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German Finance Minister talks “minimum taxation”

According to various statements of the German Finance Minister Olaf Scholz on 22 May 2019, a system of international minimum taxation will be discussed at the forthcoming G20 (June 2019) and G7 (August 2019) meetings. The aim is to agree such a system (within the terms of the Global Anti-Base Erosion "GloBE" agenda and given the name “BEPS 2.0”) with the other 128 states of the OECD in the Summer of 2020.

Prior to Mr. Scholz's most recent statements, at a symposium on 8 May 2019 at the Federal Ministry of Finance, the plans for the introduction of a general minimum taxation were also set out. As in the later statements, it was suggested that there would be a consensus among many (OECD) countries to apply such an approach in a timely manner.

The concept of minimum taxation had already been discussed between France and Germany and set out in the so-called "Meseberg paper" in June 2018. More recently, the OECD consultation document “Addressing the Tax Challenges of the Digitalisation of the Economy” of February 2019 contained more concrete details on the proposed form of any such minimum taxation rules.

The measures could then possibly be implemented within the EU within the framework of a directive and at OECD level introducing a multi-lateral instrument.

In his recent speech, Mr. Scholz stated that if the expected breakthrough with the OECD did not occur, the fair taxation of businesses would certainly be a priority during Germany's EU Council Presidency in the second half of 2020.

In terms of mechanics, the current ideas consist of two main pillars (see also the above-mentioned OECD consultation document):

Income inclusion rule

An "income inclusion rule" which, supplementay to the CFC rules, should lead to a higher taxation of “under- taxed” foreign income. What constitutes “under-taxation” is still to be defined. The rule should apply to significant (25%) direct/indirect shareholdings. In contrast to CFC rules, however, there should be no distinction should between active or passive income of the foreign subsidiary. There should also be no substance or nexus exceptions. The OECD refers here to the US Global Intangible Low-Taxed Income or "GILTI" regime (which imposes a lump-sum taxation of 13%).

Complementing this would be a "switch-over rule", which would provide for a change from the exemption method to the credit method (at double tax treaty level) where foreign establishments were also considered “under-taxed”.

Under-taxed payments rule

An "under-taxed payments rule" which, similar to the licensing barrier rule, would deny an operating expense deduction (pro rata) where the payments to an affiliated company were under-taxed at recipient level.

Complementing this, a subject-to-tax clause is being considered, which would apply to under-taxed payments that would otherwise be eligible for certain relief under a double tax treaty. This rule would apply to deny tax treaty benefits. It is still to be clarified. whether this provision should also apply to third parties or only between affiliated companies.

Compatible with EU law?

The Ministry of Finance takes the view that such minimum taxation rules would be compatible with EU law on the basis that it would provide a "level playing field". Time will tell.

Schlagwörter

BEPS, OECD, income inclusion rule, minimum taxation, under-taxed payments