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UPDATE

European Commission announces new legislative initiative on hybrid mismatches in relation to third countries

25 October 2016 - The European Commission has announced a new package of corporate tax reforms, including a proposal to counteract hybrid mismatches.

The proposal is complementing existing rules laid down in the Anti-Tax Avoidance Directive ('ATAD'), by adding rules to counteract hybrid mismatches not only in EU situations, but also in relation to third countries.

The proposed rules on hybrid mismatches aim to prevent companies from exploiting (inter)national mismatches to avoid taxation. Certain structures can contain hybrid mismatches, this is in principle the case where an entity – or a financial instrument – is qualified differently tax-wise in two different countries. The use of aforementioned mismatches can, for example, lead to situations in which payments are deductible in two countries or payments are deductible in one country but not correspondingly taxed in the other country. The proposal of the European Commission, if implemented, would result in a denial of deduction of payments or the inclusion of income that would otherwise not be taxed.

The proposal still needs to be approved unanimously by all 28 EU states. If approved by the end of 2016, the EU Member States need to implement these rules into their national laws by 31 December 2018.

The proposal may have a significant impact on structures with hybrid entities, financial instruments, as well as with respect to permanent establishments. Upon request we will review your structure and investigate whether amendments are necessary.

If you have any questions in relation to the above, please contact Joost van den Berg or Daan Versloot on +31 (0) 20 763 09 00.