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CRITICAL REMARKS ON THE IMPLEMENTATION OF THE ANTI-TAX AVOIDANCE DIRECTIVE IN THE BULGARIAN LEGISLATION

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Abstract

The aim of the current paper is to outline some challenges regarding the implementation of the Anti-Tax Avoidance Directive (ATAD) in the Bulgarian legislation. For this purpose, specific aspects of the ATAD's legal nature will also be examined in general. In this regard, the main applied methods used are the historical, the comparative and the logical.

The author would like to draw attention to the relationship between the secondary European (EU) tax law and the relevant domestic provisions as key factors for the national tax policy regarding the tax avoidance from direct taxes' perspective. The summary of the findings will help to estimate the efficiency of the new rules and the necessary steps for their further improvement. It will also outline the future trends on this issue.

Keywords: EU tax law, Anti-Tax Avoidance Directive, controlled foreign companies, exit taxation, Corporate Income Tax Act, interest limitation rule, measures against tax avoidance

JEL: K22, K34

Introduction – From Project (B)EPS to Plan (A)TAD

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, known as ATAD, is part of the secondary EU tax law. It has direct relation with some of the measures undertaken in the Base Erosion and Profit Shifting (BEPS) project (Mihaylova-Goleminova, 2019, p. 197).[2]

ATAD is an interesting and hot topic not only because of the interrelationship between the dynamic international reforms at the Organisation for

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[2] The BEPS project contains 15 actions that "set out below equip governments with domestic and international rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created" (OECD, 2013).

Economic Co-operation and Development (OECD) and EU level, but also because of the idea for appropriate anti-avoidance rules. As can be seen from its name, ATAD directly affects the functioning of the internal market. The very idea of an introduction of such a directive is not new and was preceded by the Recommendation on Aggressive Tax Planning from 2012.[3]

ATAD is of theoretical and practical interest both at the European and national level, as such a directive with such a scope has not existed so far. Its objectives generally seek to reflect the current needs through the prism of international trends. In this regard, it is also curious how Bulgaria has transposed it, as a significant number of the provisions did not exist (or at least in this way) in the domestic legislation before. All this raises the need to take into account the extent to which Bulgaria complies with ATAD and the effectiveness and fairness of the new rules. For this purpose, attention will be paid to some amendments in the Bulgarian Corporate Income Tax Act (CITA) which may be defined as disputable and give rise to the necessity for rethinking.

However, in order to analyze the Bulgarian perspective, some aspects about ATAD's very essence will be analyzed. This is vital in order to estimate the relationship between the EU and the domestic law.

Some general critical remarks regarding ATAD – should we really know what is ATAD?

When we talk about the scope, proper application of certain provisions and effect of the measures taken, it should be considered whether the conceptual apparatus (at least of significant concepts) is fully clarified. The possible ambiguity can lead to undesirable results, which will negatively reflect on the general principles of compliance with the outlined measures.

Therefore, at first place, one should consider what is really "aggressive tax planning". According to the 2012 Recommendation it "consists in taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability". Although generally described, an initial idea of the term in question is introduced through some of its specifics. Aggressive tax planning is also mentioned in recital 3 of ATAD's preamble but without any further clarifications (Dourado, 2017, p. 117). This could pose challenges both on its nature and appropriate application.

It should be noted that the aggressive tax planning is not a legal concept, so it is difficult to talk about its clarity. In principle, tax planning itself is not only prohibited, but is also in line with the EU's fundamental freedoms (Dourado, 2015, p. 43). This makes it even more difficult to estimate when it is normal/typical and

[3] For more information: European Commission (2012).

when – aggressive, as the tax effects and consequences are different. I share the view that "aggressive tax planning is currently an umbrella concept to both international tax planning and tax avoidance" (Dourado, 2015, p. 44). On the other hand, abusive and aggressive are not synonyms, "but different types of transactions" (Dourado, 2015, p. 50). I also consider that the aggressive tax planning "involves a legal yet substantively artificial assigning of taxable base to a place where it effectively remains untaxed", whereas "abusive planning outside the framework of current tax law constitutes fraud and hence is illegal" (De Wilde & Wisman, 2016, p. 8). With regard to the term "abusive", reference can also be made to tax avoidance and tax evasion, which shows the complex relationship between the conceptual apparatuses.[4]

It can be summarized that outlining the perception of "aggressive tax planning" is a challenging task due to the impossibility to delineate clear boundaries of its manifestation. Its various forms (normal, aggressive, abusive) as well as its relationship with other concepts (tax avoidance, tax evasion, (aggressive) tax policy) may raise another disputable issue. However, its complex nature cannot be a valid argument for its lack of clarification in ATAD. Firstly, as it is explicitly mentioned therein, it is appropriate to identify its scope as in the Recommendation of 2012. Secondly, the lack of precision may lead to ambiguity at the international, European and national level. The dynamic tax matter implies risks for its different interpretation through the prism of BEPS, ATAD and the Bulgarian tax law. Thirdly, the question can logically arise, since there is no clear clarification of "aggressive tax planning", whether the relevant measures in ATAD can also constitute a concrete solution. As a sub-question may be added whether "aggression" should always be associated with something wrong, immoral and undesirable, and to what extent it is not a strategically far-sighted approach for business rationalization.

Proceeding from Art. 1 ATAD, the directive in question has scope with respect to corporate tax. In this regard, the question arises as to whether this can be extended to other types of taxes, such as the alternative ones (Lazarov & Caziero, 2021, p. 1791). For example, Art. 5 CITA includes other types of taxes in addition to the corporate. This is also evident in Art. 1, it. 6 and it. 8 CITA regarding the objects of taxation.

Upon strict interpretation of Art. 1 ATAD, the answer seems to be negative, as the type of tax is clearly outlined – "corporate". In this regard, no parallel can be made with the provision of Art. 2, para 4 OECD Model Tax Convention on Income and on Capital (OECD-MC, 2017), where the phrase "identical or sub-

[4] On some aspects regarding their different nature see Mihaylova-Goleminova (2019, pp. 194-195).

stantially similar taxes" is used. The latter provision allows states to supplement the non-exhaustive list of taxes in the double tax treaties they have agreed upon.

Perhaps, as a starting point, we should rethink what ATAD's goal is – the type of taxes, the subjects or tax avoidance. Recital 4 of ATAD's preamble introduces the prohibition on the scope's extension, but with regard to the subjective criterion. Per argumentum a contrario, does this also apply to the types of taxes? Relying on Art. 1 ATAD, the answer should be negative.

However, I share the view that profits, turnover and alternative direct taxes meet the criteria for "corporate tax" (Lazarov & Caziero, 2021, p. 1814, 1816). Therefore, if this is not contrary to the domestic tax law, I do not find it inadmissible to extend the perception of "corporate tax" in a way that is based on the domestic legislation of the MS concerned. In addition, a reasonable and undue perception of this type of tax would further help to reduce abuses via limitation of tax evasion. The opposite view would be a convenient way to fall outside ATAD's scope, based solely on the different name of the tax, for example. However, the specifics of the different tax systems should also be taken into account.

Another intriguing question, analysed in the tax literature, is whether, according to ATAD's scope, each MS should have a corporate tax and it should have a tax rate other than 0 % (Lazarov & Caziero, 2021, p. 1800). In this connection, it is of interest that even if the MS concerned does not have a corporate tax in its domestic legislation, ATAD should be implemented on the basis of the EU law's primacy (Lazarov & Caziero, 2021, p. 1797). It would be intriguing if the domestic legislation decides to apply ATAD also to persons who are subjects to personal income tax (Bonn, 2017, p. 151).

Art. 3 ATAD introduces a minimum level of protection. In this way, some fundamental rules are outlined. They should not contradict the established national and EU law provisions.

It is noteworthy that Art. 3 of ATAD's Bulgarian version is translated "protection of national bases for corporate income tax". Such usage of expressions may lead to an ambiguity. The "national bases" can be interpreted as pillars, fundamental elements in terms of corporate income taxation. If the idea was the usage of a general concept that encompasses all tax elements in this matter, then the Bulgarian expression used is appropriate. If a specific concept/term was meant, it should have been specified. Comparison with Art. 3 of ATAD's English version and analysis with the subsequent provisions show that the thorough term is "tax bases". However, it is not clear whether the legislator mean MSs' tax bases or also these from third countries (Haslehner in Haslehner, Pantazatou, Kofler and Rust, 2020, p. 37).

The minimum standards set may call into question the goals pursued by ATAD, as they determine the possibility of various manifestations, some of which may be in conflict with the fundamental freedoms (Bizioli, 2017, p. 175).

Another challenge is what is "minimum" and where does "maximum" go? With regard to the first, the other provisions in ATAD should be the proper answer. ATAD is the starting point upgraded through domestic rulings or international agreements. It should be noted that this threshold is not constant and absolute. For example, some provisions contain alternative texts, which provides the MSs the opportunity to choose the most suitable option. Also, the texts themselves do not always have to be identical (e.g. monetary, percentage thresholds). This is logically determined by the domestic legal order and the economic development. However, this raises the question of whether the minimum thresholds are actually minimum or can be further reduced. They seem to be recommendable rather than constant.

There are no limits to the maximum level – this is regulated both by national law and agreements, including international ones. The lack of strict guidance in this aspect provides the opportunity of setting all possible appropriate measures. The existence of different ones is typical of different legislations, which should not contradict each other, but supplement the goals pursued in ATAD. They should comply with the EU law, as the higher level of protection is not equal to restriction of the taxpayers' rights. This approach is not followed by the OECD and may be considered as aggravating in some cases (CFE, 2016, p. 3). Perhaps the idea was to give a uniform start for all MSs, some mandatory rules to ensure equivalence in their tax treatment. The equal start does not always mean a fair end, and sometimes it can even be marked as a false start – the initiation of infringement procedures.

The brief and non-exhaustive analysis of ATAD's initial perception outlines some serious challenges. Firstly, more attention should be paid to the conceptual apparatus used, and in particular the lack of further clarification on its legal nature and its proper application. Secondly, regarding the scope, it is appropriate to think about the refinement of the subjective and the objective criteria, because without their delineation it is impossible to talk about taxation. Thirdly, the idea of minimum standards is welcoming, but implies the existence of subsequent risks, too. The options provided can be mentioned as such, which can lead to divergent tax effects, diverse practices and even more complex tax systems. The lack of maximum standards is both dictated by the sovereignty of the MSs and the development of their domestic tax systems. However, the question of granting excessive freedom arises in these cases.

Some general critical remarks regarding ATAD's implementation into the Bulgarian domestic legislation – anti-harmonisation rather than anti-avoidance?

Approximately 3 years have passed since ATAD's introduction in the Bulgarian legislation. In this regard, it is intriguing to examine to what extent its implementation actually reflects on the domestic law and order. There are a number of publications in the Bulgarian tax literature on this topic. They can be broadly divided into two major groups – informative, which follow the main features of the new provisions, and those that address specific issues and/or offer improvements to the matter in question. This is logically determined, as a significant part of the amendments are entirely new for the Bulgarian tax law, which is why there are a number of challenges. But observance of good practice by the other MSs may not always comply with the national needs, and may not always be properly implemented due to a number of factors. The reasons are various, some of which are still the relatively new matter that has not found wide application, the impossibility to build clear guidelines at this stage, as well as the extremely narrow scope of some legal norms.

Art. 4 ATAD corresponds to Art. 43a CITA regarding the interest limitation rule. ATAD's provision in question can be defined as a "rule with an anti-avoidance purpose…the main purpose of which was to combat abuse" (Dourado, 2017, p. 118). I support Prof. Dourado's view that, with regard to the provision's scope, the possible challenges may be the inclusion of new companies and those in difficulty. This poses the question of whether this is fair, proportionate and in line with the objectives pursued. Also, Prof. Dourado points out that the person is not given the opportunity to prove whether she/he acted abusively in these cases.

In this regard, one of the most controversial issues, which have also been addressed in the international tax literature, is how this rule should correspond to other relevant domestic provisions (Gutman in Haslehner, Pantazatou, Kofler & Rust, 2020 p. 91). In Bulgaria, this is the provision of Art. 43 CITA – the thin capitalization rule.

It is interesting to examine historically the Bulgarian legislative approach on this issue. The draft on the Law on Amendment and Supplementation of CITA (LASCITA) 2019 did not introduce a new provision, but repealed the old one (Art. 43 CITA) by combination of an old and new rule. This is not observed in its final version and a new Art. 43a CITA is designed.

As a significant difference compared to the latter version can be pointed out that initially the excess of borrowing costs is limited to BGN 500 000 (approximately EUR 250 000). Now, it literally corresponds to the one provided in Art. 4 ATAD of EUR 3 000 000 under Art. 43a CITA.

Another difference is the exclusion from the scope of some categories of undertakings. These were the financial under draft of LASCITA that corresponds exactly to ATAD's approach. Surprisingly, the legislator introduced stricter limitation in Art. 43a CITA, including only credit institutions. Thus, reinsurance or pension institutions cannot fall within the exclusion.

Which of these two options is more appropriate and complies with ATAD? In fact, both satisfy the secondary EU law in one way or another. The more precise inquiry here is which of the versions is more effective through the prism of domestic legislation? As another sub-question – what were the reasons for establishment of such significant measures? Due to the lack of proper arguments from the legislator's perspective, no definite answer can be provided.

But why does the original version seem to be more successful than the current provision? First of all, the division into separate provisions unnecessarily burdens the overall structure of CITA. In this regard, it is necessary to determine Art. 43a CITA's scope. From a domestic perspective, very few undertakings would meet the EUR 3 000 000 threshold. Indeed, it corresponds to that set out in ATAD, but is almost inapplicable at the national level. This seems to make the provision itself meaningless, which is a rather abstract rule in CITA. It is difficult to accept the understanding that the lower threshold would reflect the minimum level of protection of Art. 3 ATAD. If these were the legislator's concerns, then it is illogical to make the initial proposal at all.

This is not the case with the exclusion of financial undertakings under Art. 4, para 7 ATAD. The legislator initially proposed a provision similar to ATAD, but subsequently unjustifiably narrowed it only to the credit institutions. Thus, the limited scope has been already further narrowed. Again, there is no proper argumentation and the approach is the opposite of the one adapted regarding the monetary threshold.

Art. 5 ATAD deals with the exit taxation, which is not covered by the BEPS project. It has already existed in some MSs and the Court of Justice of the European Union (CJEU) has already had the opportunity to rule on its compatibility with the fundamental freedoms.[5]

It is interesting to note that ATAD provides for a mandatory exit tax in certain cases, unlike the CJEU's practice (Peeters, 2017, p. 123). For example, the transfer of assets between group companies remains outside its scope (Recital 10 of the ATAD's preamble).

The Bulgarian CITA introduces very generally the concept of "asset" only for the purposes of the exit tax, according to which it is "a resource controlled by the taxable person" (para 1, p. 108 Additional Provisions (AP) of CITA). In this way, the legislator aims to cover all its possible manifestations. This is in line with the accounting perceptions, but may also lead to further discussions. The

[5] See for example CJEU's cases C-371/10, C-164/12, C-657/13.

view has been maintained that it should not include tax-exempt assets (Schwarz in Haslehner, Pantazatou, Kofler & Rust, 2020, p. 116). However, whether the Bulgarian legislator had this in mind and whether the definition is precise will be further analysed via future practice.

Although the term "transfer of assets" outlined in ATAD coincides with that in CITA, the expression "legal or economic property" remains unclear from a domestic perspective.[6] The right of property has no legal definition and is derived through its legal nature. The term "economic property", however, does not appear in the Bulgarian doctrine. In this case, the Bulgarian legislator has directly copied ATAD's wording, without paying attention to the national specifics of this issue. Probably the idea was to follow ATAD's approach and to cover all possible types. From an economic point of view, this sounds fair, but from a legal perspective – rather incorrect.

In addition to the transfer of assets, Bulgaria has introduced another object of taxation, as well as another procedure for determination of the tax base. This is the "transfer of business activity" that can be both the whole or branch of activity. The Bulgarian tax literature justifiably argues that this approach "would be acceptable if it increases the tax burden associated with the transfer of asset, but not if it reduces it" (Mermerska, 2020a, p. 14).

According to par. 1, it. 106 of the AP of CITA the "transfer of business activity through a place of business for the purposes of Art. 155, para 1, item 4 occurs when a foreign legal entity ceases to be taxed in the Republic of Bulgaria through permanent establishment for the transferred activity and begins to be taxed in another jurisdiction". The definition is significantly similar to that in Art. 2, it. 8 ATAD, but it does not specify that this does not reflect its residence status. In this regard, another issue is whether domestic law follows the secondary EU law or whether the non-inclusion of this part of the definition is rather obviously clear and thus there is no need for its explicit inclusion. Despite the design of this text from Bulgarian perspective, ATAD's position on this issue should be followed in my opinion.

Par. 1, it. 109, of the AP of CITA also states what is meant by "activity" in these cases – "the totality of assets and liabilities of a taxable person with whom, from an organizational, functional and financial point of view, an independent economic activity may be carried out". The aim, again, is to cover all possible scenarios.

It is noteworthy that the concept is identical to that for a branch of activity under Art. 134 CITA. Therefore, independent economic activity is understood as both the whole and the branch thereof. Due to the lack of constant practice regarding the scope of Art. 134 CITA, there are some challenges regarding its

[6] The term used in ATAD is "ownership", whereas the English version of CITA uses "property".

proper treatment. Also, the usage of "independent economic activity" may lead to any associations with one of the key concepts from a VAT perspective.

The introduction of a separate provision on the transfer of activity in the Bulgarian legislation aims to stop the attempts at aggressive tax planning and the immediate shifting of companies' profits to another jurisdiction. Such a measure seems logically conditioned and connected with tax avoidance. However, the question arises as to whether it meets ATAD's objectives or goes beyond them. Paying attention to Art. 3 ATAD, this is permissible. As already mentioned above, there is no maximum limit for the extension of these rules. At the same time, they should follow the traditional perceptions. From an EU law perspective, no contradiction is evident. Moreover, ATAD itself refers to the transfer of activity. However, it is challenging whether the introduction of a new tax object in CITA will not be an additional tax administrative burden for the taxpayers. The lack of practice and theoretical analysis poses some risks. A relevant NRA's guideline is No 24-39-82 from 13.07.2020, according to which this transfer is lex specialis. Therefore, the understanding that "tax treatment provided in Art. 156 CITA, with regard to the transfer of services, is applicable to all other cases that do not constitute a transfer of assets and are not related to assets" can be accepted (Mermerska, 2020b, p. 2).

CFC rules are implemented into the Bulgarian tax legislation for the first time due to ATAD's requirements. It is noteworthy that the CJEU has already ruled that they are "contrary to the fundamental freedoms unless their exercise is abusive" (Bizioli, 2017, p. 174). It is debatable whether the exception on the substantive economic activity is a relevant factor to assume that the CFC rules comply with the CJEU's practice on abuse of law (Bundgaard & Schmidt, 2021, p. 8).

They are separated in a new Chapter nine "a" Art. 47c-Art. 47e CITA. Although they are rather with limited practical implication, the challenges therewith are numerous. They have already been subject of critical analysis in the Bulgarian tax literature.[7] Proof thereof are the numerous amendments for a two-year period. Is this "approach" a sign of their complex structure or short-sightedness of the Bulgarian legislator? An infringement procedure has been currently initiated against Bulgaria on this issue, which may provide a partial answer (European Commission, 2021).

What is still worrying regarding the Bulgarian CFC rules? Pursuant to Art. 47c, para 1, it. 2 CITA the CFC rules are applicable, when the corporate tax rate of the respective state is about two times lower than the one set in CITA. As it is 10% from a Bulgarian perspective, the other domestic legislation should have a 5% tax rate.

[7] As worth reading Bulgarian publications on this issue may be mentioned: Antonov (2018), Filipov (2019), Dulevski (2020), Lazarov (2020).

Another intriguing aspect is Art. 47c, para 4 CITA, establishing the exceptions from this regime and in particular it. 1 thereof. Theoretical and practical challenges may arise regarding the definition of "part" regarding its proper tax treatment. So far, there is no NRA's guideline on the requirements that should be met by evaluating this "part". Another issue is the situation when there are changes in the tax regime within the tax year. It should be noted that because of the initiation of the infringement procedure, mentioned in the previous paragraph, and the draft of LASCITA 2022 it is highly possible for the provision in question to be deleted.

It is normal that there are exceptions to the general rule. Such legislative approaches are evident both in the domestic legislation and in the EU law. As they should be interpreted strictly, their careful and reasoned design is vital. Through CFC's perspective, the regime is barely applicable due to its extremely narrow scope, which does not reflect the goals pursued in ATAD. These exceptions, rather, raise the question of the overall effectiveness of these rules.

Art. 7 ATAD outlines two options on what should be included in the tax base. This can be alternatively chosen by the MSs. Bulgaria did not follow them and introduced a third version. Here, the question of the minimum and the maximum standards according to Art. 3 ATAD arises again. On the one hand, we have a specific ATAD provision on this issue. Moreover, it provides options. Although no such regime has existed in the Bulgarian tax law so far, it has been designed in a different way than the ones offered by ATAD. Based on the idea that the maximum level is entrusted to the MSs, this should not be defined as an improper implementation or an obstacle to the regime's implementation if it is in line with the EU theory and practice. However, this once again raises the question of how much a minimum level and choice are a good combination. Indeed, there can be no question of harmonization of direct taxes like indirect ones in the EU, based on the MSs' sovereignty. However, their diverse tax policy on this issue may lead to diverse practices, which is hardly ATAD's ultimate goal.

Art. 47e CITA outlines the obligation to keep a register of CFCs.[8] It shall be submitted at the tax authorities' request. Such requirement does not appear

[8] Art. 47e CITA (1) The taxable person shall keep a register of the controlled foreign companies, which shall contain data for at least:

1. the amount of the participations under Art. 47c, para. 1, item 1, including their change within the tax period;
2. the amount of the profits of a non-distributed foreign entity, respectively the profits of a permanent establishment determined by the order of this law and which, on the grounds of Art. 47d, para. 1 have increased the tax financial result of the taxpayer for each tax period;
3. the amount of the loss determined by the order of this law for the current and past years in connection with the application of Art. 47d, para. 3;
4. the amount of the tax financial result for the respective tax period determined pursuant to this Act as well as the corporation tax actually paid on profits from a controlled foreign

explicitly in ATAD. In this case, can we talk about the upgrade of the concept through greater transparency and legal certainty? Is this not an additional necessary administrative burden? There are no solid arguments on its specific purposes from a legislator's position as usual.

It should be noted that the new Art. 277d CITA provides pecuniary sanction in two cases – by failure to fulfil the obligations under Art. 47e CITA or by incorrect data and circumstances in the register. The envisaged amount can be determined as one of the highest in case of administrative violations under CITA. In comparison, the minimum amount of non-submission of a tax return under CITA is six times lower than the minimum on this issue. That is why, the determination of such a huge amount is rather strange. Even if the idea was a deterrent to persons who do not meet the requirements of Art. 47e CITA, it is necessary to consider what the overall effect of such a violation is.

Based on the tax authorities' competence, the following challenges may exist. Firstly, as in most similar cases, the question of proportionality arises. Secondly, it is not clear what should be understood under "incorrect data and circumstances". The usage of the conjunction "and" requires their cumulation. Thus, they do not fall within the scope of Art. 277d CITA separately. The issue on the liability for their designation and possible mitigating/aggravating circumstances remains open.

The textual interpretation of Art. 47e CITA poses some risks both to taxpayers and tax administration. The first should keep the register carefully because of Art. 277d CITA. This is especially true with regard to Art. 47e, para 1, it. 6 CITA – "other information", as it covers everything relevant to this matter. From a tax authorities' perspective, the administrative work would increase in a certain aspect, as well as the need for careful analysis of penalty's imposition.

Conclusion – what about amendment of the amendments?

ATAD is as challenging as it is interesting and significant. It is therefore not surprising that the challenges thereon continue to be the research object both at the European and national level. This is beneficial both for the forthcoming practice on this issue and purely theoretically due to the important concepts set

company in the country where the foreign entity is a resident for tax purposes or in which it is situated the place of business;

5. the date of distribution of profits by a controlled foreign company, date of disposition with participation or business activity, and amount of distributed profit, respectively amount of the proceeds from disposition;

6. other information necessary to determine the tax financial result of the taxable person in the cases of a controlled foreign company.

(2) The taxable person shall submit the register under para. 1 at the request of the Revenue Authority of the National Revenue Agency.

out in ATAD. Such research would be useful for the introduction of future rules (such as ATAD 3), as well as reflect the international trends through the prism of the BEPS project.

The brief examination of some aspects of ATAD shows that there have been a number of questions about its scope from the outset. This also reflects the risk of achieving its ultimate goal, as well as the idea of fair tax treatment. Despite the challenges every effort should be made to refine it.

What is the Bulgarian perspective in connection with ATAD's implementation of some issues? First of all, the translation of some provisions should be clarified due to the possibility of ambiguity. Secondly, ATAD's literal adherence is not always a good option through the prism of the national needs and specifics. Thirdly, the addition of new rules that do not explicitly appear in ATAD needs to be preceded by serious preliminary analyses, including a proper impact assessment, as well as available reasons for their introduction. This is determined at least by the idea of publicity of the legislative process.

It can be summarized that Bulgaria introduces many amendments in connection with ATAD, including also non-existent before concepts. Although there are in a positive direction in general, they may lead also to further discussions on their appropriate applicability. Some of them are related to their scope from a national perspective. It is recommendable to consider rules that comply with ATAD, but do not overburden the domestic legislation. Another issue is about their proper implementation. This also opens the debate on ATAD's effectiveness. One of the hot topics is the design of a minimum level. The shortest question is how to overcome the complexity. The shortest answer is that it is possible, but it is too complicated. Here, however, a dot can be put because of the uncertain future.

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