



Finansdepartementet
Skatte- och tullavdelningen
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Fi 2016/03873/S1

2016-11-24

Remissvar

EU-kommissionens förslag till ändringsdirektiv till rådets direktiv om skatteundandragande KOM (2016) 687 slutlig

Svenskt Näringsliv har beretts tillfälle att avge yttrande över angivna promemoria. Svenskt Näringsliv ansluter sig till vad Näringslivets Skattedelegation anfört i bifogat yttrande.

Svenskt Näringsliv

Johan Fall

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NSD
NÄRINGSLIVETS
SKATTE-
DELEGATION

Finansdepartementet
Skatte- och tullavdelningen
103 33 Stockholm

Your reference: Fi2016/03873/S1

Stockholm 2016-11-24

Proposal for a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries COM(2016) 687 final

Näringslivets Skattedelegation (NSD) has been given the opportunity to leave comments on the specified proposal and makes the following remarks.

NSD supports the objective to eliminate double non-taxation due to a hybrid mismatch. We also support a uniform implementation of the OECD recommendations on hybrid mismatches within the EU. It is important that the EU does not go beyond the OECD recommendations. This would be contra productive to the aim of a uniform implementation of the BEPS-project. Because of the short time given for NSD to leave comments on this proposal we have not had the possibility to compare and fully analyze the OECD recommendations and the proposal in detail but we assume that they do correspond. If not, we believe it is essential to ensure that they do in the continued work with the proposal.

The proposal entails some changes to the current rules in the Anti-Tax Avoidance Directive (ATAD). The hybrid mismatch rules will be applicable also in situations where a third country is involved. The number of different hybrid mismatch scenarios that are covered by the ATAD is also increased and the definition of associated enterprise is broadened. There are also some changes to article 4 which concerns the interest limitation rule.

We are concerned about the inclusion of the hybrid permanent establishment mismatches in the proposal. As far as NSD are aware the OECD recommendation on Branch Mismatch Structures, which this proposal is set to implement, has not yet been finalized. A discussion draft was released in August this year and stakeholders were invited to leave comments. Since the public consultation a final report has not yet been released. It would be beneficial to await the final recommendations from the

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OECD before proceeding with the changes to the ATAD in order to ensure that the ATAD is aligned with the OECD recommendations.

The proposal broadens the scope of what is deemed to be an “associated enterprise”. The ATAD in its current form does only include a definition dependent on if the taxpayer holds no less than 25 % of the entity at hand (50 % if the mismatch involves a hybrid entity). The proposed changes mean that an associated enterprise also is at hand if the taxpayer and the entity is part of the same consolidated group for financial reporting or if the taxpayer has significant influence in the management of the entity or the entity has a significant influence in the management of the taxpayer. It is not clear when a taxpayer has a “significant influence” in another entity. A clarification in this regard is necessary to make the rules predictable for taxpayers. We are concerned that these proposed changes will lower the threshold for when the hybrid mismatch rules are applied. Without a proper impact assessment it is hard to overview the consequences of this change and what scenarios and taxpayers it will affect.

The proposal’s lack of an impact assessment is a deficiency it shares with the ATAD directive adopted earlier this year. The proposal does contain some theoretical examples on the different hybrid mismatch situations but it is hard to overview to what extent and how these new rules will affect taxpayers.

The proposal does include some changes to article 4 of the ATAD. This article concerns interest limitation rules and the changes regards how the assets and liabilities should be valued. NSD cannot find an explanation to why these changes are proposed. It is important to clarify whether they are supposed to lead to a material change. It also needs to be clarified if these changes have something to do with the hybrid mismatch rules. Until an explanation to why these changes are proposed is presented, it is not possible to assess the proposal’s impact.

NÄRINGSLIVETS SKATTEDELEGATION



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