Corporate tax avoidance: New rules adopted

On 12 July 2016, the Council adopted new rules addressing some of the practices most commonly used by large companies to reduce their tax liability.

The directive is part of a January 2016 package of Commission proposals to strengthen rules against corporate tax avoidance. The package builds on 2015 **OECD recommendations** to address tax base erosion and profit shifting (BEPS), endorsed by G20 leaders in November 2015.

"This new directive aims to protect our domestic corporate tax bases against aggressive tax planning practices that directly affect the functioning of the internal market", said Peter Kažimír, minister for finance of Slovakia and president of the Council. "It is therefore an important step, which also demonstrates that we see the fight against such practices not only as our common priority but also our common commitment.“

The directive addresses situations where corporates, mostly multinational groups, take advantage of **disparities between national tax systems** in order to reduce their tax bills. It responds to the perception of many taxpayers and SMEs that some multinationals do not pay their fair share of tax, thereby distorting tax competition within the EU's single market.

New provisions in five areas

The directive covers all taxpayers that are subject to corporate tax in a member states, including subsidiaries of companies based in third countries. It lays down anti-tax-avoidance rules for situations that may arise in five specific fields:

Interest limitation rules. Multinational groups may artificially shift their debt to jurisdictions with more generous deductibility rules. The directive sets out to **discourage this practice** by limiting the amount of interest that the taxpayer is entitled to deduct in a tax year.
Exit taxation rules, to **prevent tax base erosion** in the state of origin. Corporate taxpayers may try to reduce their tax bills by moving their tax residence and/or assets, merely for aggressive tax planning purposes.
General **anti-abuse** rule. This rule is intended to **cover gaps** that may exist in a country's specific anti-abuse rules, and thereby enable tax authorities to deny taxpayers the benefit of any abusive tax arrangements that may occur.
Controlled foreign company (CFC) rules. In order to reduce their overall tax liability, corporate groups can shift large amounts of profits towards controlled subsidiaries in low-tax jurisdictions. CFC rules reattribute the income of a low-taxed controlled foreign subsidiary to its - usually more highly taxed - parent company.
Rules on **hybrid mismatches**. Corporate taxpayers may take advantage of disparities between national tax systems in order to reduce their overall tax liability, for instance through double deductions.

A common EU approach

The directive will ensure that the OECD anti-BEPS measures are implemented in a **coordinated manner** in the EU, including by 6 member states that are not OECD members.

Three of the five areas covered by the directive implement OECD recommendations, namely the interest limitation rules, the CFC rules and the rules on hybrid mismatches. The two others, i.e. the general anti-abuse rule and the exit taxation rules, deal with anti-tax-avoidance aspects of a 2011 proposal for an EU common consolidated corporate tax base.

Implementation

The directive was adopted without discussion at a meeting of the Economic and Financial Affairs Council. Political agreement was reached on 17 June 2016, following a silence procedure.

The member states will have until **31 December 2018** to transpose it into their national laws and regulations, except for the exit taxation rules, for which they will have until 31 December 2019. Member states that have targeted rules that are equally effective to the interest limitation rules may apply them until the OECD reaches agreement on a minimum standard, or until 1 January 2024 at the latest.

Other initiatives

Work has proceeded meanwhile on the rest of the January 2016 anti-tax-avoidance package. On 25 May, the Council approved:

a directive on the exchange of **tax-related information** on multinational companies;
conclusions on the **third country aspects** of tax transparency.

The anti-tax-avoidance package follows on from a number of EU initiatives in 2015. These include a directive, adopted in December 2015, on cross-border **tax rulings**.

In December 2014, the European Council cited “an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels”.

July 2016 directive addressing corporate tax avoidance practices
Press release on May 2016 directive on the exchange of tax-related information on multinationals
Council conclusions on an external taxation strategy and measures against tax treaty abuse
Anti tax avoidance package (European Commission)
Press release on December 2015 adoption of the directive on cross-border tax rulings

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