

The BEPS Minimum standards and the EU list of non-cooperative jurisdictions

Frederik Heitmüller

PhD Candidate, Leiden University

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Universiteit
Leiden
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EU list of non-cooperative jurisdictions

- Objectives: “tackle tax fraud, evasion and avoidance”, “addressing external challenges to EU countries' tax bases”
- 3 criteria:
 - Exchange of information
 - Fair taxation
 - BEPS Minimum standards
 - (Potentially in the future: Pillars 1 and 2)
- Defensive measures:
 - Tax measures: Increased audit, higher withholding taxes for outbound payments, deduction limitations, limitation of participation exemption
 - Non-tax measures: Economic agreements, channeling of EU funds
- Criticism in literature: Compliance burden for developing countries, unequal application of criteria (developing countries vs. major powers vs. EU Member States), lack of procedural transparency
- My point: Mismatch between objective, BEPS Minimum standards criterion and defensive tax measures

Action	Type of non-compliance by a third country	Potential „threat“ to EU Member States	Defensive tax measure appropriate?	More adequate defensive measure
5 (preferential regimes)	Not implementing substance requirement	Loss of tax revenue	Yes	
5 (exchange of rulings)	Not exchanging ruling with MS	Loss of tax revenue	Yes	
6 (treaty abuse)	Not accepting anti-avoidance rule in treaties with MS	Loss of tax revenue	No (probably prohibited under treaty)	Termination of treaty
	Not accepting anti-avoidance rule in treaties with other countries	-	No (there might not necessarily be financial flows)	
13 (CbCR)	Not sending CbCR to EU MS	Loss of tax revenue	No	Requiring CbCR locally
	Not sending CbCR to other countries	Loss of competitiveness for EU MNEs abroad	No	
	Not implementing privacy and appropriate use safeguards	Double taxation for EU MNEs investing abroad /competitive disadvantage with domestic companies in third country markets	No (would lead to even more higher tax burden for EU MNEs)	
14 (dispute resolution)	Not facilitating MAP procedure	Double taxation for EU MNEs investing abroad	No (would lead to even more higher tax burden for EU MNEs)	

Should Pillar 1 and 2 be included as criteria?

- Non-compliance with Pillar 1:
 - Not taxing revenues as market jurisdiction pursuant to pillar 1
 - Maintenance of digital service tax
 - Not providing relief from double taxation if another market country taxes under pillar 1
 - All potentially economically harmful for EU, but not a tax avoidance risk
- Non-compliance with Pillar 2
 - Non-compliance by other headquarter
 - Loss of competitiveness for EU business in third country markets
 - Non-compliance by source jurisdiction
 - Pillar 2 rules provide ways to tax if other country does not tax

Conclusion

- Compliance with BEPS 1.0 can be removed from the criteria of the list of non-cooperative jurisdiction (except for criteria related to exchange of tax rulings)
- Compliance with BEPS 2.0 should a priori not be added to the criteria

Thank you!

f.heimuller@law.leidenuniv.nl

Twitter: @heimuellerf
<https://globtaxgov.weblog.leidenuniv.nl/>

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