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Euro Tax Flash from KPMG's EU Tax Centre

European Parliament's plenary session February 28 and March 1, 2018

EP Plenary Session – EU Blacklist of non-cooperative countries – Mandatory disclosure requirements – TAXE 3 committee – C(C)CTB

At its plenary sittings on February 28 and March 1, 2018, the European Parliament discussed a number of tax proposals and voted in favour of a report on the European Commission's proposal for mandatory disclosure rules for intermediaries. The EU Parliament also discussed the EU Blacklist and announced the creation of a new committee (TAXE 3) which will focus on financial crimes, tax evasion and tax avoidance.

Vote on Mandatory Disclosure Requirements for Intermediaries

On June 21, 2017, the EU Commission presented a proposal for a Council Directive as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (see ETF 330). The proposal introduces an obligation on intermediaries to disclose potentially aggressive tax planning arrangements and the subsequent exchange of this information between tax administrations.

During the plenary sitting held on March 1, 2018, MEPs debated and voted on the report prepared by the Committee on Economic and Monetary Affairs (ECON), which recommends amendments to the EU Commission's proposal. The report was adopted by 541 votes in favour to 33 votes against, with 61 abstentions.

The EU Parliament's report proposes in particular the following amendments to the initial proposal presented by the EU Commission:

- The scope of the “main benefit test” should be broadened to situations where obtaining a tax advantage is “one” of the main benefits.
- The retroactive effect of the Directive should be widened to cover all reportable arrangements that were implemented in the past but are still active.
- The reporting obligation should be extended to auditors.
- The EU Commission should be granted access to the reported information and publish a list of the reported arrangements.
- Member States should be required to implement effective penalties, the enforcement of which would be monitored by the EU Commission.

However, the EU Parliament’s vote on the proposed amendments is likely to have a limited impact on the final text to be adopted by the Member States, as the Council is not bound by these recommendations. Although discussions on the EU Commission’s proposal are still ongoing at the level of the Member States, a compromise is expected to be reached at the next ECOFIN Council meeting on March 13, 2018.

Debate on the amended EU Blacklist

The EU blacklist of non-cooperative jurisdictions for tax purposes is part of the EU’s effort to clamp down on tax avoidance and harmful tax practices and was adopted by the Council on December 5, 2017 (see ETF 345). Out of the 92 jurisdictions chosen for screening, 17 jurisdictions were placed on the blacklist. On January 23, 2018, the ECOFIN decided to remove Barbados, Grenada, South-Korea, Macao SAR, Mongolia, Panama, Tunisia and the United Arab Emirates from the list (see ETF 353).

This decision, which was widely criticized, in particular as regards the perceived absence of transparency during the listing/delisting process and the lack of credibility of the resulting blacklist, was debated by the EU Parliament on February 28, 2018. The discussion mainly focussed on the removal of Panama from the list, the criteria for including and removing countries from the list, the possible sanctions for the blacklisted jurisdictions, and the fact that EU Member States were not considered for inclusion on the blacklist.

Addressing the concerns of some MEPs about transparency, the representative of the Council noted that several documents, including criteria and sanctions, as well as the list of the commitments taken by the grey-listed jurisdictions are already publicly available and that those countries have been requested to make their correspondence with the Council public. With respect to the revision of the blacklist, the Council also mentioned that the commitments taken, including by Panama, will be closely monitored at the end of 2018 and may lead to further amendments. Finally, both the EU Commission and the Council underlined that Member States are already under permanent scrutiny as far as any harmful practices are concerned.

Vote on TAXE 3 Committee

On March 1, 2018, the EU Parliament confirmed the decision taken in February by the Conference of Presidents to set up a special committee on financial crime, tax fraud and tax avoidance. The new TAXE 3 Committee is the fourth committee, after the TAXE, TAXE 2 and PANA committees, to address these issues and is expected to build on and complete the work carried out by its predecessors. In particular, the new committee will focus on the effective implementation of recommendations highlighted in the former committees’ resolutions on tax rulings of November 25, 2015, and July 6, 2016, (see ETF 294) as well as on the

recommendations defined in the PANA report of December 13, 2017 (see ETF 346). The TAXE 3 committee will have 45 members and have a term of office of 12 months.

The new TAXE 3 Committee is also expected to investigate the recent revelations of the Paradise Papers and how EU VAT rules were circumvented under that framework. The committee will also focus on the digital economy, citizenship programs, and the EU blacklists for tax and anti-money laundering purposes, as well as analyzing the third-country dimension in tax avoidance and its impact on developing countries.

C(C)CTB – State of play

On February 21, 2018, the ECON committee also adopted two reports on the EU Commission's proposals for a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base. The EU Parliament is expected to vote on both reports at the next plenary session on March 15, 2018. In particular, the ECON Committee recommends the introduction of a digital permanent establishment concept, as well as a new allocation key based on the taxpayer's use of personal data.

In a similar vein, the EU Commission is expected to present a proposal on March 28, 2018, to address issues related to the taxation of the digital economy. The solutions envisaged include a proposal for a Directive on an EU tax on gross revenues derived from digitalized business activities and a Directive to introduce the concept of a digital permanent establishment.

EU Tax Centre comment

All of the above measures should to be seen in the light of the EU's effort to clamp down on tax avoidance and harmful tax practices and follow the European Commission's Anti-Tax Avoidance Package presented in January 2016. However, the EU Parliament's recommendations are likely to have a limited impact as they are not binding on Member States.

Should you have any queries, please do not hesitate to contact KPMG's 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

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