



21 June 2016

1. EU member states agree on Tax Avoidance Directive

The political agreement on the EU Anti-Tax Avoidance Directive (ATAD) reached between all EU member states at the Ecofin meeting on 17 June 2016 has lasted until the end of the silence period in which member states could raise objections, on 20 June at midnight, and is now effective.

The compromise adopted is a watered-down version of the Commission's original proposal of 28 January 2016. Most of its provisions will have to be applied as of 1 January 2019. Among the amendments made, the following points appear noteworthy:

- The idea of a switchover clause enabling the member state of a parent company to tax untaxed or low-taxed revenues from other countries has been dropped;
- The interest deductibility limitation ("Zinsschranke") is more generous than in the original proposal to the extent that it allows member states to maintain a threshold of € 3 million, compared to € 1 million in the Commission proposal. A grandfathering clause for existing loans as well as an exemption for public infrastructure projects has been included. Member states that have equally effective interest limitation rules in place may delay the introduction of the new rules until the end of 2023;
- For determining the application of CFC (Controlled Foreign Company) rules, the threshold relating to the effective tax rate in the country of the controlled entity (40% of the parent country rate) has been replaced by the criterion that the tax actually paid in that country is less than half of what would have had to be paid in the parent country;
- On exit taxation, the final version contains clarifications to avoid double taxation, stating that exit tax would only apply in so far as the member state loses the right to tax the transferred assets in the future; the new exit tax rules will have to be applied as of 2020;
- Where hybrid mismatches lead to double deduction, only the source state shall grant the deduction; where they lead to deduction without inclusion, the state of the payer shall deny the deduction; according to the initial proposal, the legal characterisation given by the source member state should decide.

Like the original proposal, the final ATAD will include a General Anti Abuse Rule allowing member states to enact stricter anti abuse provisions.

As the European Parliament has already given its approval (having suggested a much stronger focus on anti-avoidance) on 8 June, the ATAD can be adopted at one of the forthcoming Council meetings.

- Compromise proposal, 17 June 2016: [EN](#)
- Reuters article, 17 June 2016: [EN](#)
- Council press release (see page 4), 17 June 2016: [EN](#)
- Commission press release, 21 June 2016: [EN](#) (FR available)

2. Commission to allow member states to introduce VAT reverse charge in political trade-off

On 17 June 2016, the European Commission has committed to presenting, by the end of 2016, a legislative proposal allowing member states to apply a general VAT reverse charge mechanism to domestic supplies above a defined threshold. Reportedly, this commitment is the result of a political trade-off against the Czech Republic's agreement to the Anti-Tax Avoidance Directive. Together with Austria, the country has been seeking to allow this derogation from the common VAT system which has been criticised by VAT experts as disruptive.

3. OECD to set up BEPS monitoring process

The OECD has announced on 16 June 2016 that a monitoring process is being developed to ensure that the minimum standards included in the final BEPS reports are implemented. Countries will have to report publicly on their implementation status. This concerns the measures against harmful tax practices including IP regimes and exchange of rulings (BEPS Action 5), preventing tax treaty abuse (Action 6), transfer pricing documentation and exchange of country by country reports (Action 13) and dispute resolution (Action 14).

4. Code of Conduct Group issues guidance on hybrid PEs involving third countries

On 17 June 2016, the EU Ecofin Council received a report of the Code of Conduct Group on Business Taxation of the progress achieved in the first half of 2016. The Report includes newly developed guidance on hybrid permanent establishments involving third countries, which was welcomed by the Ecofin.

- Report of Code of Conduct Group (p. 13 ff: Guidance on hybrid PEs), 13 June 2016: [EN](#)

5. CJEU rules on deemed supply of a part of a building used for professional purposes after cessation of the activity

The CJEU, on 16 June 2016, confirmed the opinion of Advocate-General Juliane Kokott in the Polish case *Jan Mateusiak*, C-229/15, about a notary who had deducted input VAT on those parts of his private residence which he had used for professional purposes, and had retained those parts after ceasing his business. The Court ruled that this can be treated as a supply of goods for consideration subject to VAT, also after the 10-year adjustment period has passed.

- Judgment: [EN](#) (all EU languages)
- Advocate-General opinion: [EN](#) (all EU languages)

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