

Tax Haven List Repealed by D.C. Council

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After being in effect for only a week, the Council of the District of Columbia (Council) unanimously enacted legislation today that will repeal the list of tax haven jurisdictions specifically enumerated in the D.C. Code. The legislation, titled the [Fiscal Year 2016 Second Budget Support Clarification Emergency Amendment Act of 2015](#) (Act), was introduced on September 22, 2015, after the list created an uproar from singled-out countries and the business community alike. The tax haven list was passed on August 11, 2015, as part of the Fiscal Year 2016 Budget Support Act of 2015 (BSA), which became effective on October 22, 2015. The inclusion of the tax haven list in the BSA was as a supplement to the tax haven criteria that already existed in the D.C. Code.

As passed today, Section 6 of the Act repeals the tax haven list (and accompanying language) added by the BSA in August and restores the relevant D.C. Code provisions to their pre-BSA state. Thus, effective immediately, the tax haven standard established by D.C. Code § 47-1801.04(49), as amended, is as follows:

“(A) ‘Tax haven’ means a jurisdiction that:

- (i) For a particular tax year in question has no, or nominal, effective tax on the relevant income and has laws or practices that prevent effective exchange of information for tax purposes with other governments regarding

taxpayers benefitting from the tax regime;

(ii) Lacks transparency, which, for the purposes of this definition, means that the details of legislative, legal, or administrative provisions are not open to public scrutiny and apparent or are not consistently applied among similarly situated taxpayers;

(iii) Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

(iv) Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or

(v) Has created a tax regime that is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy.

(B) For the purposes of this paragraph, the term "tax regime" means a set or system of rules, laws, regulations, or practices by which taxes are imposed on any person, corporation, or entity, or on any income, property, incident, indicia, or activity pursuant to governmental authority."

Practice Note

Because only the tax haven list provisions—and not the historic tax haven criteria—were repealed today, the criteria will be the sole determiners of whether a jurisdiction is a tax haven for District Income and Franchise Tax purposes. The legislation enacted today was done on an emergency basis, with an identical temporary bill unanimously advancing for a third reading. This means that the repeal will be effective immediately, but will require subsequent permanent legislation to continue its effect beyond the 90 and 225 day (if the temporary bill is passed at a later date) periods of applicability permitted for emergency and temporary legislation, respectively.

Council Chairman Phil Mendelson has indicated his continued support for the tax haven list in a memorandum describing the enacted amendment, stating that "[t]he enumerated list improves enforcement, and is based on legislation adopted in two states . . . Repeal allows for additional time to evaluate what jurisdictions should qualify as a tax haven under existing law." Stay tuned to see whether the Council ultimately embraces a tax haven list in the District or relies on their pre-existing regime.

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