EUROPEAN COMMISSION PUBLISHES PROPOSALS FOR AN EU CORPORATE TAX SYSTEM FOR MULTINATIONALS

As expected, on October 25, 2016, the European Commission (EC) published four proposals that follow on earlier BEPS inspired draft legislation around hybrid mismatches and dispute resolution. The proposals are aimed at the establishment of one EU corporation tax system for multinationals. The proposed rules will effectively reduce Member States' autonomy in the area of tax structuring.

The proposals include the following elements:

- a Common Corporate Tax Base (CCTB Directive);
- a Common Consolidated Corporate Tax Base (CCCTB Directive);
- hybrid mismatches with third countries; and
- double taxation dispute resolution mechanisms in the EU (Dispute Resolution Directive)

In 2011, the EC proposed a Directive for a CCCTB, which aimed to provide companies with a single set of corporate tax rules for doing business within the European Union (EU). However, the 2011 Proposal was unlikely to get adopted in its entirety without a staged approach. Therefore, the EC advocated a step-by-step approach in 2015. To encourage swift adoption, a two-step approach has been adopted consisting of the establishment of a CCTB, which can be quickly agreed upon to unlock key benefits for both businesses and Member States, and a CCCTB which should be agreed upon soon afterwards.

The difference between CCTB and CCCTB lies mainly in the cross-border consolidation of profits and losses (as part of the CCCTB) and the elimination of intra-group transactions.

The proposals build on recently adopted tax measures within the EU, including the Anti-Tax Avoidance Directive (ATAD), the 2014 and 2015 amendments to the Parent-Subsidiary Directive and the recast proposal for the Interest and Royalties Directive (2011). It should be noted that whereas the earlier announced ATAD sets out minimum standards, the current proposals for CCTB and CCCTB are more prescriptive.

CCTB proposal

The CCTB-proposal contains detailed measures establishing a mandatory harmonized EU wide corporate tax base definition and tax base calculation system, including anti-tax avoidance rules.

The system would apply for all groups of companies with a total annual turnover in excess of EUR 750 million that conduct business activities in the EU through a taxable presence in an EU Member State.

Other aspects of the proposal include (not exhaustive):

- Temporary loss relief for direct EU subsidiaries and EU PE's
- Enhanced deductions for R&D costs
- Participation exemption and switch over clause
- Exit taxation

Next steps

The EU continues to proactively work on the implementation of the BEPS action plan and in some ways proposes to go even further. It is clear that the EC is of the view that the momentum for drastic changes is now and that is also the reason that the old CCCTB-proposal formally has been relaunched.

Although we agree that there has been an unprecedented amount of consent amongst the EU members to tackle tax evasion, it remains to be seen whether or not the current momentum also expands to building one EU common corporate tax base. In order to be effectuated the proposals need to be approved unanimously by all 28 EU Member States. Once adopted, the Member States will be required to transpose the directive provisions in their national laws. According to the proposed Directive, Member States shall apply the provisions of the CCTB as per January 1, 2019 and the CCCTB Directive as per January 1, 2021.

With the suggested timeframe, it is clear that the EC is trying to speed things up. However, given the state of the proposals and the proposed timeframe, it is difficult for companies to really anticipate the upcoming changes. However, as a final comment, we do note that monitoring of the developments is important especially for larger internationally active companies with activities in different EU member states. In addition, RSM is closely watching these developments and looking to create thought leadership outings together with its clients building and developing the right responses.

For further information, please contact your trusted RSM advisor.