Euro Tax Flash

Issue 301 – September 20, 2016

Euro Tax Flash
from KPMG's EU Tax Centre

EU Commission takes first steps to create common EU list of non-cooperative list of tax jurisdictions

External strategy for Effective Taxation – Non-cooperative third country tax jurisdictions – Assessment and listing – 'Scoreboard indicators'

As part of the EU's efforts to clamp down on tax evasion and avoidance, on September 15, 2016 the European Commission released a set of 'scoreboard indicators', the first step of the new EU listing process to identify and address non-cooperative third country tax jurisdictions. The scoreboard provides an objective overview of the tax systems of third-country jurisdictions to help Member States identify which countries may require further screening as regards tax good governance issues. The EU Commission further specified that it is aiming for this screening process to be completed by summer 2017 so that a definitive list of non-cooperative jurisdictions can be released by the end of 2017.

Background

In January 2016, the EU Commission presented its Anti-Tax Avoidance Package (see ETF 273), following its Action Plan for Fair and Efficient Corporate Taxation launched in June 2015 (see ETF 253). Among the raft of measures proposed was a common approach to third country jurisdictions on tax good governance matters. The aim was to replace the current patchwork of

national lists with a single EU listing system which would provide *"clear, coherent and objective criteria"*. The new listing process, which was further endorsed by the Member States at the ECOFIN meeting on May 25, 2016 (see ETF 283), foresees a three-step approach:

- **Scoreboard**: the EU Commission issues a pre-assessment of third country jurisdictions (i.e. excluding the 28 EU Member States and their associated territories) based on factual information and risk indicators. Member States will then decide which jurisdictions to screen against tax good governance criteria.
- **Screening**: A screening and dialogue process will then be launched with the jurisdictions identified above.
- **Listing**: Once the screening process is complete, jurisdictions that refused to cooperate or engage with the EU regarding tax good governance concerns will be put on the EU blacklist.

Scoreboard indicators

According to the EU Commission's press release, the scoreboard was devised by analyzing the tax systems of every non-EU country in the world against the three following 'scoreboard indicators', which were designed to provide an objective assessment of the risk that a third country's tax system could potentially be used to facilitate tax avoidance:

- Strength of **economic ties** with the EU: data examined included trade data, affiliates controlled by EU residents and bilateral foreign direct investment (FDI) flows
- Magnitude of **financial activity** in the jurisdiction: the level of financial services was measured against the financial activity and real economy in each country, using data including FDI flows, financial income flows and statistics on foreign affiliates
- **Stability factors**: general governance indicators, such as anti-corruption measures and regulatory quality, were measured to determine if the jurisdiction would be viewed as a safe location by tax avoiders/evaders.

The scoreboard of third party jurisdictions is divided into five Tables:

I. Jurisdictions that rank high in all three selection indicators (81 countries)

II. Jurisdictions that have a tax transparency agreement with the EU (5 countries; Andorra, Liechtenstein, Monaco, San Marino and Switzerland)

III. Jurisdictions that do not rank high in all three indicators (60 countries)

IV. Jurisdictions with no economic data (19 countries)

V. Jurisdictions listed by the UN as "Least Developed Countries" (LDC) (in recognition of the particular constraints they face) (48 countries)

Countries in the first two tables above were then also subjected to a risk assessment (see below). The press release does not refer to any further work that may be done with regard to those countries that do not rank high in all three indicators (Table III) or those with a lack of data (Table IV). Finally, although the LDCs were listed separately, the EU Commission's FAQs state that those countries with particularly well developed financial centers or attractive tax regimes may nonetheless be selected for screening. However, as part of the dialogue process the EU will be ready to work with them to find solutions in the context of their capacity constraints and other obstacles.

Risk assessment

The EU Commission then carried out a basic risk assessment of the potential risk level of countries identified in Tables I and II to facilitate tax avoidance using the following three risk indicators:

- Lack of transparency and exchange of information (on request and automatic) under international standards
- The existence of preferential tax regimes as identified by the Commission using publicly available information
- No corporate income tax or a zero corporate tax rate

No country was found to have all three risk indicators. There were forty-five countries with two indicators and thirty-four countries had one risk indicator. The remaining seven countries had no risk indicators at all.

The EU Commission's press release stresses that a country's appearance in a particular part of the scoreboard and, where applicable, their resulting risk assessment score, should not be regarded as a judgment on – or a preliminary list of - uncooperative jurisdictions. Therefore, being on the risk assessed list does not mean a country will be screened, though it does seem likely that the final list of countries to be screened will primarily be drawn from Tables I and II of the scoreboard, along with those LDCs that raise a particular concern for the EU based on their international status as financial centers and the attractiveness of their tax regimes.

Next steps

The Code of Conduct Group are expected to decide on the final list of countries to be screened in October 2016, with the Member States endorsing the list by the end of 2016 and the selected jurisdictions informed shortly thereafter.

The screening process will then consist of an assessment of the tax good governance standards of the affected third country jurisdictions and will give them the opportunity to start a dialogue on potential cooperation with the EU:

- Discussions with the affected jurisdictions are expected to take place in spring 2017
- The results of the screening phase will be discussed in the Code of Conduct Group and within the Council around June-July 2017
- Further discussions will be held with the affected jurisdictions until late 2017 to confirm commitments made during the initial dialogue phase.

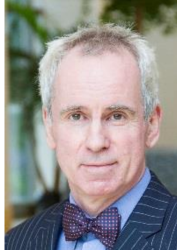
Once the screening phase is finalized, the Code of Conduct Group will present its recommendations on jurisdictions to be included on the EU blacklist by October 2017. The final list will then be reviewed and approved by the Member States by December 2017 and the relevant third country jurisdictions notified of their status shortly thereafter. For those countries blacklisted, the aim is to have consistent and common counter-measures applied by all Member States in order to encourage and incentivize the listed jurisdictions to improve their tax systems whilst protecting the tax bases of EU Member States in the meantime. The final sanctions are hoped to be agreed before the screening phase begins.

EU Tax Centre Comment

As outlined in the EU Commission's press release, the scoreboard and list of countries to be screened do not and will not constitute any indication of an initial blacklist or pre-judgment of the identified countries' cooperation on tax matters. As the common EU list is intended as a "last resort" option to deal with third countries that refuse to respect tax good governance principles, when all other attempts to engage with these countries have failed, it remains to be seen how many jurisdictions will be concerned and to what extent Member States will use the final list as a replacement for their national blacklists.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

Robert van der Jagt
Chairman, KPMG's EU Tax Centre and
Partner, Meijburg & Co



Barry Larking
Director EU Tax Services, KPMG's EU Tax Centre and
Director, Meijburg & Co

---

kpmg.com/socialmedia

kpmg.com/app

Privacy | Legal

You have received this message from KPMG International Cooperative in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To unsubscribe from the Euro Tax Flash mailing list, please e-mail KPMG's EU Tax Centre mailbox (eutax@kpmg.com) with "Unsubscribe Euro Tax Flash" as the subject line. For non-KPMG parties – please indicate in the message field your name, company and country, as well

as the name of your local KPMG contact.

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

© 2016 KPMG International Cooperative (“KPMG International”), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.