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Anti-Tax Avoidance Directive (ATAD)

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EU Directive for Anti-Tax Avoidance

SUMMARY INTRODUCTION

- 21 June 2016: The EU Council acquiesce in the proposed anti-Tax Avoidance Directive (ATAD) by the Commission to safeguard the operation of the internal market and tackle the erosion of tax base and shifting profits (BEPS).

- The compromise adopted is a watered-down version of the Commission´s original proposed measures of 28 January 2016.

- **The new provisions for the tax system will be effected from 2019 for EU Member States including Cyprus**.

- The Commission's measures deal with the fields below:

  1. deductibility of interest
  2. exit taxation
  3. a general anti-abuse rule (GAAR)
  4. controlled foreign company (CFC) rules
  5. a framework to tackle hybrid mismatches
  6. a switch-over clause (low-taxed to be taxed) but this rule wasn't accepted.

An outline of the tax provisions is given below:

1. Deductibility of interest

- Common company philosophy: Multinational groups fund with debt high-taxable subsidiaries and these companies return "enlarged interest" in group entities located in low taxation jurisdiction.
- The result for the group is a reduced tax base.
- The directive aims at limiting the amount of interest that a taxpayer is entitled to deduct during the fiscal year.
- The interest deductibility limitation allows member states to maintain a threshold of € 3 million (30% of EBITDA - earning before interest, tax, depreciation and amortization).
- A number of deviations are allowed, including the existing loans and public infrastructure projects.
- Provisions on thin capitalization rules are already included into the Greek Tax Legislation with art. 49 of the Greek Tax Income Code.

2. Exit taxation

- Member States introduce an exit tax for certain predefined situations, which include both transfers to other Member States and third countries when taxable entities transfer their tax residence and assets in order to reduce their tax burden.
- The basis of taxation will be the market value of the assets minus their tax value at the time of exit for tax payers that they are transferring assets out of a Member State's taxing jurisdiction.
- The exit taxation prevent the corrosion of the tax base when the assets transferred to another State.

3. A general anti-abuse rule(GAAR)

- Corporate tax planning systems are confused and tax legislation does not evolve fast to contain essential protective measures.
- The rule will stand in the legal discontinuity against the tax evasion and relieve tax–payers from the benefit of abusive regulations.
- A GAAR allowing tax authorities to ignore non-genuine arrangements where one of the main purpose is to obtain a tax advantage that defeats the object or purpose of the tax provision. Arrangements are regarded as non-genuine to the extent that they are not put in place for valid commercial reasons which reflect economic reality. In this case national Law is applied.

4. Controlled foreign company (CFC) rules

- Corporate groups displace large amounts of profits (intangible assets and intellectual property rights) to controlled low-taxable group entities in order to reduce their tax burden overall.
- CFC rules prescribe that passive income (interest income, interest from the exploitation of the intellectual property, dividend income etc.) of more than 50% owned affiliates, paying corporate income tax below a level of 50% of the level applicable in the country of the parent company, shall be included in the taxable base of the latter company and be taxed accordingly.
- The CFC rules attain the redistribution of the income.
- Provisions on CFC rules are already included into the Greek Tax Legislation with art. 66 of the Greek Tax Income Code.

5. A framework to tackle hybrid mismatches

Groups avail themselves the existing tax differences between national systems to reduce the tax burden. Such differences lead to i.e. double discounts or a reduction of income in a country without no increase in the other.

- To the extent that a hybrid mismatch results in a double deduction, the deduction shall be given only in the Member State where such payment has its source.
- Insofar resulting in deduction without inclusion, the Member State of the payer should deny the deduction.

6. A switch-over clause

Low-taxed foreign income would be taxed instead of being exempted, but this rule was strongly criticized and wasn't accepted.

CONCLUSION

The new provisions for the tax system will be effected from 2019 for EU Member States, and will bring substantial changes on how international groups operate. The fields covered by the Directive apply the best practices of OECD and the BEPS issues.

The anti-tax avoidance directive can also ensure that the OECD measures against profit shifting will implement coordinated in the EU, and for seven EU Member States that are not members of the OECD.

ECOFIN goes further and institutes ATAD as a first step towards harmonization in the context of the fight against base erosion and profit shifting.

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