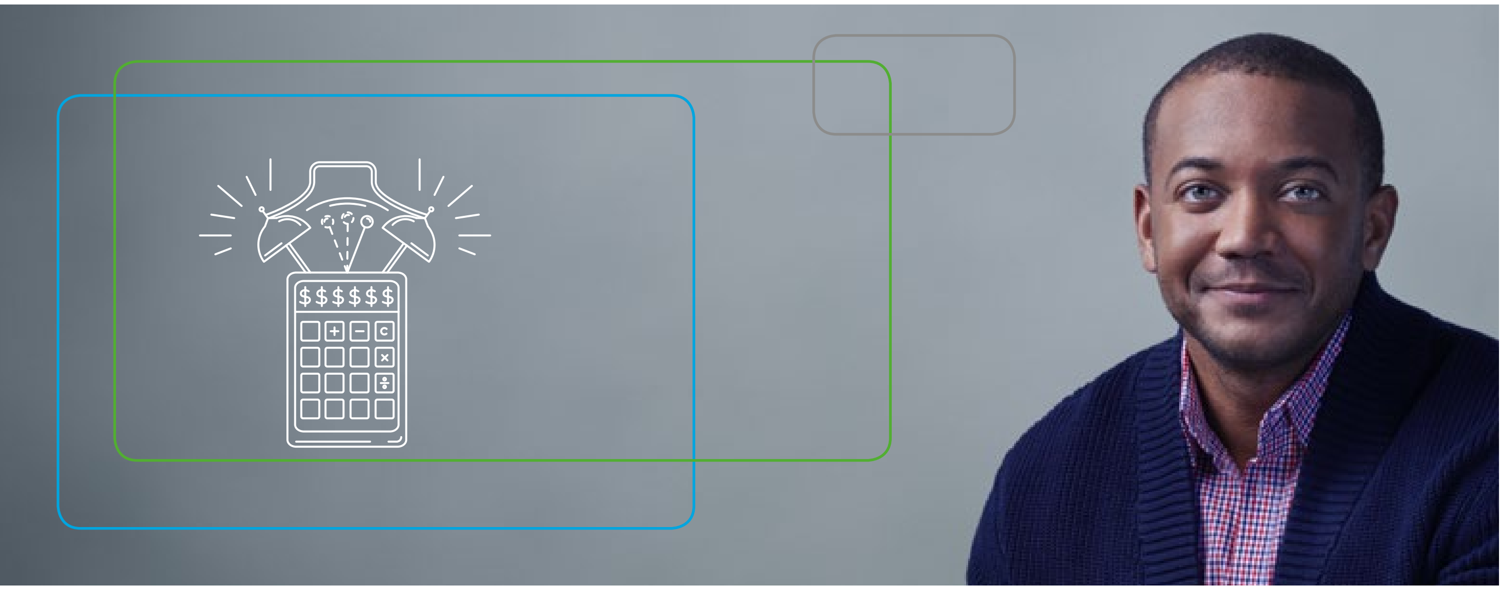

EUROPEAN COMMISSION PRESENTS ANTI-TAX AVOIDANCE PACKAGE

On January 28, 2016 the European Commission ("EC") presented its EU Anti- tax Avoidance Directive, a constituent part of the EC's "Anti- Tax Avoidance Package" (ATAP) which increases tax transparency and makes for fairer, simpler and more effective corporate taxation in the EU. With the aim to create a minimum level of protection against corporate tax avoidance, the Directive lays down six legally binding anti-abuse measures:

1. Interest deduction rules which, excluding the financial and insurance sector, limit net interest expenses of a company to a maximum of the higher of (1) 30% of the taxpayer's gross operating profit (EBITDA) or (2) EUR 1 million
2. Exit taxation rules applicable to companies transferring assets from a permanent establishment ("PE") to and from its foreign head office, between PEs, or upon moving the head office or PE abroad
3. A switch-over clause applicable to income from foreign companies situated in low-tax jurisdictions that would normally receive a tax exemption are instead given a credit for taxes abroad
4. General Anti-Abuse Rule ("GAAR") giving tax authorities to deny benefits to artificial structures
5. Controlled Foreign Company ("CFC") rules re-attributing income of a low-taxed subsidiary to its parent company; and
6. A framework to tackle hybrid mismatches, where the legal characterization for a hybrid instrument or entity of the Member State of payment, expense or loss is followed by the other State.

Many of the proposed rules in the draft ATAP Directive reflect the proposals from the OECD's BEPS project with some small deviations. The Directive requires unanimity in ECOFIN of all Member States to be adopted. In light of the BEPS initiative and pressure from the EC on this package, the EC will aim to have the Directive adopted within the next 6 months with an effective date of January 1 or July 1, 2017.

The ATAP package further contains the following key features:

- A general policy Communication on the ATAP and the way forward
- Recommendations on tax treaties on how to prevent treaty abuse, covering the introduction of a GAAR in tax treaties and the revision of the definition of permanent establishment
- A proposal for Member States for the sharing of country-by-country reports between tax authorities.
- A communication on an External Strategy for Effective Taxation, presenting a more coherent EU approach to working with third countries and providing an EU process for third countries that refuse to play fair
- A study on aggressive tax planning

The two legislative proposals of the Package will be submitted to the European Parliament for consultation and to the Council for adoption. The Council and Parliament should also endorse the Tax Treaties Recommendation and Member States should follow it when revising their tax treaties. Member States should also formally agree on the new External Strategy and decide on how to take it forward as quickly as possible once it has been endorsed by the European Parliament.

Given the current international trends aimed at combating tax avoidance and the political and public pressure behind these initiatives, we expect aforementioned proposals to be (partly) enacted on short term.
This will have a considerable impact on the taxation of multinational enterprises. We will keep you informed on the developments and the practical implications in this regard.

For further information, please contact your trusted RSM advisor, or:

Mario van den Broek
E mvdbroek@rsmnl.nl

Michael Bolt
E mbolt@rsmnl.nl

Patrick Rood
E prood@rsmnl.nl