



European Commission
Taxation and Customs Union

CFC Rules within the Council Directive (EU) 2016/1164 “ATAD”

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Main Points of the CFC Rules in the ATAD Directive

- Member States agreed on CFC rules within the ATAD Directive as a minimum standard
- Member States are free to introduce ***higher levels of protection*** against aggressive tax planning ***as long as these measures are in line with international, EU and national obligations*** (e.g. WTO rules, Double Taxation Agreements, EU Treaty Freedoms, domestic tax principles)

Main Points of the CFC Rules in the ATAD Directive

- The provision for the CFC in Article 7 of the ATAD allows **two** approaches for the calculation of the income to be included:
 - *certain categories of passive (tainted) income* (Article 7 (2)(a))
or
 - *non-distributed income of an entity arising from non-genuine arrangements* (Article 7 (2) (b))
- Furthermore, independently of the minimum standard or the chosen alternative for included income, there are obligations imposed on MS on
 - the way of income calculation,
 - the treatment of losses and profit distributions from CFC entities as well as
 - gains from the disposal of participations in CFC entities

Main Points of the CFC Rules in the ATAD Directive

- Finally, there is a provision on *the deduction of taxed by paid by the CFC entity*
- With the aim to allow the MS to consider compliance cost and administrative burden as well the absence of aggressive tax planning risks in the type of business activities of the CFC entities in respect of their national tax policies, the ATAD includes *options for MS*:
 - Exclusions if Art. 7(2)(a) applies
 - For less than 1/3 income threshold
 - For financial undertakings 1/3 rule threshold for business with associated enterprise
 - Exclusions if Art. 7(2)(b) applies
 - low accounting profits/non trading income
 - low profit margin exemption

Compliance with the Internal Market freedoms

- Option of Art. 7(2)a
 - (...) shall not apply where the controlled foreign company carries on ***a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances***
 - where the CFC is resident or situated in a third country that is not party to the EEA Agreement, MS may decide to refrain from applying the preceding subparagraph – provided that the right of establishment does not apply
- Option of Art. 7(2)b
 - the income to be included in the tax base of the taxpayer shall be limited ***to amounts generated through assets and risks which are linked to significant people functions carried out by the controlling company.***
The attribution of CFC income shall be ***calculated in accordance with the arm's length principle***

ATAD - Transposition checks

- Transposition checks – deadlines for the COM services
 - **2 phases** – following MS notification of national implementing measure (NIMs)
 - *Examination of completeness* – within **6 months** from the transposition/notification deadline
 - *Examination of correctness/conformity* – within **16-24 months** from the transposition/notification deadline

ATAD - Transposition checks

- ***Examination of completeness*** – state of play
 - As at ***1 January 2019***
 - 6 MS timely notified their NIMs for entire ATAD 1 (excluding ‘exit tax’)
 - COM opened infringement procedures against 12 MS – for no or incomplete notification of NIMs
 - As at ***1 January 2020***
 - infringement procedures against 4 MS still open

ATAD - Transposition checks

- *Examination of correctness/conformity* – state of play
 - As at **1 January 2020**
 - Most of the examination is ongoing
 - 8 MS NIMs assessed as correct/conform



ATAD – implementation by MS

- Options for tax bases of CFC
 - Article 7(2)a – tainted passive income
 - 13 MS
 - Article 7(2)b – income arranged by taxpayer’s SPF
 - 11 MS
- Exclusion for under Article 7(3) – “1/3 or less passive income”
 - 9 MS
- Exclusion for under Article 7(4) – “de minimis”
 - 8 MS
- No exclusions
 - 8 MS

The data is subject to changes within the ongoing assessment process



Thank you for your attention!

