

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. Greece - The United States Country by Country Reporting

1. On 16 March 2018, the Greek government submitted to Parliament draft legislation for the ratification of the bilateral Competent Authority Arrangement (CAA) between Greece and the United States for the exchange of Country-by-Country (CbC) reports.
2. The arrangement provides for the exchange of CbC reports with respect to reporting fiscal years beginning on or after 1 January 2016.

B. Additional Guidance on the Attribution of Profits to Permanent Establishments

1. On 22 March 2018, the OECD released the final Additional Guidance on the Attribution of Profits to a Permanent Establishment (PE).
2. In light of the changes to Article 5 of the OECD Model Tax Convention, as outlined in the final report on BEPS Action 7, the Guidance provides that the profits attributable to a PE are those that the PE would have derived if it were a separate and independent enterprise. This principle applies regardless of

whether tax administrations adopt the Authorised OECD Approach (AOA).

C. Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements

1. On 13 March 2018, the Council of the European Union reached political agreement on proposing the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. This exchange of information aims to tackle aggressive cross-border tax planning and prevent corporate tax avoidance.
2. The new Directive will be included in the existing Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC). Member States will have to lay down rules for mandatory disclosure to national competent authorities of potential aggressive cross-border tax planning arrangements by so called 'intermediaries' (e.g. tax advisers, accountants and lawyers) involved in designing, marketing, organizing or managing the implementation of these arrangements.
3. Member States have to ensure that national tax authorities will automatically exchange this information with the tax authorities of other Member States by using the mechanism provided for in the DAC. This proposal reflects elements of BEPS Action 12 on the model mandatory disclosure rules covering tax avoidance arrangements.
4. The Council considered that it would be more effective to endeavor to capture potentially aggressive tax arrangements through the compiling of a list of the features and elements of transactions that present a strong indication of tax avoidance or abuse, rather than to define the concept of aggressive tax planning. These indications are referred to as 'hallmarks' (descriptions of reportable arrangements). The hallmarks are grouped into two categories, generic hallmarks and specific hallmarks. Generic hallmarks and some specific hallmarks may only be taken into account where they fulfil

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the 'main benefit test'. This test is satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement, is the obtaining of a tax advantage.

5. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the proposed Directive by 31 December 2019 at the latest and the provisions shall apply from 1 July 2020. Automatic exchange of information will take place within one month from the end of the quarter in which the information was filed, with the first information being communicated by 31 October 2020.
6. In the case of marketable arrangements, Member States shall take the necessary measures to require that a periodic report is made by the intermediary every 3 months providing an update which contains new reportable information.
7. It should be noted that any processing of personal data carried out within the framework of the new Directive must comply with the provisions of the respective Regulation and Directive.

D. The EU Updates the List of Non-cooperative Jurisdictions

1. The EU Council's list of non-cooperative jurisdictions in taxation matters has been adjusted in the light of:
 - a. commitments made by listed jurisdictions;
 - b. an assessment of jurisdictions for which no listing decision had yet been taken.
2. Moves have also been made to improve transparency in the listing process.
3. On 13 March 2018, the Council removed Bahrain, the Marshall Islands and Saint Lucia from the list and added the Bahamas, Saint Kitts and Nevis and the US Virgin Islands. At the same time, the Council decided to add Anguilla, Antigua and Barbuda, the British Virgin Islands and Dominica to Annex II.
4. As a result, the following 9 jurisdictions remain on the EU list: American Samoa, the Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago and the US Virgin Islands.
5. These include 6 of the original 17, plus three of the Caribbean jurisdictions. (8 of the original 17 were delisted on 23 January 2018.)

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