

INTERNATIONAL TAXATION & BLACKLISTING

*By Wessel Geursen, Senior Legal Adviser
at De Brauw Blackstone Westbroek*

The EU and OECD try to prevent tax evasion and tax fraud by promoting good tax governance worldwide; or perhaps by imposing what they consider to be good tax governance by blacklisting and repressive measures. Tax jurisdictions which do not cooperate with them, have been blacklisted, amongst which several Caribbean jurisdictions. The Caribbean Community (CARICOM) considers this discriminatory and is of the opinion that substantial progress at compliance with global standards has been made by its member states.¹ It calls upon the EU to desist blacklisting small states and to pursue a truly mutually collaborative engagement. On the current EU blacklist appear three Caribbean jurisdictions: Panama, Trinidad & Tobago and the US Virgin Islands; another five have been greylisted: Anguilla, Barbados, Costa Rica, Dominica and Jamaica.²

On 15 April 2021, negotiators from the Organisation of African, Caribbean and Pacific States (OACPS), representing 79 states, and the EU agreed on the text of a new post-Cotonou treaty,³ which is now awaiting ratification. Three regional

protocols are attached to this new agreement, also one for the Caribbean region. Both the agreement as the Caribbean protocol contain obligations for the Caribbean countries in the field of taxation. Article 12(6) of this new agreement obliges parties to introduce a minimum standard against base erosion and profit shifting (BEPS) and Article 83(3) of the agreement obliges parties to “undertake measures to tackle tax avoidance, tax evasion and other harmful tax practices” by for example the exchange of information. Additionally, Art. 35(3) of the Caribbean regional protocol imposes the principle of good tax governance.

Only independent states are party to this agreement; the Overseas Countries and Territories (OCT) which a part of EU Member States are not. For the OCT, the new association decision of 5 October 2021 applies retroactively as of 1 January 2021.⁴ That decision also contains obligations in relation to taxation. Article 72 OCT-decision sets international standards in financial services, amongst which making best endeavours to ensure the OECD’s Agreement on exchange of information

on tax matters and the G20 'Statement on Transparency and exchange of information for tax purposes' are implemented. Article 73 OCT-decision obliges the OCT "to effectively implement the principles of good governance in the tax area, including the global standards on transparency and exchange of information, fair taxation and the minimum standards against [BEPS]."

¹Statement by the Caribbean Community (CARICOM) of 9 October 2020 on Blacklisting by the European Community, <https://caricom.org/statement-by-the-caribbean-community-caricom-on-blacklisting-by-the-european-community/>

²Council conclusions of 5 October 2021 on the revised EU list of non-cooperative jurisdictions for tax purposes (12519/21).

³Press release of the European Commission of 15 April 2021, "Post-Cotonou negotiations on new EU/Africa-Caribbean-Pacific Partnership Agreement concluded", https://ec.europa.eu/commission/press-corner/detail/en/IP_21_1552

⁴Council Decision (EU) 2021/1764 of 5 October 2021 on the association of the Overseas Countries and Territories with the European Union including relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other (OJ 2021, L355/6).

