

ADVISORY | INDUSTRY INFORMATION

The British Virgin Islands and the EU List of Non-Cooperative Tax Jurisdictions

The Council of the European Union (“EU”) has announced that following a meeting of the EU’s Economic and Financial Affairs Council (“ECOFIN”), the British Virgin Islands (“BVI”) has been moved to Annex I of the EU’s list of non-cooperative jurisdictions for tax purposes (“Annex I”) effective 14 February 2023.

The rationale for the move is that the BVI was not sufficiently in compliance with the Organisation for Economic Co-operation and Development’s (“OECD”) standard on exchange of information on request (“EOIR”) (criterion 1.2 of the list).

The BVI Government [announced](#) that it has requested a supplementary review be granted by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) that would more accurately reflect the BVI’s current legislative status, further to amendments made to the BVI Business Companies Act and the BVI Business Companies Regulations, which came into force on 1 January 2023.

Background

Whether a jurisdiction is added to Annex I is based on compliance with tax transparency criteria pursuant to the OECD’s Common Reporting Standard (“CRS”). Specifically, the criteria require a jurisdiction to possess at least a “largely compliant” rating by the Global Forum with respect to both the CRS and the EOIR standard.

In November 2022, the Global Forum downgraded the BVI’s rating from “largely compliant” to “partially compliant”. A rating less than “largely compliant” means a jurisdiction is automatically added to Annex I.

Limited or no impact

The inclusion of the BVI on Annex I will have limited or no direct immediate consequences for investors or clients using BVI structures.

- EU clients and investors can continue to invest and be marketed to as normal. In particular, inclusion on Annex I does not prevent a BVI investment fund from being marketed into the EU in accordance with the national private placement rules pursuant to the EU Alternative Investment Fund Managers Directive. It will prevent EU financial institutions from establishing a new securitisation special purpose entity in the BVI pursuant to the EU Securitisation Regulation but this is unlikely to be relevant to our clients.
- There are no EU level sanctions resulting from being moved to Annex I. However, the EU provided guidance in 2019 on a number of types of administrative and legislative measures in the tax area that it recommended should be applied by EU member states from 2021. Administrative measures consist of reinforced monitoring of transactions and increased risk audits for taxpayers with connections to a listed jurisdiction. Legislative measures include non-deductibility of costs incurred in a listed jurisdiction, controlled foreign companies’ rules, withholding tax measures and limitation of the participation exemption on shareholder dividends. To date, a number of member states have applied measures of both an administrative and legislative nature to Annex I jurisdictions. In practice, EU member states apply many if not all such measures in the case of non-double tax treaty jurisdictions, or tax neutral jurisdictions, such as the BVI, irrespective of any listing in Annex I.

- EU requirements for mandatory reporting in respect of certain cross-border arrangements (DAC 6) means that tax deductible payments made by an EU entity to an “associated entity” in a low tax or zero tax jurisdiction are reportable in certain cases. The requirement to report such payments is broader if the associated entity is listed in Annex I. The detail of DAC 6 is left to local implementing law.

- The EU intends that EU funding should not be made available to or through entities established in a listed jurisdiction. This is not anticipated to be relevant to the majority of our clients.

We are continuously monitoring the situation and will advise further in the event of any updates, but remain confident that the BVI has, and will continue to, address any concerns of the EU.

Further information

Walkers practices six laws from an international network of ten offices across the Americas, Asia and Europe. For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below:

Legal Services



Lucy Frew
Partner
Cayman Islands
+1 345 814 4676
lucy.frew@walkersglobal.com



Iona Wright
Senior Counsel
British Virgin Islands
+1 345 914 6356
iona.wright@walkersglobal.com



Matthew Cowman
Managing Partner
British Virgin Islands
+1 284 852 2208
matthew.cowman@walkersglobal.com



Jack Boldarin
Managing Partner
London
+44 (0)20 7220 4995
jack.boldarin@walkersglobal.com



Colm Dawson
Partner
Hong Kong
+852 2596 3357
colm.dawson@walkersglobal.com



Sara Hall
Partner
London
+44 (0)20 7220 4975
sara.hall@walkersglobal.com



Andrew Howarth
Partner
Cayman Islands
+1 345 814 4561
andrew.howarth@walkersglobal.com



John Rogers
Managing Partner
Singapore
+65 6595 4673
john.rogers@walkersglobal.com



Daniel Wood
Managing Partner
Dubai
+971 4 363 7912
daniel.wood@walkersglobal.com

Walkers Professional Services



Steven Manning
Chief Executive Officer – WPS
Cayman Islands
+1 345 814 7612
steven.manning@walkersglobal.com



Nicholas Quin
Managing Director
Cayman Islands
+1 345 914 4295
nicholas.quin@walkersglobal.com



Hannah Sagala
Corporate Services Executive
British Virgin Islands
+1 284 542 2286
hannah.sagala@walkersglobal.com



Dorothy Scott
Managing Director
Cayman Islands
+1 345 914 4202
dorothy.scott@walkersglobal.com



Andrew Gibson
Director of Legal
Cayman Islands
+1 345 814 4573
andrew.gibson@walkersglobal.com