

United Arab Emirates Removed From Tax Havens List

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The European Union recently removed the United Arab Emirates from the list of Uncooperative Tax Havens. The UAE achieved this goal after enhancing the substance and transparency of its taxation procedures. Tax analysts believe this action will make the UAE an even more attractive destination for foreign investment in future.

Background of Tax Avoidance versus Tax Evasion

“In our society, a great deal of intellectual effort is devoted to tax avoidance. The most sophisticated attempts of the Houdini taxpayer to escape from the manacles of tax ... generally ... include elements which have been inserted without any business or commercial purpose but are intended to have the effect of removing the transaction from the scope of the charge.”

[So said Lord Reed in 2016](#) as the Supreme Court of the United Kingdom unanimously allowed the appeal of Her Majesty’s Revenue & Customs in two cases concerning schemes that were devised to avoid the payment of income tax on bankers’ bonuses.

As in other countries, the distinction in the United Kingdom between tax avoidance and tax evasion is one that the legislature and the judiciary have both struggled to draw neatly over time, causing much consternation in the case law. Ultimately, tax avoidance is legally exploiting a system of taxation to reduce current or future tax liabilities by means not envisaged and provided for by parliament. This is generally considered acceptable and within the bounds of the law. Conversely, tax evasion is the illegal failure to assess and pay the full amount of a tax that is due and owing under a system of taxation. It is a white collar crime. In simple terms, the difference is one of legality.

Although incredibly difficult to quantify tax avoidance, an International Monetary Fund staff paper estimated that USD 123 billion was lost to tax avoidance in 2014. In 2015, the United Nations Conference on Trade and Development (UNCTAD) estimated the loss that year to be USD 100 billion. Also in 2015, the G20 estimated the loss at somewhere between USD 100 billion and USD 240 billion. [All three estimates](#) were of tax avoidance in the form of base erosion and profit shifting

(BEPS).

BEPS involves tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially avoid or reduce home-country taxation by relocating profits to low- or no-tax jurisdictions where, in actual fact, there is little, if any, economic activity. By engaging in tax inversions (moving operations) or by migrating intangibles, BEPS essentially “shifts” profits from higher tax jurisdictions to lower tax jurisdictions, thus “eroding” the “base” for taxation in the higher jurisdiction.

UAE Signs the OECD Multilateral Convention

On May 16, 2018, the UAE [signed up](#) to the OECD [Inclusive Framework](#) on Base Erosion and Profit Shifting (BEPS). This evidenced the UAE commitment to implementing four minimum standards designed to counter harmful tax practices, counter tax treaty abuse, mandate country-to-country disclosures, and improve the resolution of tax disputes.

The anti-BEPS multilateral instrument (MLI) Inclusive Framework puts into place minimum standards, including the “Principal Purpose Test” and the “Mutual Agreement Procedure,” which require competent tax authorities and taxpayers to look at the underlying commercial realities of transactions and, even more significantly, to cooperate with contracting states to resolve international tax disputes.

With the UAE viewed historically as a “low tax” or “tax beneficial” jurisdiction, its action in signing up to the MLI, particularly when coupled with the 83 existing treaties between the UAE and other jurisdictions around the world for the avoidance of double taxation and the prevention of fiscal evasion, constitutes a concerted push towards a global standard of governance in frustration of treaty shopping.

Removal of the UAE from Tax Haven List

As well as signing up to the MLI, the UAE has also signed up to the Foreign Account Tax Compliance Act (FATCA), in order to be compliant with U.S. laws, taken measures to comply with the Common Reporting Standard (CRS), and executed a further 113 agreements for the purposes of avoiding double taxation and eight agreements to facilitate the exchange of information for tax purposes.

As a result of these actions, the UAE secured a “largely compliant” grade in the Global Forum on Transparency and Exchange of Information for Tax Purposes and was removed from the EU’s list of [Uncooperative Tax Havens](#).

His Excellency Younis Haji Al Khoori, Undersecretary of the UAE Ministry of Finance applauded the decision by EU officials, [saying](#): “The European Union’s decision reaffirms the UAE’s full and solid commitment to transparency in tax procedures, and reflects the meticulous local and international efforts made by all stakeholders in the emirates since the beginning of 2017 to cooperate with our European counterparts and adhere to the EU’s standards and requirements regarding the exchange of tax information.”

Additional Considerations

Taxpayers with businesses in the UAE, particularly those that are foreign branches or subsidiaries

and part of an international investment structure, should consider taking advice to ensure they are mitigating tax risks and not falling foul of the anti-treaty shopping rules. The aforementioned “Principal Purpose Test” means that competent tax authorities now are committed to scrutinizing the underlying purpose of transactions and dealings to establish they are carried out for bona fide commercial reasons and not principally to obtain tax breaks.

The U.S. Department of the Treasury has decided against signing the anti-BEPS MLI, [stating](#) that the U.S.: “has a low degree of exposure to base erosion and profit shifting.” Some tax academics have [disagreed](#), submitting that U.S. multinationals are among the [largest users of BEPS tools in the world](#), while others have long suggested that the U.S. exchequer, via increased federal taxes, is a [net beneficiary](#) from the use of tax havens and BEPS by U.S. multinationals.

Interestingly, of all the tax havens in the world—the Caribbean (British Virgin Islands, Cayman Islands, Turks and Caicos, etc.), the islands of the Indian Ocean (Maldives, Mauritius, and Seychelles), the British crown dependencies (Guernsey, Jersey, and Isle of Mann), and other sovereign states such as Switzerland, Liechtenstein, Luxembourg, Hong Kong, Singapore and, of course, the UAE—[research in June 2018](#) identified Ireland as the world’s largest BEPS hub. The findings showed that, in 2015, USD 106 billion of profits were shifted from Ireland alone.

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