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Hong Kong has been removed from two of the Italian black lists



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The Ministerial Decree of 18 November 2015⁽¹⁾ has removed Hong Kong from two of the three Italian black lists:

a) The black list for the application of Italian CFC rules and the full taxation of inbound dividends⁽²⁾.

b) The black list for costs that arise in transactions between an Italian resident and a taxpayer in a black-list country (any portion of such costs that exceeds their arm's length amount is non-deductible, unless safe-harbor rule is satisfied)⁽³⁾.

The third Italian black list – i.e. the black list for the purposes of reverse burden of proof when individuals move their tax residence abroad – has remained unchanged and still includes Hong Kong.

These amendments match the criteria introduced by the 2015 Budget Law:

- For CFC purposes, the black list must only contain countries having a level of taxation 'significantly lower' than in Italy (i.e. less than half the level of taxation in Italy).

- For cost-deduction purposes, the black list must only contain countries that do not allow an adequate exchange of information with Italy.

These two black lists had already been amended, with effect from 11 May 2015⁽⁴⁾, in order to exclude jurisdictions that do not fit these criteria.

The removal of Hong Kong, especially from the cost-deduction black list, is a consequence of the new Treaty between Italy and Hong Kong (and its protocol), in force since 10 August 2015 (see our Tax Alerts of 13 July 2015 and of 27 October 2015).

⁽¹⁾ The ministerial decree was published in Official Journal no. 279 of 30 November 2015, with effect from the same date.

⁽²⁾ This black list is contained in the Decree of 21 November 2001..

⁽³⁾ This black list is contained in the Decree of 23 January 2002.

⁽⁴⁾ The Decree of 21 November 2001 was amended by the Decree of 30 March 2015 and the Decree of 23 January 2002 was amended by the Decree of 27 April 2015. Both amendments were effective from 11 May 2015.

The Treaty contains a provision for the exchange of information that seems compliant with the OECD Model and, as a result, Hong Kong should now be seen as a State that allows an adequate exchange of information with Italy.

Hong Kong has not yet been included in Italy's white list of countries that allow an adequate exchange of information⁽⁵⁾. The white list is relevant, for instance, to interest payments from Italian issuers to bondholders: there is an exemption if the bondholders are established in a white-list country. However, as the white list is built on the same criterion of adequate exchange of information, it is likely that it will soon include Hong Kong.

The following tables show the updated black lists, with the jurisdictions listed under the article of the decree in which they appear.

CFC Black List published in the Decree of 21 November 2001 (as modified by the Decree of 30 March 2015 and by the Decree of 18 November 2015)

Article 1

Alderney (Channel Islands), Andorra, Anguilla, Aruba, Commonwealth of the Bahamas, Barbados, Barbuda, Belize, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Cook Islands, Djibouti (formerly Afars and Issas), French Polynesia, Gibraltar, Grenada, Guatemala, Guernsey (Channel Islands), Herm (Channel Islands), Isle of Man, Jersey (Channel Islands), Kiribati (formerly the Gilbert Islands), Lebanon, Liberia, Liechtenstein, Macau, Maldives, Marshall Islands, Montserrat, Nauru, Netherlands Antilles, New Caledonia, Niue, Oman, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sark (Channel Islands), Seychelles, Solomon, Tonga, Turks and Caicos Islands, Tuvalu (formerly the Ellice Islands), US Virgin Islands, and Vanuatu.

Article 2

- Bahrain, with the exception of oil exploration, extraction and refining companies.
- United Arab Emirates, with the exclusion of the companies operating in the oil and petrochemical industries and subject to tax.
- Monaco, with the exception of companies that make at least 25 percent of their turnover outside the Principality.

Black List for Cost Deduction (as modified by the Decree of 27 April 2015 and by the Decree of 18 November 2015)

Article 1

Andorra, Barbados, Barbuda, Brunei, Commonwealth of the Bahamas, Cook Islands, Djibouti (former Afar and Issas), French

Polynesia, Grenada, Guatemala, Kiribati (formerly the Gilbert Islands), Lebanon, Liberia, Liechtenstein, Macau, Maldives, Marshall Islands, Nauru, New Caledonia, Niue, Oman, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sark (Channel Islands), Seychelles, Solomon Islands, Tonga, Tuvalu (formerly the Ellice Islands), US Virgin Islands, and Vanuatu.

Article 2

- Bahrain, with the exception of companies operating in the oil exploration, extraction and refining industry.
- Monaco, with the exception of companies that make at least 25 percent of their turnover outside the Principality.

Article 3

- Angola, with respect to (i) oil companies that benefit from the exemption from oil income tax, (ii) companies which benefit from tax exemptions or reductions in industries essential to the Angolan economy, and (iii) investments indicated in the Foreign Investment Code.
- Antigua, with respect to (i) international business companies that operate abroad, such as those falling under the International Business Corporation Act no. 28 of 1982 (as subsequently amended), and (ii) companies that manufacture authorised products such as those falling under Law no. 18 of 1975 (as subsequently amended).
- Dominica, with respect to international companies operating abroad.
- Ecuador, with respect to companies operating in free-trade zones that benefit from the income tax exemption.
- Jamaica, with respect to (i) companies manufacturing for export and reaping the tax benefits of the Export Industry Encouragement Act, and (ii) companies located in territories indicated in the Jamaica Export Free Zone Act.
- Kenya, with respect to companies established in the export processing zones.
- Panama, with respect to (i) companies deriving income from foreign sources, as defined under Panama legislation, (ii) companies located in the Colón Free Zone, and (iii) companies operating in the export-processing zone.
- Puerto Rico, with respect to (i) companies engaged in banking activities, and (ii) companies falling under the Puerto Rico Tax Incentives Act of 1988 or the Puerto Rico Tourist Development Act of 1993.
- Switzerland, with respect to companies not subject to cantonal and municipal taxes, such as holding, auxiliary and 'domiciliary' companies.
- Uruguay, with respect to (i) companies engaged in banking activities, and (ii) holding companies that only operate offshore.

In the case of jurisdictions listed in the third article, the black-list rule also applies to other businesses (regardless of their form) that benefit from a tax arrangement substantially similar to those indicated, because of a special measure issued by, or agreement concluded with, the local tax authorities.

⁽⁵⁾ This white list is contained in the Decree of 4 September 1996.

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