

Cayman Islands and the EU List of Non-Cooperative Tax Jurisdictions

On 18 February 2020, the ECOFIN committee of the European Union ("EU") resolved to move the Cayman Islands to the EU's Annex I list of non-cooperative jurisdictions for tax purposes ("Annex I") as it "...does not have appropriate measures in place relating to economic substance in the area of collective investment vehicles...".

The Cayman Islands Government ("CIG") statement¹, in response, points out that: (i) the jurisdiction passed the necessary investment funds legislation on 31 January 2020 which came into force on 7 February 2020; (ii) the Cayman Islands has been fully cooperative with the EU's requests; and (iii) the Cayman Islands remains fully committed to cooperating with the EU and will continue to constructively engage with them with the view to being delisted as soon as possible.²

While this would appear to be a technical timing issue, clients will want to understand what, if any, practical consequences the move to Annex I will have on structures involving Cayman Islands vehicles. This update outlines certain technical points of which clients should be aware:

- This is not expected to trigger Article 4 of the EU Securitisation Regulation (preventing the use of special purpose vehicles established in certain non-EU jurisdictions).

- We understand that it will not prevent a Cayman Islands investment fund from being marketed into the EU in accordance with the national private placement rules under the EU AIFM Directive.
- EU Member States must apply at least one of four legislative tax measures from 1 January 2021 with regard to a transaction involving an Annex I jurisdiction:
 - In broad terms, those measures involve controlled foreign company ("CFC") rules, withholding tax ("WHT"), limitation of tax deductibility and limitation of a participation exemption on profit distributions. In practice, EU Member States already apply some or all of these measures, particularly with regard to jurisdictions which do not have a tax treaty network and operate a tax neutral system, such as the Cayman Islands.
 - For example, Ireland applies withholding tax on interest payments if the recipient is not resident in an EU Member State or a country which has signed a tax treaty with Ireland, subject to certain exceptions. Ireland also operates CFC rules and has

¹ <https://www.mfs.ky/news/cayman-contacts-eu-to-begin-the-delisting-process/>

² It is worth noting that Bermuda was added to the EU's Annex I list in March 2019 and was removed later in 2019.

rules restricting tax deductibility on certain payments which are not subject to tax in the recipient jurisdiction. Finally, Ireland does not provide for a participation exemption on profit distributions to Irish companies. Accordingly, it can be said that Ireland already applies those four measures.

- The existing EU Mandatory Disclosure Rules ("DAC6") provides for the reporting of certain cross-border tax arrangements to EU tax authorities, with reporting to commence on 31 August 2020. DAC6 is explained in more detail in our recent client update.³ Under current rules, tax deductible payments made by an EU entity to an 'associated entity' in a low tax or zero tax jurisdiction are reportable in certain cases. The requirement to report such payments to associated entities is broader if the associated entity is resident in an Annex I jurisdiction.
- In addition to the legislative measures, EU Member States may also apply certain administrative measures to transactions involving Annex I jurisdictions, including increased monitoring and audits. In practice, EU Member States already apply such measures to jurisdictions which do not have a tax treaty network and operate a tax neutral system, such as the Cayman Islands.
- EU-related development agencies may not be able to lend development funding to the Cayman Islands or entities established in the Cayman Islands, subject to certain exceptions. As a practical matter, we understand that this has generally been the unofficial position for some time and, accordingly, we would not

expect this to have a material impact on the great majority of clients or the Cayman Islands.

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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³ <https://maples.com/Knowledge-Centre/Industry-Updates/2020/01/Enactment-of-the-EU-Mandatory-Disclosure-of-Cross-Border-Arrangements-Directive-DAC6>

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February 2020
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