Euro Tax Flash from KPMG's EU Tax Centre

ECOFIN decides to remove eight countries from the EU list of non-cooperative jurisdictions for tax purposes

ECOFIN – Code of Conduct Group – EU Blacklist – Tax Transparency

On January 23, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) agreed to remove eight countries from the EU blacklist of non-cooperative jurisdictions, first published on December 5, 2017 (see ETF 345), and move them to the "grey list" of countries subject to close monitoring. Their removal from the blacklist and placement on the grey list was a response to the commitment by these countries to reform their tax systems in order to bring them in line with the conditions stipulated by the European Union.

Background

The EU blacklist of non-cooperative jurisdictions for tax purposes is part of the EU's effort to clamp down on tax avoidance and harmful tax practices and follows the European Commission's Anti-Tax Avoidance Package presented in January 2016. Among the raft of measures proposed at the time 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 was endorsed by the Member States on May 25, 2016 (see ETF 283) and followed a three step approach comprising a pre-assessment of countries, an extensive screening phase and, finally, the listing of non-cooperative jurisdictions.

After pre-assessment of third country jurisdictions based on factual information and risk indicators such as economic ties, financial activity and stability factors (Scoreboard, see ETF 301), an extensive screening and dialog process with the identified jurisdictions took place, which resulted in the Council's conclusions on the EU list of non-cooperative jurisdictions for tax purposes issued on December 5, 2017. Out of the ninety-two jurisdictions chosen for screening, seventeen jurisdictions were placed on the blacklist. While listed jurisdictions were encouraged to make the required changes and to engage in discussions with the Code of Conduct Group, which is in charge of monitoring the criteria and commitments made, the ECOFIN further recommended that the list be revised at least once a year.

Revision of the 2017 EU Blacklist of non-cooperative tax jurisdictions

On January 23, 2018, the ECOFIN decided to remove Barbados, Grenada, South-Korea, Macao SAR, Mongolia, Panama, Tunisia and the United Arab Emirates from the blacklist, based on the Code of Conduct Group's assessment of the commitments made by these jurisdictions. This assessment is based on the following criteria:

- tax transparency: compliance with international standards on the automatic exchange of information (Common Reporting Standard) and on the exchange of information on request, ratification of the OECD Multilateral Convention or bilateral agreements with all Member States, and the facilitation of the exchange of information. Compliance was assessed based on peer reviews in the OECD Global Forum on Transparency;
- fair taxation – the presence of harmful tax regimes, assessed based on reviews by the OECD Forum on Harmful Tax Practices; and
- implementation of the BEPS minimum standards measured according to OECD BEPS Inclusive Framework reviews.

The decision, which was adopted without discussion by means of an amendment to the ECOFIN's conclusions of December 2017, moves the eight jurisdictions from Annex I of the conclusions (non-cooperative jurisdictions) to Annex II (cooperation with respect to commitments taken) and therefore leaves nine jurisdictions on the list of non-cooperative jurisdictions, i.e. American Samoa, Bahrain, Guam, Marshall Islands, Namibia, Palau, Saint Lucia, Samoa and Trinidad and Tobago.

Next steps

Although the Council recommended that the list be revised at least once a year, the Code of Conduct Group may suggest an update at any time. Commitments taken by the grey-listed jurisdictions will be monitored and should be implemented by the end of 2018 for most countries, with a possible extension to 2019 for developing countries. The European Commission called for all commitment letters received from the various jurisdictions to be made publicly available, although the ECOFIN underlined that any publication should be subject to the relevant jurisdiction's prior approval.

Pending changes, the EU and the Member States are expected to apply defensive measures against the blacklisted countries. In particular, the European Commission recently announced that it will present a series of sanctions at the EU level in the coming weeks, such as limiting access to EU funding. With respect to national measures, additional discussions are expected to take place at the Council level.

EU Tax Centre comment

The ECOFIN's decision to revise the EU blacklist shortly after it was first published is likely to raise criticism, in particular as regards the perceived lack of transparency and credibility of both the existing blacklist and the underlying listing process. Although the ECOFIN considers that this revision reflects the effectiveness of the listing process in promoting good tax governance requirements with non-cooperative countries, some members of the European Parliament have already expressed concerns and the revised list should be discussed during the next plenary session at the beginning of February. Especially the removal of Panama from the blacklist is expected to come in for criticism given the extensive debates about offshore structures in the context of the Panama Papers.

It also remains to be seen how the Member States will respond to the letter from US Treasury Secretary Steven Mnuchin to the ECOFIN, in which he asks the latter to reconsider the inclusion of the US territories of American Samoa and Guam on the list.

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

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