
UAE and Oman added to the EU blacklist

March 2019

Following the European Council (the “Council”) meeting on 12 March 2019, the United Arab Emirates (“UAE”) and Oman (in addition to eight other jurisdictions) were added to the European Union’s (“EU”) list of non-cooperative jurisdictions for tax purposes (the “EU blacklist”). The total number of jurisdictions on the EU blacklist currently stands at 15.

The UAE was included in the original EU blacklist in 2017, but was subsequently moved to the EU greylist on 23 January 2018 after committing to meet the standards required by the EU.

The Council confirmed that the UAE and Oman were added (back) to the EU blacklist for:

- **UAE:** not making sufficient progress in implementing economic substance regulations by the agreed deadline of 31 December 2018.
- **Oman:** not making sufficient progress in signing up to / implementing exchange of information protocols.

What does it mean to be on the EU blacklist?

EU countries can choose to apply certain **defensive measures** against the UAE, Oman and /or other countries on the EU blacklist.

Further, certain transactions between associated enterprises in the EU and the blacklisted countries would trigger a **reporting obligation** and automatic exchange of information under the EU’s Directive on Administrative Cooperation in the field of taxation (known as “DAC6”).

Defensive measures

EU countries can apply certain defensive measures against the UAE, Oman and /or other countries on the EU blacklist. Tax-specific defensive measures may include (but are not limited to):

- Increased monitoring and audits from tax authorities,
- Greater scrutiny on withholding tax rates (e.g. denying reduced rates or imposing higher/penal rates),
- Special documentation requirements in respect of transactions with blacklisted countries, and
- Automatic information exchange with relevant tax authorities.

EU countries can only take defensive measures that are available under their domestic laws. In the absence of existing defensive mechanisms against blacklisted countries, relevant measures would need to be introduced and implemented through legislative changes (which may take some time).

Where a blacklisted country has a double tax treaty with the relevant EU country, the effect of any withholding tax measures may be mitigated. Increased scrutiny is, however, expected when an entity in a blacklisted country would seek relief from taxation under a double tax treaty.

Reporting obligations under DAC 6

DAC6 provides for the mandatory disclosure to EU tax authorities of certain cross-border arrangements, and mandates the automatic exchange of this information among the EU Member States’ tax administrations.

An arrangement would be “reportable” under DAC6 if it meets certain “hallmark” criteria. One specific hallmark is where there is an arrangement that involves deductible cross-border payments from the EU to an associated enterprise resident in a country that is on the EU blacklist, irrespective of whether the payment results in a tax advantage. Accordingly, the inclusion of the UAE and Oman on the the

EU blacklist has direct implications for the disclosure of transactions between those countries and associated enterprises in the EU.

Next steps

The UAE has publicly confirmed that a timeline of actions currently being implemented has been shared with the EU, and we expect that the UAE's economic substance regulations will be issued shortly.

We also expect Oman to update their domestic legislation to facilitate the automatic exchange of financial information with other jurisdictions, and to sign and ratify the OECD Multilateral Convention on Mutual Administrative Assistance (as amended).

Removal from the EU blacklist

The Council will continue to regularly review and update the EU blacklist, and is committed to removing countries from the EU blacklist once they have addressed the areas identified and their tax regimes have sufficient governance criteria.

Key takeaway

The impact of being included on the EU blacklist is that entities in the UAE and Oman may face increased monitoring and audits, special documentation requirements, increased withholding taxes and other defensive measures in EU Member States.

In addition, increased DAC6 reporting obligations would apply to related party transactions between the EU and the UAE and/or Oman while the UAE and Oman remain on the EU blacklist.

Both the UAE and Oman have expressed their disappointment with the decision of the Council, along with their commitment to continue to cooperate with the EU and fulfill any remaining requirements to be removed from the EU blacklist.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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