

Corporate Tax Alert

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OECD rating on exchange of tax information compliance

On 22 November 2013, the OECD rated countries on their level of compliance with the global standard on the exchange of tax information ("EOI"). For some countries, only phase 1 of the compliance review is finished, while for others both phases have been completed. The **full report** can be found on the OECD's website.

Among the countries that have undergone both phase 1 and 2 of the review, Belgium is deemed compliant. On the other hand, Luxembourg, Cyprus, the BVI and the Seychelles are failing to meet the standard set by the OECD.

This OECD rating should have an impact on the reporting requirement of Art. 307 ITC. According to this provision, companies must report annually any payments made, directly or indirectly, to persons established in

- i. a state which, during the entire taxable period for which the payment takes place, has been considered by the Global OECD Forum on Transparency and EOI as a state "not effectively or substantially applying" the OECD EOI standard, or
- ii. a tax haven state (i.e. no or low taxation, see list in Art. 179 RD/ITC).

The administrative circular dated 30 November 2011 promised the release of an additional circular once it was possible to identify the countries caught by this rule. It is not clear at this stage whether this additional circular would be issued in the near future for the 4 countries involved (note that payments to the BVI do already need to be reported as they are listed among the tax haven countries), or whether this would only happen when all countries would have undergone phase 2 of the review.

Another uncertainty lies in the fact that, for the year of payment, the country must be considered "non-compliant" for the entire taxable period. It is not clear whether Luxembourg, Cyprus and the Seychelles must be deemed non-compliant as from 22 November 2013 only, or for the entire taxable period for 2013. The Luxembourg report, for instance, is dated November 2013 but "based on the legal and regulatory framework as at May 2013".

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