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EURO TAX FLASH
KPMG'S EU TAX CENTRE

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Proposal to amend the Parent-Subsidiary Directive

ECOFIN - tax avoidance - double non-taxation - aggressive tax planning - Parent-Subsidiary Directive

On June 20, 2014 the Council of the EU (ECOFIN) reached political agreement on a revised version of the European Commission's proposed amendments to the EU Parent-Subsidiary Directive ("Directive"). The revised text contains measures to combat the use of hybrid loans. Political discussions will continue on the proposal to introduce a general anti-avoidance rule in the Directive.

Background

In December 2012, the European Commission published an action plan on tax fraud and evasion, which included proposals to address perceived loopholes in the EU Parent-Subsidiary Directive 2011/96/EU. A draft directive was issued in November 2013, containing a comprehensive anti-avoidance rule and proposed changes to exclude payments on cross-border hybrid loans from a tax exemption. While there was broad support for the hybrid loan aspect of the proposals, there was disagreement on the anti-avoidance rule. A compromise text, limited to the hybrid loan issue failed to get the required unanimous approval during a May 2014

ECOFIN meeting as a result of reservations from Sweden regarding the impact on certain domestic investment companies and Malta as regards the formulation of the hybrid rule.

The approved anti-hybrid rule

The primary aim of the Directive is to prevent double taxation of the same income across members of a corporate group that are based in different Member States. This is realized by providing for a withholding tax exemption on distributed profits and an exemption or credit for the recipient. The adopted proposal is specifically aimed at preventing the Directive from facilitating double non-taxation arising from the exploitation of hybrid loan structures, for example, where a loan is treated as debt in the Member State of the debtor/subsidiary and as equity in the Member State of the lender/parent, whereby payments on the loan are deductible in the former and exempt in the latter Member State. The amendment is intended to ensure that the payments would no longer be exempt in the latter Member State, which would then be required to tax the portion of the payments which is deductible in the Member State of the paying subsidiary.

Next steps

According to the approved text, all Member States will have to implement the new anti-hybrid rules in their domestic legislation by December 31, 2015 at the latest. Discussions on the proposed general anti-abuse rule are expected to continue.

EU Tax Centre Comment

This amendment to the Parent-Subsidiary Directive should be seen as part of the increased efforts at international level to combat aggressive tax planning. As such, the changes aimed at hybrid loan arrangements could impact certain group financing arrangements, where such arrangements are not already limited under domestic rules.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor.

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