, coherent and objective criteria – will also be easier for businesses to deal with, as it will eliminate administrative burdens caused by divergent national approaches. For the EU's international partners, who sometimes struggle to understand Member States' divergent national listing conditions, a common EU approach will create more clarity and legal certainty on what the EU expects when it comes to fair taxation.

The common EU list is intended as a "last resort" option. It will be a tool to deal with countries that refuse to respect tax good governance principles, when all other attempts to engage with these countries have failed.

What is the process for developing the common EU list?

The External Strategy sets out a clear, fair and objective EU process for listing non-cooperative tax jurisdictions based on three steps:

1: *Scoreboard:* The Commission produces a neutral scoreboard of indicators, to help determine the potential risk level of each third country's tax system in facilitating tax avoidance. The Commission presents the findings of the scoreboard to Member State experts in the Code of Conduct Group on business taxation in Council.

2: *Screening:* On the basis of the scoreboard results, Member States decide which third countries should be formally screened by the EU. The screening of third countries' tax good governance standards will be carried out by the Commission and the Code of Conduct Group. There will be a dialogue process with the countries in question, to allow them to react to any concerns raised or discuss deeper cooperation with the EU on tax matters.

3: *Listing:* Once the screening process is complete, third countries that refused to cooperate or engage with the EU regarding tax good governance concerns should be put on the EU list.

Member States endorsed this process at the May 2016 ECOFIN Council and called for a first EU list to be ready in 2017.

What role does this pre-assessment play in the listing process?

The scoreboard is the first step towards a definitive list. Its purpose is to assist Member States in identifying which third countries are of most relevance for screening in greater detail against tax good governance criteria.

It presents a comprehensive set of data compiled by the Commission during a pre-analysis of all tax jurisdictions in the world. This data can then help Member States to decide which countries may be of most interest to examine in greater detail, based on their economic ties with the EU, financial activity, legal and institutional stability and tax good governance levels.

There is no pre-judgement of the countries mentioned in the scoreboard. It simply presents objective and factual, publicly available data from reliable sources, including the OECD and national websites.

Is the scoreboard suggesting which countries should be considered as "tax havens"?

The scoreboard should in no way be considered as initial EU list. Nor is it a pre-judgement of countries' cooperation on tax matters. All third countries were examined against each indicator. There can be legitimate reasons for a country to appear high on certain indicators e.g. strong economic ties with the EU. Therefore, there is no stigma linked to the countries that feature higher on the scoreboard.

It will be for Member States to determine which countries may require further screening, once they have reviewed all of the scoreboard data. It is only through the screening and dialogue process with the selected third countries that the EU will gain a clear picture of third countries' tax good governance standards and their willingness to cooperate on tax matters.

How was the scoreboard compiled?

The Commission used a wide range of indicators (165[1] in total) to screen all third countries. These indicators help to classify countries according to risk and prioritise those that are of most relevance to screen.

The indicators were grouped into the following dimensions:

- *Economic ties with the EU:* To see how strong the economic ties are between the third country jurisdiction and the EU, the Commission examined indicators such as trade data, affiliates controlled by EU residents and bilateral Foreign Direct Investment (FDI) flows.

- *Financial activity:* Tax havens are often found to have a disproportionately high level of financial services exports, or a disconnection between their financial activity and the real economy. To determine if this was the case, indicators such as total FDI, specific financial income flows and statistics on foreign affiliates were used.

- *Stability factors:* Tax havens usually have strong and stable institutional and legal structures, as tax avoiders naturally seek safe countries to put their money. Therefore, the Commission looked at general governance indicators, such as corruption levels and regulatory quality.

- *Risk factors:* For the jurisdictions which emerged strongly in the three indicator headings above, the Commission also looked at basic tax good governance indicators, such as countries' international transparency performance, the presence of preferential tax regimes, and a 0% tax rate or

no corporate tax.

The Commission suggested that the scoreboard should not include Least Developed Countries, in line with the EU's commitment to support those countries with the greatest constraints in meeting tax good governance standards.

The five European countries with transparency agreements with the EU – Switzerland, Andorra, Liechtenstein, Monaco and San Marino – are also presented separately in the scoreboard. This acknowledges the efforts they have already made to cooperate with the EU in meeting higher levels of tax good governance.

For more details on the scoreboard methodology, see here.

What are the next steps in the listing process?

Based on the scoreboard results, Member States should decide in the Code of Conduct Group on business taxation on the relevant third countries to screen, along with the criteria to screen them against. These should be endorsed by EU Finance Ministers before the end of the year. The selected countries will be fully informed of this decision in good time, and will receive a clear explanation of the criteria and next steps in the screening process.

The screening of the selected countries should begin next January, with a view to drawing up a first EU list of non-cooperative tax jurisdictions before the end of 2017. The screening and dialogues will be carried out by the Code of Conduct Group and the Commission. Countries will have ample opportunity to put forward their case and discuss solutions to any concerns that are raised.

The aim is to complete the screening process by summer 2017, so that the results can be analysed and reviewed by Member States and the final EU list drawn up by the end of next year.

What criteria will be used to screen the selected countries?

In the External Strategy of January 2016, the Commission suggested that the following criteria should be used for screening:

- *Transparency:* Does the country comply with the international standards on automatic exchange of information and information exchange on request, and has it ratified the multilateral convention for this information exchange?
- *Fair Tax Competition:* Does the country have harmful tax regimes, which go against the principles of the Code of Conduct or OECD's Forum on Harmful Tax Practices?
- *BEPS implementation:* Has the country committed to participate in the OECD's Base Erosion and Profit Shifting (BEPS) Inclusive Framework?
- *Level of taxation:* Does the country have no corporate taxation or a zero-rate on corporate tax?

Member States are expected to agree on the exact criteria, based on those proposed in the External Strategy. The criteria will be clearly communicated and explained to all countries selected for screening.

What will the consequences be for countries on the EU list?

The Commission's External Strategy states that Member States should apply common counter-measures against third countries on the EU list. These sanctions should be an incentive for these countries to improve their tax system and also protect Member States' tax bases in the meantime.

Member States have asked the Code of Conduct to agree on the exact nature of these sanctions, based on current national practices and taking into account other defence measures in place in the EU (like those contained in the Anti-Tax Avoidance Directive). Member States should decide on these sanctions before the end of 2016, so that they are agreed when the first screenings begin.

Will the countries that are screened have a chance to present their case?

Yes. The common EU list is meant to be a last resort option – when all other efforts to engage dialogue fail. Dialogue with the country in the screening stage will therefore be an extremely important part of the process.

Once Member States have agreed on who should be screened and the screening criteria, the countries in question will be fully informed of the next steps and the ways in which they can interact with the EU in the process. Each country will have a chance to present their position, address EU concerns and discuss ways of closer cooperation on tax matters.

How does the EU list fit with the OECD/G20's work on tax good governance?

The common EU list will support the OECD's agenda, as it will be based on internationally agreed good governance standards. The EU listing process should encourage countries to meet the OECD's

transparency standards and sign up to the Base Erosion and Profit Shifting (BEPS) project.

In the scoreboard, some of the indicators are drawn directly from OECD data e.g. compliance with transparency requirements. Moreover, the Commission remains in close and regular contact with the OECD on the listing issue, to ensure a complementary approach.

How will the planned OECD list compare to the EU list of non-cooperative jurisdictions?

The OECD has been tasked by the G20 to develop a new international blacklist for countries that fail to meet international transparency standards. This list is expected to be ready in summer 2017.

The EU list will deal with transparency problems too (based on the OECD assessment), but it will also go further, covering a wider range of tax good governance criteria, particularly fair taxation. This is essential to effectively protect Member States' tax bases. The EU will work closely with the OECD as the two lists are being developed, and ensure that the approaches are mutually reinforcing.

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

The anti-money laundering list aims to address risks to the EU's financial system caused by countries with deficiencies in their anti-money laundering and counter-terrorist financing regimes. It follows the global approach developed by the Financial Action Task Force (FATF) to deal with countries that have not implemented internationally agreed standards on anti-money laundering. On the basis of this list, banks must apply higher due diligence controls to financial flows to the high risk countries.

The common EU list of non-cooperative tax jurisdictions will address external risks to Member States' tax bases, posed by non-EU countries that refuse to adhere to international tax good governance standards. The criteria used to compile this list may include anti-money laundering standards, but will be much wider than this. The criteria should cover the full range of international tax good governance criteria i.e. transparency, information exchange, fair tax competition and implementation of the new Base Erosion and Profit Shifting (BEPS) measures. Member States will define the exact nature of the criteria for the common EU list in the coming weeks and will also consider what countermeasures should be applied to listed countries.

The two lists may overlap on some of the countries they feature, but it makes sense that they are kept separate. They have different objectives, different criteria, a different compilation process and different consequences. Nonetheless, the two lists should complement each other in ensuring a double protection for the Single Market from external risks.

Will exceptions be made for developing countries that fail to meet international tax good governance standards?

The Commission is very sensitive to the situation of developing countries and the need to support and assist them in the international tax good governance framework. The External Strategy has a whole section on developing countries, which is already being taken forward. The Commission excluded the 48 Least Developed Countries from the scoreboard, in recognition of the particularly difficult constraints they face.

However, not all developing countries share similar traits and some have quite developed financial centres or internationally attractive tax regimes. Any developing country selected for screening will have a chance to discuss their capacity constraints and other obstacles with the EU, as part of the dialogue process, and the EU will be ready to work with them to find solutions.

This is also aligned with our "Collect More, Spend Better" strategy to follow up on our Addis Ababa commitments.

Concrete examples of how we are supporting developing countries in the area of revenue mobilisation and tax good governance include:

- EUR 1 million to support developing countries in the OECD BEPS inclusive framework e.g. paying for their participation costs, assisting them with BEPS implementation.
- EUR 1 million to support the international implementation of Addis Tax Initiative by donor and recipient countries, by supporting an international coordinating secretariat.
- EUR 0.3 million (to be added to later) to support the participation of developing countries in the UN Tax Committee and sub-committees.
- A tripartite initiative on transfer pricing (with OECD and WB/IFC) to provide technical and policy support to developing countries in the transfer pricing area.

In addition, the Commission has already started working with Member States to try to prevent negative spillovers on developing countries from EU or national tax policies.

[1]The Commission began by considering the situation of 213 third country jurisdictions (third

countries as well as dependent or associated territories). However, it decided not to include Least Developed Countries (48) and we have also proposed that third countries which are engaged in legally binding transparency agreements with the EU should feature in a separate part of the scoreboard.

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