European Parliament
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Committee on Economic and Monetary Affairs

2016/0011(CNS)

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AMENDMENTS
40 - 237

Draft report
Hugues Bayet
(PE578.569v01-00)

Rules against tax avoidance practices that directly affect the functioning of the internal market

Proposal for a directive
(COM(2016)0026 – C8-0031/2016 – 2016/0011(CNS))

Amendment 40
Sander Loones

Draft legislative resolution
Paragraph 2

Draft legislative resolution	*Amendment*
2. Calls on the Commission to ***alter*** its proposal ***accordingly, in accordance with Article 293(2) of the Treaty*** on the Functioning of the ***European Union***;	2. Calls on the Commission to ***withdraw*** its proposal ***and submit, following an extensive and independent impact assessment, a new proposal fully implementing the OECD's anti-BEPS measures; insists thereby that such a proposal fulfils all the following criteria:*** ***- The proposal should provide measures to counter harmful tax practices, to prevent Treaty abuse and to improve effectiveness of dispute resolution;*** ***- The proposal should only go beyond the OECD's anti-BEPS action plan after an extensive and independent impact assessment unambiguously demonstrates no adverse impact of the proposed measures*** on the ***competitiveness of the Union economies especially in relation to third countries, nor on the opportunities to attract investment in the Union*** ***- The proposal should reinforce the*** functioning of the ***internal market***; ***- The proposal should strictly respect the fundamental principles of subsidiarity and proportionality.***

Or. en

Justification

The priorities of any corporate tax proposal should be: assuring the best fiscal climate to foster investment, entrepreneurship and employment, while ensuring that profits are taxed where economic activities occur. Important work was done on defining the global standards to prevent and counter BEPS within the OECD framework. . However, instead of restricting itself to implementing the OECD measures, the current proposal imposes obligations that go far beyond what is internationally agreed. This would weaken the EU's productivity and its competitiveness vis-à-vis 3rd countries.

Amendment 41
Cora van Nieuwenhuizen

Draft legislative resolution
Paragraph 2 a (new)

Draft legislative resolution	*Amendment*
	2a. Regrets that the Commission has not implemented a prior impact assessment on the consequences of the proposed Council Directive for the European business climate.

Or. en

Amendment 42
Sylvie Goulard, Enrique Calvet Chambon, Michael Theurer

Draft legislative resolution
Paragraph 2 a (new)

Draft legislative resolution	*Amendment*
	2a. Calls on the Commission to publish an ambitious proposal for a Common Consolidated Corporate Tax Base, as soon as possible, and for the legislative branch to conclude negotiations on this crucial dossier as quickly as possible;

Or. en

Amendment 43
Esther de Lange

Draft legislative resolution
Paragraph 4 a (new)

Draft legislative resolution	*Amendment*
	4a. Calls on the Commission to continue with the better regulation agenda and to publish an impact assessment for all significant legislative proposals;

Or. en

Amendment 44
Tom Vandenkendelaere

Proposal for a directive
Recital 1

Text proposed by the Commission	*Amendment*
(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan).	(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan) ***in which it recognises that a fully-fledged CCCTB, with an appropriate and fair distribution key, would be the genuine "game changer" in the fight against artificial BEPS strategies***.

[3] Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.

[3] Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.

Or. en

Amendment 45
Esther de Lange

Proposal for a directive
Recital 1

Text proposed by the Commission	*Amendment*
(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value ***are generated***. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan).	(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits ***are generated*** and value ***is created***. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan).
[3] Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.	[3] Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.

Or. en

Amendment 46
Cora van Nieuwenhuizen

Proposal for a directive
Recital 1

Text proposed by the Commission	*Amendment*
(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan).	(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated ***without hampering the business climate of Member States***. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan).
[3] Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.	[3] Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.

Or. en

Amendment 47
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission	Amendment
	(1a). The European Union believes that combatting fraud, tax evasion and tax avoidance is an overriding political priority, as aggressive tax planning practices are unacceptable from the point of view of the integrity of the internal market and social justice.

Or. es

Amendment 48
Gunnar Hökmark

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission	Amendment
	(1a) Regarding the definition of permanent establishment and the rules to ensure that tax is paid where profits are generated, it is essential for the Union to follow the OECD model tax convention on income and on capital. Different rules will lead to legal uncertainty and deviating standard since the OECD model tax convention is a flexible document that develops over time.

Or. en

Amendment 49
Gunnar Hökmark

Proposal for a directive
Recital 1 b (new)

Text proposed by the Commission	Amendment
	(1b) It is the responsibility of the tax authority in every Member State to cooperate with each other to ensure that

	taxes are paid and to establish in which Member State taxes should be paid depending on the character of the business.

Or. en

Amendment 50
Tom Vandenkendelaere

Proposal for a directive
Recital 2

Text proposed by the Commission	*Amendment*
(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against base erosion and profit shifting, released to the public on 5 October 2015. It is therefore essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against ***BEPS***. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the Union would provide taxpayers with legal certainty in that those measures would be compatible with Union law.	(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against ***genuine*** base erosion and profit shifting, released to the public on 5 October 2015. It is therefore essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against ***genuine BEPS strategies whilst at the same time taking adequate care of the competiveness of the companies operating within that internal market***. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the Union would provide taxpayers with legal certainty in that those measures would be compatible with Union law. ***In a***

	Union characterised by very diverse national markets, an encompassing impact assessment of all anticipated measures remains crucial to ensure that this common line finds widespread support among Member States.

Or. en

Amendment 51
Barbara Kappel

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) An assessment of the results of the enforcement measures will be necessary, and will be presented to the European Parliament, in order to guarantee that companies in Member States have not become less competitive in third countries since those measures were adopted.

Or. de

Amendment 52
Gunnar Hökmark

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) When Member States and the Commission take action against tax avoidance it is important with consistence with the Base Erosion and Profit Shifting (BEPS) by OECD. If the Union goes beyond the OECD recommendations it will affect European competiveness negatively but also create grey zones and new loopholes for tax avoidance.

Or. en

Amendment 53
Gunnar Hökmark

Proposal for a directive
Recital 2 b (new)

Text proposed by the Commission	*Amendment*
	(2b) The responsibility for fighting tax evasion is a national competence and EU-rules, and it must be a point of departure for the European efforts against tax evasion to ensure that member states adopt and follow the OECD recommendations.

Or. en

Amendment 54
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Recital 3

Text proposed by the Commission	*Amendment*
(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. ***As these rules would have to fit in 28 separate corporate tax systems, they should be limited to general provisions and leave the implementation to Member States as they are better placed to shape the specific elements of those rules in a way that fits best their corporate tax systems.*** This objective could be achieved by creating a minimum level of protection for national corporate tax systems across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 Action	(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. This objective could be achieved by creating a minimum level of protection for national corporate tax systems across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 Action Items against base erosion and profit shifting with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields.

Items against base erosion and profit shifting with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields.

Or. es

Amendment 55
Barbara Kappel

Proposal for a directive
Recital 3

Text proposed by the Commission	*Amendment*
(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. As these rules would have to fit in 28 separate corporate tax systems, they should be limited to general provisions and Member States should enforce them, as they are better placed to shape the specific elements of those rules in a way that best fits their corporate tax systems. This objective could be achieved by creating a minimum level of protection for national corporate tax systems across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 Action Items against base erosion and profit shifting with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields.	(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. As these rules would have to fit in 28 separate corporate tax systems, they should be limited to general provisions and Member States should enforce them, as they are better placed to shape the specific elements of those rules in a way that best fits their corporate tax systems. This objective could be achieved by creating a minimum level of protection for national corporate tax systems across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 Action Items against base erosion and profit shifting with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields. ***It is important to ensure, however, that the measures put in place do not exceed what is required in order to achieve their primary purpose, namely to combat aggressive tax planning, as this could also have an undesirable impact on companies***

	which do not employ aggressive tax planning.

Or. de

Amendment 56
Neena Gill

Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission	*Amendment*
	(3a) Given that 'tax havens' can be classified as transparent by the OECD, proposals should be brought forward to increase the transparency of trust funds and foundations.

Or. en

Amendment 57
Luděk Niedermayer

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission	*Amendment*
	(4a) To ensure consistency with regards to treatment of permanent establishments, it is essential that Member States apply in both relevant legislation and bilateral tax treaties a common definition of permanent establishments according to the Article 5 of the OECD Model Convention on Tax and Income.

Or. en

Amendment 58
Hugues Bayet

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission	Amendment
	(4a) It is essential to give tax authorities appropriate means to fight effectively against tax base erosion and profit shifting, and in doing so improve transparency in respect of the activities of large multinationals, in particular with regard to profits, tax paid on profits, subsidies received, tax rebates, number of employees and assets held.

Or. fr

Amendment 59
Luděk Niedermayer

Proposal for a directive
Recital 4 b (new)

Text proposed by the Commission	Amendment
	(4b) To avoid inconsistent allocation of profits to permanent establishments, Member States should follow rules for profits attributable to permanent establishment as part of the Article 7 of the OECD Model Convention on Tax and Income and align applicable legislation and bilateral treaties to those rules, when such rules are reviewed.

Or. en

Amendment 60
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 5

Text proposed by the Commission	Amendment
(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.	(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation. ***Nevertheless, it is also urgent and necessary to lay down a single set of rules for calculating taxable profits of cross-border companies in the Union by treating corporate groups as a single entity for tax purposes, in order to strengthen the internal market and eliminate many of the weaknesses in the current corporate tax framework enabling aggressive tax planning.***

Or. en

Amendment 61
Fabio De Masi

Proposal for a directive
Recital 5

Text proposed by the Commission	Amendment
(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to	(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to

achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

achieving that objective: limitations to the deductibility of interest ***and royalty income, basic defence measures against base erosion and profit shifting through secrecy or low tax jurisdictions, a clear definition of permanent establishment***, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

Or. en

Amendment 62
Neena Gill

Proposal for a directive
Recital 5

Text proposed by the Commission	*Amendment*
(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as	(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as

double taxation.	double taxation. ***To get correct application of these rules, tax authorities in Member States must be properly resourced.***

Or. en

Amendment 63
Esther de Lange

Proposal for a directive
Recital 5

Text proposed by the Commission	*Amendment*
(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.	(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause ***in the absence of a sound tax treaty with a third country of similar effect***, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

Or. en

Amendment 64
Barbara Kappel

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission	Amendment
	(5a) With particular reference to the restrictions on interest deductibility (the interest cap), Member States should consider whether a transitional period is necessary with a view to giving taxable entities a reasonable amount of time to adjust their financing structures.

Or. de

Amendment 65
Barbara Kappel

Proposal for a directive
Recital 5 b (new)

Text proposed by the Commission	Amendment
	(5b) Provision should be made for the exemption of infrastructure providers, leasing companies and real estate companies.

Or. de

Amendment 66
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Recital 6

Text proposed by the Commission	Amendment
(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial	(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial

costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. ***Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.***	costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country.

Or. es

Amendment 67
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 6

Text proposed by the Commission	*Amendment*
(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. ***Although*** it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, ***it is equally acknowledged that these two sectors***	(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. It is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, ***perhaps with*** a more customised approach.

present special features which call for a more customised approach. ***As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.***

Or. en

Amendment 68
Tom Vandenkendelaere

Proposal for a directive
Recital 6

Text proposed by the Commission	*Amendment*
(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be	(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments ***on intra-group loans***, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such ***genuine BEPS*** practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the

considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in ***debt*** taken out ***nationally,*** cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.	indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in ***intra-group loans*** taken out cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.

Or. en

Amendment 69
Fabio De Masi

Proposal for a directive
Recital 6

Text proposed by the Commission	*Amendment*
(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation ***rule is*** necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation	(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest ***or royalty*** payments, out of high tax jurisdictions into countries with lower tax regimes. The interest ***and royalty*** limitation ***rules are*** necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues) ***and royalty income***. ***With respect to interest costs,*** it is therefore necessary to fix a ratio for

and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.

deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.

Or. en

Amendment 70
Fabio De Masi

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission	Amendment
	(6a) Profit shifting into secrecy or low tax jurisdictions poses a particular risk to Member States' tax proceeds as well as fair and equal treatment between tax avoiding and tax compliant firms, large and small. In addition to the generally applicable measures proposed in this directive for all jurisdictions, it is paramount to deter secrecy and low tax jurisdictions from basing their corporate tax and legal environment on sheltering profits from tax avoidance while at the same time not adequately implementing global standards as regards tax good governance, such as the automatic exchange of tax information, or engaging in constructive non-compliance by not properly enforcing tax laws and international agreements despite political commitments to implementation. Specific measures are therefore proposed to use this directive as a tool to ensure compliance by current secrecy and low tax jurisdictions with the international push for tax transparency and fairness.

Or. en

Amendment 71
Luděk Niedermayer

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission	Amendment
	(6a) In the event of funding of long term infrastructure projects that are in public interest by debt to third party, where debt is higher than threshold for exemption set up by this Directive. Member States may grant exemption to third party loans funding public infrastructure projects under certain conditions, as application of

	proposed provisions on interest limitation in such cases would be counterproductive.

Or. en

Amendment 72
Sylvie Goulard, Enrique Calvet Chambon, Michael Theurer

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission	*Amendment*
	(4a) Due regard should be had to the European Parliament legislative resolution of 19 April 2012 on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB),

Or. en

Amendment 73
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Recital 7

Text proposed by the Commission	*Amendment*
(7) Exit taxes have the function of ensuring that where a taxpayer moves assets or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even if this gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets. In order to compute the amounts, it is critical to fix a market value for the transferred assets based on the arm's length principle. Within the Union, it is necessary	(7) Exit taxes have the function of ensuring that where a taxpayer moves assets ***and profits*** or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even if this gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets ***or profits***. In order to compute the amounts, it is critical to fix a market value for the transferred assets ***or profits*** based on the arm's length principle. Within the

to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax, possibly together with interest and a guarantee, over a certain number of years and to settle their tax liability through staggered payments. Exit tax should not be charged where the transfer of assets is of a temporary nature and as long as the assets are intended to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral.	Union, it is necessary to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax, possibly together with interest and a guarantee, over a certain number of years and to settle their tax liability through staggered payments. Exit tax should not be charged where the transfer of assets ***or profits*** is of a temporary nature and as long as the assets ***or profits*** are intended to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral. ***However, Member States may provide for deduction in such cases.***

Or. es

Amendment 74
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) Too often, multinational companies make arrangements to transfer their profits to tax havens without paying any or very low rates of tax. The concept of permanent establishment will provide a precise, binding definition of the criteria which must be met if a multinational company is to prove that it is situated in a given country. This will force multinational companies to pay their taxes fairly.

Or. en

Amendment 75
Neena Gill

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) Too often, multinational companies make arrangements to transfer their profits to tax havens without paying any tax. The concept of permanent establishment will provide a precise, binding definition of the criteria which must be met if a multinational company is to prove that it is situated in a given country. This will force multinational companies to pay their taxes directly. ***Companies which fail to comply with the proposals outlined in this Directive will be subject to monetary sanctions.***

Or. en

Amendment 76
Luděk Niedermayer

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) Exit tax should not be charged where the transferred assets are tangible assets generating active income. Transfers of such assets are an inevitable part of effective allocation of resources by an enterprise and are not primarily intended for tax optimization and tax avoidance, and should therefore be exempt from these provisions.

Or. en

Amendment 77
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 7 b (new)

Text proposed by the Commission	*Amendment*
	(7b) The term transfer pricing refers to the conditions and arrangements surrounding transactions effected within a multinational company, including subsidiaries and shell companies whose profits are divested to a parent multinational. It denotes the prices charged between associated undertakings established in different countries for their intra-group transactions, such as the transfer of goods and services. As the prices are set by non-independent associates within the same multinational undertaking, they may not reflect the objective market price. The Union must satisfy itself that the taxable profits generated by multinational undertakings are not being transferred outside the jurisdiction of the Member State concerned and that the tax base declared by multinational undertakings in their country reflects the economic activity undertaken there. In the interests of taxpayers, it is essential to limit the risk of double non-taxation which may result from a difference of opinion between two countries regarding the determination of the arm's length charge for their international transactions with associated undertakings. This system does not rule out the use of a range of artificial arrangements, in particular involving products for which there is no market price (for example a franchise or services provided to undertakings).

Or. en

Amendment 78
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 7 c (new)

Text proposed by the Commission	*Amendment*
	(7c) The OECD has developed the 'modified nexus approach' in an effort to regulate the patent box system. This method guarantees that, under the patent box system, a favourable rate of tax is charged only on revenue directly linked to spending on research and development. However, we already see the difficulty for member States in applying the concepts of 'nexus' and 'economic substance' to their innovation boxes. If, by June 2016, the Member States have still not fully implemented the modified nexus approach in a uniform manner in order to eliminate current harmful patent box regimes, the Commission should submit a new, binding legislative proposal under Article 116 of the Treaty on the Functioning of the European Union.

Or. en

Amendment 79
Fabio De Masi

Proposal for a directive
Recital 8

Text proposed by the Commission	*Amendment*
(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then,	(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then,

circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union ***and originate in third countries***. This income should be taxable in the Union, if it has been taxed below a certain level in the ***third*** country***. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause***. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.	circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union. This income should be taxable in the Union, if it has been taxed below a certain level in the country ***of origin***. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Or. en

Amendment 80
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 8

Text proposed by the Commission	*Amendment*
(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed -	(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed -

within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. ***Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise.*** Member States should ***therefore*** use the ***statutory*** tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.	within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Member States should use the ***effective*** tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Or. en

Amendment 81
Cora van Nieuwenhuizen

Proposal for a directive
Recital 8

Text proposed by the Commission	*Amendment*
(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-	(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-

Text proposed by the Commission	Amendment
over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against ***some types of foreign income***, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.	over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against ***foreign income that does not arise from active business***, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Or. en

Amendment 82
Esther de Lange

Proposal for a directive
Recital 8

Text proposed by the Commission	*Amendment*
(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against	(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against

Text proposed by the Commission	Amendment
such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.	such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country ***and in the absence of a sound tax treaty with the third country of similar effect***. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Or. en

Amendment 83
Luděk Niedermayer

Proposal for a directive
Recital 8

Text proposed by the Commission	*Amendment*
(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against	(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against

such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.	such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income ***not arising from active business***, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Or. en

Justification

The type of taxavoidance dealt with by these provisions concern in most cases passive income, hence income arising from genuine economic activity is exempt.

Amendment 84
Neena Gill

Proposal for a directive
Recital 9

Text proposed by the Commission	*Amendment*
(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules.	(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules.

Within the Union, the application of GAARs should be limited to arrangements that are ‘wholly artificial’ (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.	Within the Union, the application of GAARs should be limited to arrangements that are ‘wholly artificial’ (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ. ***In order to properly tackle the potential conflicts of interests audit companies are exposed to when giving tax advice, Regulation (EU) No 537/2014 of the European Parliament and of the Council of should be amended.***

Or. en

Amendment 85
Barbara Kappel

Proposal for a directive
Recital 9

Text proposed by the Commission	*Amendment*
(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are ‘wholly artificial’ (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third	(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are ‘wholly artificial’ (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third

countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.	countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ. ***In particular, Member States must apply the GAARs in a uniform manner in order to prevent potential legal uncertainty in the commercial sector.***

Or. de

Amendment 86
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 9

Text proposed by the Commission	*Amendment*
(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be ***limited*** to arrangements that are ***'wholly artificial' (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs***. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.	(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be ***applied*** to arrangements that are ***considered harmful***. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

Or. en

Amendment 87
Danuta Maria Hübner

Proposal for a directive
Recital 9

Text proposed by the Commission	*Amendment*
(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are ***‘wholly artificial’ (non-genuine); otherwise***, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.	(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are ***non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality; in other cases***, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

Or. en

Amendment 88
Sirpa Pietikäinen

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	(9a) Proper identification of taxpayers is essential to effective exchange of information between tax administrations. The creation of European Taxpayer Identification Number (EU TIN) would provide the best means for this identification. It would allow any third party to quickly, easily and correctly identify and record TINs in cross-border

	relations and serve as a basis for effective automatic exchange of information between member states tax administrations. The Commission should also actively work for the creation of a similar identification number on a global level, such as the Regulatory Oversight Committee's global Legal Entities Identifier (LEI);

Or. en

Amendment 89
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 10

Text proposed by the Commission	*Amendment*
(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third-countries and in the Union. ***To comply with the fundamental freedoms,*** the impact of the rules within the Union should ***be limited to*** arrangements which ***result in*** the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm's length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. ***CFC rules should exclude financial undertakings***	(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third-countries and in the Union. The impact of the rules within the Union should ***cover all*** arrangements which ***one of the principal purposes is*** the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm's length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle.

from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules.

Or. en

Amendment 90
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Recital 10

Text proposed by the Commission	*Amendment*
(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm’s length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not	(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm’s length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not

comply with this principle. ***CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules.***	comply with this principle.

Or. es

Amendment 91
Hugues Bayet

Proposal for a directive
Recital 10

Text proposed by the Commission	*Amendment*
(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm’s length principle, so that the State of	(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm’s length principle, so that the State of

the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, ***which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules***.	the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance ***and improper tax practices such as captive reinsurance***.

Or. fr

Amendment 92
Cora van Nieuwenhuizen

Proposal for a directive
Recital 10

Text proposed by the Commission	*Amendment*
(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third-countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the	(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third-countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the

Text proposed by the Commission	Amendment
arm’s length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules.	arm’s length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules. ***As the proposed CFC rules are narrowly intertwined with the proposed switch-over clause, any overlap should be avoided.***

Or. en

Amendment 93
Luděk Niedermayer

Proposal for a directive
Recital 11

Text proposed by the Commission	*Amendment*
(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. ***Although***	(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. ***Where such a***

Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities[4] and hybrid permanent establishments[5] within the Union as well as on the tax treatment of hybrid entities in relations with third ***countries, it is still necessary to enact binding rules. Finally, it is necessary to limit the scope of these rules to hybrid mismatches between*** Member ***States. Hybrid mismatches between Member States and third countries still need to be further examined***.	***mismatch arises between a Member State and a*** third ***country, proper taxation of such operation must be safeguarded by the*** Member ***State***.
__________________	__________________
[4] Code of Conduct (Business Taxation) – Report to Council, 16553/14, FISC 225, 11.12.2014.	[4] Code of Conduct (Business Taxation) – Report to Council, 16553/14, FISC 225, 11.12.2014.
[5] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.	[5] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.

Or. en

Amendment 94
Fabio De Masi

Proposal for a directive
Recital 11

Text proposed by the Commission	*Amendment*
(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch	(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch

Text proposed by the Commission	Amendment
should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. Although Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities[4] and hybrid permanent establishments[5] within the Union as well as on the tax treatment of hybrid entities in relations with third countries, it is still necessary to enact binding rules. ***Finally, it is necessary to limit the scope of these rules to hybrid mismatches between Member States. Hybrid mismatches between Member States and third countries still need to be further examined.***	should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. Although Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities[4] and hybrid permanent establishments[5] within the Union as well as on the tax treatment of hybrid entities in relations with third countries, it is still necessary to enact binding rules.
__________________	__________________
[4] Code of Conduct (Business Taxation) – Report to Council, 16553/14, FISC 225, 11.12.2014.	[4] Code of Conduct (Business Taxation) – Report to Council, 16553/14, FISC 225, 11.12.2014.
[5] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.	[5] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.

Or. en

Amendment 95
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) An exhaustive 'black list' with accompanying sanctions should be prepared by the Commission to list tax havens including those in the Union, which distort competition by granting low or no taxation to non-residents without real economic substance.

Or. en

Amendment 96
Sirpa Pietikäinen

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) An exhaustive, common Union 'black list' based on commonly agreed criteria should be drawn up of uncooperative jurisdictions, or tax havens. This black list should be completed with a list of sanctions for non-cooperative jurisdictions and for financial institutions that operate with tax havens

Or. en

Amendment 97
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) A Union-wide definition and an exhaustive 'black list' should be drawn up of the tax havens and countries, including those in the Union, which distort competition by granting favourable tax arrangements. The criterion of 10 Member States having identified a country as a non-cooperative tax jurisdiction used in annex I of the communication "A fair and efficient corporate tax system in the European Union" is too restrictive.

Or. en

Amendment 98
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) One of the main problems encountered by the tax authorities is the impossibility of gaining access in due time to comprehensive and relevant information about MNEs' tax planning strategies. Such information should be made publicly available, in order for tax authorities to react quickly to tax risks, by assessing those risks more effectively, targeting checks and alerting about changes required to the legislation in force.

Or. en

Amendment 99
Neena Gill

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) The funding of Member State tax authorities should be investigated to determine if they are properly equipped to conduct investigations. In light of the results of such investigations, the Commission could propose strong country specific recommendations under the EU Semester to ensure that tax authorities are sufficiently financed.

Or. en

Amendment 100
Barbara Kappel

Proposal for a directive
Recital 14

Text proposed by the Commission	*Amendment*
(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives.	(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives. ***In this respect, Member States should take particular care to ensure that existing national measures are propery adjusted in order to prevent possible inconsistencies in the application of this Directive.***

Or. de

Amendment 101
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Recital 14

Text proposed by the Commission	*Amendment*
(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives.	(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives. ***However, overhauling the legal framework for tax in order to address***

practices which erode the tax base by means of regulation would have made it possible to secure a better outcome as regards guaranteeing equal conditions throughout the internal market.

Or. es

Amendment 102
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission	*Amendment*
	(14a) The Commission should carry out a cost-benefit analysis and assess the possible impact of high levels of tax on the repatriation of capital from third countries with low tax rates.

Or. es

Amendment 103
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission	*Amendment*
	(14a) All trade agreements and economic partnership agreements to which the Union is party should include provisions on the promotion of good governance in tax matters, with the aim of increasing transparency and of combating harmful tax practises.

Or. en

Amendment 104
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Recital 14 b (new)

Text proposed by the Commission	*Amendment*
	(14b) In order to provide a higher level of protection against tax avoidance practices, Member States could target arrangements which have been put in place for the main purpose or one of the main purposes of obtaining an unfair tax advantage. Member States should apply penalties as foreseen by their national law and inform to the European Commission about the penalty systems that they implement.

Or. en

Amendment 105
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 15

Text proposed by the Commission	*Amendment*
(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation**,**	(15) The Commission should ***put in place a specific monitoring mechanism to ensure the proper implementation of this Directive and the homogeneous interpretation of its measures by Member States. It should*** evaluate the implementation of this Directive three years after its entry into force and report to the ***European Parliament and the*** Council thereon. Member States should communicate to the ***European Parliament and the*** Commission all information necessary for this evaluation**.**

Or. en

Amendment 106
Marco Valli, Marco Zanni

Proposal for a directive
Recital 15

Text proposed by the Commission	*Amendment*
(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,	(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report ***to the European Parliament and the*** Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

Or. it

Amendment 107
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Recital 15

Text proposed by the Commission	*Amendment*
(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,	(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the ***European Parliament and the*** Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

Or. en

Amendment 108
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission | *Amendment*

(1a) 'taxpayer' means a corporate entity covered under the scope of this Directive;

Or. en

Amendment 109
Fabio De Masi

Proposal for a directive
Article 2 – paragraph 1 – point 4 a (new)

Text proposed by the Commission | *Amendment*

(4a) 'royalty cost' means costs arising from payments of any kind made as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or any other intangible asset; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalty costs;

Or. en

Amendment 110
Fabio De Masi

Proposal for a directive
Article 2 – paragraph 1 – point 4 b (new)

Text proposed by the Commission | *Amendment*

(4b) 'secrecy or low tax jurisdiction' means any jurisdiction which meets any of the following criteria:

	a) a lack of automatic exchange of information with all signatories of the multilateral competent authority agreement in line with OECD's Common Reporting Standard;
	b) no publicly accessible register of the ultimate beneficial owners of corporations, trusts and equivalent legal structures as defined in Directive (EU) 2015/849;
	c) failure to require the online publishing of accounts by all legal entities created in the jurisdictions without exception;
	d) a statutory corporate tax rate of less than 75% of the weighted average corporate tax in the Union.

Or. en

Amendment 111
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission	*Amendment*
(5) 'transfer of assets' means an operation whereby the right to tax the transferred assets passes to another Member State or third country, whilst the assets remain under the beneficial ownership of the same taxpayer, excluding transfers of assets of a temporary nature as long as the assets are intended to revert to the Member State of the transferor;	(5) 'transfer of assets' means an operation whereby the right to tax the transferred assets ***(including profits)*** passes to another Member State or third country, whilst the assets remain under the beneficial ownership of the same taxpayer, excluding transfers of assets of a temporary nature as long as the assets are intended to revert to the Member State of the transferor;

Or. es

Amendment 112
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) 'permanent establishment' means a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on; this definition should also address situations in which companies which engage in fully dematerialised digital activities are considered to have a permanent establishment in a Member State if they maintain a significant digital presence in the economy of that country;

Or. en

Amendment 113
Fabio De Masi

Proposal for a directive
Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) 'a person or enterprise associated with a taxpayer' means a situation where the first person holds a participation of more than 25 percent in the second, or there is a third person that holds a participation of more than 25 percent in both.

Or. en

Amendment 114
Luděk Niedermayer

Proposal for a directive
Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission	Amendment
	(7a) 'hybrid mismatch' means a situation between a taxpayer in one Member State and an associated enterprise, as defined under the applicable corporate tax system, in another Member State or a third country where the following outcome is attributable to differences in the legal characterisation of a financial instrument or entity:
	(a) a deduction of the same payment, expenses or losses occurs both in the jurisdiction Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in the other jurisdiction Member State ('double deduction'); or
	(b) there is a deduction of a payment in the jurisdiction Member State in which the payment has its source without a corresponding inclusion of the same payment in the other jurisdiction Member State ('deduction without inclusion').

Or. en

Amendment 115
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point 7 b (new)

Text proposed by the Commission	Amendment
	(7b) 'tax haven' means a jurisdiction characterised by one or several of the following criteria: no or only nominal taxation for non-residents; laws or administrative practices preventing the effective exchange of tax information with other governments; legal or administrative provisions preventing tax transparency or the absence of

	requirement of a substantial economic activity to be carried out.

Or. en

Amendment 116
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point 7 c (new)

Text proposed by the Commission	*Amendment*
	(7c) 'competition haven' means a jurisdiction whose tax system has preferential tax regimes constituting harmful tax competition

Or. en

Amendment 117
Tom Vandenkendelaere

Proposal for a directive
Article 4 – title

Text proposed by the Commission	*Amendment*
Interest limitation rule	Interest limitation rule ***on intra-group borrowings***

Or. en

Amendment 118
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Borrowing costs shall always be	1. ***Intra-group*** borrowing costs shall

deducted to the extent that the taxpayer receives interest or other taxable revenues from financial assets.	always be deducted to the extent that the taxpayer receives interest or other taxable revenues from financial assets.

Or. en

Amendment 119
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***30 percent of the taxpayer's earnings before*** interest***, tax, depreciation and amortisation (EBITDA)*** or up to an amount of EUR 1 000 000, whichever is higher. ***The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.***	2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***each corporate group's consolidated*** interest ***costs payable to third parties*** or up to an amount of EUR 1 000 000, whichever is higher.

Or. en

Amendment 120
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***30*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000,	2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***10*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000,

Text proposed by the Commission	Amendment
whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.	whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

Or. en

Amendment 121
Fabio De Masi

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***30*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.	2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***10*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

Or. en

Amendment 122
Marco Valli, Marco Zanni

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***30*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA)	2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***10*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA)

or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.	or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

Or. it

Amendment 123
Bernard Monot

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***30*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.	2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to ***15*** percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

Or. fr

Amendment 124
Barbara Kappel

Proposal for a directive
Article 4 - paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall ***only*** be deductible on up to 30 percent of taxpayers' income before interest, tax, depreciation and amortisation (EBITDA)	2. Exceeding borrowing costs shall be deductible on up to 30 percent of taxpayers' income before interest, tax, depreciation and amortisation (EBITDA)

or up to a maximum amount of EUR ***1*** 000 000, whichever is more, in the tax year in which they are accrued. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.	or up to a maximum amount of EUR ***3*** 000 000, whichever is more, in the tax year in which they are accrued. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation. ***The restriction on deductibility shall apply solely to interest earned by partners and by lenders belonging to the corporate group of the taxpayer.***

Or. de

Amendment 125
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR ***1*** 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.	2. ***Intra-group*** exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR ***3*** 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

Or. en

Amendment 126
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission	Amendment
	2a. In the case of financial undertakings, excess borrowing costs shall be deductible only in the tax year in which they are incurred, up to a maximum of 70 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). EBITDA shall be calculated as laid down in Article 4(2).

Or. es

Amendment 127
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 1

Text proposed by the Commission	Amendment
By derogation from paragraph 2, the taxpayer may be given the right to fully deduct exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group.	By derogation from paragraph 2, the taxpayer may be given the right to fully deduct ***intra-group*** exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group.

Or. en

Amendment 128
Barbara Kappel

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 1

Text proposed by the Commission	Amendment
By derogation from paragraph 2, the taxpayer may be given the right to fully deduct exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or	By derogation from paragraph 2, the taxpayer may be given the right to fully deduct exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or

higher than the equivalent ratio of the group.	higher than the equivalent ratio of the group. ***Provision shall be made in all Member States for a group test to be conducted. On the basis of the outcome of that test, the taxpayer may deduct all interest costs if it can prove that its debt is not higher than the debt of the entire group.***

Or. de

Amendment 129
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the group consists of all entities ***which are included in audited consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State or the Generally Accepted Accounting Principles of the United States (GAAP)***;	(b) the group consists of all entities ***qualifying as a group entity***;

Or. en

Amendment 130
Fabio De Masi

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 2 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) the taxpayer's equity and total assets are reduced by any contribution stemming from intra-group shares or ownership structures, for the purpose of avoiding an abusive application of the derogation set out in this paragraph through nested

	corporate structures potentially giving way to artificial changes to an entity's equity to total assets ratio;

Or. en

Amendment 131
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 2 – point e

Text proposed by the Commission	*Amendment*
(e) payments to associated enterprises do not exceed 10 % of the group's total net interest expense.	(e) payments to associated enterprises do not exceed 10 % of the group's total net interest expense***, or 50 % in the case of financial undertakings***.

Or. es

Amendment 132
Fabio De Masi

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 2 – point e a (new)

Text proposed by the Commission	*Amendment*
	(ea) the corresponding income arising from the borrowing costs paid and deducted by the taxpayer over and above the threshold determined in paragraph 2 is, at its final destination, subject to an effective tax rate of at least 90 % of the tax rate that would have applied on the taxpayer's profits in case of non-deductibility.

Or. en

Amendment 133
Luděk Niedermayer

Proposal for a directive
Article 4 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Member States may exclude from the scope of paragraph 2 excessive borrowing costs incurred on third party loans used to fund a public infrastructure project, that last at least 10 years and are considered to be in the general public interest by a Member State.

Or. en

Amendment 134
Fabio De Masi

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for ***future*** tax years.	4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for ***the following two*** tax years.

Or. en

Amendment 135
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future	4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future

tax years.	tax years ***for a maximum period of two years***.

Or. en

Amendment 136
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years.	4. The EBITDA of a tax year which is not fully absorbed by the ***intra-group exceeding*** borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years.

Or. en

Amendment 137
Barbara Kappel

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years ***may be carried forward*** for future tax years.	4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years ***shall automatically be carried forward*** for future tax years.

Or. de

Amendment 138
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 4 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. The EBITDA ***carried forward should be limited to 4 consecutive fiscal years.***

Or. en

Amendment 139
Marco Valli, Marco Zanni

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission	*Amendment*
5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the ***30*** percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.	5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the ***10*** percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.

Or. it

Amendment 140
Fabio De Masi

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission	*Amendment*
5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the ***30*** percent of the EBITDA in ***subsequent*** tax years in the same way as the borrowing costs for those years.	5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the ***10*** percent of the EBITDA in ***the two following*** tax years in the same way as the borrowing costs for those years.

Or. en

Amendment 141
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission	*Amendment*
5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 30 percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.	5. ***Intra-group exceeding*** borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 30 percent of the EBITDA in subsequent tax years in the same way as the ***intra-group exceeding*** borrowing costs for those years.

Or. en

Amendment 142
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5a. Paragraphs 2 to 5 shall not apply to interest that results from
	(i) borrowings with a valid commercial justification;
	(ii) borrowings concluded between two or more independent enterprises taking into account cash flow, credit rating, currency and other relevant factors of the borrowing entity; or
	(iii) borrowings used to fund public-benefit projects.

Or. en

Amendment 143
Marco Valli, Marco Zanni

Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Paragraphs 2 to 5 shall not apply to financial undertakings.	***deleted***

Or. it

Amendment 144
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Paragraphs 2 to 5 shall not apply to financial undertakings.	***deleted***

Or. en

Amendment 145
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Paragraphs 2 to 5 shall not apply to financial undertakings.	***deleted***

Or. es

Amendment 146
Fabio De Masi

Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Paragraphs 2 to 5 shall not apply to financial undertakings.	6. Paragraphs 2 to 5 shall not apply to financial undertakings ***for a duration of two years starting on the date of entry into force of this directive***.

Or. en

Amendment 147
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 4 – paragraph 6

Text proposed by the Commission	*Amendment*
6. Paragraphs 2 to 5 shall not apply to financial undertakings.	6. Paragraphs 2 to 5 shall not apply to financial undertakings. ***The Commission must review the scope of this article if and when an agreement is reached at the OECD level, when the Commission assess that the OECD agreement can be implemented at Union level.***

Or. en

Amendment 148
Fabio De Masi

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission	*Amendment*
	Article 4a
	Royalties limitation rule
	1. Royalty costs shall be fully deductible in the tax year in which they are incurred if the corresponding income with the recipient of the royalty or licence fee payments by the taxpayer is subject to an effective tax rate at least as high as the

effective tax rate that would have applied for the taxpayer in case of non-deductibility.

2. Royalty costs for which the corresponding income with the recipient of the royalty and licence fee payments is, at its final destination, subject to an effective tax rate lower than the effective tax rate that would apply for the taxpayer in case of non-deductibility shall only be deductible proportionally to the difference in effective tax rates.

For the purpose of this paragraph, "proportional" means that for a difference of a given percentage between the effective tax rates applicable for the taxpayer and the final recipient of the royalty income, a share of that percentage of the royalty costs are deductible for the taxpayer.

Or. en

Amendment 149
Luděk Niedermayer

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission	*Amendment*
	Article 4a
	Permanent establishment
	Member States shall align their applicable legislation and bilateral treaties with the definition of permanent establishment as indicated in the Article 5 (Permanent Establishment) of the OECD Model Convention With Respect To Taxes On Income And On Capital.

Or. en

Amendment 150
Fabio De Masi

Proposal for a directive
Article 4 b (new)

Text proposed by the Commission	*Amendment*
	Article 4b
	Secrecy or low tax jurisdictions
	1. Payments from an entity in a Member State to an entity in a secrecy or low tax jurisdiction, as defined in this Directive, shall be subject to a withholding tax of at least 10 percent.
	2. Payments which are not directly directed to an entity in a secrecy or low tax jurisdiction, but which can be reasonably assumed to be directed to an entity in a secrecy or low tax jurisdiction indirectly, e.g. by means of mere intermediaries in other jurisdictions, shall be equally covered by the provisions of paragraph 1.
	3. Member States shall update any Double Tax Agreements which currently preclude such a level of withholding tax with a view to removing any legal barriers to this collective defence measure.

Or. en

Amendment 151
Luděk Niedermayer

Proposal for a directive
Article 4 b (new)

Text proposed by the Commission	*Amendment*
	Article 4b
	Profits attributable to permanent establishment

	1. Profits that are attributable in a Member State to the permanent establishment referred to in Article 4a are also the profits it might be expected to make, in particular in its dealing with other parts of the enterprise, if it were separate and independent enterprises engaged in the same activity and similar conditions, taking into the account also assets and risks of PE involved.
	2. Where a Member State adjusts the profit attributable to the permanent establishment referred to in paragraph 1 and taxes it accordingly, the profit and tax in other Member States should be adjusted accordingly, in order to eliminate double taxation.
	3. As part of the OECD BEPS Action 7, the OECD is currently reviewing the rules defined in Article 7 OECD Model Convention dealing with profits attributable to permanent establishments. Once these rules are updated, the Member states shall align their applicable legislation accordingly.

Or. en

Amendment 152
Fabio De Masi

Proposal for a directive
Article 4 c (new)

Text proposed by the Commission	*Amendment*
	Article 4c
	Permanent establishment
	1. A fixed place of business that is used or maintained by a taxpayer shall be deemed to give rise to a permanent establishment if the same taxpayer or a closely related person carries out business activities at the same place or at another place in the same Member State and:

a) that place or other place constitutes a permanent establishment for the taxpayer or the closely related person under the provisions of this article, or

b) the overall activity resulting from the combination of the activities carried out by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two places, constitute complementary functions that are part of a cohesive business operation.

2. Where a person is acting in a Member State on behalf of a taxpayer and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the taxpayer, and these contracts are:

a) in the name of the taxpayer, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that taxpayer or that the taxpayer has the right to use, or

c) for the provision of services by that taxpayer,

that taxpayer shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the taxpayer, unless the activities of such person are of auxiliary or preparatory character so that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of this paragraph.

3. The Member States shall adapt any bilateral Double Tax Treaties to this definition.

Or. en

Amendment 153
Luděk Niedermayer

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes, in any of the following circumstances:	1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit ***of assets***, less their value for tax purposes, in any of the following circumstances:

Or. en

Amendment 154
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes, in any of the following circumstances:	1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, ***including profits,*** at the time of exit, less their value for tax purposes, in any of the following circumstances:

Or. es

Amendment 155
Barbara Kappel

Proposal for a directive
Article 5 – paragraph 1 – point -a (new)

Text proposed by the Commission	Amendment
	-a) these provisions only apply where the exit state will lose its taxing right.

Or. en

Amendment 156
Luděk Niedermayer

Proposal for a directive
Article 5 – paragraph 1 – point a

Text proposed by the Commission	Amendment
(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country;	(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country ***in so far as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer***;

Or. en

Amendment 157
Luděk Niedermayer

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission	Amendment
(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country;	(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country ***in so far as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer***;

Or. en

Amendment 158
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in the first Member State;	(c) a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets***, including profits,*** which remain effectively connected with a permanent establishment in the first Member State;

Or. es

Amendment 159
Luděk Niedermayer

Proposal for a directive
Article 5 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) a taxpayer transfers its permanent establishment ***out of a*** Member State.	(d) a taxpayer transfers its permanent establishment ***to another Member State or to a third country in so far as the*** Member State ***of the permanent establishment no longer has the right to tax the transferred assets due to the transfer***.

Or. en

Amendment 160
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
For the purposes of point (c) of the first	For the purposes of point (c) of the first

Text proposed by the Commission	Amendment
subparagraph, any subsequent transfer to a third country of assets out of the permanent establishment which is situated in the first Member State and which the assets are effectively connected with shall be deemed to be a disposal at market value.	subparagraph, any subsequent transfer to a third country of assets***, including profits,*** out of the permanent establishment which is situated in the first Member State and which the assets are effectively connected with shall be deemed to be a disposal at market value.

Or. es

Amendment 161
Fabio De Masi

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission	*Amendment*
	In cases where the market value of a transferred asset increases by at least 50% within two years of the transfer having taken place, the taxpayer is liable to a retrospective surcharge on the tax due as a result of the provisions in the first subparagraph equal to the difference between the market value of the asset at the time of transfer and the increased market value thereafter.

Or. en

Amendment 162
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country that is party to the European Economic Area Agreement (EEA Agreement);	(a) a taxpayer transfers assets***, including profits,*** from its head office to its permanent establishment in another Member State or in a third country that is party to the European Economic Area Agreement (EEA Agreement);

Or. es

Amendment 163
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;	(b) a taxpayer transfers assets***, including profits,*** from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;

Or. es

Amendment 164
Cora van Nieuwenhuizen

Proposal for a directive
Article 5 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	With regards to the effective implementation of this Article, taxpayers shall be granted a transitional period of one year after the Directive's entry into force.

Or. en

Amendment 165
Barbara Kappel

Proposal for a directive
Article 5 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission	Amendment
	A specific ban on charging interest, from which the Member States may not deviate, needs to be set up as deferment of collection must be without interest being charged.

Or. en

Amendment 166
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 4 – point b

Text proposed by the Commission	Amendment
(b) the transferred assets are subsequently transferred to a third country;	(b) the transferred assets***, including profits,*** are subsequently transferred to a third country;

Or. es

Amendment 167
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 4 – point d

Text proposed by the Commission	Amendment
(d) the taxpayer goes bankrupt or is wound up.	(d) the taxpayer ***is engaged in a settlement procedure with its creditors,*** goes bankrupt or is wound up.

Or. es

Amendment 168
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. The European Commission shall monitor that the differences of the legal interest across Member States do not constitute an unfair tax competition between Member States.

Or. en

Amendment 169
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 6

Text proposed by the Commission	*Amendment*
6. For the purposes of paragraphs 1 to 5, 'market value' is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.	6. For the purposes of paragraphs 1 to 5, 'market value' is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction. ***The Commission shall issue a delegated act that sets out a calculation methodology for market value, which may be updated periodically.***

Or. es

Amendment 170
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 5 – paragraph 7

Text proposed by the Commission	*Amendment*
7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor.	7. This article shall not apply to asset transfers***, including profit shifting,*** of a temporary nature where the assets are intended to revert to the Member State of

the transferor***, although the Member State may levy witholding tax on the total value of the assets transferred. The taxpayer shall be entitled to claim repayment of the deduction once it has certified that the assets temporarily transferred, including profits, have reverted***.

Or. es

Amendment 171
Luděk Niedermayer

Proposal for a directive
Article 5 – paragraph 7

Text proposed by the Commission	*Amendment*
7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor.	7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor***, nor to transfers of tangible assets transferred in order to generate income from active business***.

Or. en

Amendment 172
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission	*Amendment*
	Article 5a
	Permanent establishment
	1. A fixed place of business that is used or maintained by a taxpayer shall be deemed to give rise to a permanent establishment if the same taxpayer or a closely related person carries on business activities at the same place or at another place in the

same State and:

a) that place or other place constitutes a permanent establishment for the taxpayer or the closely related person under the provisions of this article; or

b) the overall activity resulting from the combination of the activities carried on by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two places, constitute complementary functions that are part of a cohesive business operation.

2. Where a person is acting in a State on behalf of a taxpayer and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the taxpayer, and these contracts are:

a) in the name of the taxpayer, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that taxpayer or that the taxpayer has the right to use, or

c) for the provision of services by that taxpayer,

that taxpayer shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the taxpayer, unless the activities of such person are of auxiliary or preparatory character so that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of this paragraph.

3. The Member States shall adapt their bilateral treaties to this definition.

Text proposed by the Commission	Amendment
	4. The Commission shall be empowered to define by delegated act the notions of preparatory or auxiliary character.

Or. en

Amendment 173
Marco Valli, Marco Zanni

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission	*Amendment*
	Article 5a
	Ban on setting up ad hoc companies
	Companies established in Member States shall be prohibited from setting up'letterbox' and/or front companies to which they transfer income or assets with a view to ensuring favourable tax treatment, as that favourable treatment would constitute tax abuse, which is banned under Article 7 of this Directive.

Or. it

Amendment 174
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 5 b (new)

Text proposed by the Commission	*Amendment*
	Article 5 b
	Harmful tax regimes
	1. Patent or innovation boxes are not the right incentive to promote Research and Development and should be phased out in Member States where they exist by 2020. In the meantime, stricter rules than the

'modified nexus approach' on economic substance and transparency shall apply to the existing regimes, especially regarding how much revenue is granted in the form of tax exemption to taxpayers benefiting from such boxes regimes. Counter-measures shall be applicable by Member States which see their tax base eroded by such regimes.

2. Tax rulings with a cross-border effect shall be made public. The competent authority of a Member State shall publicly disclose advance rulings and advance pricing arrangements in an accessible centralised register, twelve months at the most after the ruling is signed.

3. Within the Union, the consolidated tax base shall make it possible to eliminate the issue of profit shifting through tax planning as regards intellectual property.

4. That system shall take account of the location of profit attribution.

5. The common consolidated corporate tax base (CCCTB) shall include:

- a common corporate tax base under which a single set of rules shall apply with regard to calculating the taxable result for the purposes of corporation tax, in all the Member States;

- consolidated results for members of the group.

Or. en

Amendment 175
Marco Valli, Marco Zanni

Proposal for a directive
Article 5 b (new)

Text proposed by the Commission	*Amendment*
	Article 5b

	Tax havens
	Companies in Member States may not transfer their earnings to tax havens.
	The Commission shall compile a comprehensive 'black list' of tax havens and countries which distort competition, including those situated in the European Union.
	Banks which carry out consultancy activities and act as partners in the creation of structures intended to provide the basis for tax avoidance practices and for the channelling of earnings to tax havens shall be punishable by law and liable to penalties, including the revocation of their banking licence.

Or. it

Amendment 176
Marco Valli, Marco Zanni

Proposal for a directive
Article 5 c (new)

Text proposed by the Commission	*Amendment*
	Article 5c
	Common Consolidated Corporate Tax Base (CCCTB)
	The Commission shall take steps as quickly as possible to establish a Common Consolidated Corporate Tax Base (CCCTB) at European Union level, through:
	- the application throughout the European Union of the same rules for calculating taxable profits subject to corporation tax;
	- the consolidation of the profits of the members of the group.

Or. it

Amendment 177
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 5 c (new)

Text proposed by the Commission	*Amendment*
	Article 5c
	'Letterbox' companies
	1. The use of letterbox companies shall be prohibited by taxpayers operating in the European Union. Taxpayers shall communicate to tax authorities element of proof demonstrating an economic substance for each of the entities in their group, as part of their annual country-by-country reporting obligation.

Or. en

Amendment 178
Hugues Bayet

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a ***statutory*** corporate tax rate ***lower than 40 percent of the statutory tax rate that***	1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country ***or in another Member State*** or as proceeds from the disposal of shares held in an entity in a third country or ***in another Member State*** or as income from a permanent establishment situated in a third country ***or in another Member State*** where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits

would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.	at an effective corporate tax rate ***of 25 percent. That rate shall be assessed on the basis of the profit before implementation of the operations introduced by these countries to reduce the tax base subject to the rate. That rate shall be revised each year in line with economic developments in world trade***. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

Or. fr

Amendment 179
Fabio De Masi

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution ***from an entity in a third country*** or as proceeds from the disposal of shares ***held in an entity in a third country*** or as income from a permanent establishment ***situated in a third country*** where ***the entity or the permanent establishment*** is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to ***a*** tax on profits at a ***statutory corporate tax*** rate lower than ***40*** percent ***of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer***. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax	1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution or as proceeds from the disposal of shares or as income from a permanent establishment where ***this foreign income*** is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to ***an effective*** tax on profits at a rate lower than ***25*** percent. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be

paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.	taxed.

Or. en

Amendment 180
Marco Valli, Marco Zanni

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a ***statutory*** corporate tax rate ***lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed***.	1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or ***in another Member State*** as proceeds from the disposal of shares held in an entity in a third country or ***in another Member State or*** as income from a permanent establishment situated in a third country ***or in another Member State*** where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at an effective corporate tax rate of ***25%. That rate shall be calculated on the basis of the profits before the implementation of operations introduced by the countries in question to reduce the tax base subject to the rate***.

Or. it

Amendment 181
Cora van Nieuwenhuizen

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.	1. Member States shall not exempt a taxpayer from tax on foreign income ***that does not arise from active business*** which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

Or. en

Amendment 182
Luděk Niedermayer

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a	1. Member States shall not exempt a

taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.	taxpayer from tax on foreign income ***that does not arise from active business,*** which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

Or. en

Amendment 183
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the	1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the

country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than ***40*** percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.	country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than ***25*** percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

Or. es

Amendment 184
Esther de Lange

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third	1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer ***and in the absence of a sound tax treaty with the third country of similar effect***. In those circumstances, the taxpayer shall be

country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

Or. en

Amendment 185
Paul Tang

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity’s country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged ***under the applicable corporate tax system in the Member State of the taxpayer***. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.	1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate ***in the Union*** that would have been charged ***for such an entity***. In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

Or. en

Amendment 186
Fabio De Masi

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. Paragraph 1 shall not apply to ***the following types of*** losses***:***	2. Paragraph 1 shall not apply to ***foreign*** losses***.***

Or. en

Amendment 187
Fabio De Masi

Proposal for a directive
Article 6 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) losses incurred by the permanent establishment of a resident taxpayer situated in a third country;	***deleted***

Or. en

Amendment 188
Fabio De Masi

Proposal for a directive
Article 6 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) losses from the disposal of shares in an entity which is tax resident in a third country.	***deleted***

Or. en

Amendment 189
Cora van Nieuwenhuizen

Proposal for a directive
Article 6 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	This Article should only be applicable if a prior impact assessment has made clear that there will be no negative consequences for the business climate of Member States.

Or. en

Amendment 190
Barbara Kappel

Proposal for a directive
Article 6 a (new)

Text proposed by the Commission	*Amendment*
	Article 6a
	Provision shall be made for the exemption of infrastructure providers, leasing companies and real estate companies.

Or. de

Amendment 191
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Non-genuine arrangements or a series thereof carried out for the ***essential*** purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the	1. Non-genuine arrangements or a series thereof carried out for the ***main*** purpose ***or one of the main purposes*** of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the

corporate tax liability. An arrangement may comprise more than one step or part.	purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.

Or. en

Amendment 192
Danuta Maria Hübner

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Non-genuine arrangements or a series thereof ***carried out*** for the ***essential*** purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.	1. Non-genuine arrangements or a series thereof ***which, having been put into place*** for the ***main*** purpose ***or one of the main purposes*** of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions***, are not genuine taking into consideration all relevant facts and circumstances,*** shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.

Or. en

Amendment 193
Cora van Nieuwenhuizen

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with national law.	3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with ***the*** national law ***of the Member State in which the non-genuine arrangement has been made***.

Or. en

Amendment 194
Hugues Bayet

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with ***national law***.	3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with ***Article 2***.

Or. fr

Amendment 195
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 7 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations and tax audit staff, as well as resources for the training of tax administration staff focusing on cross-border cooperation on tax fraud and avoidance, and on automatic exchange of information in order to ensure full implementation of this Directive.

Or. en

Amendment 196
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 7 – paragraph 3 a (new)

Text proposed by the Commission	Amendment
	3a. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they lead to different taxation of certain types of income, such as those generated by patents.

Or. en

Amendment 197
Paul Tang

Proposal for a directive
Article 7 – paragraph 3 a (new)

Text proposed by the Commission	Amendment
	3a. Member states will implement more detailed provisions that clarify what is meant by non-genuine arrangements that make use of its tax jurisdiction. Tax advisors that help companies create these non-genuine arrangements should be exposed to sanctions at the level of the individual advisor and at the level of the advisory firm. The Member States will implement a sanctions regime for advisors that facilitate a breach of paragraph 1 of this Article, within six months after this Directive comes into force.

Or. en

Amendment 198
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 7 – paragraph 3 b (new)

Text proposed by the Commission	Amendment
	3b. The European Commission shall

	establish a European tax inspectorate as a strong tool against base erosion and profit shifting that will evaluate and advice on the implementation of this Directive, and on its enforcement and compliance across Member States.

Or. en

Amendment 199
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 7 – paragraph 3 b (new)

Text proposed by the Commission	*Amendment*
	3b. The European Parliament may call for the Commission to open an investigation if it considers that a discretionary bilateral tax agreement has been agreed between a Member State and a MNE.

Or. en

Amendment 200
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 7 – paragraph 3 c (new)

Text proposed by the Commission	*Amendment*
	3c. In order to prevent the creation of special purpose entities such as 'letterbox companies' or shell companies with a lower tax treatment, enterprises must correspond to the definitions of permanent establishment and minimum economic substance laid down in Article 2.

Or. en

Amendment 201
Cora van Nieuwenhuizen

Proposal for a directive
Article 8 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. The tax base of a taxpayer shall include the non-distributed income of an entity where the following conditions are met:	1. The tax base of a taxpayer shall include the non-distributed income ***that does not arise from active business*** of an entity where the following conditions are met:

Or. en

Amendment 202
Fabio De Masi

Proposal for a directive
Article 8 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. The tax base of a taxpayer shall include the ***non-distributed*** income of an entity where the following conditions are met:	1. The tax base of a taxpayer shall include the income of an entity where the following conditions are met:

Or. en

Amendment 203
Fabio De Masi

Proposal for a directive
Article 8 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) the taxpayer by itself, or together with its associated enterprises***, as defined under the applicable corporate tax system,*** holds a direct or indirect participation of more	(a) the taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50 percent of the voting rights, or owns more

Text proposed by the Commission	Amendment
than 50 percent of the voting rights, or owns more than 50 percent of capital or is entitled to receive more than 50 percent of the profits of that entity;	than 50 percent of capital**,** or is entitled to receive more than 50 percent of the profits of that entity ***or can be considered the ultimate place of effective management of the entity meaning the place where key management and commercial decisions of the entity that are necessary for the conduct of the entity's business are in substance made***;

Or. en

Amendment 204
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) under the general regime in the country of the entity, profits are subject to an ***effective*** corporate tax rate ***lower than 40 percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer***;	(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate ***of 25 percent; that rate shall be assessed on the basis of the profit before implementation of the operations introduced by these countries to reduce the tax base subject to the rate; that rate shall be revised each year in line with economic developments in world trade***;

Or. fr

Amendment 205
Fabio De Masi

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) ***under the general regime in the country*** of the entity***, profits*** are subject to an effective corporate tax rate lower than ***40*** percent ***of the effective tax rate that***	(b) ***profits*** of the entity are subject to an effective corporate tax rate lower than ***25*** percent;

would have been charged under the applicable corporate tax system in the Member State of the taxpayer;

Or. en

Amendment 206
Marco Valli, Marco Zanni

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) under the general regime in the country of the entity, profits are subject to an ***effective*** corporate tax rate ***lower than 40 percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;***	(b) under the general regime in the country of the entity, profits are subject to a corporate tax rate of ***25%. That rate shall be calculated on the basis of the profits before the implementation of operations introduced by the countries in question to reduce the tax base subject to the rate.***

Or. it

Amendment 207
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than ***40*** percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;	(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than ***25*** percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;

Or. es

Amendment 208
Paul Tang

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 40 percent of the effective tax rate that would have been charged ***under the applicable corporate tax system in the Member State of the taxpayer;***	(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 40 percent of the ***average*** effective tax rate ***in the Union*** that would have been charged ***for such an entity.***

Or. en

Amendment 209
Cora van Nieuwenhuizen

Proposal for a directive
Article 8 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) more than 50 percent of the income accruing to the entity falls within any of the following categories: ***(i) interest or any other income generated by financial assets;*** ***(ii) royalties or any other income generated from intellectual property or tradable permits;*** ***(iii) dividends and income from the disposal of shares;*** ***(iv) income from financial leasing;*** ***(v) income from immovable property, unless the Member State of the taxpayer would not have been entitled to tax the income under an agreement concluded with a third country;*** ***(vi) income from insurance, banking and other financial activities;***	***deleted***

(vii) income from services rendered to the taxpayer or its associated enterprises;

Or. en

Amendment 210
Fabio De Masi

Proposal for a directive
Article 8 – paragraph 1 – point c – introductory part

Text proposed by the Commission	*Amendment*
(c) more than ***50*** percent of the income accruing to the entity falls within any of the following categories:	(c) more than ***25*** percent of the income accruing to the entity falls within any of the following categories:

Or. en

Amendment 211
Fabio De Masi

Proposal for a directive
Article 8 – paragraph 1 – point c – point vii

Text proposed by the Commission	*Amendment*
(vii) income from services rendered to the taxpayer or its associated enterprises;	(vii) income from services rendered to ***or goods traded with*** the taxpayer or its associated enterprises;

Or. en

Amendment 212
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 8 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) the entity is not a company whose principal class of shares is regularly	***deleted***

traded on one or more recognised stock exchanges.

Or. es

Amendment 213
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission	*Amendment*
Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.	Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. ***Furthermore, a company insurer may not reinsure through one of its own subsidiaries.***

Or. fr

Amendment 214
Danuta Maria Hübner

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission	*Amendment*
Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the	Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the

Text proposed by the Commission	Amendment
entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the ***essential*** purpose of obtaining a tax advantage.	entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the ***main*** purpose ***or one of the main purposes*** of obtaining a tax advantage.

Or. en

Amendment 215
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2

Text proposed by the Commission	*Amendment*
Paragraph 1 shall not apply to financial undertakings which are tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of their permanent establishments in one or more Member State.	***deleted***

Or. es

Amendment 216
Paul Tang

Proposal for a directive
Article 8 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. CFC rules shall be applicable to the actual country of establishment of a parent company. Relocating the parent company to a third country will be disregarded if the company has an activity of less than 25% of its total global activities in the new state of establishment.

Or. en

Amendment 217
Paul Tang

Proposal for a directive
Article 8 – paragraph 2 b (new)

Text proposed by the Commission	*Amendment*
	2b. A withholding tax shall be charged on any interest and royalty payments to tax havens, unless the company can prove that these payments relate to active business operations with sufficient economic substance

Or. en

Amendment 218
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 10 – title

Text proposed by the Commission	*Amendment*
Hybrid mismatches	Hybrid mismatches ***between Member States***

Or. en

Amendment 219
Fabio De Masi

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission	*Amendment*
Where two Member States give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member ***State***, and this leads to either a situation where a deduction of the same payment,	Where two Member States ***or a Member State and a third country*** give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member ***States or third countries***, and this leads to

expenses or losses occurs both in the ***Member*** State in which the payment has its source, the expenses are incurred or the losses are suffered and in another ***Member*** State or a situation where there is a deduction of a payment in the ***Member*** State in which the payment has its source without a corresponding inclusion of the same payment in the other ***Member*** State, the legal characterisation given to the hybrid entity by the ***Member*** State in which the payment has its source, the expenses are incurred or the losses are suffered shall ***be followed by*** the other ***Member*** State.	either a situation where a deduction of the same payment, expenses or losses occurs both in the State in which the payment has its source, the expenses are incurred or the losses are suffered and in another State or a situation where there is a deduction of a payment in the State in which the payment has its source without a corresponding inclusion of the same payment in the other State, the legal characterisation given to the hybrid entity by the State in which the payment has its source, the expenses are incurred or the losses are suffered shall ***follow the legal characterisation of*** the other State.

Or. en

Amendment 220
Fabio De Masi

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission	*Amendment*
Where two ***Member*** States give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the ***Member*** State in which the payment has its source without a corresponding inclusion of the same payment in the other ***Member*** State, the legal characterisation given to the hybrid instrument by the ***Member*** State in which the payment has its source shall ***be followed by*** the other ***Member*** State.	Where two Member States give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid instrument by the Member State in which the payment has its source shall ***follow the legal characterisation of*** the other Member State.

Or. en

Amendment 221
Cora van Nieuwenhuizen

Proposal for a directive
Article 10 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	This Article should only be applicable if a prior impact assessment has made clear that there will be no negative consequences for the business climate of Member States.

Or. en

Amendment 222
Fabio De Masi

Proposal for a directive
Article 10 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	Member States shall update their Double Tax Agreements with third countries or negotiate collectively equivalent agreements in order to make the provisions of this article applicable in cross-border relations between Member States and third countries.

Or. en

Amendment 223
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission	*Amendment*
	Article 10a
	Effective tax rate
	1. The Commission shall develop a common method of calculation of the effective tax rate in each Member State,

so as to make it possible to draw up a comparative table of the effective tax rates across the Member States.

Or. en

Amendment 224
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission	*Amendment*
	Article 10a
	Hybrid mismatches involving third countries
	Where a Member State and a third country give a different legal characterisation to the same taxpayer (hybrid entity), including permanent establishments in the third country, and this leads to either a situation where a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in the third country or a situation where there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the third country, the legal characterisation given to the hybrid entity by the third country, the expenses are incurred or the losses are suffered shall be followed by the Member State.
	Where a Member State and a third country give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the third

	country, the legal characterisation given to the hybrid instrument by the third country shall be followed by the Member State.

Or. en

Amendment 225
Luděk Niedermayer

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission	*Amendment*
	Article 10a
	Hybrid mismatches related to third countries
	1. To the extent that a hybrid mismatch between a Member State and a third country results in a double deduction, the Member State shall deny the deduction of such a payment, unless the third country has already done so.
	2. To the extent that a hybrid mismatch between a Member State and a third country results in a deduction without inclusion, the Member State shall deny the deduction or non-inclusion of such a payment, as the case may be, unless the third country has already acted accordingly.

Or. en

Amendment 226
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 10 b (new)

Text proposed by the Commission	Amendment
	Article 10b
	Measures against tax treaty abuses
	1. It is recommended that Member States amend their bilateral tax treaties to include the following provisions:
	(a) a clause ensuring that both parties to the treaties commit that tax will be paid where economic activities are taking place and value is created,
	(b) an addendum to clarify that the objective of bilateral conventions, beyond avoiding double taxation is to fight tax evasion and tax avoidance,
	(c) a clause for a principal purpose test based general anti-avoidance rule, as defined in the Commission recommendation C (2016) 271 final,
	(d) a definition of permanent establishment, as defined in Article 5 of the OECD Model Tax Convention;
	2. The Commission shall make a proposal before 31 December 2017 for a "European approach to tax treaties" in order to set up a European model of tax treaty which could ultimately replace the thousands bilateral treaties concluded by each Member States;
	3. Member States shall denounce or refrain for signing bilateral treaties with jurisdictions not respecting minimum standards of Union agreed principles of good governance in tax matters.

Or. en

Amendment 227
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 10 b (new)

Text proposed by the Commission	Amendment
	Article 10b
	Non-cooperative tax jurisdictions
	1. The Commission shall develop an exhaustive 'black list' of the tax havens and countries, which distort competition by granting favourable tax arrangements. The Commission will elaborate a proposal on how to define a non-cooperative tax jurisdiction and propose ways to stop this practice.

Or. en

Amendment 228
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 10 c (new)

Text proposed by the Commission	Amendment
	Article 10c
	Good governance in tax matters
	1. The Commission shall include provisions on the promotion of good governance in tax matters, with the aim of increasing transparency and of combating harmful tax practises, in international trade agreements and economic partnership agreements to which the European Union is party.

Or. en

Amendment 229
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 10 d (new)

Text proposed by the Commission	*Amendment*
	Article 10d
	Penalties
	1. In order to provide for a higher level of protection against tax avoidance practices, Member States could target arrangements which have been put in place for the main purpose, or one of the main purposes of obtaining an unfair tax advantage. Member States shall apply penalties to the undertakings that infringe the rules laid down in this Directive as foreseen by their national law.
	2. Member States shall inform the European Commission about the penalties that they intend to implement and the type of penalty when transposing this Directive into national law.

Or. en

Amendment 230
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 11 – title

Text proposed by the Commission	*Amendment*
Review	Review ***and Monitoring***

Or. en

Amendment 231
Enrique Calvet Chambon, Sylvie Goulard

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon.	1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to ***the European Parliament and*** the Council thereon.

Or. en

Amendment 232
Marco Valli, Marco Zanni

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon.	1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report ***to the European Parliament and*** the Council thereon.

Or. it

Amendment 233
Marco Valli, Marco Zanni

Proposal for a directive
Article 11 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. In order to guarantee full transparency and the correct implementation of this Directive, exchanges of information on tax matters shall be automatic, mandatory and public.

Or. it

Amendment 234
Jonás Fernández, Ramón Jáuregui Atondo

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive.	2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive***, and, in particular, shall forward a detailed report every year which includes statistics on interest deductions, exit taxes, additional taxation of income earned abroad, non-genuine settlements and hybrid mismatches***.

Or. es

Amendment 235
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Article 11 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. The Commission shall put into place a specific monitoring mechanism to ensure the full and adequate transposition of this Directive and the correct interpretation of all definitions provided and actions required by Member States, in order to have a coordinated European approach on the fight against base erosion and profit shifting.

Or. en

Amendment 236
Sirpa Pietikäinen

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission	*Amendment*
	Article 11a
	European Taxpayer Identification Number (EU TIN)
	The European Commission shall present a legislative proposal for a harmonised, common European Taxpayer Identification Number (EU TIN) by 31 December 2016, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Or. en

Amendment 237
Cora van Nieuwenhuizen

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission	*Amendment*
	Article 11a
	Impact Assessment
	The Commission shall implement a proper impact assessment on all future tax proposals that may touch upon national tax sovereignty. The Commission shall then communicate the results of these assessments to the European Parliament and the Member States.

Or. en