

KPMG in the Channel Islands

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EU Anti-Tax Avoidance Package

The EU Commission has agreed the Anti-Tax Avoidance Package. A key component, and the one most likely to impact the Channel Islands, is the proposed assessment of non-EU jurisdictions or third countries.

The results of this assessment will determine a new common EU list of uncooperative jurisdictions, aka another “blacklist”, due to be finalised by late 2017. The EU has proposed to impose defensive measures against those blacklisted jurisdictions.

Currently the blacklisting of third countries is tackled through national measures, which tend to vary considerably. Some of the lists are old and have not been updated for changes made by certain third countries.

During Summer 2015, the EU Commission reviewed the national lists, and applied an arbitrary threshold, whereby any third country that appeared on more than 10 national lists would be treated as “non-cooperative”. Guernsey found itself on this list. However, working alongside the UK Government, Guernsey was removed from the list. Guernsey was originally included on the list as Sark had incorrectly been treated as part of Guernsey for these purposes and Sark (but not Guernsey) had been listed as non-compliant on Poland’s list. The lesson to be learned is that the Channel Islands need to stay alert to developments of this nature, which are increasingly happening at a faster pace and sometimes at the expense of accuracy.

The Anti-Tax Avoidance Package

On 14 September 2016, the EU Commission completed the first of three steps of the process to assess and list third countries: a scorecard of all third country jurisdictions for tax purposes. This scorecard presents the results of a pre-analysis carried out by the Commission under which 160 jurisdictions were examined against objective economic, financial, stable and good tax governance indicators. The Commission then sought to undertake a basic assessment of the potential risk level of the jurisdictions to facilitate tax avoidance. The risk indicators used were:

- Transparency and exchange of information;
- The existence of preferential tax regimes;
- No corporate income tax or zero corporate tax rate.



Guernsey and Jersey were included on the list, as were a further 79 jurisdictions including the USA, Brazil and Hong Kong. However, unlike most listed jurisdictions, Guernsey has only one risk factor, being the general zero rate of corporate tax.

The process now enters into stage 2 which involves the EU Commission screening the jurisdictions against a set of criteria that have not yet been determined, and entering into dialogue with the jurisdictions to encourage them to accommodate this process. Although not yet confirmed, it is likely that Guernsey and Jersey will move to stage 2. The expectation is that the Member States will start the dialogue process with us before the end of 2016, with the final list to be ready by the end of 2017.

Guernsey will contend that it should not be on the final list, stating that tax neutrality combined with a fully transparent regime does not constitute a threat to the EU tax base. However, the listing is a highly political matter. The EU Commission has a difficult choice to make. For instance, would a "tax haven" list that did not include the likes of Guernsey and Jersey be viewed as credible in the eyes of our detractors? Conversely, what message would the EU Commission be sending to the international community if they were to list as uncooperative a jurisdiction such as Guernsey, who, in the words of the EU Tax Commissioner, is an important EU partner in *the key international initiatives for fighting tax evasion, fraud and abusive tax*.

The next move rests with the EU Commission. It will need to eliminate a number of the current listed jurisdictions while leaving just a few that will be treated as "uncooperative". Let's hope that the Commission plays the game fairly, and does not pander to public pressure. In the interim, Guernsey's Government should engage all diplomatic means to continue to bring the relevant facts and information to the table.

Should you wish to discuss this topic in more detail, please contact one of our experts



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