

for a representative's permanent establishment were tightened by the OECD model agreement in 2017. According to this OECD model agreement, it is sufficient that the representative takes over an important role during the negotiation of contracts and that these contracts are routinely accepted without any major alterations by the company. He no longer needs the power to conclude the contracts. Therefore, the risk in order to establish a representative's permanent establishment increases.

The status as member of a board does not prevent the existence of a permanent representative anymore. Consequently, the representative's permanent establishment leads to a liability of the foreign company for limited corporation tax.

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# Direct Application of EU General Anti-Abuse Rule



By **Dr Sergio Finulli**

The EU ATAD (European Union Anti-Tax Avoidance Directive) No. 2016/1164 introduced a general anti-abuse rule in Article 6 that not only replaces and standardises the anti-abuse rules included in the three directives which regard corporate income tax (company mergers, parent-subsidiary, interest and royalties), but also extends the scope in the national legislations of the member states.

The Directive entered into force on 1 January 2019 and intends to ensure that the general anti-abuse rules

are applied uniformly in national situations, within the Union and in relation to third countries, so that the scope of application and the results of the application in national and cross-border contexts are identical.

The legislation is new because, while the discipline regarding corporate income tax remains the competence of the member states, the anti-abuse clause becomes the only rule: all the member states must implement the EU regulation in the national legislation and this regulation must be applied in all the cases regarding corporate income tax.

In practice, application problems will need to be addressed, because in order to perform an assessment of the possible tax benefits prohibited by anti-abuse legislation, Article 6 of the Directive requires a verification to be carried out regarding the possible conflict with the subject matter or purpose of the applicable tax law, namely, that of the single member states. Therefore, the anti-abuse legislation becomes the only legislation, but for its practical application in each case it is necessary to consider the context of the law of each member state.

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**COMMA 10** is a firm built on the cornerstone of professional collaboration between chartered accountants and lawyers. The firm provides its clients with comprehensive accounting, corporate and tax services, as well as legal support, corporate restructuring, and bankruptcy services in multiple industries. **COMMA 10** is based in Milan and provides integrated services to individuals and private



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and public companies, as well as non-profit organisations.

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The general Italian implementing provision, Art. 10-bis of Law No. 212/2000 ("Taxpayers' Statute") is already in line with the provisions set out by the Directive and the way it can be applied will need to be verified in the light of the interpretation that

the Court of Justice of the European Union will give. However, some specific anti-abuse rules, as for example the one requesting CFC the inversion of the burden of proof, do not seem to be in line with the provisions of the EU Directive.

# More Taxpayer Data Protection

## Alternative Methods for Retrieving Taxpayer Information from the IRS

By **Laurie B. Kazenoff**

In its ongoing effort to protect taxpayers from identity theft, the US Internal Revenue Service

announced it will stop its tax transcript faxing service on 28 June 2019 and will amend the Form 4506 series (tax return copy requests) to end third-party mailing of tax

returns and transcripts in July.

Transcripts, which show detailed tax return information, have become

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