



Council of the
European Union

077577/EU XXVI. GP
Eingelangt am 10/10/19

**Brussels, 10 October 2019
(OR. en)**

**5439/19
DCL 1**

FISC 39

DECLASSIFICATION

of document: 5439/19 RESTREINT UE/EU RESTRICTED

dated: 17 January 2019

new status: Public

Subject: The EU list of non-cooperative jurisdictions for tax purposes
- Progress Report - United Arab Emirates

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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NOTE

From: Commission Services

To: Code of Conduct Group (Business Taxation)

Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Progress Report - United Arab Emirates

Delegations will find attached a document by the Commission services.

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PROGRESS REPORT - UNITED ARAB EMIRATES**Code of Conduct Subgroup meeting – 18 January 2018****Background**

The Code of Conduct Group (the COCG) found that the United Arab Emirates' (the UAE) tax system failed to meet listing criteria 1.1, 1.3, 2.2 and 3. The UAE was put on Annex I in December 2017 and was then moved to Annex II following commitment of the UAE to remedy the deficiencies identified.

This report assesses the overall implementation of the commitments undertaken by the UAE.

Assessment

The Code Group agreed in July 2018 to recommend removing UAE from annex II on criteria 1.1, 1.3 and 3, considering that the UAE has taken the following commitments:

- Criterion 1.1 (automatic exchange of information including the legislative process to implement the Common Reporting Standard): UAE has fulfilled its commitment on this criterion.
- Criterion 1.3 (ratification of the OECD MAC): UAE has fulfilled its commitment on this criterion.
- Criterion 3 (BEPS minimum standards): UAE has joined the BEPS Inclusive Framework.

Following this decision, the discussions with the UAE focused on the implementation of the UAE's commitment regarding criterion 2.2.

At first, the UAE showed some reluctance and considered that joining the BEPS Inclusive Framework and implementing transparency requirements should be sufficient to address the Member States' concerns on criterion 2.2, as they would have access to information on companies operating in the UAE. They also considered that their existing legislation would already address substance requirements and offered to provide details on this legislation.

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Following these initial contacts, there were no more contacts or documents shared until the end of October at the occasion of an on-site visit by the Commission services. At that time, the UAE shared an extensive set of existing legislation in order to evidence existing substance requirements. The Commission services, however, could not find substance requirements in that legislation that could be considered equivalent to the Scoping Paper requirements.

Following the 24 October meeting, the dialogue with the UAE has resumed. However, still no draft legislation was shared with the Commission services as a basis for a technical discussion.

A meeting was held in Brussels on 5 December 2018 during which the UAE presented its complex legal system in which the federal level has to consult each of the seven Emirates on new legislation (with internal consultation in each Emirate of relevant regulators and free zones) before it is submitted to the cabinet and finally to the legislative board. The UAE clearly stated they would not meet the 31 December 2018 deadline, as the legislative process will take months. They also indicated that they were uncertain to be able to share any draft legislation due to internal legal limitations to sharing draft legislation.

On 17 December 2018, the UAE sent a “Concept Paper” on economic substance highlighting the main points that will be included in the future regulation.

The relevant activities would cover: banking, insurance, fund management, financing and leasing, distribution and services centres, shipping, holding IP business, headquarters and holding business. Our understanding is that the UAE plan to introduce a mandatory licensing of all legal entities carrying out relevant activities by the relevant Regulatory Authority that will be responsible for the implementation and enforcement of the economic substance test. All types of natural or legal entities should be covered, including branches, subsidiaries and partnerships. By exception, entities in which the UAE Federal and/or Local Government, or any Governmental authority or body of any of them, owns share capital will not be covered.

The UAE Concept Paper further defines core income generating activities (CIGAs) in line with the FHTP Guidance on non-IP regimes and the specific IP CIGAs.

The substance test would require that a company is directed and managed in the UAE in relation to a relevant activity. There should be an adequate number of qualified full-time employees, adequate level of expenditure and adequate physical assets. Outsourcing would be allowed with the appropriate safeguards.

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The presumption of non-compliance for high-risk IP scenarios is mentioned in the Concept Paper, but not further detailed or defined in particular with an enhanced evidential threshold to rebut the presumption.

The information on high-risk IP cases as well as non-compliant cases will be provided to the UAE Competent Authority. It is however unclear whether that information will then automatically be exchanged with the relevant Member States as the Concept Paper refers to “relevant information” to be shared with the foreign authority.

The filing requirements of substance information by entities carrying out relevant activities is not detailed.

The sanctions framework is not very detailed as to the amount of penalties for non-compliance as well as the timeline for application of such penalties and for the entity to remedy the problems identified. There is no reference as to how the UAE would definitively prevent a non-compliant entity to do business without proper substance (whether they would strike-off a non-compliant entity).

Conclusion

The UAE has fulfilled its commitments on criteria 1.1, 1.3 and 3 and were already removed from Annex II for these criteria.

Although the dialogue with the UAE on criterion 2.2 has improved lately, this only started late October 2018 and still, to date, no draft legislation was shared with the COCG but only a Concept Paper outlining their intentions regarding substance. This document goes in the right direction but cannot be considered as sufficient, especially as compared to the level of cooperation and technical work of other 2.2 jurisdictions.

We suggest to conclude that the UAE has not implemented its commitment under criterion 2.2 to introduce substance requirements by 31 December 2018 and to list them in Annex I.

Questions: Do delegations agree with the suggested way forward?