

Brussels, 9 November 2020
(OR. en)

12713/20

FISC 208

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Cayman Islands: final legislation and assessment under criterion 2.2

INTRODUCTION

The ECOFIN Council acknowledged on 12 March 2019 that further work was needed to define acceptable economic substance requirements for collective investment funds (CIVs) under criterion 2.2 and invited the Code of Conduct Group (business taxation) (COCG) to "*continue the dialogue and provide further technical guidance to the jurisdictions concerned by mid 2019*".

In June 2019, the ECOFIN Council subsequently endorsed a technical guidance on substance requirements for CIVs that had been developed by the COCG.¹ The deadline of end of 2019 was confirmed for Cayman Islands to address COCG's concerns relating to economic substance in the area of CIVs.

In February 2020 Cayman Islands was placed on Annex I of the EU list of non-cooperative jurisdictions for tax purposes for criterion 2.2, after failing to deliver timely on the commitment to enhance their regulatory framework on Collective Investment Funds (CIVs).

Since February 2020, Cayman Islands adopted further reforms to their CIVs framework to address the remaining deficiencies.

¹ p. 149 <https://data.consilium.europa.eu/doc/document/ST-5814-2018-REV-6/en/pdf>

A/ FINAL LEGISLATION:

In February 2020 the following rules were adopted:

1. Private Funds Law, 2020, Law No 1 of 2020, Supplement No. 1, published with Legislation Gazette No. 9, 7 February 2020 (ADD 1)
2. Mutual Funds (Amendment) Law, 2020 Law 2 of 2020, Supplement No.2 published with Legislation Gazette No. 9, 7 February 2020 (ADD 2)
3. Private Funds Law, 2020 (Commencement) Order, 2020 Supplement No. 4 published with Legislation Gazette No. 9, 7 February 2020 (ADD 3)
4. Private Funds Regulations, 2020, SL 4 of 2020, Supplement No. 5 published with Legislation Gazette No. 9, 7 February 2020 (ADD 4)
5. Private Funds (Savings and Transitional provisions) Regulations (SL 5 of 2020) Supplement No. 6 published with Legislation Gazette No. 9, 7 February 2020 (ADD 5)
6. Securities Investment Business (Conduct of Business) Amendment Regulations, 2020 (SL 6 of 2020) Supplement No. 7 published with Legislation Gazette No. 9, 7 February, 2020 (ADD 6)

In July 2020 the following rules were adopted:

1. Mutual Funds (Amendment) (No.3) Law, 2020, Law 29 of 2020, Supplement No.5 published with Legislation Gazette No. 49, 7 July 2020 (ADD 7)
2. Private Funds (Amendment) Law, 2020, Law 30 of 2020, Supplement No.6 published with Legislation Gazette No 49, 7 July 2020 (ADD 8)
3. Rule on Calculation of Net Asset Values for Regulated Mutual Funds (ADD 9)
4. Rule on Calculation of Net Asset Values for Registered Private Funds (ADD 10)
5. Regulatory Policy on Exemption from Audit Requirement for a Regulated Mutual Fund (ADD 11)
6. Regulatory Policy on Exemption from Audit Requirement for a Private Fund (ADD 12)

On 10 September 2020 the Cayman Islands published in its official gazette:

1. Revised Rule on Segregation of Assets for Regulated Mutual Funds. (ADD 13)
2. Revised Rule on Segregation of Assets for Registered Private Funds. (ADD 14)

On 4 September 2020 the Regulatory Policy on Exemption from Valuation Requirement for a Private Fund was published. (ADD 15)

B/ FINAL ASSESSMENT:

In September 2019, Cayman Islands legislative framework on CIVs was found inadequate under pillars 1, 3 and 4, while for pillar 2, there was no sufficient information to make an assessment. As of September 2019, Cayman Islands' framework comprised Mutual Funds Law, last revised in 2015, specific rules for funds marketed in Japan (Retail Mutual Funds (Japan) Regulations) and Enforcement Manual.

In the context of the update of the EU list in February 2020, Cayman Islands' framework was re-assessed taking into account reforms that Cayman Islands were in the process of adopting. In particular, at that stage, Cayman Islands were in the process of adopting (i) Private Funds Law (and Private Funds Commencement Order), (ii) Private Funds Regulations, (iii) Private Funds (Savings and Transitional Provisions) Regulations, (iv) Mutual Funds Amendment Law and (v) Securities and Investment Business (Conduct of Business) Amendment Regulations. While these reforms could address the majority of the deficiencies identified in September 2019, they were still inadequate under pillars 1, 3 and 4, and raised new concerns under pillar 2. In addition, these reforms were adopted and entered in force on 7 February 2020, which was after the end of the cut-off period set for the update of the EU list in February 2020.

Since February 2020, Cayman Islands adopted and entered in force the following additional reforming acts: (i) Private Funds Amendment Law, (ii) Mutual Funds Amendment (No. 3) Law, (iii) Rules on NAV Calculation for Regulated Mutual Funds and for Registered Private Funds, (iv) Rules on Segregation of Assets for Regulated Mutual Funds and for Registered Private Funds, (v) Regulatory Policy on Waiver of Audit for Regulated Mutual Funds and for Registered Private Funds and (vi) Regulatory Policy on Exemption from Valuation Requirement for Registered Private Funds.

Member States examined the above reforms that were adopted and entered in force in July and September 2020, together with the reforms adopted on 7 February 2020.

Member States agreed that these reforms in their totality addressed the concerns pending as of February under all 4 pillars, while emphasising that certain aspects should be monitored.

Under pillar 1, registration/authorization requirements applied to mutual funds incorporated, established or marketed to retail investors in Cayman Islands. Cayman Islands has removed exemptions provided in its previous framework, has extended relevant requirements to close ended funds (private funds) and has introduced notification requirements for foreign funds (i) marketed to retail investors under certain conditions or (ii) managed in/from Cayman Islands. The transition period for compliance with the above requirements ended on 7 August 2020. Under pillar 2, the Cayman Islands Monetary Authority (CIMA) is an IOSCO (International Organisation of Securities Commissions) member with staff, resources and significant supervisory and enforcement powers, and its powers to make exemptions are limited. Under pillar 3, funds' valuation policies should adhere to specific principles, while any exemptions are limited by Regulatory Policy. In addition, funds must prepare their accounts according to IFRS or GAAP of US, Japan, Switzerland or other non-high risk jurisdiction, and where audit requirements apply, auditors must be internationally qualified with well-recognized institutions. Under pillar 4, mutual funds must appoint a service provider for the safekeeping of the fund's portfolio and must comply with segregation obligations. Segregation obligations apply to private funds as well and any exemptions are clearly limited.

Conclusion

Cayman Islands revised its legislative framework for CIVs, which now complies with the requirements of the 4 pillars. Therefore, Cayman Islands has delivered on its commitment and can be removed from Annex I for criterion 2.2.
