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European Parliament adopts TAX3 Committee's recommendations on Financial Crimes, Tax Evasion and Tax Avoidance

EU Plenary Session - TAX3 Committee – Aggressive Tax Planning – Anti-Money Laundering – Whistleblowers – Cash Payments – Tax Intermediaries

On March 26, 2019, the European Parliament adopted in plenary the final report on financial crimes, tax evasion and tax avoidance adopted by the TAX3 Committee (Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance) on February 27, 2019. The final report emphasizes the urgent need for tax reform to strengthen the fight against financial crimes and aggressive tax planning. The report provides recommendations for new rules that increase administrative cooperation, and for the establishment of new European and global bodies to address these issues.

Background

On March 1, 2018 the European Parliament confirmed the decision taken in February 2018 by the Conference of Presidents to set up a special committee on financial crime, tax fraud and tax avoidance. The TAX3 Committee was the fourth committee, after the TAXE1, TAXE 2 and PANA committees, to address these issues and expands on the work carried out by its predecessors.

The TAX3 Committee, whose mandate ended on March 1, 2019, focused on issues related to financial crimes, tax fraud and tax avoidance including the taxation of the digitalized economy, citizenship programs, the EU blacklist, tax avoidance and its impact on third and developing countries, administrative cooperation and exchange of information, whistleblowers protection, and circumvention of European VAT rules. The final report, prepared by the co-rapporteurs Jeppe Kofod and Luděk Niedermayer, concludes the committee's twelve-month mandate.

Final report

The recommendations adopted by the TAX3 Committee range from overhauling the system for dealing with financial crimes, tax evasion and tax avoidance, notably by thoroughly improving cooperation between the tax authorities involved, to setting up new bodies at the EU and global level. The report also expresses the Members of the European Parliament's concern about the Member States' perceived lack of political will in the Council to tackle tax evasion, avoidance and financial crime.

As regards aggressive tax planning ("ATP"), the report calls for the adoption of a comprehensive definition of ATP indicators, as well as their use in the framework of the European Semester and notes in particular that seven EU countries (Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and The Netherlands) display traits of a tax haven and facilitate aggressive tax planning.

In the field of corporate taxation, the report calls for:

- More stringent EU anti-tax avoidance standards, such as the implementation by Member States of the tainted income "categorical" approach, the "simpler and most efficient CFC rules in ATAD 1", the adoption of a common General Anti-Avoidance Rule (GAAR) in the Parent-Subsidiary Directive, the Interest and Royalties Directive and the Merger Directives, and the strengthening of existing exit tax provisions, for example through coordinated withholding taxes.
- A clear definition of a permanent establishment, as well as coordinated substantial economic activity requirements for "letterbox" companies and a proposal to repeal patent boxes;
- Member States in favor of the introduction of a digital services tax to do so under the enhanced cooperation procedure and to all Member States to explore the concept of minimum effective taxation;
- Increased cooperation between tax authorities of Member States, by extending the scope of the EU Directive on Administrative Cooperation and encouraging joint audits;
- Progress on the recast of the Interest and Royalties Directive, the Common Consolidated Corporate Tax Base, and public country-by-country reporting;
- The assessment of possible countermeasures including fines in State aid cases;
- EU blacklist - Blacklisting Switzerland if no significant progress has been made by the end of 2019, as well as the implementation of strong countermeasures, such as automatic Controlled Foreign Company rules for blacklisted jurisdictions.

Moreover, the report reiterates that intermediaries facilitating money laundering or tax evasion activities should face effective and dissuasive penalties and that professional secrecy should not be used to protect illegal practices or violations to the spirit of the law. The role of the EU mandatory disclosure rules (DAC6) and the broad definition of "intermediary" in addressing these issues was also recognized and welcomed in the report. The Committee furthermore calls on the Commission to reassess the extension of the DAC6 reporting obligation to domestic cases. As regards limiting the risks of conflicts of interest, the report suggests a rotation of auditors every seven years.

The numerous findings and recommendations also include:

- The establishment of additional supervisory authorities at the EU level, and in particular the creation of a European financial police force, as well as an EU anti-money laundering surveillance body;
- The possible ban of tax-driven financial practices such as dividend arbitrage and dividend stripping in the absence of a substantive economic purpose;
- The phasing out of Golden visas and passports, in particular those offered by Member States without strong due diligence safeguards;
- The automatic exchange of information on beneficial ownership and transactions taking place in free ports and other specific economic zones,
- The screening by the Code of Conduct Group of tax amnesty programs envisaged by the Member States before their implementation
- A better protection for whistleblowers and investigative journalists. In that respect, the US reward system for whistleblowers could be replicated in the EU;
- With respect to relationships with third countries, countermeasures should be envisaged against the United States if they do not ensure FATCA's reciprocity, and the Council should properly assess the situation in Switzerland in order to ensure that no harmful tax regimes are introduced. In addition, 'Tax good governance' clauses should be systematically included in new EU agreements with non-EU countries

The report adopted by the European Parliament in plenary with 505 votes to 63, with 87 abstentions will now be passed on to the Council and to the European Commission, although they are not binding to the Member States or EU institutions.

EU Tax Centre Comment

The final report should be seen as complementing the work and recommendations issued by TAXE1, TAXE2 and PANA Committees in November 2015, July 2016 and December 2017. The report validates the accomplishments in tackling tax evasion and aggressive tax planning but also exposes the amount of work still to be done in this field, in particular by enhancing administrative cooperation at EU and global level. Although most of the proposed recommendations have already been considered in other work undertaken by the European Parliament, this report is yet another indication of the increasing pressure the Parliament is trying to put on the other European institutions and on Member States with respect to countering aggressive tax planning and promoting tax transparency.

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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