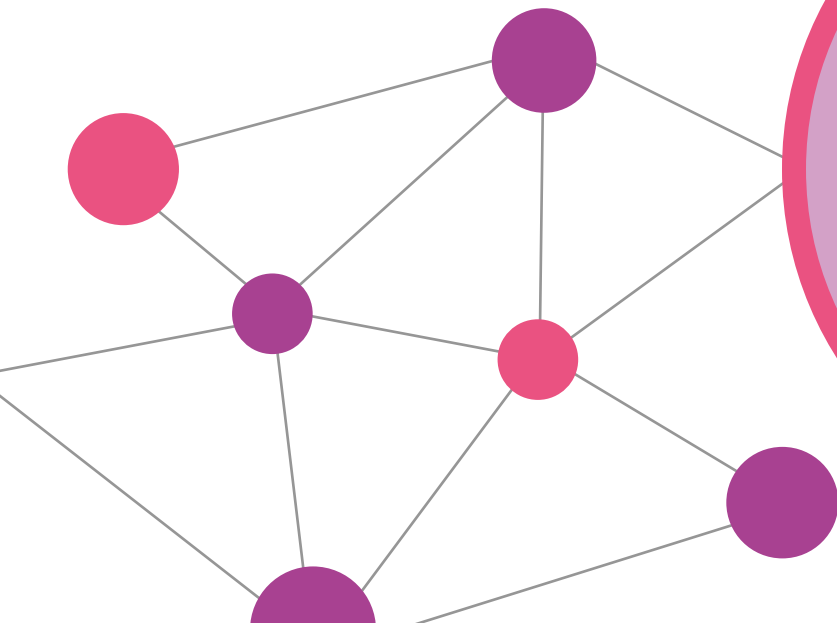
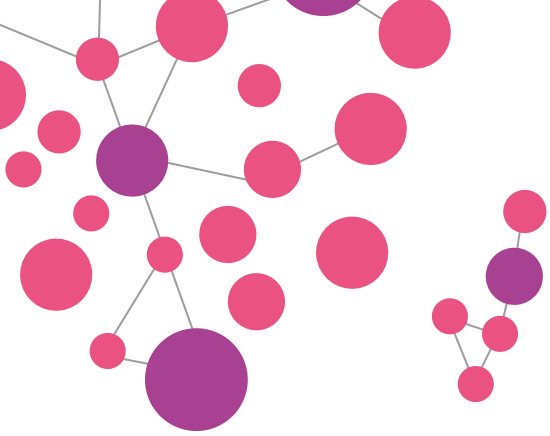


EU ANTI-TAX AVOIDANCE MEASURES Q&A

From BEPS to ATAP and ATADs, Massimiliano Gazzo, chair of Interlaw tax team, answers the key questions on new anti-tax avoidance measures in Europe





Q1. WHAT IS BEPS?

BASE EROSION AND PROFIT SHIFTING OR BEPS AS IT HAS BECOME KNOWN, REFERS TO TAX AVOIDANCE STRATEGIES THAT EXPLOIT 'LOOPHOLES' IN TAX RULES TO ARTIFICIALLY MOVE PROFITS TO JURISDICTIONS WHERE THERE IS A MORE FAVOURABLE TAX ENVIRONMENT.

As part of a co-ordinated approach, led by the OECD, to tackle tax avoidance, more than 100 countries and jurisdictions are collaborating to put measures in place to tackle BEPS.

Q2. WHY DOES THE EU NEED NEW RULES ON TAX AVOIDANCE?

THE INCREASING COMPLEXITY OF BUSINESS MODELS AND CORPORATE STRUCTURES FACILITATES TAX AVOIDANCE AND AGGRESSIVE TAX PLANNING, IMPACTING ON THE TAX SOVEREIGNTY OF EU MEMBER COUNTRIES.

Domestic rules cannot be fully effective, given the cross-border dimension of many tax planning structures and the use of arrangements which artificially relocate the tax base to another jurisdiction within or outside the EU. In addition, relying on unilateral and domestic measures may fragment the EU Single Market.

The OECD has provided BEPS recommendations on how countries should design their tax systems to make them more resilient against profit-shifting and tax income where value is created.

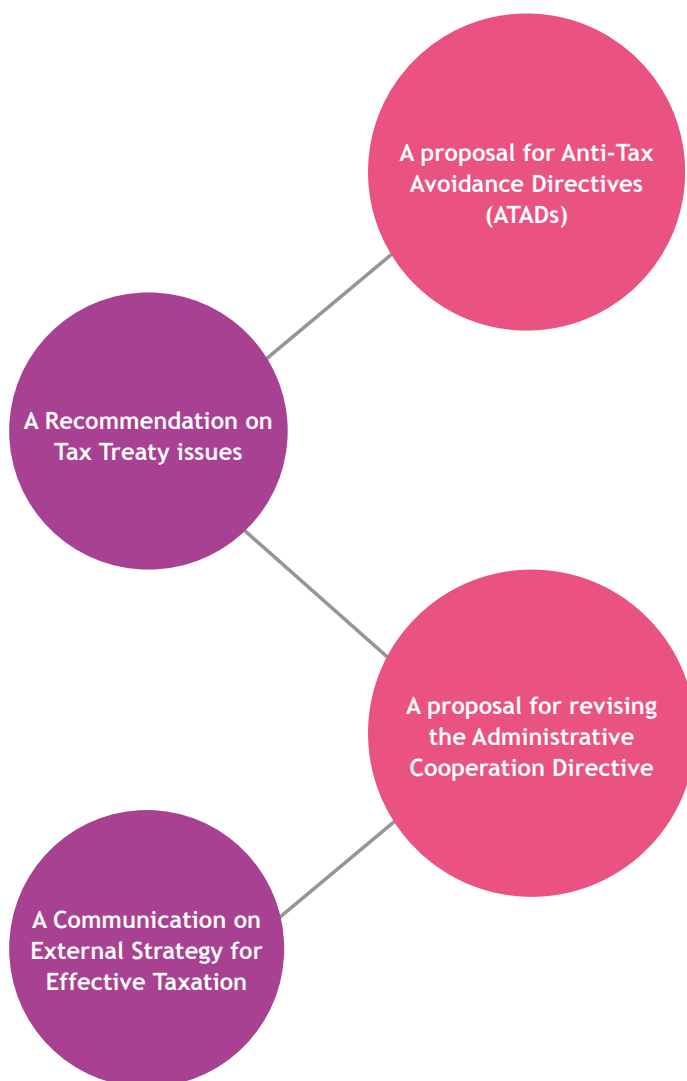


Q3.

HOW HAS THE EU RESPONDED TO BEPS?

BASED ON THE OECD'S BEPS RECOMMENDATIONS, THE EU ANTI-TAX AVOIDANCE PACKAGE (ATAP) AIMS TO ENSURE THAT MEMBER STATES TAKE A CO-ORDINATED STANCE BOTH IN THE IMPLEMENTATION OF THE BEPS PROJECT AND AGAINST TAX AVOIDANCE.

ATAP is structured around the following 4 elements:



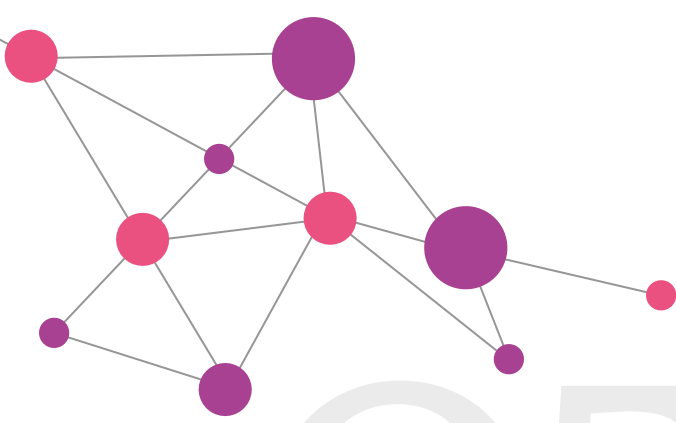


Q4. WHAT IS IN THE EU ANTI-TAX AVOIDANCE DIRECTIVE?

ADDRESSING SPECIFIC AREAS OF POTENTIAL HARMFUL TAX PRACTICES, THE EU ANTI-TAX AVOIDANCE DIRECTIVE WILL AFFECT ALL BUSINESSES EITHER BASED OR OPERATING IN THE EU.

It proposes six specific legally-binding anti-abuse measures, which all Member States should apply against common forms of aggressive tax planning.

1. The rule on hybrid mismatches aims to limit companies from writing off the same expenses multiple times across jurisdictions. These can be cases where a payment would face double non-taxation resulting from a discontinuous interplay between separate tax systems in different jurisdictions. In particular, the scope of this measure is to prevent cross-border payments generating either double deductions (“DD”) or deductions without symmetrical inclusion (“D/NI”) as per effect of cross-border hybrid mismatch of financial arrangements as well as the use of Hybrid entities producing DD or D/NI consequences.
2. The controlled foreign company (CFC) rule, which is designed to deter profit-shifting to low-tax countries by giving the right to tax company profits also outside a country’s territory; this measure addresses the potential ways of re-allocating profits to low tax jurisdictions.
3. The third measure is a switchover rule aimed at preventing double non-taxation of certain income.
4. The exit-taxation deals with cases where the tax base is shifted within or outside the EU; it is designed to take effect before valuable assets, developed within one jurisdiction, are moved across borders.
5. The interest limitation rule, is designed to prevent profit-shifting activities that take place via the debt-shifting channel; this rule restricts the deductibility of interest expenses and similar payments from the tax base and, therefore, reduces the benefit from debt-shifting and makes it less lucrative from the company’s point of view. This is recommended to ensure that an entity’s net interest deductions are directly linked to its level of economic activity, based on earnings before interest, tax, depreciation and amortization.
6. The final measure is the general anti-avoidance rule (GAAR) allowing EU countries to tackle artificial tax arrangements if they cannot be justified by economic reasons, and if other measures are not able to capture these.



Q5 WHEN DO THE CHANGES COME INTO FORCE?

BUSINESSES OPERATING IN THE EU NEED TO KNOW ABOUT THESE SPECIFIC LEGALLY-BINDING ANTI-ABUSE MEASURES URGENTLY AS ALL EU MEMBER STATES ARE BEING ADVISED TO START ENFORCING THEM FROM 1 JANUARY 2019.

In particular, Member States shall, by 31 December 2018, adopt and publish the laws, regulations and administrative provisions necessary to comply with ATAD. They shall communicate to the Commission the text of those provisions without delay. They shall apply those provisions from 1 January 2019.

By way of derogation, Member States shall, by 31 December 2019, adopt and publish, the laws, regulations and administrative provisions necessary to comply with exit-taxation (Article 5 of ATAD). They shall communicate to the Commission the text of those provisions without delay. They shall apply those provisions from 1 January 2020.

Q6 WHAT DO THE CHANGES MEAN FOR BUSINESSES OPERATING IN THE EU?

EU APPROACHES HIGHLIGHT A NEED FOR MNES TO REVIEW ITS OPERATION AND, IF NEEDED, TO ALIGN ALL ITS INTRAGROUP POLICIES WITH NEW ATAD PRINCIPLES AND RULES.

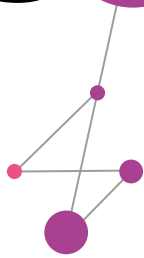
Among others, Group financial policies are massively impacted by ATAD and by ongoing BEPS Actions 8-10 follow-up work on transfer pricing aspects of financial transactions.

In this framework, M&A transactions shall be reshaped to take care of these new rules. Specifically any structuring of M&A deals shall be re-thought to generate value through less leveraged deals of equity-based ones.

On the other hand, MNEs have to face the new GAAR imposing that only genuine and economic sounded structure and arrangements still work. Thus any MNE should carefully review its corporate structure and arrangements to remove any artificial tool and strengthen its tax rating.

Needless to say that inadequate ATAD practices may cause Tax Authorities inquiries, adjustments, additional taxes, penalties, double taxation and costly and time-consuming litigations.

CONNECT WITH US



INTERLAW OFFERS A GENUINE GLOBAL ALTERNATIVE TO THE TRADITIONAL INTERNATIONAL LAW FIRM MODEL.

Our approach provides our clients with guaranteed quality, serious connections, informed advice, speed, cost-effectiveness and competitive advantage. At a time when business is truly international, we are the alternative global legal practice that clients need to help them succeed in international business.

We would be delighted to discuss our unique solution with you further. To continue the conversation on your global legal tax, please contact:

Massimiliano Gazzo
Chair, Global Tax Team
INTERLAW LIMITED

t: +39 02 72554
e: m.gazzo@dejalex.com



www.interlaw.com

© INTERLAW 2019. INT.LAW.535

