KPMG

Tax Alert

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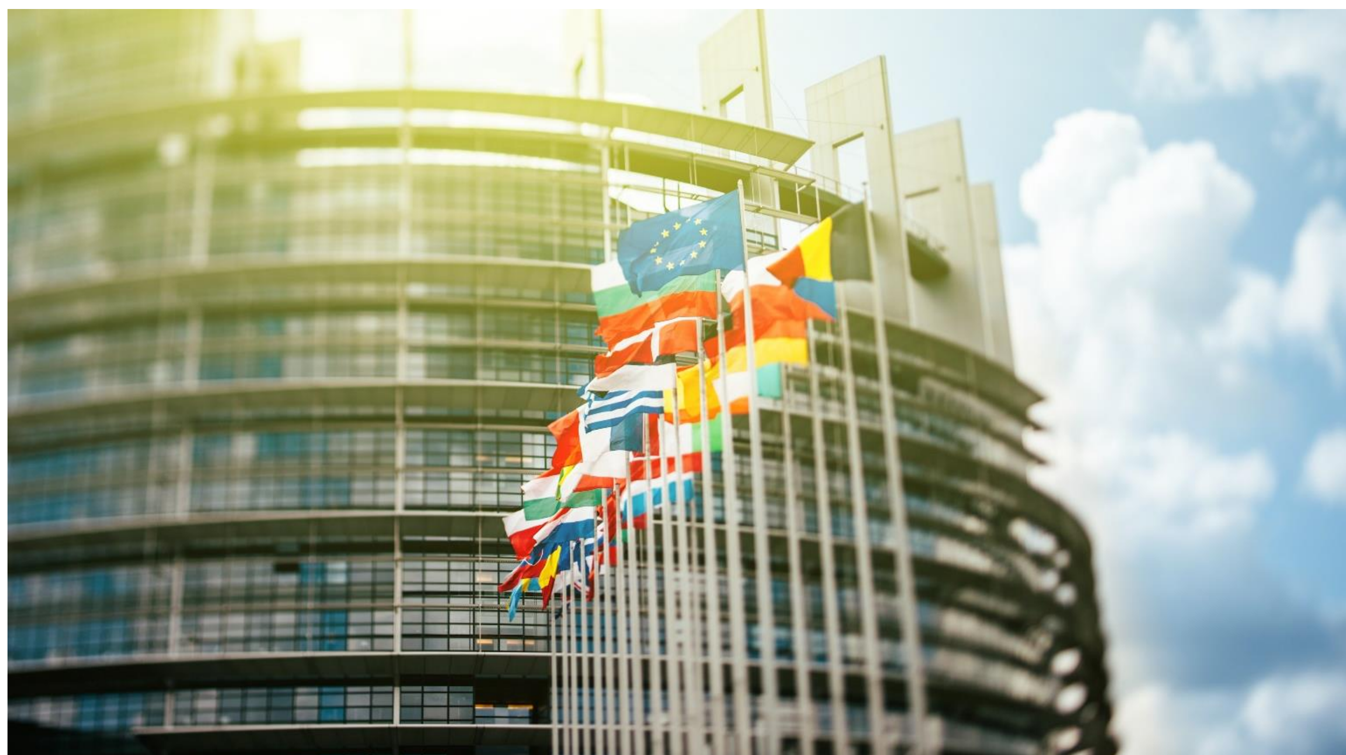
EU publishes list of non-cooperative tax jurisdictions (otherwise referred to as "the Blacklist")



The long-awaited EU Blacklist has been issued.

Perhaps your first reaction might be to ignore the Blacklist on the basis that Singapore is not blacklisted and it is an EU related-matter.

But that is a mistake for several reasons including:
- Other countries may choose to follow the EU approach and blacklist the nominated countries (or others); and
- The listed countries (there are 64 countries which have either been listed or are being monitored) will likely make changes to their laws (47 have committed to do so) and the impact of these changes will be felt by any of you who invest in or through these countries.

The EU has blacklisted 17 countries for failing to meet agreed tax good governance standards.

From an Asian perspective, the only substantive country included on the blacklist is the Republic of Korea.

The table below shows the Asian countries and their respective issues.

Improve Transparency Standards	**Taiwan, Thailand, Vietnam**
Improve Fair Taxation	**Hong Kong SAR, Malaysia, Taiwan, Thailand, Vietnam**
Commit to apply OECD BEPS measures	**Taiwan**

In brief, the issues relate to:

- **Transparency:** Compliance with international standards on automatic exchange of information and information exchange on request plus ratification of the multilateral convention (or signed bilateral agreements with all EU counties). Prior to June 2019, countries only need to satisfy two out of three of these criteria. After that, countries will have to meet all three to avoid being listed.
- **Fair Tax Competition:** The country should not have harmful tax regimes (as defined by the OECD). Those countries that have no or zero-rate corporate taxation should ensure that this does not encourage artificial offshore structures without real economic activity.
- **BEPS implementation:** The country must have committed to implement the BEPS minimum standards.

We should not limit assessment of the impacts only to Asian countries as other affected jurisdictions such as the Cayman Islands have made commitments which could have impacts.

In the case of the Caymans (and many other countries), there is a commitment to introduce substance requirements which are unlikely to be limited to transactions with the EU and will therefore be relevant outside the EU. This process will continue, and the 47 more countries are expected to (or perhaps more appropriately must) meet EU criteria by the end of 2018, or 2019 for developing countries without financial centres, to avoid being blacklisted.

The EU process will continue into 2018 and beyond and includes the following steps:

- A letter will be sent to all jurisdictions on the Blacklist, explaining the decision and what they can do to be de-listed.
- There will be continued monitoring of all jurisdictions, to ensure that commitments are fulfilled and determine whether any other countries should be listed in the future.
- The list will be updated at least once a year.

Being listed should have a real impact on the countries concerned. This is achieved by the following measures:

- The list is linked to certain categories of EU funding such that funding from those sources cannot be channelled through entities in listed countries.
- The list is also linked to other legislative proposals. For example, the Country-by-Country reporting includes stricter reporting requirements for multinationals with activities in listed jurisdictions. In the proposed transparency requirements for intermediaries, a tax scheme routed through a listed country will be automatically reportable to tax authorities.
- In addition, Member States are encouraged to agree on further co-ordinated sanctions to apply to listed jurisdictions. First steps have been taken in this direction. There are an agreed set of countermeasures which they can choose to apply against the listed countries. This includes:
  - Increased monitoring and audits
  - Higher rates of withholding taxes
  - Special documentation requirements
  - Anti-abuse provisions

Comments

As noted above, Singapore businesses need to monitor the potential impacts of the EU process including:

- Direct impacts where you have operations in the listed countries which undertake business with the EU.
- Indirect benefits where some of the 64 affected countries seek to amend their laws to be de-listed or avoid being listed. More importantly, the required changes include adopting BEPS outcomes, increased transparency and more substance. Many of these changes are likely to result in increased tax exposures and/or increased cost to comply with new laws and substance requirements.

How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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KPMG's Tax Alerts highlights the latest tax developments, impending change to laws or regulations, current practices and potential problem areas that may impact your company. As certain issues discussed herein are time sensitive, it is advisable to make plans accordingly.
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