

II

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EUROPEAN COMMISSION

COMMISSION NOTICE

Measures considered equally effective to Article 4 of the Anti-Tax Avoidance Directive

(2018/C 441/01)

1. General remarks

Article 4 of the Anti-Tax-Avoidance Directive (hereinafter ATAD) ⁽¹⁾ requires the Member States to introduce interest limitation rules that shall be transposed into national law by 31 December 2018 ⁽²⁾.

According to Article 11(6) ATAD '(...) Member States which have national targeted rules for preventing base erosion and profit shifting (BEPS) risks at 8 August 2016, which are equally effective to the interest limitation rule set out in this Directive, may apply these targeted rules until the end of the first full fiscal year following the date of publication of the agreement between the Organisation for Economic Cooperation and Development (OECD) members on the official website on a minimum standard with regard to BEPS Action 4, but at the latest until 1 January 2024'.

Article 10(3) ATAD provides that 'Member States referred to in Article 11(6) shall communicate to the Commission before 1 July 2017 all information necessary for evaluating the effectiveness of the national targeted rules for preventing BEPS risks'.

2. Measures considered equally effective to Article 4 ATAD

The Commission services consider the following rules, as notified by the Member State concerned, to be 'equally effective' to the interest limitation rules in Article 4 ATAD. The Member States concerned may continue to apply these rules in accordance with Article 11(6) ATAD:

- Greece — Article 49 of Law 4172/2013,
- France — Article 212 bis of 'code général des impôts ("rabort")',
- Slovakia — Section 21a of Act No 595/2003 Coll,
- Slovenia — Article 32 of 'zakon o davku od dohodkov pravnih oseb' (ZDDPO-2), and
- Spain — (1) Articles 16 and 63 of 'Ley 27/2014, Del Impuesto Sobre Sociedades (territorio comun)' and (2) Article 24 of 'Ley Foral 26/2016, Del Impuesto Sobre Sociedades (Navarra)'.

3. Criteria for Assessment of equal effectiveness

On the basis of the benchmarks set out in ATAD, the Commission Services assessed (1) the legal similarity and (2) the economic equivalence of the measures notified by Member States.

The basic assumption for the examination of legal equivalence of the notified measures was that only the measures which ensure limitation on deductibility of exceeding borrowing costs in relation to factors of taxpayer's profitability may be primarily regarded as equally effective in targeting excessive interest deductions.

⁽¹⁾ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

⁽²⁾ By virtue of Article 11(1) ATAD.

The analysis of economic equivalence of the notified rules and Article 4 ATAD involved two criteria.

First, the notified measure should, as a minimum requirement, not produce significantly less revenue than the interest limitation rule on the basis of Article 4 ATAD.

Second, the notified national measure was deemed 'equally effective' to Article 4 ATAD when its application would lead to a similar or higher tax liability for a majority of large undertakings (all firms except small and medium-sized enterprises) as compared with the estimated result under the ATAD interest limitation rule.
