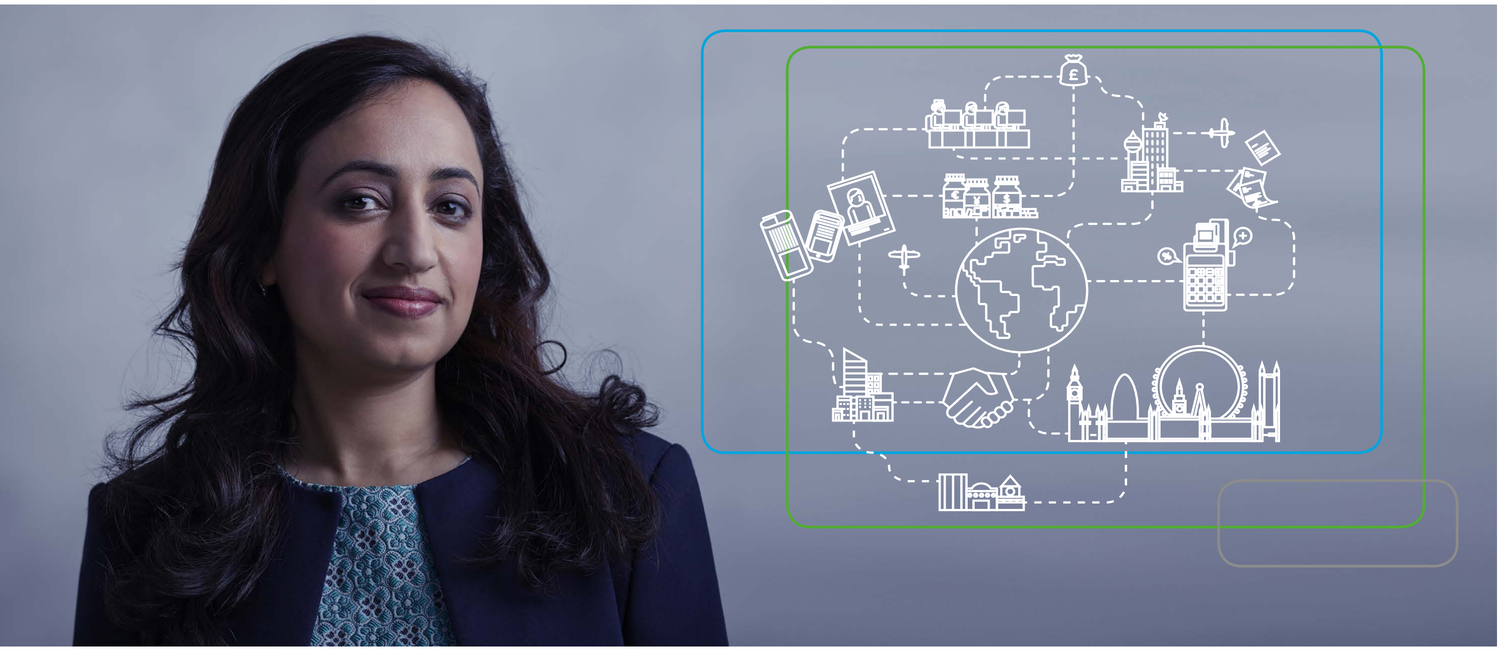

UPDATE ON THE ANTI-TAX AVOIDANCE DIRECTIVE

On May 25, 2016, the Council of the European Union discussed adopting the Anti-Tax Avoidance Directive. This Directive proposes new rules against tax avoidance practices that directly affect the functioning of the internal market

Although the Dutch Presidency, the European Commission as well as a number of Member States were determined to reach an agreement during the May 25, 2016 ECOFIN on the Anti-Tax Avoidance Directive, no such agreement was reached. The reason for this is that several countries expressed reservations to different aspects of the Directive, citing possible negative economic impacts and/or difficulties in changing their current national systems, such is the case with the proposed exit taxation rules in some instances.

The key open items relate to the CFC rules and the switch over clause:

- Firstly, some countries feel the CFC rule goes beyond the existing case law of the European Court of Justice with regards to its application within the EU and have suggested to change the wording limiting intra-EU/EEA CFC rules to wholly artificial entities. Furthermore, the burden of proof that an arrangement is wholly artificial should be put on the tax administration.
- Secondly, countries debated whether or not to maintain the switch-over clause in the Directive as the measure is not recommended in the BEPS initiative of the OECD and not essential to the package. The Presidency believes that the clause should be maintained as it currently stands to have a coherent package of anti-BEPS measures, but acknowledges the need for an exchange of views and decision at Ministerial level on this matter.

The Council will now attempt to resolve the remaining political issues in order to reach an agreement on a general approach on the Directive with a view to adopting the Directive during the next Council.

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

RSM