



Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre



Meeting of ECOFIN, no agreement on draft anti-tax avoidance directive

Anti-tax avoidance directive – Directive on the exchange of tax-related information on multinational companies - Council Conclusions on Commission's ATAP Communication and Recommendation

On May 25, 2016 the Economic and Financial Affairs Council (ECOFIN) met to discuss and agree on its position on the draft anti-tax avoidance directive (ATAD). Although both the Dutch Presidency, the Commission as well as a number of Member States pressed for adoption of the current draft Presidency compromise on the ATAD, no agreement was concluded and the matter has been postponed until the next ECOFIN meeting.

On the agenda was also the formal adoption of the directive on the exchange of tax-related information on multinational companies (country-by-country reporting to tax authorities), as well as adoption of conclusions on the Commission communication on an external taxation strategy and on the Commission recommendation on measures against tax treaty abuse. These items on the agenda were adopted as planned.

Background

The anti-tax avoidance directive and the directive on the exchange of tax-related information on multinational companies are the two legislative pillars of the European Commission's 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 and the Commission Recommendation on the implementation of measures against tax treaty abuse is the non-legislative part of the ATAP. For more general information on the ATAP, see [ETF 273](#).

Presidency ATAD compromise and general approach

The ECOFIN meeting was presented with both a Presidency compromise text on the ATAD (available [here](#)) and a proposal for a general approach on the ATAD (available [here](#)). The aim of the meeting was to at least settle on a general approach. However, while there was strong general agreement on the need to combat aggressive tax planning and the importance of a response at the EU level, a number of Member States voiced concern over the Presidency's compromise proposal and a final agreement was not reached.

In particular, there were disagreements related to the scope of the hybrid mismatch rules, whether the switch-over rules should form part of the directive, and whether the effective taxation requirements in the proposal infringed Member States' tax autonomy, especially the right to set their own level of taxation. Concern was also expressed with respect to the CFC rules, where the issues of disagreement related to whether they should apply both inside and outside the EU, the substance requirement, and where the burden of proof for substance should be placed.

Next steps on the ATAD

Following the lack of agreement, the parties agreed to work on the draft proposal over the coming weeks, with the aim of adopting the ATAD at the next ECOFIN meeting on June 17, 2016.

Exchange of information/Country-by-Country Reporting

The Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation was adopted without discussion. The rules reflect the OECD recommendations in BEPS Action 13. For further information, see [ETF 273](#).

Council Conclusions on External Strategy

As expected, the Council Conclusions on the Commission communication on an external taxation strategy and the Commission recommendation on measures against tax treaty abuse were adopted without debate and without material changes from the draft conclusions published previously. For more information on the Council's conclusions, see [ETF 283](#).

EU Tax Centre comment

Despite the strong determination of both the Presidency, Commission and certain Member States, including France and Germany, to adopt the ATAD and maintain momentum in tackling aggressive tax planning, there are still items that need to be resolved before its adoption. The Dutch Presidency ends in June and adoption of the ATAD has been one of the main goals of their Presidency. Although it is still possible that a final solution will be reached, the requirement of full unanimity means any single Member State may obstruct the adoption.

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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