ELVINGER HOSS
LUXEMBOURG LAW

Anti-Tax Avoidance: ATAD II

Posted 03.05.2017

Further to the adoption of the Anti-Tax Avoidance Package including the first Anti-Tax Avoidance Directive (EU) 2016/1164 of 12 July 2016 ("**ATAD**"), the ECOFIN Council requested the Commission to expend the territorial scope of the ATAD in order to include hybrid mismatches involving third countries.

This is the objective of the current proposal on hybrid mismatches agreed during the ECOFIN meeting of 21 February 2017 ("**ATAD II**"), amending the ATAD, which prohibits multinational companies from tax avoidance practices by exploiting differences between the tax systems of EU Member States and non-EU States. ATAD II is modelled on the rules contained in the OECD BEPS report Action 2 on hybrid mismatch arrangements but also covers the branch mismatch structures.

ATAD II will be submitted to the European Parliament for consultation and to the Council of the European Union for adoption. If the proposal is unanimously accepted, Member States will have to implement ATAD II by 31 December 2019 and apply these measures as from 1 January 2020.

ATAD II complements the five legally-binding anti-abuse measures embedded in ATAD (i.e. CFC rules, switchover rule, exit taxation, interest limitation, general anti-abuse rule) in addressing hybrid permanent establishments, entity or financial instrument mismatches, hybrid transfers, imported mismatches and dual residence mismatches existing between a EU taxpayer (including permanent establishment of entities residing in third countries) and an "associated enterprise" or in the case of "structured arrangements".

The definition of "associated enterprise" is based on the OECD Action 2 definition of "control group". A "structured arrangement" is defined as an "arrangement involving a hybrid mismatch where the mismatch is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch".

ATAD II creates a minimum level of protection against corporate tax avoidance throughout the EU, and should have a significant impact on the direct tax environment of the multinational companies.

Further details on the implementation of ATAD II in Luxembourg will be provided in a later edition. In the meantime, please click on the following link to access the UE website dedicated page: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_687_en.pdf

ELVINGER HOSS PRUSSEN

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