Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre

ECON Committee votes on the report 'Bringing transparency, coordination and convergence to Corporate Tax policies in the EU'

ECON Committee – legislative initiative procedure

On December 1, 2015, the European Parliament's permanent Economic and Monetary Affairs (ECON) Committee voted on its report entitled "Bringing transparency, coordination and convergence to Corporate Tax policies in the Union". The report was adopted by 45 votes to 3, with 10 abstentions.

Background

Following the LuxLeaks scandal last year, the European Parliament (EP) decided in December 2014 to launch the drafting of a legislative own-initiative report on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union. The report contains a number of recommendations to the European Commission (EC) which are built on the work of the Parliament's Special Committee on Tax Rulings, whose recommendations were approved at the plenary session on November 26, 2015. This report is set up in the form of a legislative initiative procedure which means that the EC will have to respond to it (click here for the final text).

The views expressed in the original draft report

The recommendations are divided into the following headings: (1) transparency, (2) coordination, and (3) convergence.

(1) Transparency:

- Introduce Country-by-Country reporting for all sectors by multinational companies, based on the work of the Organization for Economic Cooperation and Development (OECD), by June 2016.
- Create a new "Fair Tax Payer" label for companies that engage in good tax practices, with eligibility criteria going beyond what is required by EU and national law.
- Introduce mandatory notification of new tax measures, e.g. allowance, relief, exception, incentive or similar measures having effects on the tax base of another Member State (MS).
- Extend automatic exchange of information on tax rulings to all tax rulings and make them public to a certain extent (i.e. list of companies having rulings, and anonymized summary of main rulings).
- Introduce transparency of customs-free ports.
- Estimate the corporate tax gap (taxes owed minus what has been paid).
- Table proposal for legal protection of whistleblowers.

(2) Coordination

- Introduce a mandatory Common Corporate Tax Base (CCTB) by June 2016 with exemptions for Small and Medium-sized entities (SMEs) and companies with no cross-border activities and a full Common Consolidated Corporate Tax Base (CCCTB) by the end of 2017. In the meantime, a temporary cross-border loss offset regime should be implemented. Any CCTB or CCCTB proposal should include an anti-avoidance clause and the Commission should consider if and to what extent it is necessary to harmonize accounting principles.
- Strengthen the mandate and improve transparency of the Council's Code of Conduct Group on Business Taxation, by incorporating the group as a Council Working Group (WG) with the participation of the EC and of the EP as an observer.
- Link preferential regimes (Patent boxes and other preferential regimes) to where value is generated in line with the “modified nexus approach”. The EC should publish guidelines and if, within 12 months, MSs are not following this approach consistently, the EC should bring forward a binding legislative proposal.
- Bring forward a legislative proposal to coordinate national Controlled Foreign Corporation (CFC) rules.

- Bring forward a legislative proposal to improve MSs' coordination on tax audits (e.g. ensure more effective simultaneous tax audits and regular exchange of information between tax authorities on their investigations).
- Introduce a common European Tax Identification Number.

(3) Convergence

- Allow the EU to speak with one voice with respect to international tax arrangements by (1) allowing the Commission to negotiate on behalf of the EU with third countries, (2) develop a multilateral double tax treaty (DTT) to replace existing bilateral DTTs between MSs, and (3) introduce a clause of good tax governance in all new international trade agreements.
- Create a common definition to tax havens, in cooperation with the OECD and the UN, by defining objective criteria and publishing and updating biannually a list of tax havens.
- Bring forward a proposal by summer 2016 to introduce a Union-wide withholding tax or a measure similar in effect, in order to ensure that profits, generated within the EU, are at least taxed once in the EU.
- Introduce countermeasures towards companies that make use of tax havens, e.g. by banning them from accessing state aid, public procurement opportunities or EU funds.
- Bring forward a legislative proposal to adjust the definition of permanent establishment and minimum economic substance.
- Improve the Transfer Pricing framework in the EU.
- Prevent hybrid mismatches by harmonizing national definitions and prevent double non-taxation in the event of a mismatch.
- Change the EU state aid regime as it relates to tax, by introducing binding guidelines.
- Introduce a general anti-avoidance rule (GAAR) in the Interest and Royalties Directive, Merger Directive, and other relevant EU legislation.
- Improve cross-border taxation dispute resolution mechanisms. A proposal should be submitted by summer 2016.

Other measures

- Investigate sources of low efficiency regarding tax collection, including VAT collection.
- Investigate sources of tax unfairness or weak credibility of tax administrations in the areas other than corporate taxation.
- Set up principles for tax amnesties, in order to eliminate the negative consequences of these policies on future tax collection.
- Propose a minimum level of transparency for 'tax forgiveness' schemes run by national governments.
- Ensure that tax authorities have full and meaningful access to

central registers of beneficial ownership for both companies and trusts, and that those registers are properly maintained and verified.

Next steps

The ECON Committee's report will be put to a vote by the EP as a whole on December 16, 2015. If it is approved, the Commission has to respond to the recommendations within three months, by either submitting a legislative proposal or giving an explanation for not doing so.

EU Tax Centre Comment

During the last year, the EP has put more and more pressure on other European institutions with regard to countering aggressive tax planning and promoting tax transparency. After approving the TAXE Committee's (Parliament's Special Committee on Tax Rulings) non-binding report last week, the EP now has the possibility to force the Commission to react to its recommendations by adopting the report on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union in plenary session.

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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