EU actions against evasion of taxes

On the new EU rules aimed at combating tax evasion

20 July 2018

On July 12, 2016, the Council of the European Union published a draft directive (EU 2016/1164) against tax evasion (Anti-Tax Avoidance Directive – ATAD). The ATAD Directive implements the recommendations of the OECD (Organization for Economic Co-operation and Development) set out in the section of the Action Plan for Base Erosion and Profit Shifting.

The draft directive contains five basic rules applied within the struggle against tax evasion:

1. Interest limitation rule. This rule is directed against company financing schemes realized through the provision of friendly loans, which allow the debtor to reduce the taxable base by including interest payments in its expenses. According to the ATAD directive, the allowable amount of such payments will be limited to a certain amount (30% of EBITDA, but not more than 3 million euros), calculated on the basis of the profit figures that the taxpayer receives in the corresponding reporting period.

2. Exit Tax. This rule imposes the obligation on companies to assess the market value of their assets and to determine the capital gains accumulated in the EU country, when withdrawing their assets from the EU country to another jurisdiction. With a positive capital growth rate, the tax authorities of the state from which the assets are derived will be able to impose the withholding tax.

3. Controlled Foreign Companies (CFC) rules. These rules will allow the tax authorities to levy taxes on the retained earnings of foreign companies that are controlled by residents of EU countries.

4. Hybrid mismatch rules. Apply in such situations when taxpayers use loopholes and inconsistencies in the legislation of several countries and due to this receive tax advantages.

5. General anti-abuse rules. These rules are now being applied by some states to combat such methods of tax evasion that do not directly contradict the legislation, but at the same time lead to double tax deductions (in both states) and to obtaining “unreasonable tax benefits”.

We draw your attention to the fact that some of the above rules also apply in the territory of the Russian Federation, in particular provisions on controlled foreign companies and controlling persons. In this connection, we would like to remind you that, before February 28, 2019, Russia is implementing the second stage of voluntary declaration of assets and deposits by individuals, during which declarants are provided with guarantees and benefits, including “tax-free” liquidation of foreign companies.

If you are interested and intend to take advantage of the privileges granted within the “amnesty of capital”, then you can contact our specialists who are ready to assist in the implementation of the following actions:

1. Declaring assets, deposits and bank accounts outside the territory of the Russian Federation;

2. Liquidation of a foreign company with subsequent tax exemption of any income received during liquidation.

DSL-Service provides legal assistance and advice on any issues related to the amnesty of capital.

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