KRESTON INTERNATIONAL

Knowing you.

International Tax Newsletter

EU blacklist of tax havens

January 2018

A global network of independent accounting firms

Follow us on:

European Union blacklist of tax havens

On 5 December 2017, the EU's Economic and Financial Affairs Council ("ECOFIN") published the first ever EU list of non-cooperative tax jurisdictions.

This 'blacklist' comprises 17 countries deemed to have failed to meet agreed tax good governance standards. In addition, 47 countries have committed to addressing deficiencies in their tax systems and to meet the required criteria.

These 47 countries on the so called 'grey list' must meet EU criteria by the end of 2018, or 2019 for developing countries without financial centres, to avoid being listed.

Why has the list been produced?

It is part of the EU's work to clamp down on tax evasion and avoidance. The aim is to help the EU to deal more robustly with external threats to Member States' tax bases and to tackle countries that consistently refuse to play fair on tax matters.

Member States were not assessed for the list - the list is a tool to deal with external threats to Member States' tax bases. It is also a means to promote more dialogue and cooperation with international partners on tax issues.

How was the list compiled?

A 3 step process:

1: Pre-Selection: The Commission pre-assessed 213 countries using indicators to help classify countries according to their economic ties with the EU, financial activity, legal and institutional stability, and tax good governance levels. This data was compiled in a Scoreboard to determine which countries to screen in more depth.

2: Screening: All jurisdictions chosen for screening were formally contacted, to explain the process and invite them to engage with the EU. Member State experts then assessed the selected jurisdictions' tax systems in-depth, using the agreed criteria.

3: Listing: Once the experts had finished the screening stage, they delivered their findings. A letter was sent to each jurisdiction, either confirming that they complied with the criteria, or highlighting deficiencies in their tax systems. Jurisdictions were asked to make high level commitments to address identified deficiencies within a set time period. Those that did not do so were put forward for listing.

Countries on the blacklist:

American Samoa
Bahrain
Barbados
Grenada
Guam
Korea (Republic of)
Macao SAR
Marshall Islands
Mongolia
Namibia
Palau
Panama
Saint Lucia
Samoa
Trinidad and Tobago
Tunisia
United Arab Emirates

Criteria used for listing:

Transparency: The country should comply with international standards on automatic exchange of information and information exchange on request. It should also have ratified the OECD's multilateral convention or signed bilateral agreements with all Member States, to facilitate this information exchange.

Fair Tax Competition: The country should not have harmful tax regimes, which go against the principles of the EU's Code of Conduct or OECD's Forum on Harmful Tax Practices. Those that choose to have no or zero-rate corporate taxation should ensure that this does not encourage artificial offshore structures without real economic activity.

BEPS implementation: The country must have committed to implement the OECD's Base Erosion and Profit Shifting (BEPS) minimum standards.

Not every country that failed to meet the criteria is on the list. The EU list was always intended as a last resort option – when all other efforts to engage with the country had failed. Jurisdictions that were prepared to cooperate were not listed, so long as they gave a clear and concrete commitment to address the identified tax deficiencies.

Special Circumstances

8 jurisdictions (Antigua and Barbuda, Anguilla, Bahamas, British Virgin Islands, Dominica, St Kitts and Nevis, Turks and Caicos, US Virgin Islands) that were badly hit by the hurricanes in summer 2017 have been given until early 2018 to respond to the EU's concerns.

Special consideration was also given to the situation of developing countries. Least Developed Countries without financial centres were automatically excluded from the screening process, while other developing countries without financial centres were given more time to address their shortcomings.

What sanctions will apply to listed countries?

The EU list is now linked to EU funding in the context of the European Fund for Sustainable Development (EFSD), the European Fund for Strategic Investment (EFSI) and the External Lending Mandate (ELM). Funds from these instruments cannot be channelled through entities in listed countries.

Only direct investment in these countries (i.e. funding for projects on the ground) will be allowed, to preserve development and sustainability objectives.

The list is also referenced in other relevant legislative proposals:
Country-by-Country reporting - proposal includes stricter reporting requirements for multinationals with activities in listed jurisdictions.

Countries on the grey list:

Albania
Andorra
Armenia
Aruba
Belize
Bermuda
Bosnia & Herzegovina
Botswana
Cape Verde
Cayman Islands
Cook Islands
Curaçao
Faroe Islands
Fiji
Former Yugoslav Republic of Macedonia
Greenland
Guernsey
Hong Kong SAR
Isle of Man
Jamaica
Jersey
Jordan
Labuan Island
Liechtenstein
Malaysia
Maldives
Mauritius
Montenegro
Morocco
Nauru
New Caledonia
Niue
Oman
Peru
Qatar
Saint Vincent & Grenadines
San Marino
Serbia
Seychelles
Swaziland
Switzerland
Taiwan
Thailand
Turkey
Uruguay
Vanuatu
Vietnam

Proposed transparency requirements for intermediaries - a tax scheme routed through an EU listed country will be automatically reportable to tax authorities.

Member States have agreed on a set of countermeasures which they can choose to apply against the listed countries. These include measures such as increased monitoring and audits, withholding taxes, special documentation requirements and anti-abuse provisions.

Will the list be updated?

The list will be updated at least once a year based on the continuous monitoring of listed jurisdictions, and those that have made commitments to improve their tax systems. Member States may also decide to screen even more countries in 2018. An interim report will be prepared by mid-2018 to assess progress made.

Further information:

Through these international tax bulletins we aim to keep you informed of international tax and transfer pricing developments. For specific comments, questions or concerns, please contact the editor.

Mark Taylor
Tax Director
Duncan & Toplis
Email: mark.taylor@duntop.co.uk

For more information please contact the author:

Lois Tack
Tax Manager
Duncan & Toplis
Email: lois.tack@duntop.co.uk