

**Euro Tax Flash**

**Issue 242 - December 9, 2014**

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



### **ECOFIN Meeting on the EU FTT, proposed GAAR in the PS Directive, and Automatic Exchange of Information**

[ECOFIN – FTT – Enhanced Cooperation – Tax Avoidance – Parent Subsidiary Directive – Automatic exchange of information - Patent Box – BEPS](#)

On December 9, 2014 the Council of the EU (ECOFIN) discussed the status of the proposal for a Directive on a Financial Transaction Tax (FTT) for those Member States participating under the enhanced cooperation regime, reached agreement on the introduction of a general anti-avoidance rule (GAAR) into the Parent-Subsidiary Directive, and formally adopted a Directive amending the existing Directive on Administrative co-operation in the field of direct taxation (2011/16/EU) on information exchange.

#### **Status of the proposed FTT**

Agreement is still yet to be reached on what form the initial application of the FTT will take, currently scheduled for January 1, 2016. The next Presidency (Latvia, which is not part of the FTT under the enhanced cooperation regime) has been called on to continue working to facilitate an agreement during 2015.

The ongoing issues were highlighted in the previous ECOFIN meeting of November 7, 2014 (see [ETF 238](#)). Agreement on the extent to which transactions involving other financial instruments such as derivatives should be subject to the FTT has not been reached. Another unresolved area includes whether the FTT should be levied on the basis of the place of establishment of the participating financial institutions, or where the instrument was issued. Further work is also required on a possible collection mechanism for the tax. Although the self-imposed deadline for reaching agreement by the end of 2014 has now effectively not been met, EU Commissioner Mocscofici indicated that the 2016 start date was still realistic and that a decisive step is still possible this year. French Minister of Finance Sapin suggested that a solution to the first step of the FTT might be achieved at the beginning of 2015.

#### **EU Tax Centre Comment**

It remains to be seen whether the FTT will receive the same political attention during 2015, or whether momentum will now begin to slow, notwithstanding the positive comments from the EU Commissioner and French Finance Minister.

#### **Introduction of the GAAR to the Parent-Subsidiary Directive**

Agreement has now been reached by Member States on the wording of a binding anti-abuse clause introduced into the Parent-Subsidiary Directive to prevent the misuse of the Directive for tax avoidance and aggressive tax planning purposes.

The GAAR requires Member States to introduce rules that refrain from granting the benefits of the Directive to any arrangement or series of arrangements that are not genuine, have been put in place to obtain a tax advantage, while not reflecting economic reality. Member States will be free to apply stricter domestic rules as long as they meet this minimum EU requirement, but will have until December 31, 2015 to introduce the GAAR into national law. The approved proposal now calls for Member States to keep each other informed when applying the revised Directive, and for a similar provision to be considered for inclusion in the Interest Royalty Directive.

#### **EU Tax Centre Comment**

This development forms a decisive step forward in EU efforts to combat aggressive tax planning and supplements the recent approval of an anti-hybrid rule specifically aimed at preventing the Directive from facilitating double non-taxation arising from certain hybrid loan structures (see [ETF 230](#)).

#### **Extension of scope for the automatic exchange of information**

A revised Directive which extends the scope for the mandatory

automatic exchange of information between Member States was formally adopted at the ECOFIN meeting. The effect of those amendments brings interest, dividends, gross proceeds from the sale of assets and other income, and account balances within the scope of the automatic exchange of information. Political approval of the revised Directive was reached in October 2014 (see [ETF 234](#)). Austria noted that it will now introduce due diligence on new accounts from October 2016 and start exchanging at the same time as other Member States, i.e. September 2017 at the latest. Commissioner Moscovici also announced that the European Commission would issue a legal proposal for the exchange of information on tax rulings in early 2015.

### **EU Tax Centre Comment**

These amendments should be seen as part of the EU's overall focus on cross border tax fraud and tax evasion. The ECOFIN acknowledged the overlap with the OECD's 'global standard' but appears committed to adapting its own legislation on this issue.

### **Other issues**

Although the issue of patent boxes was expected to be addressed in the context of a report to be presented by the Code of Conduct, no public discussion took place. There was also no public discussion of a proposed "anti-BEPS" directive or a CCCTB (common consolidated corporate tax base), that had been anticipated as a result of a call for more concrete action to combat certain types of perceived abuse in a November letter to the Commission drawn up by France, Germany and Italy.

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

### **Robert van der Jagt**

Chairman, KPMG's EU Tax Centre and  
Partner, Meijburg & Co

[vanderjagt.robert@kpmg.nl](mailto:vanderjagt.robert@kpmg.nl)

### **Barry Larking**

Director EU Tax Services, KPMG's EU Tax Centre

[larking.barry@kpmg.nl](mailto:larking.barry@kpmg.nl)

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KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

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