



# Cayman Islands Blacklist Update

The Cayman Islands has been added to the EU's list of non-cooperative jurisdictions for tax purposes at a meeting of EU Member States finance ministers ("ECOFIN") on February 18, 2020.

## Background – Non-cooperative Jurisdictions List

This list was first established in December 2017 and is based on a continuous and dynamic process of:

- Establishing criteria in line with international tax standards;
- Screening countries against these criteria;
- Engaging with countries which do not comply;
- Listing and de-listing countries as they commit or take action to comply; and
- Monitoring developments to ensure jurisdictions do not backtrack on previous reforms.

Since the establishment of the non-cooperative tax jurisdiction list, the Cayman Islands has adopted more than 15 legislative changes in line with the EU's criteria. We note that in April 2019 the EU confirmed that the Cayman Islands had satisfied its Economic Substance requirements, with the exception of Economic Substance for investment funds/CIVs. This is a specific EU requirement, as the Cayman Islands Economic Substance legislation was evaluated in June 2019 as "not harmful" – the highest positive rating possible – by the OECD's Forum on Harmful Tax Practices.

As a result, the Cayman Islands Government recently passed the Private Funds Law and the Mutual Funds (Amendment) Law, both of which address the EU's concerns for CIVs. These laws came into force on February 7, 2020.

## Reason for Blacklisting

The Private Funds Law and the Mutual Funds (Amendment) Law have been passed and are now effective in the Cayman Islands. However, it appears that the blacklisting is due to the legislation not being in force by February 4, 2020, which was the date of the EU's Code of Conduct Group ("CoCG") meeting to advise the EU Finance Ministers, prior to the ECOFIN decision regarding the listing.

## What is the impact of the Blacklisting for Cayman Funds

1. The EU does not have any automatic sanctions on a country in a non-cooperative tax jurisdiction. Individual EU countries may provide otherwise and effective January 1, 2021 they are required to apply at least one of four tax measures on

any transactions with a non-cooperative jurisdiction. These tax measures include limits on tax deductions, controlled foreign company rules and withholding taxes on payments to a tax neutral jurisdiction such as Cayman. We note that many EU countries already have rules such as these in place so this does not appear to be a significant concern.

2. EU investors can continue to invest/remain invested in Cayman Islands funds and Cayman Islands funds can continue to be marketed to EU investors under the existing private placement regimes.
3. The EU Mandatory Disclosure Regime (DAC 6) includes a hallmark for related party payments to an entity in a non-cooperative tax jurisdiction. Any related party payments to a Cayman entity may now be Reportable under DAC 6 to the relevant jurisdictions' home tax authority (i.e. source country) within 30 days. DAC 6 reporting requirements are due to take effect on July 1, 2020 in most EU countries. However, we expect that many related party payments to Cayman entities from EU countries were likely already caught as reportable under the DAC 6 Regime due to Cayman being a zero tax jurisdiction.
4. EU funding is not available to or through entities established in a non-cooperative tax jurisdiction. This prohibition has been applied (for example) to the European Fund for Sustainable Development and the European Fund for Strategic Investments. It has not been extended to the Alternative Investment Fund Managers Directive or to the availability of national private placement regimes. In practice our firm in Cayman cannot recall seeing any funding from either EU funding entity. As a result we do not expect this to impact Cayman funds.

## Next Steps

The list of non-cooperative tax jurisdictions will now only be updated twice yearly. The next review of the list is expected in October 2020.

## KPMG in the Cayman Islands Comments

Although the listing is not welcome news, we do not believe there is any immediate concern of adverse tax consequences for Cayman investment funds.

Our view, which is consistent with the general industry view here in Cayman, is that Cayman Laws are now in place to satisfy the EU between now and October 2020. Progress should be monitored and clients should ensure their Cayman entities are compliant with all enacted Cayman Laws.

## Cayman Islands Government Response

The Cayman Islands Government ("CIG") yesterday issued a statement that confirmed that "the Cayman Islands remains fully committed to cooperating with the EU, and will continue to constructively engage with them with the view to be delisted." Furthermore, CIG has already "contacted EU officials to begin the process of being removed from the EU list of non-cooperative jurisdictions."

- To read the Cayman Islands Government response, [click here](#).
- To read Cayman Finance response, [click here](#).

We are here to help. Please contact us directly with any follow up questions on this matter.



**David Conen**  
Partner, Tax  
[dgconen@kpmg.ky](mailto:dgconen@kpmg.ky)



**Caherine Houts**  
Director, Tax  
[catherinehouts@kpmg.ky](mailto:catherinehouts@kpmg.ky)



**Jama Johnston**  
Principal, Tax  
[jamajohnston@kpmg.ky](mailto:jamajohnston@kpmg.ky)



**Jigna Patel**  
Senior Manager, Tax  
[jignapatel@kpmg.ky](mailto:jignapatel@kpmg.ky)

## Key links

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- [Cayman Islands Government's response](#)
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KPMG, P.O. Box 493, SIX Cricket Square, Grand Cayman KY1-1106, Cayman Islands

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