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THE 50 SHADES OF THE EU BLACKLIST

On 12th March 2019, the European Union (EU) Finance Ministers adopted the EU list of non-cooperative tax jurisdictions (EU Blacklist) following an intense screening of 92 jurisdictions based on three criteria: tax transparency, good governance and real economic activity, as well as one indicator, the existence of a zero corporate tax rate.

The EU Blacklist is as follows:

Source: European Commission website

However, the finalization of the EU Blacklist had its fair share of drama that solicited high-level intervention from country states. It will be recalled that earlier this month, the European Commission (EU Commission) circulated the EU Blacklist (the "Initial Blacklist") to its Member States which then included Panama, Saudi Arabia as well as the following countries:

Afghanistan, American Samoa[1], The Bahamas, Botswana, Guam[1], North Korea, Ethiopia, Ghana, Iran, Iraq, Libya, Nigeria, Pakistan, Puerto Rico, Samoa[1], Sri Lanka, Syria, Trinidad and Tobago[1], Tunisia, US Virgin Islands[1] and Yemen

[1] *these countries still appear in the updated EU Blacklist*

The Initial Blacklist sparked an outcry from the affected countries prompting them, especially Saudi Arabia, to embark on a lobbying campaign with EU Member States. Rumours of Saudi Arabia threatening to terminate contracts with EU member states if the list is approved even floated around.

As a result, EU Member States unanimously rejected the Initial Blacklist as according to them, it was *"not established in a transparent and resilient process that actively incentivises affected countries to take decisive action while also respecting their right to be heard".*

Subsequently, a new EU Blacklist was circulated. Saudi Arabia, Panama, Afghanistan, The Bahamas, North Korea, Ethiopia, Ghana, Iran, Iraq, Libya, Nigeria, Pakistan, Puerto Rico, Sri Lanka, Syria, Tunisia, and Yemen no longer appear on the EU Blacklist voted by EU Member States and published on the 12th March 2019, prompting beliefs that the EU Members States ought to have been influenced by countries having major political trump cards in hand.

Whilst the EU blacklisting exercise provides incentive for countries to bring their tax systems in line with internationally accepted standards at the risk of being named and shamed on an international platform, it should be seen as an unbiased exercise. However these turns of events can be construed as a harbinger of discrimination against more vulnerable economies which bereft of options, have to bow to the whims of the EU Commission.

At a time when the EU is set to face challenges such as the Brexit, it is more important than ever before for the EU Commission to strengthen its credibility and instil investor confidence in its institution. Any signs of partiality will reflect poorly upon the EU Commission and its Member states.

Appearing on the EU Blacklist is detrimental to any country since this will imply enhanced scrutiny and due diligence on blacklisted countries alongside a plethora of other sanctions. It is simply beyond reason to have what could possibly be termed as "50 shades" or multiple facets to an exercise that could potentially dampen the economy of blacklisted countries.

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