Rules against tax avoidance practices that directly affect the functioning of the internal market

2016/0011(CNS) - 12/07/2016 - Final act

PURPOSE: to establish rules against tax avoidance practices that directly affect the functioning of the internal market.

LEGISLATIVE ACT: Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

CONTENT: the Directive aims to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market.

In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to maximise the positive effects of the Organisation for Economic Cooperation and Development (OECD) initiative against base erosion and profit shifting (BEPS).

The Directive applies to all taxpayers that are subject to corporate tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country. It lays down anti-tax-avoidance rules in five specific anti-BEPS fields:

- Interest limitation rules: multinational companies may artificially shift profits to jurisdictions with more generous rules with regard to deductibility. The Directive aims to dissuade companies from recourse to this practice by limiting the amount of interest that the taxpayer has the right to deduct in a tax period. The Directive sets the rate of deductibility at a maximum of 30% of the taxpayer's earnings before interest, tax, depreciation and amortization.
- Exit taxation rules: taxpayers may try to reduce their tax liability by transferring its tax residence and/or its assets to a low-tax jurisdiction, solely for the purposes for aggressive tax planning. Exit taxation rules aims to prevent the erosion of the tax base in the Member State of origin when high-value assets are transferred with ownership unchanged, outside the tax jurisdiction of that Member State. The Directive also addresses the EU law angle of exit taxation by giving taxpayers the option of deferring the payment of the amount of tax over five years and settling through staggered payments.
- General anti-abuse rule: this rule is designed to cover gaps that may exist in a country's specific anti-abuse rules against tax avoidance, and allows authorities the power to deny taxpayers the benefit of abusive tax arrangements. The directive provides that the general anti-abuse clause will be applied to arrangements that are not genuine to the extent that they are not put into place for valid commercial reasons that reflect economic reality.
- Controlled foreign company (CFC) rules: in order to reduce their overall tax liability, corporate groups can shift large amounts of profits towards controlled subsidiaries in low-tax jurisdictions. CFC rules reattribute the income of a low-taxed controlled foreign subsidiary to its - usually more highly taxed - parent company. As a result of this, the parent company is charged to tax on this income in its State of residence.
- Rules on hybrid mismatches: corporate taxpayers may take advantage of disparities between national tax systems in order to reduce their overall tax liability, for instance through double deduction (i.e. deduction on both sides of the border) or a deduction of the income on one side of the border without its inclusion on the other side. To neutralise the effects of hybrid mismatch arrangements, the Directive lays down rules whereby one of the two jurisdictions in a mismatch should deny the deduction of a payment leading to such an outcome.

ENTRY INTO FORCE: 8.8.2016.

TRANSPOSITION: by 31.12.2018.

APPLICATION: from 1.1.2019.

By way of derogation, Member States have until 1 January 2020 to apply the exit taxation rules.

Member States which have at 8 August 2016, national targeted rules for preventing BEPS risks, which are equally effective to the interest limitation rule set out in the Directive, may apply these targeted rules until the end of the first full fiscal year following the date of publication of the agreement between the OECD members on the official website on a minimum standard with regard to BEPS Action 4, but at the latest until 1 January 2024.