



On 7 April 2009, the Organisation for Economic Co-operation and Development (OECD) declared that the four countries, Costa Rica, Malaysia (Labuan), Philippines and Uruguay, have been removed from the blacklist of tax haven in the OECD progress report first issued on 2 April 2009. Thus, no country was listed in the blacklist of tax haven.

Background

The OECD, founded in 1961 to stimulate global economic progress by liberalising free trade and the movement of capital, in 1971 established a Committee on Fiscal Affairs. Whilst some of the work of the Committee has brought positive results, notably the establishment of double-tax treaties between nations, most will associate the Fiscal Affairs Committee with the recent crusade against tax havens.

ABOUT TAXAND

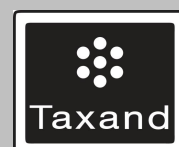
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A tax haven is a place where certain taxes are levied at a low rate or not at all. This encourages wealthy individuals and/or firms to establish themselves in areas that would otherwise be overlooked. The OECD identifies three key factors in considering whether a jurisdiction is a tax haven:

1. No or only nominal taxes.
2. Lack of effective exchange of information.
3. Lack of transparency

The OECD's later work has therefore focused on the single aspect of information exchange. This is generally thought to be an inadequate definition but is politically expedient of a tax haven. It divides countries into three categories:

- Jurisdictions that have substantially implemented the internationally agreed tax standard (white list).
- Tax havens and other financial centres that have committed to the internationally agreed tax standard but have not yet substantially implemented it (gray list).
- Jurisdictions that have not committed to implement the internationally agreed tax standard (blacklist.).

Recent developments

The OECD published a report on 2 April 2009 on progress by 84 countries and territories toward financial openness on the exchange of tax information.

- GRAY LIST: Costa Rica, Malaysia (Labuan), Philippines and Uruguay, added after being taken off blacklist since they made commitment to the internationally agreed tax standard on exchange of information, and another 30 countries, including British Virgin Islands and Cayman Islands.

The following gray list countries haven't fully implemented the rules, although their economies are sufficiently diversified away from financial services so as not fit the classic definition of tax havens: Austria, Belgium, Brunei, Chile, Guatemala, Luxembourg, Singapore and Switzerland.

- WHITE LIST: 40 countries including China (excluding Hong Kong and Macau), France, Germany, Britain, United States, and the U.S. Virgin Islands.
- BLACK LIST: No country is listed in the BLACK LIST after the aforementioned four countries were removed to GRAY LIST.

Hong Kong and Macau are referred to as special administrative regions of China which have recently stated they will be implementing the principles of transparency and exchange of information.

Comments

With the global economics depression and recent financial scandal made tax heaven a sit duck to the public. In China, the Implementation Measures of Special Tax Adjustments (Provisional) (Guoshuifa [2009] No.2, issued on 8 January 2009) cover various aspects of special tax

adjustments including some key forms of tax heaven to avoid taxations, i.e. Transfer Pricing (“TP”), Controlled Foreign Corporations and General Anti-avoidance Rules, etc. In addition, China also tightened up on abusive use of the double tax treaty. In December 2008, the State of Taxation Administration (“SAT”) issued a circular (Guoshuihan [2008] No.1076) to set its position on a case involving the abusive use of double tax treaty in relation to an acquisition in Xinjiang. The issuance of Guoshuihai [2009] No.81 shows that enjoyment of tax treaty benefits regarding dividend withholding tax is not automatic and far from guaranteed.

Both the global environment and local environment are changing. With the closer cooperation between countries, it provides limit space for the development of tax heaven. Multinational companies should keep eyes on those changes as well as further developments and consider the potential tax implications when make business strategies.

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