Forthcoming Amendments to the Corporate Income Tax Act on the Taxation of Parent Companies and Subsidiaries of Different Member States

The Council of Ministers has tabled an amending bill to the Corporate Income Tax Act (CITA) in relation to the need for transposition of the requirements of Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States and Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

The existing Directive 2011/96/EU exempts dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and eliminates double taxation of such income at the level of the parent company, obligating Member States to refrain from taxing distributed profits originating from subsidiary companies established in other Member States. However, the existing provisions make it possible for tax avoidance through double non-taxation of cross-border payments within multinational groups deriving from mismatches in the tax treatment of profit distributions between Member States.

The reasons outlined in the bill make it clear that the objective of the amendment to Article 4 of Directive 2011/96/EU introduced with Directive 2014/86/EU, which the amending bill transposes into the CITA provisions, which regulate the cases of exemption of distributed dividends from foreign persons who are local persons for tax purposes of an EU Member State or another State Part to the Agreement on the European Economic Area, is precisely to avoid the cases of double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States.

Thus the new Directive and the proposed amendments to the CITA in connection with the transposition of the Directive into the domestic legislation envisage that the Member State of the parent company will not allow tax exemption of profit distributions which are deductible by the subsidiary established in another Member State with the following wording: “dividends resulting from distributions insofar as these amounts are deductible for tax purposes and/or lead to reduction of the tax financial result of the distributing entity, regardless of the way they are accounted for by this entity”.

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