

June 2020

The Act implementing the ATAD II Directive signed by the President

On 22 June, the Act amending the Act on Corporate Income Tax, the Act on Value Added Tax, the Act on the exchange of Tax Information with other States, and certain other Acts (hereinafter: "the Act") was signed by the President.

The review of the key measures included therein can be found below.

Hybrid transactions and hybrid entities

The key objective of the new provisions is to prevent hybrid mismatches giving rise to a double deduction or to a deduction without taxation in different tax jurisdictions.

Under the Act, in certain cases, taxpayers will be denied the right to recognize tax deductible costs on payments subject to double deduction, i.e. deduction from the tax base in more than one tax jurisdiction.

Furthermore, the taxpayer will not be allowed to recognize payments that are deductible from the tax base in one jurisdiction as deductible, without corresponding inclusion of this payment in the tax base in another jurisdiction.

The taxpayer will also be required to recognize the receivables obtained as taxable profits, even if they are excluded for tax purposes under other provisions of the CIT Act.

These restrictions and obligations will apply to specific situations set forth in the new regulations. In fact, they will occur only if the deduction without taxation has been made by related entities or under a structural arrangement involving a hybrid mismatch.

The new provisions may have practical implications, among others, for entities using group financing, e.g. in the form of loans, if the relevant funds were to be acquired by the lender as part of a hybrid instrument.

Additionally, the Act concerns also the issue of dual residency mismatches. A taxpayer recognized under the Polish tax law as a Polish tax resident will not be entitled to deduct expenses or to reduce their income by the amount of tax losses, if such expenses or tax losses:

- are deductible in at least two Member States in which the taxpayer is a resident;
- do not correspond with the dual-inclusion income.

Moreover, under the proposed provisions, in a situation where a foreign establishment of a Polish tax resident is not treated as a foreign permanent establishment by the country of its location (the so-called "disregarded permanent establishment"), the taxpayer's taxable revenues will be increased by the revenues that would otherwise be attributed to the disregarded permanent establishment. However, this regulation will not apply if the obligation to apply exemption on the income of the disregarded foreign establishment will result from a double tax treaty in force between Poland and another non-EU country.

Call-off stock arrangements

Call-off stock refers to the situation where, at the time of the transport (shipment) of goods to another Member State the supplier already

knows the identity of the person acquiring the goods, to whom these goods will be supplied at a later stage and after they have arrived in the Member State of destination.

The aim of the amendment is to align the related Polish regulations with EU law. As a result, such transactions, under certain conditions, shall be considered to give rise to one exempt supply in the Member State of departure (zero rate) and one intra-Community acquisition (by the purchaser) in the Member State of arrival.

Automatic Exchange of Information on reportable cross-border arrangements

In addition, the Act aims at finalizing the incorporation of the Council Directive (EU) 2018/822 into national law, notably by introducing amendments to MDR-1 and MDR-3 forms. The changes are necessary, since under the Directive, the scope of automatic exchange of information in relation to reportable cross-border arrangements within the Union should be consistent between the States (pursuant to the Directive, the first amendment shall be introduced by 31 October 2020).

Thus, taxpayers will be required to once again report on cross-border tax arrangements in order to provide the missing information. The deadline for tax scheme promoters has been fixed on 31 July 2020, for beneficiaries - on 16 August 2020 and for supporters - on 31 August 2020.

On 1 July 2020, the tax arrangement numbers issued before that date will become invalid.

Furthermore, the Act provides for the possibility to sign the MDR-3 form in line with the principles of representation of legal persons (currently, MDR-3 must be signed by all the members of the Board) However, the possibility of signing it by proxy was excluded.

The Act also introduces the possibility of extending the deadlines for reporting tax arrangements by the Minister

of Finance by way of a decree. This provision may be linked to the European Commission's attempts at postponing a number of requirements set out in the Directive due to the COVID-19 pandemic.

Entry into force

Essentially, it shall enter into force on 1 July 2020. However, the provisions on hybrid structures are to enter into force on 1 January 2021

and are to apply to income (revenues) obtained in the tax year starting after 31 December 2020.

Note that the deadline for implementing the ATAD II Directive expired on 31 December 2019.

If you would like to learn more about the issue discussed, please do not hesitate to contact us at:

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