HKSAR Government expresses regret at Hong Kong being listed by the European Commission as a non-cooperative tax jurisdiction

Hong Kong is included in a list of non-cooperative tax jurisdictions recently published by the European Commission (EC). Those jurisdictions included in that list are regarded as non-cooperative tax jurisdictions by at least 10 member states of the European Union (EU). Of note is that Hong Kong is the only major financial center so included.

The EC has noted that the list may be used by the EU to develop a common strategy against external threats to the tax revenues of its member states. Apparently, at the moment, apart from the possible reputational damage, there are no other immediate and direct consequences for Hong Kong of being included in the list.

EU member states may each adopt different criteria to identify uncooperative tax jurisdictions, some being common to the EU and others specific to individual member states. As a result, the exact criteria adopted by each of the member states concerned is not readily apparent. As far as the EU is concerned, likely criteria leading to a jurisdiction’s inclusion in the list would include lack of transparency and exchange of information, the presence of harmful tax measures, and the use of low or no tax rates.

1. The list is reproduced in Appendix I to this alert.
2. Member states of the EU that regard Hong Kong as an uncooperative tax jurisdiction are: Bulgaria, Estonia, Croatia, Greece, Latvia, Lithuania, Poland, Italy, Portugal and Spain
In terms of harmful tax measures, the Code of Conduct on Business Taxation adopted by the EU states that

“...tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code...When assessing whether such measures are harmful, account shall be taken of, inter alia: (1) whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents; or (2) whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base; or (3) whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages...”

The HKSAR Government issued a strongly worded statement last Thursday refuting the EC’s allegation that Hong Kong is a non-cooperative tax jurisdiction. The statement expressed regret that Hong Kong had been denied any opportunity to comment or clarify its position.

In its refutation, the HKSAR Government stressed that Hong Kong has complied with all international obligations in terms of tax transparency by way of exchange of information with other jurisdictions either under comprehensive tax treaties or standalone tax information exchange agreements. Furthermore, Hong Kong has committed itself to automatically exchange information on accounts held by non-Hong Kong residents with financial institutions in Hong Kong with the relevant tax residence jurisdictions of the account holders under the Common Reporting Standard developed by the Organization for Economic Co-operation and Development.

The HKSAR Government indicated that it would continue its dialogue with the EU and its member states in this regard. It appears that, in addition to emphasizing that Hong Kong is a responsible member of the international community in terms of its tax transparency, the HKSAR Government may need to explain that the low tax rate and few tax incentives offered by Hong Kong should not be regarded as harmful tax measures under the criteria adopted by the EU.

We will keep our clients informed of any development on this issue. In the meantime, should you have any questions, you may contact your tax executive.

**Appendix I**

List of non-cooperative tax jurisdictions published by the European Commission:

- Andorra
- Anguilla
- Antigua and Barbuda
- Bahamas
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Brunei
- Cayman Islands
- Cook Islands
- Grenada
- Guernsey
- Hong Kong
- Liberia
- Liechtenstein
- Maldives
- Marshall Islands
- Mauritius
- Monaco
- Montserrat
- Nauru
- Niue
- Panama
- Saint - Vincent and the Grenadines
- Saint Christopher and Nevis
- Seychelles
- Turks and Caicos Islands
- US Virgin Islands
- Vanuatu

3. The HKSAR Government’s statement is downloadable from http://www.info.gov.hk/gia/general/201506/18/P201506180929.htm
4. The tax incentives offered by Hong Kong include a 50% concessionary tax rate for profits derived by an reinsurer from the reinsurance of offshore risks and by a captive insurer from underwriting offshore risks; the exemption of offshore funds and the proposed concessionary tax rate for group treasury companies.
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