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## EU Tax Haven Blacklist Update

The unveiling of the EU tax haven blacklist was covered in our Alert [dated 12 December, 2017](#). While the consequences of a jurisdiction being on the blacklist remain largely unclear, clients may wish to review whether they have transactions which involve blacklisted jurisdictions and to consider carefully the uncertainty and possible reputational consequences of undertaking new transactions involving blacklisted jurisdictions.

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Earlier this week, EU officials announced their proposal to remove eight jurisdictions from its tax-haven blacklist, as they offered to change their tax rules following the publication of the blacklist itself in December. These eight jurisdictions include: Panama, South Korea, the UAE, Barbados, Grenada, Macao, Mongolia and Tunisia. The move will be discussed by officials in Brussels later this week, and EU finance ministers are likely to make a decision on the proposal later this month. If the removal plan is approved, then these eight countries will be moved from the blacklist to the grey list, which currently includes 47 jurisdictions.

If approved, the shrinking of the list is likely to add to criticism already levied against the regime. Since its publication in December, transparency groups have criticised the robustness of the program given the lack of clarity around enforcement. Furthermore, the EU was criticised for not considering whether or not its own members should be amongst those on the list, with the European Commissioner for Economic and Financial Affairs, Pierre Moscovici, admitting that it was “unquestionable” that tax havens exist within the EU. The British Overseas Territories and Crown Dependencies were also notable absences from the original blacklist, despite being implicated in the recent Paradise Papers.

Arguably the most prominent criticism of the original regime has come from American Treasury Secretary Steven Mnuchin. Mnuchin wrote to the EU’s Economic and Financial Affairs Council (“ECOFIN”) to encourage it to rethink the inclusion of American Samoa and Guam – two American territories that were included on the first blacklist and remain there under the current proposal to remove eight jurisdictions. In his letter, Mnuchin pointed out that the EU was wrong to think of the American territories as distinct from America, which had played a “leading role” in a number of international initiatives on transparency and tax. He added that the EU’s list was “duplicative of the process undertaken by the G-20 and OECD.” The latter is a particularly important criticism because, unlike ECOFIN, both the G-20 and OECD include European countries in their analysis.

The Caribbean Community (CARICOM), which saw four of its members put on the original blacklist (with two now poised to be removed under the current proposal), also criticised the scheme stating: “this decision by the EU has been based on new and unilaterally determined criteria, that go beyond the generally accepted international tax transparency and accountability standards which our countries have been diligently meeting over the past several years.”

These arguments will potentially fuel criticism that the list is more political than legal.

What proposals these eight countries made to potentially be removed from the blacklist should become clear in the coming weeks. It also remains to be seen whether or not ECOFIN will consider removing the American jurisdictions from the list. At present, the following countries will remain on the blacklist: American Samoa, Bahrain, Guam, the Marshall Islands, Namibia, Palau, St Lucia, Samoa and Trinidad & Tobago. Regardless of the politics involved, it is the as-yet-unspecified enforcement regime that will be fundamental to whether or not the regime has any real teeth.

Ropes & Gray will continue to monitor developments in this area and provide updates on the regime as they are announced by the Commission. For more detailed analysis of the issues, please contact your usual Ropes & Gray partner. For additional resources, please refer to the Ropes & Gray [Risk Mitigation & Management Model](#) webpage.