Euro Tax Flash

Issue 294 – July 6, 2016

Euro Tax Flash
from KPMG's EU Tax Centre

European Parliament votes on TAXE 2 Committee recommendations to make corporate taxation fairer and clearer

TAXE2 Committee - Tax avoidance – Non-cooperative jurisdictions – Protection of whistleblowers – Beneficial owners registers – Code of conduct for tax advisers - CCCTB

On July 6, 2016, the European Parliament (EP) voted in plenary session on the report prepared by the Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE2). The report, which was adopted by 514 votes to 68, with 125 abstentions, contains recommendations to make corporate taxation fairer and clearer and to tackle tax evasion and aggressive tax planning.

Background

The TAXE2 Committee is the second temporary group set up by the EP with the mandate to investigate EU Member States' tax ruling practices, examine ways to end unfair tax competition and combat tax evasion within the EU. After an initial 10-month mandate, the firs5 TAXE Committee published a final report in November 2015 and acknowledged that its work should be continued, especially as regards the alleged role of banks and intermediaries in facilitating aggressive tax planning and on uncooperative jurisdictions. As a consequence, the TAXE2 Committee was created on December 2, 2015, for an initial 6-month mandate, which was further extended until August 2016. The focus of the TAXE2 Committee was on harmful corporate tax regimes and practices at the European and international level.

Recommendations made in the final TAXE2 report

The TAXE2 report includes a number of recommendations to the Member States and the EU Commission regarding current and future legislative proposals, inter alia:

- **Blacklist and sanctions against non-cooperative jurisdictions**: the report welcomes the initiative to create a common EU definition and list of uncooperative jurisdictions, but stresses that to be effective this list should be accompanied by sanctions against (1) the blacklisted jurisdictions e.g. by suspending free trade and double taxation agreements, and prohibiting access to EU funds, and (2) companies, banks, or advisory and law firms involved with those jurisdictions. The Committee also insisted on the need to renegotiate bilateral tax treaties to include anti-abuse clauses.

- **Implementation of an EU-wide withholding tax,** which would ensure that profits generated within the EU are taxed at least once before leaving it, and including a refund system to prevent double taxation.

- **Patent Boxes**: noting that “patent boxes” are not effective in fostering innovation and are mostly used for profit-shifting purposes, the report recommends that Member States (1) phase out existing patent boxes by 2021 at the latest and (2) support R&D through subsidies or broader policy measures that promote long-term innovation and independent research. The report also calls on the EU Commission to put forward proposals addressing the weaknesses of the OECD modified nexus approach and asks for the public disclosure of companies benefiting from a patent box regime.

- **Minimum effective taxation**: the report considers that Member States should revise the EU Interest and Royalties Directive as well as the EU Parent-Subsidiary Directive to include a minimum effective taxation clause.

- **Better oversight and sanctions against tax advisers and other intermediaries** playing a role in designing aggressive tax planning schemes for their clients. The report emphasizes the need to (1) develop an EU Code of Conduct for all advisory services, including an incompatibility regime to prevent tax advisers from advising both public and private sectors, (2) revise the Audit Directive in respect of the separation of legal, tax and auditing services within the same firm, (3) propose legislation to introduce a mandatory disclosure requirement for banks, tax advisers and other intermediaries concerning complex structures and special services linked to blacklisted jurisdictions, and (4) tighten requirements on banks to report transfers to and from tax havens to tax authorities. In addition, the report stresses that Member States should establish effective, proportionate and dissuasive sanctions against tax advisers engaged in unlawful tax practices, banks and financial institutions facilitating transfers to tax havens, and company managers involved in tax evasion.

- **Protection of whistle blowers**: the Committee urges the EU Commission to propose a clear legal framework to guarantee their effective protection and calls on the Member States to revise their current legislation by including the possibility of abstention from prosecution in cases where whistleblowers have acted in the public interest.

- **Code of Conduct Group and inter-institutional issues**: the report emphasizes the need to enhance the governance, transparency and working methods of the Code of Conduct Group, in particular regarding the access to meeting documents. It also calls for the creation of a new body, the Union Tax Policy Coherence and Coordination Centre, to assess and monitor Member States' tax policies, as well as foster cooperation between national tax administrations. The new body could also serve as point of contact for whistleblowers.

- **EU register of beneficial owners of companies**: the report calls for a more stringent definition of beneficial ownership and emphasizes the need for more coordinated action as regards registers of beneficial owners of assets and undertakings, including the implementation of a public EU register. The Committee also asks for a study on the feasibility of a global register of all assets held by individuals, companies and all entities such as trusts and foundations, to which tax authorities would have full access.

- **External dimension**: insisting on the need for further cooperation between the EU, the G20, the OECD and the UN, the report also recommends including good governance clauses in all trade and partnership agreements

While welcoming most of the initiatives and legislative proposals put forward by the EU Commission, the report also comments on a number of their weaknesses. The Committee particularly regrets that the initial proposal for an Anti-Tax Avoidance Directive has been diluted, e.g. on the interest deduction and controlled foreign company rules, and that earlier recommendations by the EP have not been included in the EU Commission's proposal for public country-by-country reporting and the final text on the automatic exchange of tax rulings.

Finally, the Committee urges the EU Commission to come forward with a proposal on CCCTB before the end of 2016, and to present concrete legislation on transfer pricing issues, insisting on the need to provide clarifying guidelines as regards their interaction with State aid.

EU Tax Centre comment

This report should be seen as complementing the report issued by the TAXE Committee in November 2015 and aims at following-up the work that could not be completed by its predecessor. Although most of the proposed recommendations have already been considered in other work undertaken by the EP, this report is yet another indication of the increasing pressure the EP is putting on other European institutions with respect to countering aggressive tax planning and promoting tax transparency. This is also evidenced by the proposals put forward by the EU Commission on July 5, 2016 (see ETF 292) on anti-money laundering requirements and beneficial owners registers.

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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