


Procedure file

Basic information		
CNS - Consultation procedure Directive	2010/0387(CNS)	Procedure completed
Company taxation: parent companies and subsidiaries of different Member States, common system. Recast		
Amended by 2013/0400(CNS)		
Subject 3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		15/02/2011
		Vers/ALE GIEGOLD Sven	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		03/02/2011
		ECR KARIM Sajjad	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3129	30/11/2011
	Economic and Financial Affairs ECOFIN	3088	17/05/2011
European Commission	Commission DG	Commissioner	
	Legal Service		
	Taxation and Customs Union		

Key events			
04/01/2011	Legislative proposal published	COM(2010)0784	Summary
03/02/2011	Committee referral announced in Parliament		
17/05/2011	Debate in Council	3088	Summary
22/09/2011	Vote in committee		Summary
27/09/2011	Committee report tabled for plenary, 1st reading/single reading	A7-0314/2011	
25/10/2011	Debate in Parliament		
26/10/2011	Results of vote in Parliament		
26/10/2011	Decision by Parliament	T7-0464/2011	Summary

30/11/2011	Act adopted by Council after consultation of Parliament		
30/11/2011	End of procedure in Parliament		
29/12/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0387(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Recast
Legislative instrument	Directive
	Amended by 2013/0400(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/05218

Documentation gateway

Legislative proposal		COM(2010)0784	04/01/2011	EC	Summary
Economic and Social Committee: opinion, report		CES0353/2011	16/02/2011	ESC	
Committee draft report		PE462.544	04/05/2011	EP	
Amendments tabled in committee		PE465.004	29/06/2011	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0314/2011	27/09/2011	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0464/2011	26/10/2011	EP	Summary
Commission response to text adopted in plenary		SP(2011)8697	30/11/2011	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2011/96](#)
[OJ L 345 29.12.2011, p. 0008](#) Summary

Company taxation: parent companies and subsidiaries of different Member States, common system. Recast

PURPOSE: the recast of Council Directive 90/435/EEC concerning the common taxation system applicable in the case of parent companies and subsidiaries of different Member States.

PROPOSED ACT: Council Directive.

LEGAL BASIS: Article 115 of the Treaty on the Functioning of the European Union (TFEU).

IMPACT ASSESSMENT: no impact assessment was undertaken.

CONTENT: the codification of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States has been initiated by the Commission, and a relevant [proposal](#) has been submitted to the legislative authority. The new Directive was to have superseded the various acts incorporated in it.

In the course of the legislative procedure, views were expressed by the European Parliament and by the Council that the wording of the second subparagraph of Article 4(3) of Directive 90/435/EEC, as it appeared in Article 4(5) of the proposed codified text, might be understood as establishing a secondary legal basis.

In the light of the judgment of the Court of Justice of 6 May 2008 in Case C-133/06 and for the avoidance of any doubt and for the sake of legal certainty, those two institutions requested that the provision in the proposed codified text be redrafted. Since such a redrafting would imply certain substantive changes, and would therefore go beyond straightforward codification, it was considered necessary that point 8 of the Interinstitutional Agreement of 20 December 1994 'Accelerated working method for official codification of legislative texts' be applied, in the light of the Joint declaration on that point.

The amendment to be made to Article 4(5) of the proposed codified text concerns the insertion of words clarifying that the rules referred to in that provision are adopted by the Council acting in accordance with the procedure provided for in the Treaty. It is therefore appropriate to transform the codification of Directive 90/435/EEC into a recast in order to incorporate the necessary amendment.

BUDGETARY IMPLICATION: the proposal has no implication for the European Union's budget.

Company taxation: parent companies and subsidiaries of different Member States, common system. Recast

The Council agreed a general approach on a draft directive recasting existing rules on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (see Council doc. [8619/11](#)).

Company taxation: parent companies and subsidiaries of different Member States, common system. Recast

The Committee on Economic and Monetary Affairs adopted the report drafted by Sven GIEGOLD (Greens/EFA, DE), in the framework of a special legislative procedure) on the proposal for a Council directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast).

The committee recommends that the European Parliament approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission.

Members suggest amendments that stipulate that where a parent company or its permanent establishment, by virtue of the association of the parent company with its subsidiary, receives distributed profits, the State of the parent company and the State of its permanent establishment shall, except when the subsidiary is liquidated, either:

- refrain from taxing such profits if they have been taxed in the country of the subsidiary at a statutory corporate tax rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States;
- tax such profits at a statutory corporate tax rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States while authorising the parent company and the permanent establishment to deduct from the amount of tax due that fraction of the corporation tax related to those profits and paid by the subsidiary and any lower-tier subsidiary, subject to the condition that at each tier a company and its lower-tier subsidiary fall within the definitions laid down in the Directive and meet the requirements provided for in the Directive, up to the limit of the amount of the corresponding tax due.

Company taxation: parent companies and subsidiaries of different Member States, common system. Recast

The European Parliament adopted by 585 votes to 72, with 11 abstentions, a legislative resolution on the proposal for a Council directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast).

Parliament's position at first under the ordinary legislative procedure approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission.

Parliament underlines that in relation to the treatment of permanent establishments, Member States may need to determine the conditions and legal instruments in order to protect the national tax revenue and fend off circumvention of national law, and to avoid extreme forms of under-taxation or non-taxation.

Therefore, Members suggested amendments that stipulate that where a parent company or its permanent establishment, by virtue of the association of the parent company with its subsidiary, receives distributed profits, the State of the parent company and the State of its permanent establishment shall, except when the subsidiary is liquidated, either:

- refrain from taxing such profits if they have been taxed in the country of the subsidiary at a statutory corporate tax rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States;
- tax such profits at a statutory corporate tax rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States while authorising the parent company and the permanent establishment to deduct from the amount of tax due that

fraction of the corporation tax related to those profits and paid by the subsidiary and any lower-tier subsidiary, subject to the condition that at each tier a company and its lower-tier subsidiary fall within the definitions laid down in the Directive and meet the requirements provided for in the Directive, up to the limit of the amount of the corresponding tax due.

Company taxation: parent companies and subsidiaries of different Member States, common system. Recast

PURPOSE: recast of Council Directive 90/435/EEC concerning the common taxation system applicable in the case of parent companies and subsidiaries of different Member States.

LEGISLATIVE ACT: Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

CONTENT: the Council adopted a directive recasting rules on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

It should be noted that the objective of this Directive is to exempt dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and to eliminate double taxation of such income at the level of the parent company.

ENTRY INTO FORCE: 18/01/2012.