



Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre



Draft Council Conclusions on Commission's ATAP Communication and Recommendation

Anti-tax avoidance package – Communication on an External Strategy for Effective Taxation – Recommendation on the implementation of measures against tax treaty abuse – EU blacklist

On May 13, 2016 the draft Council Conclusions on the EU Commission's Communication on an External Strategy for Effective Taxation and on the Commission Recommendation on the implementation of measures against tax treaty abuse were published. The full draft Conclusions are available [here](#) and indicate, inter alia, that an EU list of non-cooperative jurisdictions may be endorsed by the Council in 2017.

Background

On January 28, 2016 the European Commission published its Anti-Tax Avoidance Package (ATAP), aimed at addressing tax abuse, ensuring sustainable revenues and fostering a better business environment in the internal market. The Communication on an External Strategy for Effective Taxation as well as the Commission Recommendation on the implementation of measures against tax treaty abuse constitute the non-legislative parts of the ATAP (for more information on the ATAP, see [ETF 273](#)).

Draft Council Conclusions

In general, the Council welcomes the Commission initiatives and confirms the importance of continuing and intensifying action to tackle tax fraud, tax evasion and aggressive tax planning. Of particular note, the draft:

- invites the Commission to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the OECD BEPS project with a view to introducing more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes;
- agrees to the establishment by the Council of an EU list of third-country non-cooperative jurisdictions, while stressing that the work should be carried out in close cooperation with the OECD;
- invites the Code of Conduct Group to consider an additional criterion for non-cooperative jurisdictions based on the non-existence of harmful tax regimes as defined by the Code of Conduct on Business Taxation;
- welcomes the pilot project for automatic exchange of ultimate beneficial ownership information between Member States, and the possible development of a common standard.

With respect to the EU list of non-cooperative jurisdictions (the blacklist), the Council invites the Code of Conduct Group to start work by September 2016, with the view to drawing up an EU list of non-cooperative jurisdictions and exploring defensive measures at the EU level to be endorsed by the Council in 2017. Third-country jurisdictions will be involved in this process. The blacklist will have significance for, *inter alia*, the recently proposed public Country-by-Country Reporting (see [ETF 278](#)).

Next steps

We expect the EU Member States to endorse the draft Conclusions during the next ECOFIN meeting on May 25, 2016, once the Swedish Parliamentary scrutiny reservation has been lifted. The EU Commission will then initiate action as appropriate in the following months, which could take the form of legislative proposals.

EU Tax Centre comment

The draft Conclusions are on the next ECOFIN meeting's agenda for endorsement without debate, which means that a strong consensus exists among the Member States, and that no political disagreements are expected. This is of particular relevance, as the draft Conclusions also call for legislative actions to further "disincentivise" the provision by intermediaries of advice promoting tax avoidance schemes. In view of the recent Panama Papers scandal and of the long-standing support of the European Parliament to introduce similar measures, it cannot be excluded that proposals will be pushed forward to introduce some type of penalties or sanctions in this area.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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