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Euro Tax Flash from KPMG's EU Tax Centre

ECOFIN discusses EU Digital Services Tax and removes UK and Dutch overseas territories from the tax haven blacklist

ECOFIN – Digital Services Tax – Fair Taxation – Code of Conduct Group – Harmful Tax Regimes – EU Blacklist

In a meeting held on May 17, 2019, the Economic and Financial Affairs Council of the EU (ECOFIN) exchanged views on the taxation of the digitalized economy, in anticipation of the debates that will take place at the next G20 summit in June, where the OECD is expected to report on the progress made in addressing the taxation of the digital economy.

The ECOFIN also approved, without discussion, amendments to the EU blacklist of uncooperative jurisdictions for tax purposes. Bermuda, Aruba and Barbados were removed from the blacklist, which now includes twelve jurisdictions.

Taxation of the Digitalized Economy

In March 2018 the European Commission issued several proposals on "A Fair and Effective Tax System in the EU for the Digital Single Market", which included proposals for Directives on a digital services tax (DST) and on the introduction of a digital permanent establishment concept. The primary focus of the discussions throughout 2018 was the implementation of an EU-wide DST, with an initial goal of achieving consensus before the end of 2018.

However, at the ECOFIN meeting on March 12, 2019, Member States failed to reach agreement on a watered-down version of the Commission's DST proposal that would have been limited to taxing advertising revenues. At the time, the European Commission encouraged Member States to reach consensus on a common approach before the June 2019

G20 summit in Japan, where the OECD is expected to report on the progress made in addressing the taxation of the digital economy.

In parallel, the Romanian Presidency of the Council confirmed that work would continue on a two-track approach, first towards reaching consensus on a global solution at the level of the OECD and, if global consensus is not reached by the end of 2020, to revisit the EU proposals for a DST or a Digital Advertising Tax, and possibly on a significant digital presence.

On May 17, 2019, the Finance Ministers therefore held a policy debate on digital taxation in an international context, with a goal of presenting the outcome of the discussions at the Fukuoka G20 meeting. On the basis of a Presidency note summarizing the various views expressed by Member States and a European Commission paper, the Finance Ministers reviewed the possibilities for negotiations in the OECD on long-term comprehensive solutions addressing both the challenges of taxation in the digitalized economy and broader issues related to the allocation of taxing rights and tax competition. In this respect, the OECD is expected to publish a detailed work program in advance of the June 2019 Fukuoka G20 meeting and a final report by 2020.

EU Tax Centre Comment

It remains to be seen whether all Member States will be able to agree on a common EU position before the G20 summit. The Austrian Minister of Finance noted that, based on previous conversations with his US counterpart and with industry representatives, a clear EU-wide position would represent a symbolic signal to the international community on the EU's commitment to reform in this area. However, several EU Member States continue to have fundamental objections to an EU-only, short-term measure.

EU Blacklist Update

During their meeting, the EU Finance ministers also approved, without discussion, amendments to the EU blacklist of uncooperative jurisdictions for tax purposes.

The EU blacklist, first adopted on December 5, 2017, is part of the EU's effort to clamp down on tax avoidance and harmful tax practices. Out of the ninety-two jurisdictions initially chosen for screening, seventeen jurisdictions were placed on the blacklist in December 2017. Over the course of 2018, most of the countries and territories on the blacklist engaged in constructive dialogue with the EU and made commitments to comply with the EU's criteria. As such, by the end of 2018, only five jurisdictions remained listed. Most of the commitments were given a deadline of the end of 2018 and their enactment into national law was carefully monitored at a technical level by the Code of Conduct Group on business taxation until the beginning of 2019. The monitoring process revealed that ten jurisdictions either failed to deliver on their commitments by the agreed deadline or made no commitment to address the EU's concerns. Consequently, Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, the Marshall Islands, Oman, the United Arab Emirates and Vanuatu were added to the blacklist on March 19, 2019.

In the ECOFIN meeting on May 17, 2019, the Finance Ministers made the decision to remove the British overseas territory of Bermuda, the Dutch Caribbean island of Aruba, and Barbados from the blacklist:

- Barbados committed to amend or abolish by the end of 2019 the harmful preferential regimes that the COCG had identified on January 30, 2019 as falling under criterion 2.2, and was therefore moved to the “grey list”, which includes jurisdictions identified as cooperative, subject to successful delivery on their commitments to comply with the EU screening criteria.
- Bermuda adopted additional amendments to its Economic Substance Regulation on March 4, 2019, thereby resolving the last area of concern, i.e. the wording related to core income-generating activities for intellectual property assets. Bermuda was however placed on the grey list as a result of its commitment to address the concerns relating to economic substance in the area of collective investment funds by the end of 2019.
- Aruba introduced substance requirements for its transparency regime in April 2019, and was therefore removed from the Blacklist.

The blacklist now includes twelve jurisdictions: American Samoa, Belize, Dominica, Fiji, Guam, the Marshall Islands, Oman, Samoa, Trinidad and Tobago, the United Arab Emirates, the US Virgin Islands, and Vanuatu.

EU Tax Centre Comment

The work on the EU blacklist is a dynamic process that is regularly reviewed and updated. Additionally, the evolving deadlines will be closely monitored to ensure jurisdictions deliver on their commitments. Jurisdictions will only be removed from the list once they have engaged in dialogue with the EU and addressed EU concerns.

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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