Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre

European Commission’s proposal on UBO registers and Communication on tax transparency, anti-avoidance and anti-evasion measures

Anti-Money Laundering Directive – UBO registries – Tax transparency – EU blacklist – BEPS 12 – Protection of whistle-blowers

On July 5, 2016, the European Commission unveiled its latest proposals to tackle terrorism financing and money laundering, and the next steps in the Commission's agenda for tackling tax avoidance. This new package includes two legislative proposals to amend the Anti-Money Laundering Directive (2015/849/EU) and the Directive on Administrative Cooperation (DAC) in the field of direct taxation (2011/16/EU), as well as a Communication on further measures to enhance transparency and the fight against tax evasion and avoidance. The proposed measures are aimed at addressing tax abuse, ensuring sustainable revenues and fostering a better business environment in the internal market, and should particularly be seen in light of the recent “Panama Papers” scandal.

Background

The legislative proposals should be seen in the context of the European Commission’s Action Plan for Fair and Efficient Corporate Taxation, launched in June 2015 (see ETF 253), and the final recommendations issued by the OECD in October 2015 on their 15 BEPS Action Points. The Communication also outlines the Commission’s view of the progress already made on the so-called 'Anti-Tax Avoidance Package' launched in January 2016, after the adoption of two legislative proposals on non-public country-by-country reporting and the Anti-Tax Avoidance Directive by the EU Member States..

Acknowledging that progress has been made, the Commission nevertheless refers to the recent "Panama Papers" scandal as evidence of the continued use by taxpayers of complex and sophisticated structures to hide income and assets from tax authorities. Whilst the European Parliament recently set-up an enquiry committee to investigate the "Panama Papers" scandal, the Commission proposes a wide range of new measures to continue to help aid the fight against tax avoidance and evasion.

Details of the Commission's tax transparency package

Extension of the scope of the Anti-Money Laundering Directive (AMLD)

The main proposed amendments, which are aimed at bolstering rules around tax transparency and reinforcing EU defences against money laundering and terrorist financing, include:

- Lowering the threshold for declaring beneficial ownership for passive corporate entities. This will ensure that these structures are subject to greater transparency and scrutiny.
- Requiring financial institutions to systematically apply current due diligence rules to existing customers, as well as all new customers.
- Implementing a direct and immediate interconnection of the national registries on company information to facilitate cooperation between Member States.
- Clarifying rules around registration of and access to information on beneficial owners of trusts, to remove gaps in the legislation and national mismatches.

The Commission will also adopt on July 14, 2016 an EU list of high risk third countries with strategic deficiencies in their anti-money laundering and counter-terrorism financing regimes, and it has proposed a list of due diligence measures that financial institutions will have to implement when dealing with financial flows from these countries.

Finally, Member States will be required, through amendments to the Company Law Directive (2009/101/EC), to give public access to a set of beneficial ownership information on companies and business-type trusts. Access to such information will also be granted on a legitimate interest basis for family or charitable trusts.

Amendments to the Directive on Automatic Exchange of Information

As underlined by the Commission in its Communication, the latest media leaks have highlighted the need for tax authorities to gain greater access to information on the beneficial owners of off-shore entities if they want to effectively identify and address tax evasion. As part of the current Directive on Administrative Cooperation in the field of taxation (DAC), which implements the standards on automatic exchange of financial account information in tax matters, financial institutions have to look through passive non-financial entities to identify and report their beneficial owners. However, the fact that Member States currently have the choice of whether or not to give access to this information to tax authorities limits the effectiveness of tax audits.

To remedy this deficiency, the proposed amendments will ensure that tax authorities are given access to the data provided under the anti-money laundering rules, especially customer due diligence information and the information in their national beneficial ownership registries.

The Commission's other recommendations and next steps

The Commission's Communication also includes a certain number of additional recommendations and next steps that they will be taking in the near future:

- Following the introduction of an EU-wide pilot project to **exchange information on the ultimate beneficial owners of companies and trusts**, the Commission has started examining the most appropriate framework through which this could be implemented at EU level. A first analysis and proposed next steps will be issued in autumn 2016. The Commission will also help develop the new global transparency standard proposed by the G20 in April 2016. Once the standard has been developed, the Commission will then review how Member States' registers of beneficial owners can be linked together.
- Addressing the European Parliament's (TAXE 2 report) and Council's requests to **increase oversight of promoters of aggressive tax planning schemes**, the Commission will explore the best way to increase oversight and ensure that effective disincentives apply for certain financial intermediaries and advisers. This could include, for example, increasing transparency on such schemes vis-à-vis tax authorities. The Commission will launch a public consultation on this issue in autumn 2016 and, at the same time, will work closely with the OECD to develop a global approach to tax transparency going beyond the current BEPS recommendation.
- In order to promote higher tax good governance standards worldwide, in 2017 the Commission will publish a new **EU listing process of third countries that enable tax abuse**, with appropriate countermeasures. The Commission will present the results of its initial pre-assessment of third countries to the Code of Conduct Group before the end of summer 2016 and will open a dialogue with the selected jurisdictions before the end of 2016, with a view to having a first EU list by the end of 2017. The Commission will also work with the OECD to develop an international blacklist of non-cooperative countries.
- Expand and strengthen the **protection of whistle-blowers** by facilitating the exchange of best practice across Member States' national rules, whilst assessing what, if any, sectorial action may be required at EU level.

Next steps

The proposal for access to information on beneficial ownership for tax authorities (amendment to the DAC) will be submitted to the European Parliament for consultation and to the Council for adoption. On the contrary, the proposed amendments to the AMLD should be adopted by the European Parliament and the Council as co-legislators. Once formally adopted, the new provisions will have to be implemented as from January 1, 2017.

As regards the measures set out in its Communication, it is expected that the Commission will analyse over the coming months the most appropriate EU level action to take on each of them.

EU Tax Centre comment

After the unprecedented rapid adoption by the Member States of the two legislative proposals on non-public country-by-country reporting and the Anti-Tax Avoidance Directive, this package constitutes yet another indication of the EU's strong political will to effectively tackle tax avoidance, by promoting improved tax transparency standards and good governance practices. The recommendations outlined in the Commission's Communication also build on the European Parliament's recent work on tax avoidance practices and reflect the increased political pressure applied by this institution.

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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