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INFORMATION PAPER 9: EU NON-COOPERATIVE JURISDICTIONS FOR TAX

Purpose and Summary

Purpose

This paper provides an update on:

- i. the current state of the EU Tax Jurisdiction (ETJ) and Anti-Money Laundry/Counter Terrorist Financing (AML/CTF) listing of member countries assessed by the EU to be in breach of ETJ tax governance criterion and AML/CTF standards and requirements; and
- ii. follow-up actions by PIFS to coordinate regional efforts to assist members get delisted on both ETJ and AML/CFT blacklists.

Summary

Four member countries (Fiji, Palau, Samoa and Vanuatu) are on the ETJ blacklist and Australia is on the greylist. Vanuatu is also on the AML/CTF backlist (high risk third countries with strategic deficiencies). FICs continue to face the risk of being re-listed in either list due to lack of capacity and also the unilateral and unfair nature of assessment by EU. The Pacific is disproportionately singled out by the EU despite its minute share of potential tax avoidance and illicit financial flows. It is also subject to additional scrutiny of its international financial transactions and can be subject to sanctions on investment and development assistance flows by the EU, which would increase the cost of doing business, and affect resource mobilisation and the capacity to implement economic development strategies.

The paper provides an update on three areas of on-going follow-up actions PIFS is involved:

- i. Access to available information;
- ii. Regional dialogues and collective representation; and
- iii. regional assessments and bilateral technical assistance

It is recommended that FEMM be regularly updated on developments on this important agenda item as it has significant bearing on resource mobilisation and financing flows in and out of the region.

PIFS advocacy and advisory role is critical as it is the apex convening regional body for regional and collective representation on the matter. It shall also play a vital role in the dissemination of information flow between members, relevant agencies and the OACPs and the coordination of technical assistance in partnership with relevant agencies such as PITAA and UNDP.

A. Problem/Opportunity Identification

In the latest review by the EU of its lists Fiji, Palau, Samoa and Vanuatu have been blacklisted as being non-cooperative by not complying with ETJ standards and requirements. Australia is greylisted as a cooperative country that is committed but yet to fully comply with the requirements. Vanuatu is also listed as a high-risk third country with strategic deficiencies in their AML/CFT framework. Summarised below in Table 1 are the status of these Member countries in regard to meeting the ETJ and AML/CFT requirements.

Table 1.0: Summary of Listing Status

ETJ Blacklist	Compliance issues
Fiji	Fiji is not a member of the Global Forum on transparency and exchange of information for tax purposes ("Global Forum"), has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, has harmful preferential tax regimes, has not become a member of the Inclusive Framework on BEPS or implemented OECD anti-BEPS minimum standard, and has not resolved these issues yet.
Palau	Palau does not apply any automatic exchange of financial information, has not signed and ratified the OECD Multilateral Convention on Mutual administrative Assistance as amended, and has not resolved these issues yet
Samoa	Samoa has a harmful preferential tax regime and has not resolved this issue yet.
Vanuatu	Vanuatu does not have a rating of at least "Largely Compliant" by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request, facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not resolved these issues yet.
ETJ Greylist	Commitments
Australia	Committed to amend or abolish its harmful tax regime by end 2019 but was prevented from doing so due to a delayed process in the OECD Forum on Harmful Tax Practices, was granted until the end of 2021 to adapt its legislation.
AML/CTF List	Compliance issues
Vanuatu	Vanuatu has been listed as a jurisdiction presenting strategic deficiencies in the EU's AML/CTF regime, particularly in regard to limited supervision and enforcement of international companies' obligations to keep beneficial ownership details and to report that information to the Vanuatu authorities.

2. Out of the 12 countries on the global ETJ blacklist, 4 are FICs and 2 other countries are US Territories in the Pacific i.e. Guam and American Samoa. Whilst it is encouraging to note that in the last two years, three FICS (Cook Islands, Nauru and RMI) have been removed altogether from both the ETJ black and grey lists, recent experience shows that FICs could still be at risk of falling back into either list, with Palau being the most recent example of being moved into the black in 2020 from the grey list in 2019.

3. The Pacific is disproportionately over-represented on the blacklist, noting that in nominal terms, they would account for relatively a very minute percentage of tax revenues foregone by the EU members, compared to other countries on the lists. This gives a highly skewed impression against the Pacific of the quantum of the problem attributed to the Pacific, i.e. in representing one-third of the total number of countries on the ETJ blacklist. The EU Parliament even acknowledges that a mere 2% of global tax losses were caused by jurisdictions on the EU list; whereas the Cayman Islands were found to be the jurisdiction responsible for the most global tax losses, costing others over USD 70 billion a year, or 16.5 % of the estimated total tax losses of USD 420 billion¹.

4. Being listed on ETJ or AML/CTF would have a bearing on the post-Cotonou arrangements whereby blacklisted countries could be placed in a disadvantaged position when it comes to EU development assistance and investment flows. The AML/CTF list of high risk third countries, is based on that of the Financial Action Task Force (FATF)² and its directives. Ten (10) Organization of ACP Secretariat (OACPS) countries, out of a total of twenty (20), are on the list, which could increase based on the changes to the FATF's list, as that entity has added new OACPS countries to its grey list following its meetings in February 2021.

5. Vanuatu is the only member country on the AML/CTF list and bears the additional consequences of having its financial institutions and banks subjected to extra scrutiny of its international transactions involving EU countries. This can entail serious impact on the business profile of the country internationally, given the perception it carries as a blacklisted country on tax governance and AML/CFT standards.

B. Background (Context)

6. The EU had 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 jurisdictions. The first list was established at the end of 2017.

7. In May 2019, PIFS updated the FEMM on the latest EU blacklist (done in March 2019) of non-cooperative tax jurisdictions, which comprised a total of fifteen (15) countries, out of which four (4) countries were Forum Island Countries (FICs): Fiji, Samoa, RMI and Vanuatu. The grey list had a total of thirty-seven (37) countries, out of which five (5) countries were Forum member countries: Australia, Cook Islands, Nauru, Niue, Palau.

8. As an outcome of 2019 FEMM, the Forum Chair, on behalf of all Forum Members, wrote to the President of the European Council (PEC) in Brussels in October 2019 to express concerns with the process, manner and implications of the EU listing of tax jurisdictions on the region. In November 2019, the PEC assured the FEMM Chair that the EU was taking all necessary steps to follow transparent, cooperative and consultative processes in undertaking its assessment. The Pacific ACP (PACP) countries also contributed to a strong Resolution of the ACP Council of Ministers at their 110th session in December 2019, calling for a moratorium on the list and requesting consultations on the matter.

¹ European Parliament resolution of 21 January 2021 on reforming the EU list of tax havens (2020/2863(RSP))

² The Financial Action Task Force (FATF) is an inter-governmental policymaking body whose purpose is to establish international standards, and to develop and promote policies, both at national and international levels, to combat money laundering and the **financing** of terrorism. FATF: (i) sets international standards to combat money laundering and terrorist **financing**; (ii) Assesses and monitors compliance with the FATF standards. (iii) Conducts typologies studies of money laundering and terrorist **financing** methods, trends and techniques. (<https://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/>)

Listing Profiles

9. The lists were further revised and updated in February 2020, which resulted in the Republic of Marshall Islands being removed from both the black and grey lists, along with the removal of the Cook Islands, Nauru and Niue from the grey list. Palau has been now added to the blacklist from 2020. Table 1.0 shows the listings in 2019, 2020 and 2021.

Table 1: Comparison of 2019, 2020, 2021 ETJ Listings

Feb 2019		Feb 2020		Feb 2021	
Grey-list	Blacklist	Grey-list	Blacklist	Grey-list	Blacklist
Australia	Fiji	Australia	Fiji	Australia	Fiji
Cook Islands	Samoa		Palau		Palau
Nauru	RMI		Samoa		Samoa
Niue	Vanuatu		Vanuatu		Vanuatu
Palau					

C. Analysis of Policy Options and Actions

Access to Available Information

10. Listed members are urged to seek timely and regular advice and information from the EU Code of Conduct Group (the body designated by the EU to manage and adjudicate on the EU listing exercise) on their status in regard to compliance with the prescribed standards and criteria. The PEC has assured the EU's support in this process, therefore listed members may wish to take full advantage of this offer of support and therefore should be aware of the relevant information and available assistance. PIFS will continue to facilitate the flow of these information and coordinate assistance between EU, relevant agencies and members.

11. It is important to note that the Defensive Measures³ makes the following reference: "...encourages EU institutions and member states to take Annex I list into account in foreign policy, economic relations and development cooperation with the relevant third countries, in taking a comprehensive approach in relation to compliance with the criteria..." This will have a bearing on post-Cotonou agreement relations and has the potential to put listed countries in a disadvantaged position when it comes to EU development assistance and investment flows.

Regional dialogue and collective representation

12. It is critical that dialogue continues to take place at the regional level, as broadly, the tax issues in question are common across members' jurisdictions. There are certain concerns with the unilateral and unfair way the EU's listing regime works, and these have been well articulated, as per the letter from the Forum Chair to the President of the PEC in 2019. It is, however, important that the Pacific Islands Forum continues to express through the FEMM process and Leaders, the collective concerns of affected members, including capacity limitations, and the prerogative of members as sovereign members to set their policy priorities and the consequential legislative processes.

³ Defensive Measures: the list of effective measures and proportionate defensive measures, that could be applied by EU and its member states, in both tax and non-tax areas, vis-vis the non-cooperative tax jurisdictions.

13. Recent deliberations in the EU Parliament has shown some remorse that the EJT listing may have been too overbearing and unfair on small island developing states and that the EU could be taking a more targeted and fair approach. This can perhaps be attributed to the relentless and persistent submission of ACPs through their various regional institutions, including PIFS and OACPS.

“...EU recognizes the positive impact that the list has already had, but regrets that it does not live up to its full potential as jurisdictions currently on the list cover less than 2 % of worldwide tax revenue losses, making the list confusing and ineffective....deplores the removal of countries with a clear record of promoting BEPS, such as the Cayman Islands, from the list; regrets the insufficient explanation provided to the general public despite European public opinion supporting tighter rules on tax havens...” **European Parliament Resolution: January 2021**

14. Further concerted actions are being contemplated by the OACPS in Brussels this year, including a series of high-level meetings between the designated contact group of ACP Ambassadors and senior EC officials held in April this year and a seminar in May. The seminar was intended to contribute to the dialogue between the OACPS and the EU on their list of non-cooperative tax jurisdictions and that of high-risk third countries pertaining to AML/CFT, in order to find mutually acceptable solutions. It also helped to strengthen information sharing and the sharing of best practices on this issue, as well as allowed for brainstorming on the best approach for OACPS countries in dealing with it.

15. Taking a passive approach in dealing with these matters and liaising with the EU only at the bilateral level, limits the ability of listed Forum Members to expound on issues of common concern in the region. Political dialogue and advocacy at the regional and at the OACPS level is thus critical. It will require robust coordination and timely information flow between listed countries, the PIFS and the OACPS.

Regional assessments and bilateral technical assistance

16. In this regard, PIFS has requested the EU for an extended technical assistance (TA) to continue the regional TA for a tax expert, which lapsed last year, to continue to support on-the-ground capacity and hence expedite the implementation of the required measures. The revised terms of reference of the TA will now include a regional element to help assess the level of compatibility of members' tax regimes with EU tax governance standards and to some extent AML/CTF requirements and help members build their capacity and take a proactive approach to addressing the identified shortfalls.

17. The objective of the AML/CTF initiative is to protect the integrity and sustainability of the EU financial system against the growing risk of money laundering and the financing of terrorism, by strengthening the measures used to monitor the financial transactions of the countries on its list. Promoting tax good governance and AML/CFT is a major challenge, which the Members must embrace since it is in their interest, as well as the EU's, to tackle these challenges, while safeguarding their economic development policies to ensure economic competitiveness and resource mobilisation.

18. In view of the high risk of FICs falling into the AML/CTF blacklist, it will be advisable that further technical assistance specific to this area is to be explored with relevant partners. This additional TA should be responsive to deliver technical support to members when they demand it. This TA is envisaged to be undertaken in close collaboration with Pacific Islands Tax Administration Association (PITAA), which will be the lead technical agency on the regional assessment aspect of the work.

D. Consultation

19. Consultations have been undertaken extensively by PIFS with relevant agencies including UNDP, PITAA and EU on the delivery of the previous TA and the scoping and design of the next phase of TA (refer to para 16).

E. Recommendations

20. It is recommended that FEMM be regularly updated on developments on this important agenda item as it has significant bearing on resource mobilisation and financing flows in and out of the region.

21. PIFS advocacy and advisory role is critical as it is the apex convening regional body for regional and collective representation on the matter. It shall also play a vital role in the dissemination of information flow between members, relevant agencies and the OACPS and the coordination of technical assistance in partnership with relevant agencies such as PITAA and UNDP.

F. Next Steps

22. This will entail finalising the scope and design of TA for regional assessment and bilateral technical support to listed members in partnership and collaboration with agencies such as PITAA, and UNDP, as well as continue to engage with OACPS in Brussels and facilitate information exchange amongst relevant parties.

G. Regional Governance Implications

23. There will be no regional governance implications in the near future. The role and status of PITAA and Oceania Customs Organization (OCO) in the scheme of CROP hierarchy may need to be revisited in the longer term since this type of work will entail deeper institutional collaboration with these agencies over time.

H. International Advocacy and Engagement Implications

24. PIFS will be collaborating extensively with the OACPS in Brussels as the central point of international advocacy on the matter. At the regional level, the offices of the Chairs of the Leaders Forum and FEMM will be the official representation of members' position on the ETJ and AML/CTF agenda. Bilaterally, PIFS, in partnership with relevant agencies and partners such as PITAA, will continue to consult and collaborate at the policy and technical levels with affected members and relevant agencies.

Pacific Islands Forum Secretariat
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