Applause for Hong Kong’s removal from the EU’s blacklist

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In brief

On 14 October 2015, the HKSAR Government issued a press release announcing that Hong Kong has now been removed from the list of third country non-cooperative tax jurisdictions (the pan-EU blacklist) originally published by the European Commission (EC) in June 2015.

According to the updated information on the EC’s website and the HKSAR Government’s press release, of the 10 European Union (EU) Member States that had included Hong Kong on their national lists of non-cooperative jurisdictions when the pan-EU blacklist was first released, Spain no longer includes Hong Kong on its national list and Estonia no longer presents a national list. As a result, the number of EU Member States that still include Hong Kong in their national lists has been reduced from ten to eight, resulting in the removal of Hong Kong from the pan-EU blacklist.

To further defend Hong Kong as a cooperative tax jurisdiction, the HKSAR Government will (1) maintain ongoing dialogue with the EU to keep its Member States abreast of Hong Kong’s commitments and efforts on tax cooperation, (2) proceed with the work on drafting the legislation for implementing the automatic exchange of information (AEoI) in Hong Kong and (3) continue its effort in expanding Hong Kong’s network of tax treaty or tax information exchange agreement (TIEA).

In the post-Base Erosion and Profit Shifting (BEPS) environment and under the international pressure of increased tax transparency, inevitably companies in Hong Kong with cross-border operations/transactions will be affected by the more stringent information disclosure requirement and increased tax information exchange between different jurisdictions (e.g. the new three-tiered transfer pricing (TP) documentation approach recommended by the Organisation for Economic Co-operation and Development (OECD) under Action 13 of the BEPS Action Plan) going forward.

In detail

According to the updated information on the EC’s website and the HKSAR Government’s press release issued on 14 October 2015, the pan-EU blacklist has been updated on 12 October 2015 to reflect the situation on 30 June 2015. As a result, Hong Kong has been removed from the pan-EU blacklist that was originally issued on 17 June 2015.

The pan-EU blacklist

The pan-EU blacklist was first published on 17 June 2015 together with the EC’s Action Plan to combat tax evasion and move to a fairer corporate taxation. It was compiled from the EU Member States’ independent national lists. The jurisdictions included on the pan-EU blacklist were identified by at least 10 Member States as a non-cooperative jurisdiction in their national lists. When the list was released the first time, the pan-EU blacklist consisted of 30 non-cooperative tax jurisdictions, including Hong Kong.

For a more detailed discussion of the EC’s Action Plan, the pan-EU blacklist and our view on the inclusion of Hong Kong on the pan-EU blacklist, please refer to our Hong Kong Tax News Flash, June 2015, Issue 7

Hong Kong was included in the original pan-EU blacklist because it was treated as being on the national lists of Bulgaria, Croatia, Estonia, Greece, Italy, Latvia, Lithuania, Poland, Portugal and Spain.

However, the original pan-EU blacklist did not take into account the fact that Hong Kong has actually been removed from the Spanish blacklist since 1 April 2013 when the comprehensive double tax agreement (CDTA) between Hong Kong and Spain signed in April 2011 became effective on 1 April 2013 in both Hong Kong and Spain.
Actions taken to refute allegation against Hong Kong as a tax haven

Subsequent to the release of the pan-EU blacklist, the HKSAR Government promptly issued a press release on 18 June 2015 to express its regret over the inclusion.

That was followed by extensive liaison work conducted by the HKSAR Government with the EU and its Member States through various diplomatic channels to clarify that Hong Kong is not a non-cooperative tax jurisdiction for various reasons, including (1) Hong Kong has been ranked as “largely compliant” in the peer reviews conducted by the OECD Global Forum and (2) Hong Kong has committed to implement AEOI by the end of 2018. In particular, request was made to the EC for it to review the pan-EU blacklist to reflect the removal of Hong Kong from the Spanish blacklist from 1 April 2013. We understand that the State Administration of Taxation of China also made efforts to support Hong Kong in the clarification.

With all the said efforts, the EC’s website was finally updated on 12 October 2015 and the technical error of including Hong Kong in the national list of Spain has now been rectified. In addition, Estonia no longer presents a national list. As a result, the number of EU Member States that have included Hong Kong in their national lists has been reduced from ten to eight, resulting in the removal of Hong Kong from the pan-EU blacklist. Hong Kong is currently still on the national lists of Bulgaria, Croatia, Greece, Italy, Latvia, Lithuania, Poland and Portugal.

Future actions to uphold Hong Kong as a cooperative tax jurisdiction

To further defend Hong Kong as a tax cooperative jurisdiction, the HKSAR Government has indicated that it is currently working on the early removal of Hong Kong from Italy’s national list as the CDTA between Hong Kong and Italy was ratified in August 2015. In addition, the HKSAR Government will maintain ongoing communication with the EU to keep its Member States abreast of Hong Kong’s commitments and efforts on tax cooperation.

In terms of Hong Kong’s commitment to implement AEOI by the end of 2018, the HKSAR Government launched a public consultation in April 2015 to gauge views on the proposed legislative regime and operational framework for implementing AEOI in Hong Kong.

On 12 October 2015, the HKSAR Government issued a press release to indicate that certain refinements will be made to the legislative proposals contained in the AEOI consultation paper after taking into account the comments received from various stakeholders. The draft AEOI legislation is scheduled to be introduced into the Legislative Council in early 2016.

The above, together with Hong Kong’s continuous effort in concluding more tax treaties/TIEA with other countries, should help demonstrate Hong Kong’s determination to align with the latest international standard on increased transparency and tax cooperation.

The takeaway

We applaud the joint efforts made by the governments of Hong Kong and China as well as various stakeholders in defending Hong Kong as a cooperative tax jurisdiction, which has resulted in a prompt removal of Hong Kong from the pan-EU blacklist. Although Hong Kong has been removed from the pan-EU blacklist, in the post-BEPS environment and under the international pressure of increased tax transparency, it is expected that companies in Hong Kong with cross-border operations/transactions will inevitably be affected by the more stringent information disclosure requirement and increased tax information exchange between different jurisdictions.

An example is the new three-tiered TP documentation approach recommended by the OECD under Action 13 (i.e. re-examining TP documentation) of the BEPS Action Plan. Although Hong Kong has not yet had any plan to adopt the OECD’s new approach of TP documentation, a Hong Kong company which is part of a multinational group based in a jurisdiction adopting the OECD approach or a Hong Kong based group with companies operating in a jurisdiction adopting the OECD approach may be affected. Such multinational groups should be mindful of the changing global landscape in information disclosure and exchange and evaluate its potential impact on them by reviewing the current group structure/arrangements as well as the group’s TP policy/documentation.

Endnotes

1. Please refer to this link for the press release issued by the HKSAR Government on the updated pan-EU blacklist on 14 October 2015: http://www.info.gov.hk/gia/general/201510/14/P201510140706.htm

2. Please refer to this link for the updated map of third country non-cooperative tax jurisdictions on the EC’s website: http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance/lists_of_countries/index_en.htm


4. Please refer to this link for the press release issued by the HKSAR Government on the pan-EU blacklist on 18 June 2015: http://www.info.gov.hk/gia/general/201506/18/P201506180829.htm

5. Please refer to this link for the press release issued by the HKSAR Government on Hong Kong’s commitment to timely implement AEOI in Hong Kong: http://www.info.gov.hk/gia/general/201510/12/P201510120682.htm

6. Various jurisdictions have already indicated that they will implement the OECD’s new three tiered TP documentation approach, some with certain modifications (e.g. Australia, China, Ireland, the Netherlands, Spain and the UK).
News Flash — Hong Kong Tax

Let’s talk

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