Euro Tax Flash from KPMG's EU Tax Centre

Third revision of the 2017 EU Blacklist

Updated standard provision in EU Agreements with third countries

EU Tax Centre comment

ECOFIN conclusions, May 25, 2018 - Third revision of the EU list of non-cooperative jurisdictions for tax purposes and updated provision on good tax governance

ECOFIN – Code of Conduct Group – EU Blacklist – Tax Transparency – Good Tax Governance – EU Agreements

On May 25, 2018, the Economic and Financial Affairs Council of the EU (ECOFIN) agreed to remove the Bahamas and Saint Kitts and Nevis from the EU blacklist of non-cooperative jurisdictions, first published on December 5, 2017 (see ETF 345), thus bringing to seven the number of remaining blacklisted jurisdictions. The EU Finance ministers have also approved an updated standard provision on good tax governance to be included in EU agreements with third countries.

Third revision of the 2017 EU Blacklist

The EU blacklist of non-cooperative jurisdictions for tax purposes is part of the EU's effort to counter tax avoidance and harmful tax practices and follows the European Commission's Anti-Tax Avoidance Package presented in January 2016. Among the 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).

The EU blacklist was established based on a three-step process (see ETF 301) consisting of a pre-assessment, a screening phase and the listing. Thus, after pre-assessment of third country jurisdictions based on factual information and risk indicators listed in the Scoreboard, an extensive screening and dialog process with the identified jurisdictions took place, which resulted in the first 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.

The first EU blacklist has been revised three times since its publication in December 2017. On January 23, 2018, eight jurisdictions were removed from the blacklist. Later, on March 13, 2018, the Council removed three more countries and added the Bahamas, Saint Kitts and Nevis and the US Virgin Islands. On May 25, 2018, ECOFIN agreed to remove the Bahamas and Saint Kitts and Nevis.

These two jurisdictions were moved to the grey list in Appendix II to the Conclusions. The decision was based on the Code of Conduct Group's assessment of the commitments made by these two jurisdictions to reform their tax systems in order to bring them in line with the EU screening criteria listed below.

- Tax transparency and exchange of information: 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 tax competition: the presence of harmful tax regimes, assessed based on reviews by the OECD Forum on Harmful Tax Practices.
- Anti-BEPS measures: Implementation of the BEPS minimum standards measured according to OECD BEPS Inclusive Framework reviews.

The Council also added Turks and Caicos Islands to the grey list in Annex II. The Turks and Caicos Islands were one of the Caribbean countries that suffered extensive hurricane damage in 2017 and the screening process was therefore put on hold until the beginning of 2018.

As of May 25, 2018, only the following seven jurisdictions appear on the EU blacklist: American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago and the US Virgin Islands. 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.

Updated standard provision in EU Agreements with third countries

The EU Finance ministers also approved an updated standard provision on good tax governance to be included in EU agreements with third countries.

The existing clause was first adopted by the ECOFIN on May 14, 2008, and defined good governance in the tax area as meaning the principles of transparency, exchange of information and fair tax competition. In 2016, the ECOFIN supported the need to update such principles in order to reflect recent progress in the international tax agenda, and in 2017 the Maltese Presidency of the Council proposed a first revised text that aimed at aligning the EU standard provision with the screening criteria used for the establishment of the EU blacklist.

The updated clause provides for jurisdictions to commit to implementing, inter alia, the global standards on transparency and exchange of information as well as the minimum standards against Base Erosion and Profit Shifting (BEPS) published by the OECD and reads as follows:

"*The Parties recognise and commit themselves to implement the principles of good governance in the tax area, including the global standards on transparency and exchange of*

information, fair taxation, and the minimum standards against Base Erosion and Profit Shifting (BEPS). The Parties will promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of tax revenues."

EU Tax Centre comment

Both the revision of the EU blacklist and the adoption of updated provision on good tax governance should be seen as part of the EU's continued efforts to combat tax avoidance and harmful tax practices. Since the first EU blacklist was published in December 2017, it has been revised three times and ten jurisdictions have been moved from the blacklist to the grey list. Although this shows that the EU list is a living document and that commitments made by listed jurisdictions are taken into account, this new revision is likely to attract further criticism, in particular as regards the lack of credibility around the screening and monitoring process.

The adoption of updated principles of good tax governance, partly reflecting the screening criteria used for the EU blacklist, is a welcome development and is also part of the EU's wider dialog with third countries on the need to prevent cross-border tax fraud and money laundering.

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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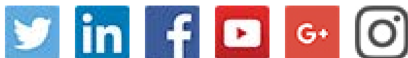

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