Tax News Bulletin
12 April 2016

EC changes its draft Anti Tax Avoidance Directive

On 6 April 2016, the EC released changes to its first draft Anti-Tax Avoidance Directive ("ATAD") that was released on 28 January 2016. The ATAD contains proposals for concrete measures to prevent aggressive tax planning, boost tax transparency and create a level playing field for all businesses in the EU. For detailed information on the first draft ATAD, we refer to our newsletter of 28 January 2016 (http://ohp.nl/sites/default/files/TNB%2028%20January%202016.pdf).

In addition to some clarifications, the proposed changes that have now been agreed upon by the EU member states comprise mostly *mitigations* to the first draft ATAD. Some important mitigations include:

- The switch-over clause will not apply to foreign income that arises from active business, nor will it apply where a treaty for the avoidance of double taxation is in place between the member state of the taxpayer and the third state where the entity or permanent establishment is situated.
- Interest shall be deductible up to the higher of 30% of EBITDA or EUR 3 million (under the first draft ATAD the threshold was EUR 1 million)
- Exceptions apply to financial undertakings (under the first draft ATAD, temporary exemptions for financial undertakings were proposed)

If you would like to have more detailed information on *all* changes to the first draft ATAD, please contact Wiecher Munting (wiecher.munting@ohp.nl) or Jeroen van der Wal (jeroen.vanderwal@ohp.nl).