European Union

Anti-Tax Avoidance Directive adopted by EU Council

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On 12 July 2016, the Council of the European Union adopted the Anti-Tax Avoidance Directive (the Directive) laying down rules against tax avoidance practices that directly affect the functioning of the internal market. Political agreement on the Directive was reached on 17 June 2016, following a silence procedure (see European Union-1, News 21 June 2016).

The Directive covers all taxpayers that are subject to corporate tax in a Member State, 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. The Directive sets out rules limiting the amount of interest that a taxpayer is entitled to deduct in a tax year in order to prevent multinational groups to artificially shift their debt to jurisdictions with more generous deductibility rules.

- Exit taxation rules, to prevent tax base erosion in the state of origin. Corporate taxpayers may try to reduce their tax liability 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 Member State’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.

Member States will have until 31 December 2018 to transpose the Directive 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.

See also

European Union-1, News 21 June 2016