Tax News Bulletin
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European Commission publishes Action Plan on corporate taxation reform

On 17 June 2015 the European Commission published its Action Plan on corporate tax reform. The European Commission argues that Europe needs a framework for fair and efficient taxation of corporate profits, and effective tackling of corporate tax avoidance. The current rules for corporate taxation purportedly no longer fit today's globalised, mobile and digital economic environment.

In the wake of the OECD's BEPS project, the European Commission ("the Commission") introduces its "own" Action Plan to tackle corporate tax avoidance. The Commission's new approach to corporate taxation builds on, and integrates, results of the OECD's BEPS Actions at EU level, while taking into account factors which are unique to the EU such as the Single Market, single currency area, and fundamental freedoms. The Plan is based on the following objectives:

1. Re-establishing the link between taxation and where economic activity takes place;
2. Ensuring that Member States can correctly value corporate activity in their jurisdiction;
3. Creating a competitive and growth-friendly corporate tax environment for the EU, resulting in a more resilient corporate sector, in line with the recommendations in the European Semester;
4. Protecting the Single Market and securing a strong EU approach to external corporate tax issues, including measures to implement OECD BEPS, to deal with non-cooperative tax jurisdictions and to increase tax transparency.

Based on these objectives, the five "key areas for action" are:

1. Re-launching the "Common Consolidated Corporate Tax Base" (CCCTB)
2. Ensuring effective taxation where profits are generated
3. Additional measures for a better tax environment
4. Further progress on tax transparency
5. EU tools for coordination

1 *Re-launching the CCCTB*

Benefits of a CCCTB, first proposed in 2011, would be the reduction of the administrative burden and compliance costs, the possibility to offset losses in one Member State against profits in another, and the effective tackling of profit shifting and corporate tax abuse in the EU. It would also allow Member States to implement a common approach towards third countries and defend the Single Market against aggressive tax planning. The proposed key changes to the 2011 proposal are: (1) making the CCCTB mandatory (at least for MNE's), and (2) developing a staged approach for implementation to improve its chances of being adopted. A new proposal is scheduled for next year.

2 *Ensuring effective taxation where profits are generated*

This key area for action comprises three objectives:

(1) bringing taxation closer to where profits are generated and ensuring effective taxation of profits through (i) a full-fledged CCCTB, (ii) an adjusted definition of permanent establishments (to prevent companies from artificially avoiding a taxable presence where they have their economic activity), and (iii) improving CFC rules;

(2) Improving the transfer pricing framework in the EU: the current framework is complex and can be manipulated for shifting profits. The Commission will work with Member States to build on the new guidelines from the OECD BEPS project (aimed at bringing transfer pricing outcomes more in line with value creation), to increase transparency, and to provide guidelines and tools for tax administrations on how to best use information on intragroup transactions;

(3) Linking preferential regimes to where value is created: the Commission intends to tackle the abuse of preferential regimes (e.g. patent box regimes) by enforcing the "modified nexus approach" which requires a proportional link between tax benefits and the underlying privileged activities.

3 *Additional measures for a better tax environment*

This key area for action comprises two objectives:

(1) Enabling cross border loss offset: the Commission proposes a cross Member State offset of profits and losses, subject to a recapture mechanism (until full consolidation has been achieved as part of the staged implementation of the CCCTB).
(2) Improving double taxation dispute resolution mechanisms: once fully implemented, the CCCTB should eliminate the risk of double taxation in the EU. Until such time, by the summer of 2016 the Commission will propose improvements to the current system (most importantly the multilateral Arbitration Convention), with clearer rules and more stringent timelines.

4 *Further progress on tax transparency*

The Commission urges Member States to implement its proposal – presented in March 2015 – on automatic exchange on cross border tax rulings by January 1, 2016. In addition to that, the Commission has published an EU-wide list of third country non-cooperative tax jurisdictions, to be amended on a periodic basis. This “screening” is done with a view to assisting non-cooperative tax jurisdictions, appearing most frequently on the list, with improving their good governance standards. Furthermore, the Commission is assessing whether additional disclosure of certain corporate tax information should be introduced, and launches public consultations.

5 EU tools for coordination

The Commission believes the current use of existing instruments on administrative assistance and cooperation is sub-optimal. It will therefore launch a discussion with Member States on how a more strategic approach to controlling and auditing cross border companies can be taken forward. Furthermore, the Commission will make a proposal to introduce reforms to the Code of Conduct for Business Taxation, to enable it to react more efficiently to cases of harmful taxation.

Our comments

In our view, the actions proposed in the area of transparency, mutual assistance, and coordination are likely to be welcomed and supported by most, if not all, Member States. However, the actions proposed in the area of tax base consolidation (CCCTB) and transfer pricing are likely to – at the very least – raise controversy among Member States. On several occasions, the Dutch Ministry of Finance has said not to be in favor of a CCCTB. It takes the view that each state should have the possibility to develop instruments to stimulate its investment climate, as long as it is transparent and creates a level playing field. The increased focus on “nexus” between profit and the location of activity is likely to be supported, so long as it does not depart from the at arm’s length principle. If the nexus approach should transition into a (form of) global formulary apportionment, it is likely to meet more resistance.