KPMG

Euro Tax Flash from KPMG's EU Tax Centre

Conclusions of the ECOFIN meeting on May 23, 2017

ECOFIN – Dispute Resolution Mechanism - C(C)CTB

At its meeting on May 23, 2017, the Economic and Financial Affairs Council of the EU (ECOFIN) reached agreement on the proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the EU ('the Directive'). The meeting also included a policy debate on the European Commission's proposals for a Council Directive on a Common Corporate Tax Base (CCTB). The proposal to extend the Anti-Tax Avoidance Directive to third country hybrids (see ETF 314), was not formally approved at this meeting. Another meeting that had been anticipated in the margins of the ECOFIN meeting, and which was to discuss the proposed introduction of a Financial Transaction Tax in a group of Member States, was postponed.

Background

The two initiatives discussed by the ECOFIN are part of the Commission's package of corporate tax reform proposals, which were published on October 25, 2016, (see ETF 303) as part of the EU's ongoing fight against aggressive tax planning and its efforts to resolve double taxation issues for businesses in line with recommendations set out under Action 14 of the OECD BEPS project.

The proposed Directive on Double Taxation Dispute Resolution Mechanisms aims to introduce an improved system to resolve double taxation disputes in the EU. Although dispute resolution mechanisms, such as mutual agreement procedures under double taxation conventions between Member States and the EU Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, already exist, they are lengthy, costly and do not always result in agreement. In addition, more effective dispute resolution procedures are considered necessary to address the potential side effects of measures taken to address BEPS. For this reason, the Commission considers that mechanisms available in the EU need to be improved with respect to scope, timeliness, certainty and access for taxpayers, while ensuring a uniform application within the EU.

Dispute Resolution Mechanism

The Directive introduces a mandatory and binding mechanism for resolving disputes that give rise to double taxation on business income and that arise from the application or interpretation of double tax treaties. The Directive contains clear deadlines for Member States to agree on solutions.

Taxpayers can initiate a mutual agreement procedure under which Member States must reach agreement within two years (this may be extended by up to one year, if justified). If the mutual agreement procedure fails, the arbitration procedure is automatically initiated, whereby an Advisory Commission composed of independent arbitrators and representatives of each Member State is set up. The Advisory Commission has six months (this may be extended by three months) to issue its opinion. The competent authorities of the Member States concerned then have six months to agree on how to eliminate double taxation in the disputed case. The final decision is binding on the Member States and although it must be published (in full or abbreviated form) it does not establish a precedent. Taxpayers may refer to their national court if the Advisory Commission is not set up within a certain timeframe.

Member States can agree to set up an Alternative Dispute Resolution Commission instead of the Advisory Commission. The former has more flexibility in terms of dispute resolution processes and the techniques used.

The ECOFIN's agreement on a General Approach to the proposed Directive included agreement on the following three issues:

- a broad scope, with the possibility to exclude, on a case-by-case basis, disputes that do not involve double taxation;
- independent arbitrators must not be employees of tax advisory organizations or have given tax advice on a professional basis. Unless otherwise agreed by the representatives of each competent authority and the independent arbitrators, the chair of the Advisory Commission will be a judge;
- the possibility of setting up a standing committee, i.e. a permanent structure to deal with dispute resolution cases, if Member States agree.

The legislative procedure for the Directive is consultation, meaning that the Council will adopt the text once the European Parliament has given its (non-binding) opinion. A vote in the European Parliament's ECON committee is scheduled for June 8, 2017, and a plenary session is scheduled for July 4, 2017. Once adopted, Member States will have until June 30, 2019, to transpose the Directive, which will apply to complaints submitted after that date on issues relating to tax years starting from

January 1, 2018. However, Member States may apply the Directive to complaints related to earlier tax years.

Common (Consolidated) Corporate Tax Base

A policy debate on the CCTB proposal (see ETF 303) took place during the meeting, with members of the ECOFIN being asked to give their views on whether the CCTB includes the elements that would offer the right mix of harmonization and flexibility, in light of the increased need for the EU to be competitive in the international arena.

Representatives of the Member States generally expressed their support for the CCTB initiative and the aim of strengthening the EU Single Market by facilitating cross-border operations within the EU. Speakers reiterated their countries' commitment to combating tax evasion and tax avoidance.

However, concerns were also expressed, in particular on the impact of the CCTB on tax revenues and the potential harm to the EU's competitiveness in global markets. A few Member States noted the need for flexibility in implementing the CCTB, in particular the super-deduction for research and development (R&D) expenses and the new Allowance for Growth and Investment (AGI) due to the absence of corresponding domestic rules. The Commission, along with several other Member States, expressed the concern that too much flexibility can be detrimental to the objective of harmonization. In addition, some Member States mentioned concerns raised by their national Parliaments with regard to the compliance of the CCTB proposal with the subsidiarity and proportionality principles.

Technical work on the CCTB proposals will continue in the working groups, including a more detailed assessment of the impact on national budgets. The Finance Minister of Estonia expressed the intention to continue working on this proposal during Estonia's Presidency of the Council, starting in June.

EU Tax Centre comment

The agreed proposal for resolving double taxation disputes between Member States may be seen as complementing the initiatives to combat tax avoidance. The improved mechanisms should enhance tax certainty and as such contribute to the European Commission's efforts to improve the business environment in the EU. In this respect, the agreement should be seen in the context of the recent focus on tax certainty by both the OECD and the EU.

The debate on CCTB makes clear that some Member States still have strong reservations on this matter. As the initiative is subject to unanimous approval by Member States, the current proposals may have to undergo significant amendment in order to achieve final agreement, in particular by granting more flexibility to Member States.

Should you have any questions, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

Robert van der Jagt
Chairman, KPMG's EU Tax Centre and Partner,
Meijburg & Co

kpmg.com/socialmedia

kpmg.com/app

Privacy | Legal

You have received this message from KPMG's EU Tax Centre. If you wish to unsubscribe, please send an Email to eutax@kpmg.com.

If you have any questions, please send an email to eutax@kpmg.com

You have received this message from KPMG International Cooperative in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To unsubscribe from the Euro Tax Flash mailing list, please e-mail KPMG's EU Tax Centre mailbox (eutax@kpmg.com) with "Unsubscribe Euro Tax Flash" as the subject line. For non-KPMG parties – please indicate in the message field your name, company and country, as well as the name of your local KPMG contact.

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands