

EU Council adds to blacklist of tax havens 2/12/23



Senior Consultant, Tax, PwC Latvia
Madara Hmelevska



Manager, Tax, PwC Latvia
Viktorija Volta

On 14 February 2023 the EU Council decided to add four jurisdictions to the EU blacklist, bringing the total to 16. This blacklist is coming up for review in October. The Latvian blacklist of 12 jurisdictions in the Cabinet of Ministers' Rule No. 819 is based on the EU blacklist as updated by the EU Council on 4 October 2022. While no amendments are being proposed, companies should prepare themselves for any resulting changes in advance and estimate their business impact.

The EU Council has been working internationally and across the EU to introduce and strengthen good tax governance mechanisms, fair administration of taxes and tax transparency aimed at fighting tax evasion. Given the global nature of unfair tax competition, the EU Council annually revises the blacklist in order to encourage the blacklisted jurisdictions to improve their tax laws and practices. Before the latest changes were made, the blacklist contained the following jurisdictions:

1. Anguilla
2. Guam
3. American Samoa
4. U.S. Virgin Islands
5. The Bahamas
6. Fiji
7. Palau
8. Panama
9. Samoa
10. Turks and Caicos Islands
11. Trinidad and Tobago
12. Vanuatu

Russia and another three jurisdictions are now blacklisted

From 14 February 2023 the blacklist contains 16 jurisdictions, including British Virgin Islands, Costa Rica, Marshall Islands and Russia for different reasons:

- British Virgin Islands have failed to observe the OECD's standards for information exchange.
- Costa Rica must carry out its commitment to cancel or amend the harmful aspects of its foreign income tax exemption regime.
- There is concern that Marshall Islands have failed to adopt sufficient economic substance requirements, and profits arising to a company registered there without a real business may enjoy a 0% corporate income tax (CIT).
- Russia has stopped dialogue with the EU on tax matters since 2022. Like Costa Rica, Russia had, by the date of the EU decision, failed to deliver on its commitment to eliminate the impact of its special regime for holding companies it introduced in 2018 to protect companies from international sanctions. While Russia had pledged to reform its law, the European Commission's progress assessment showed that Russia had failed to honour the pledge.

Withholding tax on payments to residents of blacklisted jurisdictions

Subsections 5(6) and 5(8) of the Latvian CIT Act require a 20% tax to be withheld on all payments and dividends that Latvian residents or the permanent establishments of non-resident companies pay to entities, individuals or other persons that are based, formed or established in a tax haven. The only exception when a 20% CIT is not charged is if the payer of income has been liable to withhold personal income tax on interest and royalties.

The Latvian State Revenue Service has the power to waive the 20% CIT if the payer of income substantially demonstrates that the payments are not being made to reduce the payer's taxable income nor to evade or reduce Latvian taxes.

The DAC6 reporting obligation

This obligation might apply in the following circumstances:

1. A Latvian company does business with a related party in any of these jurisdictions involving deductible cross-border payments (class C hallmark).
2. Financial accounts or assets are transferred from jurisdictions between which there is no automatic exchange of information on financial accounts with the taxpayer's country of tax residence (class D hallmark).¹

If your company is involved in transactions with residents of these jurisdictions, we recommend evaluating how the additions to the blacklist affect your payment flows and tax implications in general.

¹The Cabinet of Ministers' Rule No. 210 on the automatic exchange of information on reportable cross-border arrangements