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By PwC Deutschland | 17 November 2023

Online form for filing obligations under the Tax Haven Defence Act

An online form enabling the taxpayer to meet his extended duty to cooperate under Section 12 (2) of the Tax Haven Defence Act (in full “Act on Defence against Tax Avoidance and Unfair Tax Competition and amending other laws”) has been published on the homepage Federal Central Tax Office.

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Taxable persons or enterprises, which have business relationships with or interests in enterprises in a non-cooperative tax jurisdiction, are obliged to submit comprehensive records of their business activities.

A tax jurisdiction is considered non-cooperative within the meaning of the law if it is on the EU blacklist and the national Tax Haven Defence Ordinance.

In such as case the relevant taxpayer must submit:

1. A description as well as an overview of the type and scope of business relationships. This includes in particular the purchase of goods, services, loan relationships, insurance relationships, transfers of use and cost allocations,
2. Contracts and agreed contractual conditions on which the business relationships are based,
3. A list of agreements relating to intangible assets. This also includes cost allocation agreements, research service agreements and licence agreements as well as a list of the intangible assets that are used or transferred for use within the scope of the relevant business relationships,
4. A description of the functions performed, and risks assumed by the parties involved in the business relationship, including changes during the financial year,
5. A list of the main assets used,
6. A description of the business strategies chosen,
7. A description of the market and competitive conditions that are relevant for taxation,
8. A list of individuals who are direct or indirect partners or shareholders of the enterprise/company in the non-cooperative tax jurisdiction with which the taxpayer has a business relationship. (This does not apply if there is significant and regular trading in the main class of shares of the foreign company on a stock exchange in an EU/EEA Member State or if the stock exchange is listed by the Federal Financial Supervisory Authority (BaFin) as an authorised stock exchange or other organised market).

The records pursuant to Section 12 (2) Tax Haven Defence must be prepared no later than one year after the end of the calendar year or financial year in question and sent to the locally competent tax authority and, in cases where the requirements of Section 138a General Tax Code (Country by Country Reporting) are met, to the Federal Central Tax Office.

The EU list of tax jurisdictions considered non-cooperative and subsequently the national Tax Haven Defence Ordinance is generally updated on an annual basis. Where a tax jurisdiction is added to the national Tax Haven Defence Ordinance, the obligation to cooperate for that jurisdiction will apply from the beginning of the year following the entry into force of the ordinance (e.g., if the tax jurisdiction was added to the ordinance in 2021, the obligation to cooperate will apply from 1 January 2022).

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*Federal Central Tax Office **online portal**.*

EU List of Non-cooperative jurisdictions for tax purposes

Keywords

EU blacklist, General Tax Code, Tax Haven Defence Act, non-cooperative tax jurisdiction