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Luxembourg Newsflash - 18 February 2020

EU ECOFIN: revision of the EU list of non-cooperative jurisdictions for tax purposes

The Economic and Financial Affairs Council (ECOFIN) today adopted revised conclusions on the EU list of non-cooperative jurisdictions for tax purposes.

In addition to the 8 jurisdictions that were already listed as non-cooperative tax jurisdictions (*i.e.*, American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu), the EU decided to include the Cayman Islands, Palau, Panama and the Seychelles. The objective of this list is to help EU member states deal with countries that encourage abusive tax practices. This is an evolving list which encourages the listed jurisdictions to conform to international tax standards, *i.e.*, once a jurisdiction meets all of its commitments, it is removed from the list.

Luxembourg issued a tax circular¹ on 7 May 2018, which indicates the measures the tax authorities will take where a Luxembourg company has transactions with non-cooperative jurisdictions indicated on the list. One should note that Luxembourg law does not provide for a specific withholding tax provision for (deductible) payments made to entities set up or resident in non-cooperative jurisdictions. According to the circular letter, Luxembourg companies must disclose any intragroup transactions made with entities set up or resident in non-cooperative jurisdictions in their annual tax returns. Whilst the tax authorities may, during the tax assessment process, closely review the details of those transactions, they should mainly focus on whether those transactions are at arm's length.

The mere listing of a country on the list of non-cooperative jurisdictions for tax purposes does not therefore lead to adverse tax consequences in Luxembourg *per se*, provided that transactions between Luxembourg entities and entities located in such jurisdictions are in line with the domestic provisions relating to the arm's length principle.

Note that the inclusion of a jurisdiction onto the list of non-cooperative jurisdictions for tax purposes has limited regulatory consequences, in particular restricting the access of vehicles domiciled in such jurisdictions to the European Fund for Sustainable Development, the European Fund for Strategic Investments and the general EU framework for securitisation.

Our dedicated tax team or your usual contact at Arendt are at your disposal to assist you in this respect.

¹ Circular of the head of the tax authorities, L.G. – A N°64 of 7 May 2018.

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