

Cayman Islands added to the EU blacklist of non-cooperative jurisdictions for tax purposes

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On 18 February 2020, the ECOFIN committee of finance ministers of the EU resolved to add the Cayman Islands to the EU blacklist of non-cooperative jurisdictions for tax purposes. Their reasoning was short:

“[The] Cayman Islands does not have appropriate measures in place relating to economic substance in the area of collective investment vehicles.”

This is despite Cayman having passed a new statute – the Private Funds Law and The Mutual Funds (Amendment) Law – which was designed to address the EU concerns for collective investment vehicles, and which was enacted on 7 February 2020.

It is important to note that there was no suggestion from the EU that Cayman is not cooperating with the EU or having major transparency concerns (which is the case with other countries on the blacklist).

There are no major immediate and significant direct implications of this development, and we very much expect that the Cayman Islands will make every effort to ensure that they are removed from the list when it is next updated, which is scheduled for October 2020. That said, there are some issues that should be borne in mind:

1. The EU has recommended that EU Member States introduce by January 2021 at least one of four “defensive measures” against countries that are on the blacklist. These comprise controlled foreign companies legislation; non-deductibility of costs; withholding taxes measures; and limitation of participation exemption on distribution of profits.
2. Access to EU governmental funding may be restricted.
3. Some transactions that involve EU Member States (or the UK) and the Cayman Islands will potentially be brought into the scope of “DAC6”, which is the new EU tax avoidance disclosure regime. This could apply, for example, where there is a deductible cross border payment between associated enterprises and the recipient of the income is resident in Cayman. This might involve instances such as a UK or Luxembourg company paying interest

to its Cayman parent company. Deductions would not be denied, but the transaction would be disclosable to the local EU tax authority (HMRC in the UK).

4. The impact of the Cayman Islands being on the EU list of non-cooperative jurisdictions for tax purposes should be considered in the context of existing contracts, investment agreements and side letters.
5. Separate “blacklists” are also maintained at local level by certain Member States. If Cayman were to be added to any of those lists, there could be adverse implications for structures that include entities in those Member States and also Cayman Islands entities.

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