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EU Efforts to Stem Abusive Tax Structures

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It is of little surprise that the individual EU countries and European Commission for Competition have narrowed their focus on multinational companies with cross border operations. There have been a number of high profile cases – Astra Zenteca, Apple, and Mastercard to name a few who have had to pay the piper. And the release of the Panama Papers only served to stir the pot even more. As a result, companies doing business within the EU should be aware of the Commission's ambitious agenda "for fairer, simpler and more effective corporate taxation in the EU".

To that end, nearly 3 years ago, the European Commission rolled out the Anti-Tax Avoidance Directive aimed at establishing common transparency rules against practices deemed to be for the purposes of tax avoidance. These measures come into effect as of January 1, 2019 and will serve to help eliminate inconsistency among member countries, provide a more level playing field and uniform taxation as well as country-by-country reporting and sharing of information.

The Anti-Tax Avoidance Directive portion provides rules in the following areas:

Controlled Foreign Company (CFC) – to deter profit shifting to a low/no tax country.

Switchover rule – to prevent double non-taxation of certain income.

Exit Taxation – to prevent companies from avoiding tax when relocating assets/operations.

Interest limitation - to discourage artificial debt arrangements designed to minimize taxes.

General Anti-abuse Rules (GAAR) – to counteract aggressive tax planning when other rules don't apply.

And the plot thickens – adding to that, the changes set forth when the U.S. passed the Tax Cuts & Jobs Act in 2017. These include many changes to the international side of U.S. taxation. Specifically these new provisions take aim at:

CFC rules – expanded in scope.

Dividend s Received Deduction – indirect foreign tax credit replaces ownership threshold limits.

G.I.LT.I. now impose U.S. tax on most of the CFC's operating income.

Outbound transfers now fully taxable in most cases.

Corporate Tax Rate – reduced to 21%

Companies doing business in the EU (and throughout the world) should be aware of these new measures and take this opportunity to assess their operations, the use of holding companies, review internal documents and agreements to ensure compliance with these rules and make changes where needed. Penalties for non-compliance and the cost of defending arrangements can be high.

Do planning opportunities still abound? Is your structure tax efficient? Is it time to repatriate income to the states?

You've heard our thoughts… We'd like to hear yours