Euro Tax Flash
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Euro Tax Flash from KPMG's EU Tax Centre

Proposal to amend the Parent-Subsidiary Directive

ECOFIN - tax avoidance - double non-taxation - aggressive tax planning - Parent-Subsidiary Directive

On May 6, 2014 the Council of the EU (ECOFIN) had intended to adopt part of the European Commission's proposed amendments to the EU Parent-Subsidiary Directive, i.e. the proposals to combat the use of hybrid loans, but this was blocked by Sweden. As anticipated, agreement was not reached on the proposed general anti-avoidance rule.

Background

In December 2012, the European Commission published an action plan on tax fraud and evasion, which included proposals to address perceived loopholes in the EU Parent-Subsidiary Directive 2011/96/EU ("Directive"). A draft directive was issued in November 2013, containing an amended anti-avoidance rule and proposed changes to exclude payments on cross-border hybrid loans from a tax exemption.

The primary aim of the Directive is to prevent double taxation of the same income across members of a corporate group that are based in different Member States. This will be realized by providing for a withholding tax exemption on distributed profits and an exemption or credit for the recipient. The current proposals are specifically aimed at preventing the Directive from facilitating double non-taxation arising from the exploitation of hybrid loan structures, for example, where a loan is treated as debt in the Member State of the debtor/subsidiary and as equity in the Member State of the lender/parent, whereby payments on the loan are deductible in the former and exempt in the latter Member State. The proposed amendment is intended to ensure that the payments would no longer be exempt in the latter Member State, which would then tax the portion of the payments which is deductible in the Member State of the paying subsidiary.

The draft directive also included an amended anti-avoidance rule intended to restrict the benefits of the Directive to situations where there is real economic substance. For more details see Euro Tax Flash 220.

ECOFIN position

In order to become law, the proposed amending directive would have to be approved by all 28 Member States. While there was broad support for the hybrid loan aspect of the proposals, the Directive was not approved as Sweden requested further assurance on certain technical aspects. The Member States also did not agree with the proposed amendment to the existing anti-avoidance provision in the Directive. In particular, there were concerns that, due to its general formulation, this could lead to different interpretations in different Member States and would create uncertainty for businesses.

Next steps

The Commission committed to working closely with Sweden to tackle any issues they currently have with the proposed wording, in order for the amendments to be approved at the next ECOFIN meeting in June. Discussions on the proposed general anti-abuse rule are expected to continue.

EU Tax Centre Comment

The proposed amendments to the Parent-Subsidiary Directive should be seen as part of the increased efforts at international level to combat aggressive tax planning. As such, the changes aimed at hybrid loan arrangements could impact certain group financing arrangements, where such arrangements are not already limited under domestic rules.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor

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