

Recent developments under the scope of ATAD and DAC6 for companies operating in European Union

In line with the actions taken by the OECD to ensure tax transparency and prevent tax base erosion within the scope of the BEPS project, EU has also introduced various rules and obligations such as Anti-Tax Avoidance Directive (ATAD) and Directives on Administrative Cooperation (DAC) in order to ensure the unity regarding the implementation and to maintain the regional stability within European Union. Although EU regulations do not directly affect Turkey, such regulations have still great importance as they can affect all companies operating in the EU region and have serious consequences in case of non-compliance.

ATAD I, which was accepted by EU member states at the Economic and Financial Affairs Council (ECOFIN) in 2016 provides for measures in the following five areas; general anti-abuse rules (GAAR), controlled foreign company (CFC) rules, interest limitation rules, hybrid mismatches and exit taxation. Following ATAD I acceptance, ATAD II is introduced as an amendment to the scope of hybrid mismatches set out in ATAD I and, added Permanent Establishment (PE), transfer, imported, dual residency and reverse hybrid entity mismatches to the definition of hybrid mismatches.

As the most recent directive, draft ATAD III is introduced in December 2021 and focuses on legal entities involved in cross-border activities by mainly targeting shell companies which have no or minimal economic activity and used for tax evasion and/or avoidance purposes. In this context, the Draft sets out rules to identify these shell companies and provides measures such as disallowing access to double tax treaties and penalties in case of incompliance with the directive. Furthermore, automatic exchange of information between member states on companies at the risk of being deemed as a shell company is also envisaged in the draft.

Following BEPS and ATAD regulations, further directives were introduced by EU in order to ensure the integrity and transparency regarding the implementation of rules as well as the unity among the member states. Accordingly, DAC6 is accepted in 2016, which regulates automatic exchange of information in the field of taxation for cross-border reportable arrangements within the scope of the directive. In this context, except for the cases where specified otherwise, “intermediaries” defined in the directive is required to report transactions and arrangements mentioned above. Therefore, it is crucial for companies operating in the EU to assess and review arrangements/transactions to determine whether they should be reported and to re-define/restructure their arrangements in cases where necessary to avoid any risk.

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