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EU draft directive to end the misuse of shell entities for tax purposes

On 22 December 2021 the European Commission presented a draft directive to prevent the abuse of shell companies for tax purposes whereby amending the Anti-Tax Avoidance Directive (ATAD 3). The proposal should ensure that entities in the EU that have no or minimal economic activity are unable to benefit from any tax advantages and do not place any financial burden on taxpayers.

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With the proposed directive, the EU aims to combat aggressive tax planning strategies pursued with the help of insubstantial i. e. so called “shell companies”. The draft provides for a substance test that establishes a set of criteria to "identify companies that engage in economic activity but do not meet minimum substance requirements and are used to obtain tax benefits."

In the **first stage of the substance test**, it is sought to identify companies at risk of being used as a shell entity. These are supposed to be companies

- who in the preceding two years have derived more than 75 percent of their income from so called "relevant income," which includes i. a. interest, royalties, dividends, and financial income (income from financing)
- whose assets (book values) consist of more than 60 percent real estate assets or movable assets not used for business purposes (beyond cash, shares and securities) or whose relevant income is derived at least 60% from cross-border transactions
- who have outsourced the management of day-to-day operations and decision-making in key functions over the previous two years.

Indicators for the **second stage of the substance test** are the maintenance of business premises in the state in which they are registered, active use of a bank account in that state, and a number of characteristics relating to management or employees (residence of the majority of full-time employees in the state).

Once adopted by Member States, the proposal should come into force as of 1 January 2024.

Source:

EU-Commission: **Proposal for a COUNCIL DIRECTIVE** laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU

A detailed and more in-depth look at the proposed amendments to be found in our **pwc tax policy alert** of 23 Dec 2021.

Keywords

shell companies, shell entities