

District of Columbia – Pending law change provides market-based sourcing applicable beginning after 2014 and tax haven expansion

August 31, 2015

UPDATE: On December 29, 2015, temporary legislation repealed the list of tax havens. [DC Act 21-252](#). The temporary legislation is good for 225 days. Permanent legislation is expected to make the repeal permanent.

In brief

On August 11, 2015, Mayor Muriel Bowser signed D.C. Act 21-148, the *District of Columbia FY 2016 Budget Support Act of 2015*, which implements market-based sourcing for sales other than sales of tangible personal property for tax years beginning after December 31, 2014. Additionally, Act 21-148 expands D.C.'s definition of a 'tax haven' by adding a list of jurisdictions that qualify as tax havens.

Act 21-148 will not become law until it completes a 30-day review period by Congress.

[\[Fiscal Year 2016 Budget Support Act of 2015\]](#)

In detail

Clarifying start date of market-based sourcing

As part of its FY 2015 budget enacted in February 2015, D.C. imposed market-based sourcing for sales other than sales of tangible personal property. The legislative change failed to include an applicable date, which raised questions regarding when the change was to go into effect.

Act 21-148 provides that the market-based sourcing changes are applicable for tax years

beginning after December 31, 2014.

Tax haven countries defined

Under current law, D.C. provides that the income and apportionment factors of a unitary group includes the income and apportionment factors of members doing business in 'tax haven' jurisdictions. A 'tax haven' is currently defined under D.C. Code § 1801.04(49) as a jurisdiction that satisfies one of several qualitative requirements (e.g., a jurisdiction that has a

nominal effective tax rate, that lacks transparency, that has a tax regime favourable for tax avoidance).

Under Act 21-148, the definition of a 'tax haven' expands to include the qualitative factors mentioned above as well as any of the countries listed below:

Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar,

Grenada, Guernsey-Sark- Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the islands formerly constituting the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.

The D.C. City Council is required to review the list biennially “or as needed.”

The tax haven change does not provide an applicable date. The

general applicable date of Act 21-148 is October 1, 2015.

Act awaits Congressional approval before becoming law

An approved act must be sent to Congress for a 30-day review period. It is important to note that the 30-day period is not based on calendar days but, rather, on days in which Congress is in session.

Act 21-148 was signed by the mayor on August 11, 2015, which was after Congress ended their session. Therefore, the Act is waiting to be transmitted to Congress, which begins its next session on September 8, 2015.

The takeaway

Act 21-148 provides much needed clarity around the start date of market-based sourcing – tax years beginning after 2014. Additional guidance regarding the details of market-based sourcing are expected to be released shortly by the Office of Tax and Revenue.

With the implementation of a tax haven list, D.C. would join the ranks of Montana and Oregon as states that provide a ‘blacklist’ of tax haven jurisdictions. However, D.C. appears to be the first jurisdiction that would have *both* a qualitative list and a blacklist to define a tax haven.

Let’s talk

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