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# EUROPEAN

NEWSLETTER / JANUARY 2018

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## PRESS RELEASE

### 1.1

#### **Press Release dated 23 January 2018. "Taxation: Eight jurisdictions removed from EU list"**

With Press Release dated 23 January 2018 titled "*Taxation: Eight jurisdictions removed from EU list*", the EU Council informed that eight jurisdictions have been removed from the EU's list of non-cooperative jurisdictions for tax purposes, following commitments made at a high political level to remedy EU concerns<sup>1</sup>.

*Barbados, Grenada, the Republic of Korea, Macao SAR, Mongolia, Panama, Tunisia and the United Arab Emirates* are moved to a separate "*category of jurisdictions subject to close monitoring*". The decision leaves 9 jurisdictions on the list of non-cooperative jurisdictions out of 17 announced initially on 5 December 2017<sup>2</sup>. These are *American Samoa, Bahrain, Guam, Marshall Islands, Namibia, Palau, Saint Lucia, Samoa and Trinidad and Tobago*.

The EU's list is intended to promote good governance in taxation worldwide, maximizing efforts to prevent tax avoidance, tax fraud and tax evasion. Whereas the list is to be revised at least once a year, the working group responsible for preparing it (the '*Code of Conduct Group*') can recommend an update at any time.

On the issue, reference is made to the following documentation:

- January 2018 Note on the EU list of non-cooperative jurisdictions ("*The EU list of non-cooperative jurisdictions for tax purposes: - Report by the Code of Conduct Group (Business taxation) suggesting the de-listing of certain jurisdictions*");
- December 2017 Council Conclusions on the EU list of non-cooperative jurisdictions ("*The EU list of non-cooperative jurisdictions for tax purposes. Council conclusions (adopted on 5/12/2017)*").

<sup>1</sup> December 2017 Council Conclusions on the EU list of non-cooperative jurisdictions specify that "*It is important to provide efficient protection mechanisms to fight against the erosion of Member States' tax bases through tax fraud, evasion and avoidance, and consequently, to apply effective and proportionate defensive measures, at the EU and national level, to the jurisdictions in the EU list of non-cooperative jurisdictions for tax purposes*".

<sup>2</sup> The list was drafted during year 2017 as response also to the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The former document lists, among others, the jurisdictions considered compliant with ODEC measures within the scope of the BEPS Project (BEPS minimum standard).

**Table 1:** Anti-BEPS Measures

<i>The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard by <b>2018</b></i>	<i>Aruba, Cook Islands, Faroe Islands, Greenland, New Caledonia, Saint Vincent and the Grenadines, Taiwan and Vanuatu</i>
<i>The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard by <b>2019</b></i>	<i>Albania, Armenia, Bosnia and Herzegovina, Cabo Verde, Fiji, Former Yugoslav Republic of Macedonia, Jordan, Maldives, Montenegro, Morocco, Serbia and Swaziland</i>
<i>The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard if and when such commitment will become relevant</i>	<i>Nauru, Niue</i>

**Table 2:** OECD Multilateral Convention on Mutual Administrative Assistance (MAC)

<i>The following jurisdictions are committed to sign and ratify the MAC or to have in place a network of agreements covering all EU Member States by <b>2018</b></i>	<i>Hong Kong SAR, New Caledonia, Oman, Qatar and Taiwan</i>
<i>The following jurisdictions are committed to sign and ratify the MAC or to have in place a network of agreements covering all EU Member States by <b>2019</b></i>	<i>Armenia, Bosnia and Herzegovina, Botswana, Cabo Verde, Fiji, Former Yugoslav Republic of Macedonia, Jamaica, Jordan, Maldives, Montenegro, Morocco, Peru, Serbia, Swaziland, Thailand, Turkey and Vietnam</i>

## EU COURT OF JUSTICE

### 2.1

**Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 77/388/EEC – Third subparagraph of Article 12(3)(a) – Reduced rate of VAT – Annex H, category 7 – Single supply comprised of two distinct elements – Selective application of a reduced rate of VAT to one of those elements – ‘World of Ajax’ tour – Visit to the AFC Ajax museum. Judgement dated 18 January 2018, Case C-463/16, *Stadion Amsterdam CV vs Staatssecretaris van Financiën***

*The Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/4/EC of 19 January 2001, must be interpreted as meaning that a single supply, such as that at issue in the main proceedings, comprised of two distinct elements, one principal, the other ancillary, which, if they were supplied separately, would be subject to different rates of value added tax, must be taxed solely at the rate of value added tax applicable to that single supply, that rate being determined according to the principal element, even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified.*

The request for a preliminary ruling concerns the interpretation of Article 12(3)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the value added tax as amended by Council Directive 2001/4/EC of 19 January 2001.

The request has been made in proceedings between *Stadion Amsterdam CV* and the *Staatssecretaris van Financiën* (Secretary of State for Finances, Netherlands) concerning the latter’s refusal to allow the applicant in the main proceedings to apply a reduced rate of value added tax (VAT) to the tourist services that the applicant offers<sup>3</sup>. During the period between 1 January 2001 and 30 June 2005, it was not possible to visit the museum without participating in the guided tour of the stadium.

Since *Stadion Amsterdam* was of the view that the tour should be treated as the supply of a cultural service or as recreation or entertainment, it applied the reduced rate of VAT provided for by Law to the revenue received in respect of that service.

<sup>3</sup> *Stadion Amsterdam* is a company operating a multi-purpose building complex, known as the *Arena*, consisting of a stadium and associated facilities. The museum of the football club *AFC Ajax* (*AFC Ajax*) is also housed in that complex. *Stadion Amsterdam* hires the stadium out to third parties as a venue for sports competitions and (occasionally) for performances by performing artists. Furthermore, it offers visits to the *Arena* in the form of tours with an admission charge.

The EU Court of Justice intervened on the theme of single supplies and of ancillary supplies. As a preliminary point, it should be noted that, where a transaction comprises a bundle of elements and acts, regard must be had to all the circumstances in which the transaction in question takes place in order to determine whether that operation gives rise, for the purposes of VAT, to two or more distinct supplies or to one single supply (see, to that effect, judgments *Bog and Others* and *Žamberk*). According to the Court, it follows from Article 2 of the Sixth Directive that every supply of a service must normally be regarded as distinct and independent and that a supply which comprises a single service from an economic point of view should not be artificially split. There is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split (judgments as above-mentioned and *Baštová*). A service must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but “*a means of better enjoying the principal service supplied*”.

The judgement makes reference to a previous position expressed by EU judges as to whether access to an aquatic park offering visitors not only facilities for engaging in sporting activities but also other types of recreation or relaxation amounted to a single supply. The Court has held that the fact that the aquatic park offers only a single entrance ticket granting access to all of the facilities, without any distinction according to the type of facility actually used and to the manner and to the duration of use during the period of the entrance ticket's validity, constitutes a strong indication of the existence of a single supply (judgment *Žamberk*).

On the issue, reference is made also to judgements *CPP*, *Commission/France* and *Talacre Beach Caravan Sales*.

## EUROPEAN TAX NEWSLETTER | JANUARY 2018

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 JANUARY 2018.  
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST,  
AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.  
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO [UFFICIOSTUDI@STUDIOPIROLA.COM](mailto:UFFICIOSTUDI@STUDIOPIROLA.COM)