



## PACIFIC ISLANDS FORUM SECRETARIAT

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### FORUM ECONOMIC MINISTERS MEETING

### FORUM ECONOMIC OFFICIALS MEETING

10-12 August 2022

Port Vila, Vanuatu

## INFORMATION PAPER 7: EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

### Purpose and Summary

#### Purpose

This paper provides an update on:

- i. the status of the EU Non-cooperative Tax Jurisdiction (ENTJ) listing of Forum Member countries assessed by the EU to be in breach of ENTJ tax governance criterion; and
- ii. actions by PIFS to coordinate regional efforts to assist members to get delisted from the ENTJ list.

#### Summary

On 24 February 2022, the Council of the European Union (EU) updated the EU list of non-cooperative jurisdictions for tax purposes, and decided to maintain nine countries/territories, which include four Forum Member countries (Fiji, Palau, Samoa and Vanuatu) on the ENTJ blacklist (so-called Annex I list). EU asserts that these countries have either have not engaged in a constructive dialogue with the EU on tax governance or have failed to deliver on their commitments to implement the necessary reforms.

Forum Island countries (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 the EU. They are also subject to additional scrutiny of their international financial transactions and can be subject to sanctions on investment and development assistance flows by the EU. This would increase the cost of doing business and affect access to and mobilisation of development finance and the capacity to implement economic development strategies.

The advocacy and advisory role of the Pacific Islands Forum (PIF) is critical as it is the apex convening body for regional and collective representation on the matter. The Forum Secretariat also plays 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 Pacific Islands Tax Administrators Association (PITAA) and UNDP.

#### A. Overview

In the latest review by the EU on 24 February 2022, Fiji, Palau, Samoa and Vanuatu still remain on the EU blacklist on noncooperative jurisdictions on tax. **Table 1** provides the EU's reasons for blacklisting the four Forum Member countries and recent actions taken by the affected members

to address the issues and concerns raised by the EU.

**Table 1: Summary of Listing Status**

<b>Countries</b>	<b>EU's summary of compliance issues &amp; actions taken to date</b>
Fiji	<p>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 (Exporting Companies, Income Communication Technology (ICT) Incentive, Concessionary rate of tax for regional or global headquarters), has not become a member of the Inclusive Framework on BEPS or implemented OECD anti-BEPS minimum standards, and has not resolved these issues yet.</p> <p><b>Actions taken to date:</b> Fiji have complied with all, except two, of the deficiencies highlighted by the EU. They engaged the IMF to review its taxation policies in 2021 and enacted amendments to the Income Tax Act (ITA) in 2021. Fiji has clarified that its tax policies are in line with international standards and do not create tax avoidance opportunities to allow EU businesses to shift their profits to Fiji.</p>
Palau	<p>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.</p> <p><b>Actions taken to date:</b> Palau continued consultations with the EU on issues related to the EU list, including commitments to the OECD Forum recommendations on harmful tax practices (HTP), steps to reform their preferential tax regime and strengthen their legislation.</p>
Samoa	<p>Samoa has a harmful preferential tax regime (Offshore Business) and has not resolved this issue yet.</p> <p><b>Actions taken to date:</b> Samoa remained engaged with the EU on this matter. Samoa expressed its intention to move away from the preferential tax treatment to a territorial tax system but proposed a measured approach to the transition to mitigate potential disruptive impacts on the country. Legislative changes to facilitate the transition are also in train.</p>
Vanuatu	<p>Vanuatu facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not resolved this issue yet.</p> <p><b>Actions taken to date:</b> Vanuatu held bilateral consultations with EU in 2021 and discussed the state of play on Vanuatu's implementation of EU requirements and highlighted their commitment to introduce economic substance requirements and shared their draft legislation with EU. The draft bill is expected to be enacted by the end of 2021.</p>

2. Of the nine countries currently on the global ENTJ blacklist, four are FICs and two are US territories in the Pacific i.e. Guam and American Samoa. Whilst it is encouraging to note that in the last two years, four Forum Members (Australia, Cook Islands, Nauru and RMI) have been removed from both the ENTJ black and grey lists, recent experience shows that Forum Members are still at risk of falling back into either list, with Palau being the most recent example of being moved into the blacklist in 2020 from the grey list.

3. The Pacific is disproportionately over-represented on the EU’s blacklist, noting that in nominal terms, they account for a relatively small percentage of tax revenues foregone by 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 two-thirds of the total number of countries on the ENTJ blacklist. The EU Council 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 USD70 billion a year, or 16.5 % of the estimated total tax losses of USD 420 billion<sup>1</sup>, but is not on the list.

4. Being listed on the ENTJ would mean that blacklisted countries could be placed in a disadvantaged position when it comes to accessing international development assistance and investment flows.

**B. Background**

5. 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 tax jurisdictions. The first list was established at the end of 2017.

6. In May 2019, the Forum Secretariat 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, of which four countries were Forum Members: Fiji, Samoa, RMI and Vanuatu. The grey list had a total of thirty-seven (37) countries, out of which five countries were Forum member countries: Australia, Cook Islands, Nauru, Niue, Palau.

*Listing Profiles*

7. Based on the lists of February 2020, Republic of Marshall Islands was removed from both the black and grey lists, along with the removal of the Cook Islands, Nauru and Niue from the grey list. In February 2021, EU revised the lists which included Australia’s inclusion in EU’s grey list, and Palau blacklist from 2020. In October 2021, Australia was dropped from the greylist. Four FICs are still blacklisted by EU in its latest revision of October 2021. **Table 2** shows the EU listings in 2019, 2020, 2021 and February 2022. The next revision to the lists by EU is expected in October 2022.

*Table 2: Comparison of 2019, 2020, 2021, and February 2022 ETJ Listings*

Feb 2019	Feb 2020	Feb 2021	Oct 2021	Feb 2022
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<sup>1</sup> European Parliament resolution of 21 January 2021 on reforming the EU list of tax havens (2020/2863(RSP))

Grey-list	Blacklist	Grey-list	Blacklist	Grey-list	Blacklist	Grey-list	Blacklist	Grey-List	Blacklist
Australia	Fiji	Australia	Fiji	Australia	Fiji		Fiji		Fiji
Cook Islands	Samoa		Palau		Palau		Palau		Palau
Nauru	RMI		Samoa		Samoa		Samoa		Samoa
Niue	Vanuatu		Vanuatu		Vanuatu		Vanuatu		Vanuatu
Palau									

## C. Discussions

### *Access to Available Information*

8. 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 regarding 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 ensure access to all relevant information and available assistance. The Forum Secretariat will continue to facilitate the flow of information and to coordinate assistance between the EU, relevant agencies and Members.

9. It is important to note that the Defensive Measures<sup>2</sup> 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...”

### *Regional dialogue and collective representation*

10. 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 Forum Countries continue to express, through the FEMM, PIF, as well as the PACP processes, the collective concerns of affected Forum Members, including capacity limitations, and the prerogative of sovereign Members to set their policy priorities and the consequential legislative processes.

11. Recent deliberations in the EU Parliament have 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,*

<sup>2</sup> 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.

*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**

12. 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 Forum countries, the Forum Secretariat and the OACPS.

#### *Regional assessments and bilateral technical assistance*

13. In this regard, the Forum Secretariat 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 includes a regional element to help assess the level of compatibility of Members’ tax regimes with EU tax governance standards and help Members build their capacity and take a proactive approach to addressing the identified shortfalls.

14. The TA would deliver technical support to the Members on the EU list and also work in close collaboration with PIFS and the Pacific Islands Tax Administration Association (PITAA). To date, however, it has been difficult to secure the services of a competent tax expert despite attempts to advertise the position and recruit the expert.

#### **D. Consultation**

15. Consultations have been undertaken with relevant agencies including UNDP, PITAA, and EU on the delivery of the previous TA and the scoping and design of a next phase of TA.

16. The Forum Secretariat has been part of an OACPS Ad-hoc Contact Group on the ENTJ. This group has been engaged in dialogue with the EU on the list of NTJ and countries with strategic AML/CFT deficiencies with a view to reaching mutually acceptable solutions to the issue. The group organized a seminar on ENTJ and AML/CFT in October with the outcomes of the seminar to be presented the OACPS Ministerial Contact Group for deliberation. The Secretariat has also been involved in dissemination of information between Members, relevant agencies and the OACPS and coordination of technical assistance in partnership with relevant agencies such as PITAA and UNDP.

#### **E. Next Steps**

17. Next steps on this issue are to secure tax and AML/CFT experts to provide technical support to listed Members in collaboration with the Forum Secretariat and PITAA, as well as continue to engage with OACPS in Brussels to facilitate information exchange amongst relevant parties. The Secretariat held recent discussions with the IMF to solicit their support in this area.

#### **F. International Advocacy and Engagement Implications**

18. The Forum Secretariat is a member of the OACPS Ad-hoc Contact Group on ENTJ and will continue to support international advocacy on the matter and provide requisite support to Member states as directed by Forum Economic Ministers.

19. 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.

*Pacific Islands Forum Secretariat*  
*24 May 2022*