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Global Tax Alert

Netherlands removes Kuwait, Qatar, Saudi Arabia and Belize from list of low-taxed jurisdictions for FY 2020, adds Barbados and Turkmenistan

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Executive summary

On 18 December 2019, the Dutch Government published a decree updating various Dutch tax regulations including adjustments to the Dutch list of low-taxed and non-cooperative jurisdictions. This list is relevant to the application of certain Dutch measures against tax avoidance including the possibility to obtain advanced certainty. Compared to the prior list applicable for FY 2019,[1] and following a public consultation,[2] the list for FY 2020 no longer includes Kuwait, Qatar, the Kingdom of Saudi Arabia (KSA) and Belize but now additionally includes Barbados and Turkmenistan.

This new list is relevant for fiscal years starting on or after 1 January 2020. Inclusion on the list could impact multinationals with entities or permanent establishments in one of the jurisdictions and controlled by or engaged in transactions with a Dutch taxpayer.

Detailed discussion

On 7 October 2019, a consultation was started by the Dutch Government to update the Dutch list of low-taxed and non-cooperative jurisdictions for FY 2020, including jurisdictions that the Dutch Government has identified as having no profit tax regime or a profit tax regime with a statutory rate of less than 9% (low-taxed jurisdictions) as well as those jurisdictions that are included

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on the European Union (EU) blacklist of non-cooperative jurisdictions in tax matters as published in the calendar year prior to the calendar year in which the relevant fiscal year commences.

The list is particularly relevant for the Dutch controlled foreign company (CFC) rules and the Dutch tax ruling practice. It is furthermore relevant for the new Dutch *Withholding Tax Act 2021* as adopted and published on 27 December 2019, introducing a conditional withholding tax on interest and royalties paid by Dutch companies to group companies residing in one of the listed jurisdictions as of 1 January 2021. Reference to the withholding tax is also made in our EY Global Tax Alert on the Dutch 2020 Budget Proposals.[3]

The Dutch list applicable for FY 2020 consists of the following jurisdictions: Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Turkmenistan, Turks and Caicos Islands, Vanuatu and the United Arab Emirates (UAE).

Additionally, the non-cooperative jurisdictions identified by the EU and valid for the abovementioned Dutch tax rules in FY 2020 are American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, and Vanuatu.

When publishing the draft list for consultation in October, the Dutch Government already announced that it no longer considered the KSA to qualify as a low-taxed jurisdiction as the average local tax burden exceeds the aforementioned 9% tax over profit, considering the local corporate tax system and the levy of Zakat. In the explanation to the decree published on 18 December 2019, it is now furthermore stated that the tax regimes of Kuwait and Qatar are considered almost the same as that of the KSA, accordingly these two jurisdictions were also removed from the list. In relation to Belize, the Dutch Government concluded that the local statutory levy over revenue results in a profit tax exceeding 9%.

Barbados reduced its statutory profit tax rate effective 1 January 2019 to vary between 1% and 5.5%. For Turkmenistan, the 8% rate was incorrectly not considered to be a general statutory rate. As a result, both jurisdictions were added to the final list for FY 2020.

Implications

Overall, multinationals with a business in one of the listed jurisdictions, either through an entity or a permanent establishment, should carefully review whether the above impacts their current structure, potential investments and restructuring plans. Additionally, for multinationals with presence in the Netherlands and in Belize, the KSA, Kuwait or Qatar, the removal of these jurisdictions from the list should be positive news. It may reduce the potentially adverse consequences of the Dutch CFC rules and withholding tax on interest and royalties and it may also open up the possibility to conclude a tax ruling with the Dutch tax authorities.

Endnotes

1. See EY Global Tax Alert, *Dutch Government publishes list of low-taxed jurisdictions: Impact to the Middle East*, dated 14 January 2019.
2. See EY Global Tax Alert, *Dutch Government starts consultation on updated list of low-taxed jurisdictions to apply for FY 2020*, dated 11 October 2019.
3. See EY Global Tax Alert, *The Netherlands publishes 2020 budget proposals*, dated 18 September 2019.

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