KPMG

Euro Tax Flash from KPMG's EU Tax Centre

Background

Counter-measures on the EU Blacklist

EU Tax Centre Comment

European Commission publishes guidelines on effective counter-measures on the EU Blacklist

European Commission – Tax Transparency – EU Blacklist

On March 21, 2018, the European Commission published guidelines on the use of EU funds that are meant to ensure that EU funds are not channeled through non-cooperative tax jurisdictions (the EU "Blacklist").

Background

The EU blacklist is part of the EU's efforts to clamp down on tax avoidance and harmful tax practices and follows the European Commission's Anti-Tax Avoidance Package presented in January 2016 (see ETF 273).

The initial EU list of non-cooperative jurisdictions for tax purposes was approved by the ECOFIN Council on December 5, 2017 (see ETF 345) and included 17 jurisdictions (of the 92 chosen for screening). Since its adoption, several changes were made to the blacklist (see ETF 353 and ETF 359), with some countries being removed (Bahrain, Barbados, Grenada, the Marshall Islands, South Korea, Macao SAR, Saint Lucia, Mongolia, Panama, Tunisia and the United Arab Emirates), while others were added (Bahamas, Saint Kitts and Nevis, as well as the US Virgin Islands). The late addition of the latter Caribbean jurisdictions was a result of a suspension of the screening and listing process granted due to the impact of hurricanes in summer 2017.

Nine jurisdictions are currently blacklisted: American Samoa, the Bahamas, Guam, Namibia, Palau, Saint Kitts and Nevis, Samoa, Trinidad and Tobago, and the US Virgin Islands.

Countries that have been delisted from the Blacklist were instead added to the grey list, which means that commitments made by the relevant jurisdictions will continue to be subject to close

monitoring.

Once the list was published in December 2017, the European Commission suggested several possible counter-measures on blacklisted countries, such as increased monitoring and audits, withholding taxes, special documentation requirements and anti-abuse provisions. Besides the amendments with respect to EU funding that have now been concluded, it was also announced that other legislative proposals, i.e. the public country-by-country reporting rules, will make reference to the Blacklist. Furthermore, the Directive on Mandatory Disclosure Requirements – on which the ECOFIN has recently reached agreement (see ETF 359), contains a specific rule that addresses cross-border payments between associated enterprises where the recipient is a resident in an EU (or OECD) blacklisted jurisdiction.

Counter-measures with respect to EU funds

With the aim of preventing projects financed by EU funds from inadvertently contributing to global tax avoidance, the published guidelines provide a framework intended to ensure that EU external development and investment funds can no longer be channeled or transited through entities that are resident in blacklisted tax jurisdictions. In particular, the new requirements concern funding by International Financial Institutions such as the European Investment Bank and the various Development Financial Institutions.

Under current EU legislation, it is prohibited to use financial instruments to invest EU funds in entities incorporated in jurisdictions that do not commit to internationally accepted tax standards. In order to further emphasize the link between EU funds and tax good governance, standardized wording referring to the adoption of the EU list of non-cooperative jurisdictions was inserted into various EU legal acts, such as Regulation 2017/1601 establishing the European Fund for Sustainable Development and Regulation 2015/1017 establishing the European Fund for Strategic Investments. The relevant legal acts can be found in the Annexes to the Communication from the Commission.

Besides the abovementioned general commitment to the EU blacklist, the guidelines also provide information on how Implementing Partners should assess projects that involve entities in blacklisted countries. Implementing Partners are entities implementing EU funds under indirect management, in contrast with the direct management of EU Funds, which is directly performed by the European Commission and its agencies. Implementing Partners are generally International Financial Institutions, Development Financial Institutions and other types of eligible counterparts of the indirect management of the EU budget (e.g. the UN family). According to the new guidelines, Implementing Partners should, for example, perform tax avoidance checks on all relevant entities involved in a project as regards the identification of beneficial owners. In addition, the Implementing Partners' internal policies should also be brought in line with EU policy on non-cooperative jurisdictions for tax purposes. Implementing Partners are also invited to review their existing portfolio with respect to EU policy, although the EU list only applies to new and renewed operations.

EU Tax Centre comment

Although a welcomed development, the EU blacklist attracted criticism, in particular as regards the lack of transparency and credibility around the screening and monitoring process, but also as regards the lack of effective measures against blacklisted countries. The new guidelines mark a first step by the European Commission in addressing that issue. It remains to be seen whether these measures will prove effective and what measures individual Member States will choose to implement in their national legislation.

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

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