

# Legal Alert



## EU Removes UAE from Tax Blacklist

By Greg Mayew | 10 October 2019

The European Union (EU) has removed the UAE from the EU's blacklist of non-cooperative jurisdictions for tax purposes.

### The EU Blacklist

The EU maintains a blacklist of non-cooperative jurisdictions for tax purposes. The EU has published criteria on tax transparency, fair taxation and implementation of anti-BEPS measures that EU Member States undertake to promote.<sup>1</sup> BEPS refers to domestic tax base erosion and profit shifting due to multinational enterprises exploiting gaps and mismatches between different countries' tax systems. Under the OECD/G20 Inclusive Framework on BEPS, over 130 countries are collaborating to put an end to tax avoidance strategies that exploit gaps and mismatches in tax rules to avoid paying tax. The EU has been active in trying to combat such tax avoidance not just in the EU itself but internationally and the blacklist is a key pillar of such efforts.

### Brief History

Several jurisdictions that were either on the EU blacklist or at risk of being blacklisted responded by introducing legislation requiring entities established in such jurisdictions to demonstrate economic substance in the jurisdiction of establishment. The UAE had committed to enact legislation of this nature by 31 December 2018 but did not meet this deadline. On 12 March 2019, the EU placed the UAE on the blacklist.

In an apparent response to the UAE being blacklisted, the UAE Cabinet issued Cabinet Resolution 31 of 2019 Concerning Economic Substance Regulations (the **UAE Economic Substance Regulations** or the **Regulations**) which came into effect on 30 April 2019. On 11 September 2019, pursuant to Article 6(6) of the Regulations, the UAE Ministry of Finance issued Guidance<sup>ii</sup> on the Regulations.

The EU updates the blacklist periodically and on 10 October 2019 an EU press release announced that the UAE has been removed the blacklist.

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Greg Mayew joined Afridi & Angell in 2004 and is the partner in charge of the Abu Dhabi office. He is involved in the firm's corporate and commercial, capital markets, construction, project finance, and banking practices. Greg holds a JD from the University of Minnesota Law School, a master's degree from the Massachusetts Institute of Technology and a BA from the University of Denver. He is a member of the New York State Bar. Prior to joining Afridi & Angell, Greg was an associate at the London and New York offices of a leading firm.

## Going Forward

The EU Code of Conduct Group monitors compliance with the EU's criteria so the UAE's removal from the blacklist is not necessarily the end of the story. A detailed discussion of the UAE Economic Substance Regulations is beyond the scope of this Legal Alert (for more information on these Regulations see Afridi & Angell's inBrief articles dated 7 July 2019 and 10 October 2019). However, one issue to highlight is that the Regulations contemplate a further UAE Cabinet Resolution designating a Regulatory Authority<sup>iii</sup> to regulate compliance with the Regulations. The Regulatory Authority has not yet been designated. As such, the regulatory regime under which the Regulations will be enforced is not yet complete.

The appointment of the Regulatory Authority and the approach such Regulatory Authority will take in enforcing the UAE Economic Substance Regulations is a future development that warrants monitoring by any businesses that are potentially subject to the Regulations. ■

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<sup>i</sup> See Council of the European Union, *Outcome of Proceedings* dated 5 December 2017. The Criteria on tax transparency, fair taxation and implementation of anti-BEPS measures that EU Member States undertake to promote are set out in Annex V thereto.

<sup>ii</sup> Ministerial Decision No. 215 of 2019 on the Issuance of Directives for the Implementation of the Provisions of Cabinet Decision No. 31 of 2019 Concerning Economic Substance Requirements.

<sup>iii</sup> The Guidance issued by the Ministry of Finance on 11 September 2019 raises the possibility that there could be more than one Regulatory Authority.

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