

# THE IMPLEMENTATION OF EU DIRECTIVES USING THE EXAMPLE OF THE ANTI-TAX- AVOIDANCE DIRECTIVE (ATAD)

15TH INTERNATIONAL SCIENTIFIC AND PRACTICAL CONFERENCE ON  
"«TRANSFORMATION OF FISCAL POLICY IN THE CONTEXT OF  
EUROPEAN INTEGRATION»,"

Prof. Dr. Lars Micker, LL.M., BScEc  
Institute for International Taxation, Nordkirchen, Germany





INTRODUCTION:  
WHO WE ARE AND  
WHAT WE DO



# Introduction

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- May 27, 2021: Institut für Internationales Steuerrecht/Institute for International Taxation e.V. (Ifitax)" was founded at the University of Finance of the State of North Rhine-Westphalia
- Serves non-profit purposes and is recognized as tax-privileged in Germany
- Purpose
  - Enhancing dialogue between persons active in legislation, administration, jurisdiction, science, tax professions, companies and in research and teaching in the field of International Tax Law

# Introduction

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Cooperation between STU and University of Finance

- Established on April 28th 2023 by Signing a Memorandum of Understanding
- Cooperation with Ifitax





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# INFLUENCE OF SECONDARY LAW - BASICS

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# Influence of secondary law - Basics

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- In the area of taxation, directives are the primary regulatory instrument
- Directives under Article 288 (3) TFEU are binding targets for the Member States
- They therefore require transformation into national law and are generally not directly effective
- Insofar as EU directives are to regulate income taxes, Art. 115 TFEU is the basis for the EU's authorization: The principle of unanimity applies
- Directives are exceptionally applicable even without implementation if they work in favor of the citizen, were culpably not or incompletely transposed and the content of the directive is sufficiently defined



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# DIRECTIVE (EU) 2016/1164 (ANTI-TAX AVOIDANCE DIRECTIVE, ATAD)

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# Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive, ATAD)

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- **Essential content of the directive**
  - Rules against tax avoidance practices that directly affect the functioning of the internal market
  - Package of legally binding anti-avoidance measures that must be applied by all Member States against common forms of aggressive tax planning
  - Germany already largely complies with the minimum standards set by ATAD
  - Nevertheless, there was still a need for adjustment in some areas



# Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive, ATAD)

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- **Essential content of the directive**
  - Art. 4 ATAD contains regulations limiting the deductibility of interest payments
    - This regulation, also known as the interest barrier, is based on action point 4 of the BEPS package of measures and is very similar in its concrete form to the interest barrier under the German Section 4h EStG
    - Differences exist insofar as the Directive is based on an extended definition of interest
    - Furthermore, the directive provides for an exemption amount, not an exemption limit, for an exemption from the scope of application

# Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive, ATAD)

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## Essential content of the directive

- Art. 5 of the ATAD deals with the taxation of exit and deprivation of tax domicile
  - The provision covers both cases in which assets are transferred across borders and cases in which the entire tax residence is transferred to another country
  - For these cases, the provision provides rules that largely correspond to the case law of the European Court of Justice on exit taxation and taxation of the loss of tax domicile
  - In particular, the principles from the ECJ decision *National Grid Indus* and the subsequent case law are implemented: hidden reserves have to be taxed within the scope of five years



# Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive, ATAD)

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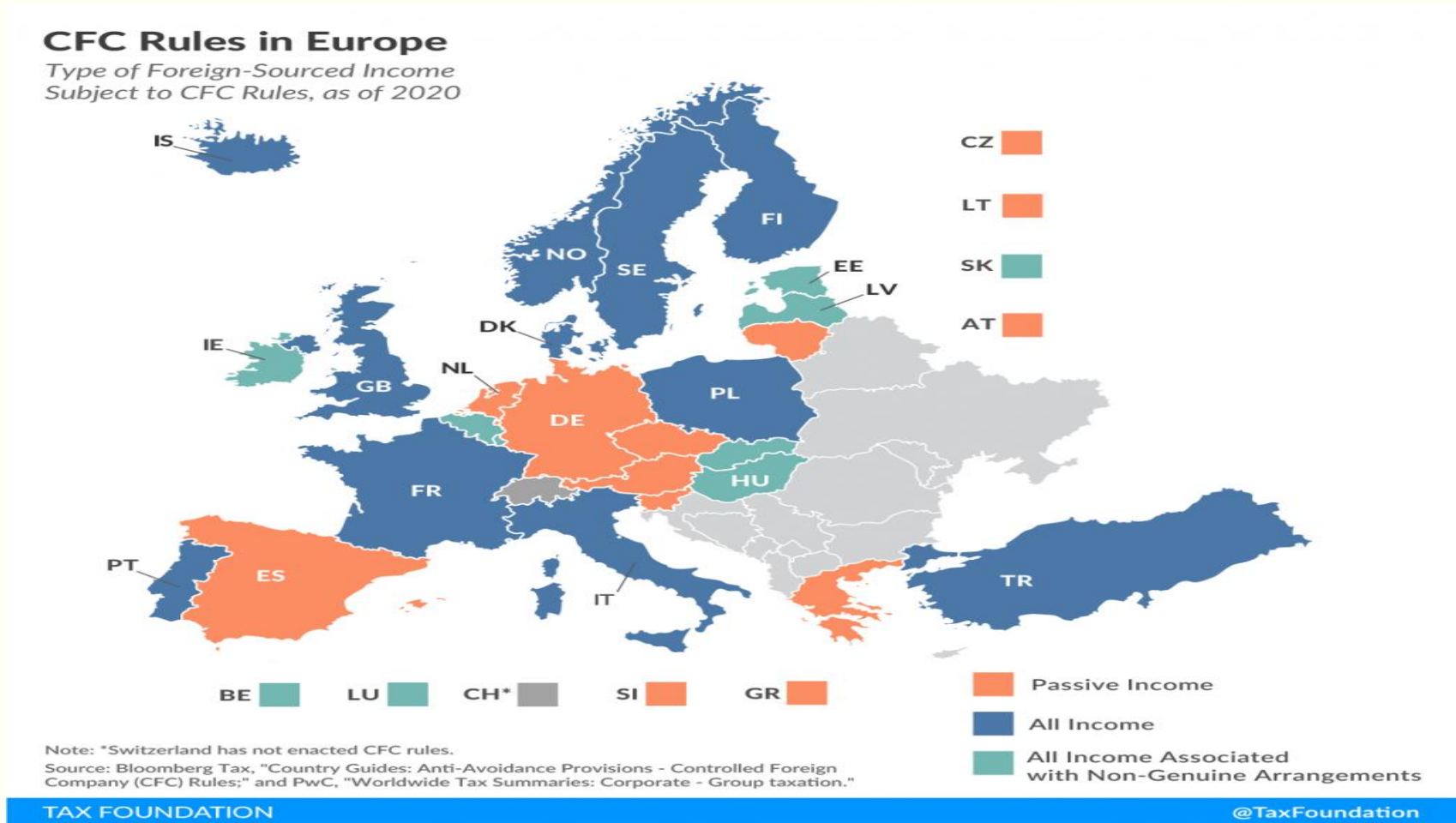
- **Essential content of the directive**

- Articles 7 and 8 of the ATAD contain provisions on controlled foreign companies (so-called CFCs)
  - This attribution taxation has long been the focus of the discussion on regulations to curb tax avoidance
  - The directive provisions contain a concept in this regard that is based on action point 3 of the BEPS action plan
  - Unlike under German law, the income to be added is determined on the one hand according to a catalog of passive income and on the other hand according to whether it originates from inappropriate arrangements
  - Here, too, only a minimum standard is standardized, but all member states must now introduce so-called CFC rules

# Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive, ATAD)

- Essential content of the directive

- CFC-Rules:



# Your Contact Person

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Prof. Dr. Lars Micker, LL.M., BScEc

Institute for International Tax Law ([www.ifitax.com](http://www.ifitax.com))

c/o University of Finance NRW, Germany

E-mail: [lars.micker@ifitax.com](mailto:lars.micker@ifitax.com)