



PACIFIC ISLANDS FORUM SECRETARIAT

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FORUM ECONOMIC OFFICIALS MEETING

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FORUM ECONOMIC MINISTERS MEETING

9-10 August 2023

Suva, Fiji

AGENDA ITEM 6b – EUROPEAN UNION (EU) LIST OF NON-COOPERATIVE TAX JURISDICTIONS ISSUES

Purpose

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This paper provides an update on the Secretariat's work on the European Union (EU) list on Non-Cooperative Tax Jurisdictions as mandated by FEMM at their meeting in August 2022.

Summary

- Since 2019, four (4) Forum members were on the list and in February 2023, the Republic of Marshall Islands was reinstated on the list, bringing the total Forum members on the list to five (5).
- These countries are listed as the EU regards them as lacking tax transparency, having unfair taxes and not meeting the anti Base Erosion and Profit-shifting Standards (BEPS).
- With the FEMM calling for a stronger regional approach to address the challenges faced by members on the list and the implications on their sovereign risk ratings, with support from Australia and New Zealand, the World Bank was engaged to prepare a report on the state of play of the issue in the region.
- The draft report by the World Bank is attached as **Annex 1** to this paper. The report provides the *state of play* of the issue in the region including proposed actions to be undertaken (highlighted in **Table 1**) by the affected countries as the required next steps to addressing this matter. The World Bank has the technical expertise to implement tax transparency and BEPS standards and collaborates with other international organisations that provide support in these areas to countries seeking assistance.

A. Problem/Opportunity Identification

Since 2019, four (4) PIF members have been on the EU list of non-cooperative tax jurisdictions (NCTJ). In the latest review of the list on 14 February 2023, Republic of Marshall Islands (RMI) was re-listed, bringing the number of PIF members on the list to five (5) : Fiji, Marshall Islands, Palau, Samoa and Vanuatu.

2. **Table 1** below provides a summary of the World Bank report findings, especially the reasons why these countries remain on the list and proposed actions to be taken by the affected members to address the issues and concerns raised by the EU.

Table 1: Summary of Listing Status

ENTJ Blacklist	Summary of compliance issues & actions required to be taken by affected jurisdictions
Fiji	<p>Fiji remains on the EU list of non-cooperative tax jurisdictions since March 2019. The latest list published in February 2023, states that Fiji is yet to:</p> <ul style="list-style-type: none"> • Amend its preferential tax regimes (for exporting companies, information communication technology (ICT) incentives, and concessionary tax rates for regional or global headquarters), • Be a member of the Global Forum on transparency and exchange of information for tax purposes, • Ratify the OECD Multilateral Convention on Mutual Administrative Assistance, • Be a member of the Inclusive Framework on BEPS or implemented OECD anti-BEPS minimum standards. <p>Proposed actions to be taken by Fiji:</p> <ul style="list-style-type: none"> • Become a member of the Global Forum and OECD/G20 Framework on BEPS. • Sign up to the Multilateral Convention and commit to automatic exchange of information (AEOI). • Ratify the Multilateral Convention on assistance on tax matters and Multilateral Instruments to implement measures to prevent BEPS. • Amend or abolish existing regimes with harmful features. • Conduct assessment on Information Security Management (ISM) framework.
RMI	<p>In February 2023, Marshall Islands was re-listed for:</p> <ul style="list-style-type: none"> • facilitating offshore structures and arrangements aimed at attracting profits without real economic substance, • failing to take all necessary actions to ensure the effective implementation of economic substance requirements, • deficiencies in the implementation of its legal framework, • inability to demonstrate compliance actions and related statistics to the enforcement of the Economic Substance Regulations, including the provision on exchange of information to other competent authorities. <p>Proposed actions to be taken by RMI:</p> <ul style="list-style-type: none"> • Implement economic substance regulation. • Monitor AEOI implementation.
Palau	<p>Palau was included in the EU list in December 2017 when the EU Council determined that:</p> <ul style="list-style-type: none"> • Palau was facilitating offshore structures and arrangements aimed at attracting profits without real economic substance. • At that time, Palau was also requested to commit to the following: <ul style="list-style-type: none"> ○ Implement the OECD's automatic exchange of information (AEOI) standard;

	<ul style="list-style-type: none"> ○ Become a member of the OECD's Global Forum; ○ Sign the OECD's Multilateral Convention; and ○ Implement reporting in accordance to BEPS Action 13 if and when this becomes relevant. <p>Proposed actions to be taken by Palau:</p> <ul style="list-style-type: none"> ● Sign up and ratify the Multilateral Convention. ● Conduct EOIR pre-assessment. ● Conduct assessment of ISM framework. ● Commit to AEOI with specific deadlines.
Samoa	<p>Samoa is on the list for harmful preferential tax regime, known by the EU as the Offshore Business regime.</p> <p>Proposed actions to be taken by Samoa:</p> <ul style="list-style-type: none"> ● Amend or abolish the Offshore Business Regime. ● Monitor AEOI implementation.
Vanuatu	<p>Vanuatu is on the list for facilitating offshore structures and arrangements aimed at attracting profits without real economic substance and has not yet resolved this issue.</p> <p>Proposed actions to be taken by Vanuatu:</p> <ul style="list-style-type: none"> ● Continue cooperation with Global Forum on peer review of EOIR. ● Amend or abolish potentially harmful regime. ● Monitor AEOI implementation.

3. Out of the sixteen (16) countries on the global ENTJ blacklist, five (5) are FICs and another two (2) are US territories in the Pacific, Guam and American Samoa. Whilst it is encouraging to note that in the last two (2) years, four (4) Forum Members (Australia, Cook Islands, Nauru and RMI) have been removed from both the ENTJ black and grey lists, RMI has been reinstated on the list in 2023 and other Forum Members could potentially be at risk of falling back into the list.

4. The Pacific is disproportionately over-represented on the EU list, noting that in nominal terms, FICs account for a small percentage of tax revenues foregone by EU Members, and that very few EU firms operate in the Pacific region, compared to other countries on the lists or those not on the list. The EU Council acknowledged that a mere 2% of global tax losses came from jurisdictions on the EU list; whereas the Cayman Islands were found to be responsible for the most global tax losses, amounting to over USD70 billion a year, or 16.5% of the estimated total tax losses of USD420 billion¹ but are not on the list.

5. Blacklisted countries are placed in a disadvantaged positions in terms of accessing international development assistance and investment flows. Countries on the EU list faced challenges of accessing funding from some EU instruments and members can also apply tax and non-tax defensive measures in dealing with these countries.

B. Background

6. The EU adopted an external taxation strategy to promote good governance tax principles of tax transparency, fair taxation, and implementation of anti-Base Erosion and Profit-shifting Standards (BEPS). The EU Code of Conduct Group was mandated by the Council of EU in 2016 to come up with a common EU list of non-cooperative tax jurisdictions. The first list was established in 2017.

7. Since 2019, four Forum members were on the list. In February 2023, the Republic of Marshall Islands was reinstated on the list, bringing a total of five Forum members on the list.

Table 2: Comparison of 2020 - 2023 Listings

Feb 2020		Feb 2021		Feb 2022		Feb 2023	
Grey-list	Blacklist	Grey-list	Blacklist	Grey-list	Blacklist	Grey-list	Blacklist
Australia	Fiji	Australia	Fiji		Fiji		Fiji
	Palau		Palau		Palau		Palau
							RMI
	Samoa		Samoa		Samoa		Samoa
	Vanuatu		Vanuatu		Vanuatu		Vanuatu

8. The Secretariat has been working with members on the list to enable compliance with the EU concerns, but the process has been slow. The Secretariat will continue to facilitate the flow of information and to coordinate assistance between the EU and listed members.

C. Recent Discussions & Consultations

9. At their meeting in August 2022, Forum Economic Ministers called for a stronger regional approach to address the challenges faced by members from the onerous demands from the EU through the blacklist on non-cooperative tax jurisdictions and its implications in undermining their sovereign risk ratings.

10. In line with this new mandate, the Secretariat developed a Terms of Reference (TOR) to review the situation and with the support of DFAT and MFAT, the World Bank was engaged to conduct a study on the state of play of the matter in the region. A draft report was received from the World Bank and is provided as **Annex 1** to this paper.

11. The Secretariat, as a member of the OACPS Ad-hoc Contact Group on the EU list, has been part of the Group's dialogue with the EU on the list with a view to reaching mutually acceptable solutions to the issue. The group organized a meeting between the OACPS Ministers/ambassadors and the European Commission in Mauritius at the end of January.

12. Several recommendations emerged from the meeting, including the following:

- The OACPS to use its diplomatic presence to strategically engage relevant international organisations (FATF, OECD, UN etc.) to defend OACPS interests when discussing and

setting with relevant international standards on tax governance and AML/CFT. This should also include active engagement of OACPS in the UN Tax Convention discussion and expedite its observer status in these organisations.

- Coordination and communication between OACPS Member States and the Secretariat to be enhanced.
- An OACPS Virtual Platform on Tax Governance and AML/CFT to be established and to meet at least three times per year virtually and once per year physically. The Secretariat to submit a project proposal to the next Council of Ministers for financing from the EU to set up this platform.
- A Joint OACPS-EU Mechanism for Structured Partnership Dialogue on specific issues concerning AML/CFT and Tax Good Governance to be established.
- The OACPS Secretariat to draw up a Plan of Action for the implementation and follow up of the recommendations and discussions at the Mauritius meeting.

D. Next Steps

13. The World Bank study provides a useful state of play on the EU list in the region and important proposals on next steps. The Secretariat will use the study report to work with Members, especially in securing tax and AML/CFT experts to support them address the issue. The Secretariat will also study the OACP Ambassadors Plan of Action agreed to in Mauritius for implementation and follow up with affected members.

14. The World Bank has the technical expertise to implement tax transparency and BEPS standards and also collaborates with other international organisations to provide support on these areas to countries seeking assistance to deal with the issue.

E. International Advocacy and Engagement

15. The Secretariat will continue to support member states and engage in regional and international advocacy on the matter as directed by Forum Economic Ministers.

16. At the regional level, the offices of the Chairs of the Leaders Forum and FEMM will be the official representation of Forum Members position on the ENTJ. Bilaterally, the Forum Secretariat, in partnership with relevant agencies and partners such as PITAA and IMF, will continue to consult and collaborate at the policy and technical levels with affected Members and relevant agencies.