Hendersen
Taxand

Special Issue

No Country Listed in OECD's Blacklist of Tax Heaven

April 09, 2009

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 heaven in the OECD progress report first issued on 2 April 2009. Thus, no country was listed in the blacklist of tax heaven.

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

Taxand is a global network of leading tax advisors from independent member firms in approaching 50 countries. Our tax professionals-more than 300 tax partners and 2,000 tax advisors-grasp both the find points of tax and the broader strategic implications, helping our clients mitigate risk, manage their tax burden and drive the performance of their business.

We're passionate about tax. We collaborate and share knowledge, capitalising on our collective expertise to provide our clients with high quality, tailored advice that helps relieve the pressures associated with making complex tax decisions.

We're also independent-ensuring that our clients adhere both to best practice and to tax law and that we remain free from time-consuming audit-based conflict checks. This, coupled with the compact structure of our member firms, enables us to deliver practical advice, responsively.

Taxand has achieved worldwide market recognition in 2008. We have won the International Tax Reviews (ITR) best newcomer awards for delivering best-in-class cross border advice throughout Europe, across the Americas and over Asia Pacific. Our member firms have also been shortlisted for 33 national ITR awards this year. Moreover 85% of Taxand firms are ranked in the top tiers of World Tax 2009, the ITR's global guide to the world's leading tax firms.

Further information is available at www.taxand.com .

(C) 2009 Hendersen Taxand. All rights reserved.

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

(C) 2009 Hendersen Taxand. All rights reserved.

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.

(C) 2009 Hendersen Taxand. All rights reserved.

The information contained in the newsletter is of general nature only. It is not meant to be comprehensive and does not constitute accounting, tax, legal, investment, consulting or other professional advice or services. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

About Hendersen Taxand

Hendersen Taxand is a China member firm of Taxand which still “fills a niche market” in corporate tax, M&A, investment advisory, human capital, customs and outsourcing technology-based solutions. We are a group of experienced professionals who used to work for the top fortune 100 companies and the big 4 accounting firms. We are committed to add value - tremendous value - to our clients. Hendersen Taxand is one of the top ten tax practitioners in China.

For more information visit www.hendersen.com or www.taxand.com.

Contact Us

International Tax
Dennis Xu
dennis.xu@hendersen.com

Transaction Service
Thomas Ge
thomas.ge@hendersen.com

Corporate Tax
Eddie Wang
eddie.wang@hendersen.com

Transfer Pricing
Joyce Zhang
joyce.zhang@hendersen.com

Human Capital Service
Kevin Wang
kevin.wang@hendersen.com

Outsourcing
Grace Chen
grace.chen@hendersen.com

Hendersen
Taxand

www.hendersen.com

Hendersen Taxand
Unit 1003-1004, the Exchange
No. 299 TongRen Road
Shanghai 200040, PRC
Tel: +86 (21) 6447 7878
Fax: +86 (21) 3360 7100

www.taxand.com

(C) 2009 Hendersen Taxand. All rights reserved.