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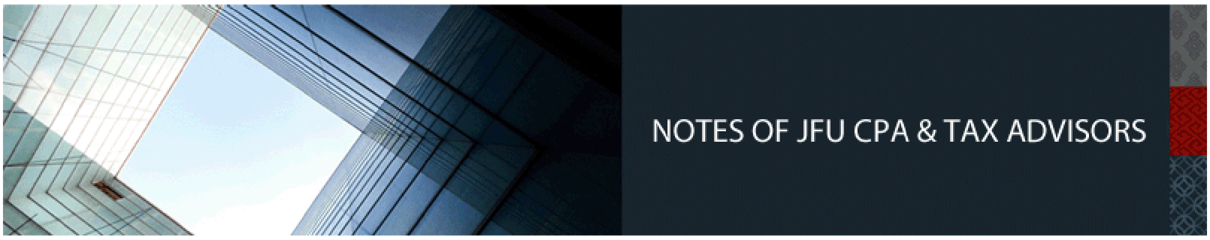

Hong Kong Included on the European Commission Tax Haven Blacklist

Source: JFU
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Recently, the European Commission published a tax haven blacklist of the jurisdictions suggested by at least 10 EU states to be “problematic” or “non – cooperative”. Hong Kong is included in the blacklist.

The Government of Hong Kong responded as follows:

“Hong Kong was denied any opportunity to comment or clarify its position before the proposed blacklisting which was unilateral and procedurally unfair. Hong Kong is one of the members of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and its commitment to meeting international standards on tax transparency was recognized in a two- phase peer review, completed in 2011 and 2013 by the Global Forum”.

It was not only Hong Kong that was outraged by its inclusion on the blacklist. Many other jurisdictions have expressed their dismay at their inclusion and the Organization for Economic Co-operation and Development (“OECD”) also expressed their dissatisfaction with the list. OECD Secretary General, Angel Gurria noted that many of the jurisdictions on the list are members of the Global Forum and, as such, are committed to an automatic exchange of information and are rated as largely compliant. In a letter that was posted on the OECD website but subsequently removed, the following statement was made about the jurisdictions included on the list:

“There is nothing more they could do to be considered co-operative “

So what does this mean for Hong Kong in terms of inward investment and as a place to participate in international business activities? Many of our clients have already asked this question.

Pushing Taxpayers Away?

There is no doubt that the initial knee jerk reaction is, that such a listing could affect Hong Kong’s reputation in the global business community. However, as we understand it, the EU jurisdictions' view of Hong Kong to be “problematic” or “non co-operative”, rather than being a reflection on the Hong Kong fiscal system, may be indicative of how the tax authorities in those jurisdictions see the tax-paying behavior of their own taxpayers.

Why Hong Kong is able to Maintain an Attractive Tax Regime

Hong Kong's low tax system did not evolve to create a tax haven to attract foreign companies to set up legal entities here purely to benefit from its low or, in the case of non Hong Kong sourced income, zero tax rate, without any commercial justification. In the 60s and 70s Hong Kong was a thriving manufacturing centre and by the time the 90s came around, Hong Kong was reliant on the service industry and financial services. However, no matter what the nature of the profit generating activities the companies carried on here, they were able to benefit from a low or zero rate of tax, because of the structure of the administration in Hong Kong.

The Hong Kong government is a small, tightly run ship and as a consequence the tax revenues required to fund the operation are relatively small, hence the low effective rate of tax on business profits and the personal income of individuals. Revenues for larger infrastructure projects and the provision of welfare are largely provided through stamp duty on land and property sales, such that the direct tax system in Hong Kong remains relatively simple and the effective tax rate low.
Although taxation does not dictate how a business makes decisions, it is crucial enough to make a difference when a business decides where to locate and how to run an operation. Hong Kong becomes a center attractive to international businesses not just because it has a low tax regime, but because it has a favorable tax environment including a highly professional and a friendly tax administration.

KYC as a Duty of Tax Practitioners

Hong Kong's achievement relies on a community and players willing to take root here, setting eyes on horizons beyond local waters. We believe therefore, that it is up to practitioners in Hong Kong to preserve the tax regime and protect our international reputation, by conducting rigorous “know your client” procedures to ensure that companies and businesses setting up in Hong Kong are doing so for valid commercial reasons. We also owe it to potential overseas investors to advise them that setting up a Hong Kong company to do “business” in Hong Kong, whilst continuing to undertake all the day to day business activities in another location will create a taxable presence in that other jurisdiction which should be reported to the relevant tax authorities.

Fundamentally, as practitioners in Hong Kong, we should be helping our clients to undertake tax planning exercises as an integral part of their business strategies and core business, taking into account the location of their customers, markets as well as long and short term objectives. In doing so, we not only protect our clients, both financially and from a reputational risk perspective due to tax avoidance challenges, we also help preserve the integrity of our fiscal system and our own global reputation as a leading jurisdiction to do business.