At a glance

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European Parliament

Call for stricter rules against tax avoidance

The European Commission's proposed anti-tax-avoidance directive aims to create a higher level of protection against corporate tax avoidance throughout the EU, setting legally binding minimum standards addressing six practices. The ECON Committee is calling, in a report to be debated in the June plenary, for stricter rules than in the original proposal on several key aspects.

Background

The principle that multinational enterprises (MNE) should pay taxes in the country where profits are generated is not straightforward to apply when activities cross borders and money can move easily. Estimates show that EU Member States lose between €50 billion and €70 billion every year in tax avoidance by companies. On 28 January 2016, the European Commission presented a proposed directive on 'Rules against tax-avoidance practices that directly affect the functioning of the internal market' (the ATA directive), one of two legislative proposals in an 'Anti-Tax-Avoidance Package'. The ATA directive targets schemes involving situations whereby corporate taxpayers operating businesses in several countries take advantage of disparities and loopholes to reduce their tax bill. The package is linked to the OECD/G20 action plan to limit tax base erosion and profit shifting (BEPS).

The Anti-Tax-Avoidance Package

A number of EU Member States have individually committed to implementing the BEPS actions since they all participate in international fora and instruments relevant to BEPS actions (though they are not all members of the OECD itself). In the EU, however, a coordinated approach is essential to avoid varying interpretations of the OECD/G20 BEPS measures, and inconsistencies that could create uncertainty and administrative burdens in the Single Market. The Anti-Tax-Avoidance Package therefore aims at ensuring effective taxation in the EU, increasing tax transparency (for instance by introducing Country-by-country reporting for MNEs) and securing a level playing field. The directive sets out six legally binding anti-abuse measures, which Member States would apply against common forms of aggressive tax planning: (1) **general interest limitation rule**: the deductibility rate is set at the top end of the scale of 10-30%, and applies equally regardless of the origin of the debt; (2) **exit taxation provision**: obliges Member States to apply an exit tax when a taxpayer transfers assets or its tax residence out of the tax jurisdiction of that Member State; (3) **switch-over clause**: this rule prevents double non-taxation of certain income by precluding Member States from exempting dividends or capital gains, for example, if the tax rate applied is lower than 40% of the statutory tax rate; (4) **general anti-abuse rule**: provides for a mandatory general anti-abuse rule (GAAR) in the tax legislation of Member States to fill gaps that may exist in specific anti-abuse rules; (5) **controlled foreign company rules:** to enable a jurisdiction to reallocate the income of low-taxed controlled subsidiaries to the parent company; and (6) **hybrid mismatches framework**: aims at minimising or eliminating mismatches resulting from Member States treating the same income or entities differently for tax purposes.

ECON report

The report of the EP's Committee on Economic and Monetary Affairs (ECON) (rapporteur Hugues Bayet, S&D, Belgium), adopted in the committee on 24 May 2016, is more ambitious than the Commission proposal. Regarding deductions for interest payments, for instance, the Commission proposes that companies should not be allowed to deduct more than 30% of their earnings, whereas the EP report suggests 20% or €2 million within five years (the Commission did not propose a time limit). The Committee also wants a stricter switch-over clause. In order to avoid double taxation, foreign income is often exempt from taxation. The Commission proposes that this exemption should be denied if the foreign income was taxed at a rate lower than 40% of the national statutory tax rate. The Bayet report favours setting a minimum rate of 15%.

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