The ECOFIN

Anti-Tax Avoidance Directive
On 12 July 2016, the Economic and Financial Affairs Council of the European Union (ECOFIN) which is made up of the Finance Ministers of all European Union (EU) Member States, formally adopted the Anti-Tax Avoidance Directive (ATAD). Unanimous political agreement on the ATAD¹ was reached on 21 June 2016 following several discussions and compromises.

Communication on further measures to enhance transparency against tax evasion and avoidance
At its 12 July 2016 meeting, the ECOFIN also discussed possible additional measures to enhance tax transparency and prevent tax abuse, based on the European Commission Communication on further measures to enhance transparency against tax evasion and avoidance² from 5 July 2016. With regard to the proposed amendments to the Directive on Administrative Cooperation that would require tax authorities to have access to national anti-money laundering information (see below), the main concern raised by the Finance Ministers is that the transposition deadline being suggested, i.e., 1 January 2017, is unrealistic. Specifically, the German Finance Minister suggested
that this date should be extended to 26 June 2017. In response, the Commission stated that even though the proposed changes and deadline are ambitious, they are also proportionate and hence achievable by the Member States.

The Presidency committed to start the technical work on this proposal at the earliest possible time and will seek to reach agreement before the end of its term.

The European Commission

Communication on further measures to enhance transparency against tax evasion and avoidance

On 5 July 2016, the European Commission (Commission) published a communication on further measures to enhance transparency against tax evasion and avoidance. The communication outlines the progress achieved and steps to be taken to tackle remaining challenges in the fight against tax evasion and tax avoidance. With respect to taxation, the Commission has put forward a proposal for an amendment of the Directive on Administrative Cooperation in the field of taxation granting tax authorities access to enhanced national beneficial ownership information. In addition, it has stated that it is examining the most appropriate framework for implementing automatic exchange of beneficial ownership information in the EU and that it will present the first analysis in the autumn of 2016. Also in the autumn of 2016, the Commission will open a public consultation to gather input on the best approach to increase oversight and ensure that effective disincentives apply for promoters and enablers of aggressive tax planning structures. Finally, it was announced that the Commission is finalizing a pre-assessment of third countries to determine the risk they pose for eroding the tax bases of Member States that will be presented shortly.

Access to national anti-money laundering information

The Commission proposed amendments to the Directive on Administrative Cooperation in the field of taxation to ensure that tax authorities in EU Member States are given access to the data provided under the European Union’s Anti-Money Laundering Directive, namely customer due diligence information and information in the national beneficiary ownership registries. Under the proposal, the Member States would transpose the amended directive by 31 December 2016 at the latest, so that the amendments take effect as of 1 January 2017.

Automatic exchange of national information on beneficial owners of companies and trusts

Further to the above-mentioned measures, the Commission also announced that it started to examine which legal framework is most appropriate for Member States to automatically exchange their national information on beneficial owners of companies and trusts. In this regard, the European Commission referred to the pilot project, launched by France, Germany, Italy, Spain and the UK. More than forty countries, including all the EU Member States, have already agreed upon this pilot project. The Commission has indicated that an automatic exchange of information on beneficial ownership regarding companies and trusts could potentially be integrated into the binding tax transparency framework already in place in the EU. The Commission plans to present a first analysis to the Member States in the autumn of 2016.

EU list of third countries that do not respect tax good governance standards

As part of the Anti-Tax Avoidance Package, the Commission presented its External Strategy for Effective Taxation. Part of this strategy in relation to non-EU Member States is the establishment of a list of third countries that do not respect the tax good governance standards as announced in the External Strategy for Effective Taxation communication. Together with the Council’s Code of Conduct Group, the Commission is now working to identify the most relevant countries to screen under this process, in order to have a first EU list ready in 2017.

Increase oversight of enablers and promoters of aggressive tax planning

The Commission suggested that more work is needed to discourage the promoters and enablers of tax evasion and avoidance. In May 2016, the Commission was invited by the Council to consider legislative initiatives on Mandatory Disclosure Rules inspired by Action 12 of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project. This OECD recommendation states that countries should require taxpayers and promoters of tax planning schemes to disclose any aggressive tax planning scheme that they use or promote. While the OECD BEPS recommendation suggests that such disclosure is made at the national level, the Commission believes that this will have only a limited effect. Accordingly,
the Commission is expected to launch a public consultation in autumn 2016 to gather feedback on the most appropriate approach. In parallel the Commission will work closely with the OECD and other international partners to determine a global approach for greater tax transparency on advisor’s activities that go beyond what is currently recommended by OECD BEPS.

Other measures
Together with the outlined taxation related measures the Commission also announced further measures and plans which are mainly aimed at tackling money laundering and terrorism financing. Additionally, it announced that it will assess the need for an increased protection of whistleblowers.

Concluding remarks
The Commissioner who oversees the Commission’s taxation and customs affairs, Pierre Moscovici, said with respect to the announced plans and initiatives that the “EU’s tax transparency campaign continues.” Indeed, the Commission considers the above-mentioned plans and initiatives to add to the various legislative measures initiated throughout the recent years direct at situations that it considers aggressive tax planning and tax evasion.

According to the Commission the proposal for an amendment to the Directive on Administrative Cooperation in the field of taxation will be submitted to the European Parliament and to the Council. Since it is in the field of taxation the Council, i.e., the Member States of the European Union, will have to adopt the proposed amendments unanimously. The European Parliament will not have legislative power but will be heard for consultative purposes.

The European Parliament

TAXE 2 adopts its report
The special committee on tax rulings and other measures similar in nature or effect (TAXE 2) adopted its report on 21 June 2016. The European Parliament’s (Parliament) recommendations for making corporate taxation fairer and clearer were prepared by co-rapporteurs Michael Theurer and Jeppe Kofod on behalf of TAXE 2. This was also approved in the Parliament Plenary session on 7 July 2016.

The report calls for an EU register of beneficial owners of companies, a tax havens blacklist, sanctions against non-cooperative tax jurisdictions, action against abuse of “patent box” regimes, a code of conduct for banks and tax advisors, tax good governance rules in EU trade agreements, a common consolidated corporate tax base (CCCTB) and a withholding tax on profits leaving the EU.

Committee of inquiry on Panama Papers
On 8 June 2016, the Parliament agreed to set up an inquiry committee into the Panama Papers revelations. The committee, also known as PANA, is set to investigate whether EU laws on money laundering, tax evasion and tax fraud were breached in the structures revealed by the leak. On 12 July 2016, the German Member of the European Parliament, Werner Langen, was elected to chair this committee of 65 members. The committee is expected to start its work in late September 2016 and has a mandate of 12 months, at the end of which it is anticipated to deliver a final report.

Endnotes
6. Afghanistan, Anguilla, Austria, Belgium, Bermuda, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gibraltar, Germany, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Latvia, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Nigeria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Arab Emirates, and the United Kingdom.


9. IP/16/2380; IP/16/2354.


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EYG no. 02029-161Gbl
1508-1600216 NY
ED None

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