



Tax&Legal Highlights

Hungary

The planning schemes in EU focus

The European Commission is expected to publish its draft on 21 June 2017, which stipulates that tax advisors are required to inform the competent tax authorities of the tax planning schemes that they designed.

The draft is based on the idea that if tax authorities learn about aggressive tax planning schemes even before implementation, they could more efficiently monitor them and take the right measures if necessary.

The draft intends to regulate as many schemes as possible where at least two member states or one member state and a third country are involved. To this end the Commission created the following definitions: Taxpayer: Any person (natural or legal) that uses a cross-border scheme to optimise its tax position. Intermediary: Any person that provides tax advisory services to taxpayers regarding planning, marketing, organisation or implementation of cross border schemes.

Intermediaries are required to report any tax planning schemes to the competent tax authority (within 5 days following the delivery of the scheme to the taxpayer). If the tax advisor's registered office is located in a third country, such reporting obligation is assumed by the taxpayer (within 5 days following the start of implementation).

The individual member states are required to introduce “effective, proportionate and dissuasive” sanctions against intermediaries and taxpayers who break the rules. Furthermore, member states’ liability is extended to automatic information exchange on a quarterly basis.

In the annexes to the draft, the Commission specified five features and examples to identify aggressive tax planning schemes:

1. The intermediary is entitled to a fee that is linked to the amount of tax advantage reached through the tax planning scheme.
2. “Primary advantage test” – relates to schemes:
 - o where the taxpayer deducts losses from his tax liabilities that were transferred from abroad, or
 - o as a result of which taxable income is converted to capital, gift or any other income category that is subject to lower taxes.
3. Schemes where funds are transferred across the border between two or more associated parties and the addressee:
 - o has no tax residence in either of the countries, or
 - o it has tax residence in a country where the corporate income tax rate is lower than half of the EU average or there is no corporate income tax at all.

The draft also relates to transactions where the same asset is depreciated in more than one country.

4. Any scheme that aims the avoidance of EU law or regulations pertaining to automatic information exchange.
5. Any scheme that goes against the arm's length principle or the OECD transfer pricing rules.

Currently only three countries have transparency requirements for intermediaries: Ireland, Portugal and UK.

The Commission hopes that the new rules may enter into force as early as 2019 after effective and efficient negotiations.

Multilateral Treaty against tax planning

The multilateral treaty signed on 7 June 2017 by 68 countries, including Hungary is a spectacular result of the fight against BEPS (Base Erosion and Profit Shifting), and brings significant changes to the interpretation of international transactions by modifying several thousands of bilateral tax treaties through one single legal act.

Rather than amending tax treaties through bilateral negotiations, the aim of the multilateral agreement is to incorporate the main rules created in the BEPS project into the effective treaties of the signing countries in a more efficient and uniform way.

The multilateral treaty had to be flexible enough so that several countries can commit; therefore it sets forth both compulsory and optional provisions. The mandatory provisions apply to all tax treaties of all countries involved where the partner country also accepted the multilateral treaty. These are the following:

Tax&Legal Highlights

- Use of a new introductory text that lays down on a concept level that the aim of the tax treaty is the avoidance of double taxation in a way that is no option for nontaxation or artificially low taxation.
- If all circumstances of the case imply that the main goal of a transaction is to reach a tax advantage, then the benefits granted by the tax treaty are not applicable. This rule may be supplemented by a further restriction on benefits based on activities, but this is only optional.
- Mutual negotiations to make international taxation smoother.
- The multilateral treaty provides for several other optional rules, including the so called hybrid schemes, the permanent establishment rules and the taxation of companies holding real estate.

The multilateral treaty is to enter into force on the first day of the forth calendar month after the date when the fifth country ratifies the treaty. To make the treaty applicable to an existing tax treaty between two countries, both countries need to ratify it, then three months need to pass. Having been signed on 7 June, it is clear that the treaty is not yet effective but the process has started and about 1,100 tax treaties of the 68 signing countries are to be modified within the next year or two.

More than 100 countries indicated their intentions to ratify the multilateral treaty, and further countries are free to join at any time, potentially increasing the number of tax treaties concerned. The OECD keeps records of signing and ratifying countries and their choices made with respect to the treaty (also country specific choices).

With respect to the fact that the multilateral treaty is not automatically incorporated in the individual tax treaties, in the future it will not be sufficient to review the provisions of the individual tax treaties in case of cross-border transactions, but it must also be considered whether the multilateral treaty is effective for the given country, and if so, which country opted for which provisions in addition to the mandatory elements. Therefore the tax treatment of international transactions will require even more consideration and expertise, with special regard to the fact that out of the 68 countries now signing the treaty, Hungary has effective tax treaties with 52.

For more information on the multilateral treaty, please contact our experts.

Contacts Details

Dr. Gábor Kóka

Partner, Tax&Legal

Tel: + 36 (1) 428 6972

Email: gkoka@deloittece.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

Deloitte provides audit, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 245,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

Deloitte Central Europe is a regional organization of entities organized under the umbrella of Deloitte Central Europe Holdings Limited, the member firm in Central Europe of Deloitte Touche Tohmatsu Limited. Services are provided by the subsidiaries and affiliates of Deloitte Central Europe Holdings Limited, which are separate and independent legal entities.

The subsidiaries and affiliates of Deloitte Central Europe Holdings Limited are among the region's leading professional services firms, providing services through nearly 6,000 people in 44 offices in 18 countries.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2017. For information, contact Deloitte Central Europe