

# Cyprus Implements ATAD

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In light of EU Anti-Tax Avoidance Directive (ATAD), the Cyprus House of Representatives on April 5, 2019 voted into law (applicable from January 1, 2019) the partial implementation of legally-anti-abusive measures. These measures include the ‘interest limitation’ rule, the ‘general anti-abuse’ rule, and the ‘controlled foreign companies’ rule. The rest two measures stipulated by the EU ATAD (exit taxes and rules to tackle hybrid mismatches) are expected to be implemented in Cyprus by 2020.

The underlying purpose of the **Interest Limitation Rule (ILR)** is to limit the practice of providing financing facilities to companies (based in high-tax jurisdictions) in low-tax jurisdictions through subsidiaries belonging to the same group of companies. To do so, the interest limitation rule requires that the excess borrowing cost (EBC) which is greater than 30% of taxable income before EBITDA, is not deductible for income tax purposes. As such, it limits the otherwise deductible EBCs to 30% of taxable EBITDA. However, the ECB is deducted up to a de minimis threshold of three million euro (EUR 3,000,000) per fiscal year. Standalone entities (not part of a group) are excluded from the limitation rule. Moreover, grandfathering has been provided for loans concluded before 17 June 2016. Finally a group equity ‘escape’ or ‘carve-out’ is provided, according to which where the Cyprus resident company is part of a consolidated group for financial reporting purposes, the taxpayer may be given the right to fully deduct its EBCs, provided that the ratio of its equity over its total assets is equal to (or even up to 2% lower) or higher than the equivalent ratio of the group.

The **General Anti-Abuse Rule (GAAR)** provides that non-genuine arrangements that have as a main purpose the procurement of a tax advantage are ignored. Those arrangements are considered to be ‘non-genuine’ as their mere existence does not reflect valid commercial reasons or economic reality.

The **Controlled Foreign Companies (CFC)** rule results in the re-attribution of the income of a low-taxed controlled non-Cyprus subsidiary to its parent company in order to avoid revenue diversion to a jurisdiction with a more favourable tax regime (through the subsidiary). A CFC is a low taxed non-Cyprus tax resident company or permanent establishment in which the (i) Cyprus taxpayer, alone or together with its associated enterprises, holds a direct or indirect interest of more than 50%, and (ii) the actual corporate tax paid on the profits of the company or permanent establishment of the company is lower than the 50% of the tax that would be paid in Cyprus. The non-distributed income of a CFC which is the result of non-genuine arrangements is added to the taxable income of the Cyprus tax resident controlling company. The CFC rule is not applicable when the company or the foreign permanent establishment has (a) accounting profits of no more than €750.000, and non-trading income of no more than €75.000, or (b) accounting profits of no more than 10% of its operating costs for the tax period.

Overall, the implementation of ATAD signals the readiness of Cyprus in complying with the EU’s regulatory intention of suppressing tax avoidance practices by formulating a coherent post-BEPS (Base Erosion and Profit Shifting) framework.