Anti-Hybrid Measures in the Parent Subsidiary Directive and the EU’s Competence to Harmonise

EU Tax News
August 18, 2015


Last post, Dennis Weber started a debate on recent BEPS-related changes to European tax directives with his excellent blog post "The Anti-Hybrid Measures in the Parent Subsidiary Directive...". I would like to follow up on this with a brief discussion of the recent and potentially more far-reaching amendments put forth through European Directives, which may contain important implications for the taxation of residents, non-residents, and non-taxpayers in many jurisdictions.

The main aim of the Anti-Hybrid Measures in the Parent Subsidiary Directive is to avoid or reduce the negative effects of hybrid mismatches, where the tax treatment of the same financial relationship is different in different jurisdictions, which can result in double taxation or double non-taxation.

The anti-hybrid measures are designed to ensure that the tax treatment of related parties is consistent across different jurisdictions. This is achieved by preventing the occurrence of hybrid mismatches and ensuring that the tax treatment of related parties is harmonized.

The anti-hybrid measures are important for several reasons:

1. They ensure that there is a consistent treatment of related parties across different jurisdictions.
2. They prevent the occurrence of double taxation or double non-taxation.
3. They promote a more transparent and stable tax environment.
4. They help to prevent tax avoidance and evasion.

The anti-hybrid measures are based on the principle of the substance-over-form doctrine, which states that the tax treatment of a transaction should be determined by the economic substance of the transaction, rather than by the form of the transaction.

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