Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States: tackling double non-taxation

2013/0400(CNS) - 02/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 513 votes to 32, with 81 abstentions, in the framework of a special legislative procedure (Parliament consultation), a legislative resolution on the proposal for a Council directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

Parliament approved the Commission proposal subject to the following amendments:

Combating tax evasion: Parliament recalled that an estimated EUR 1 trillion of potential tax revenue is lost to tax fraud, tax evasion, tax avoidance or aggressive tax planning in the Union every year, representing an approximate cost of EUR 2 000 per annum for each Union citizen. It is therefore vital to take appropriate measures against tax fraud and to amend Council Directive 2011/96/EU in order to ensure that the application of that directive does not prevent effective action against double non-taxation in the area of hybrid loan structures.

In its resolution of 21 May 2013 on Fight against Tax Fraud, Tax Evasion and Tax Havens, the European Parliament called on the Commission to put forward a proposal in 2013 to amend Directive 2011/96/EU with a view to revising the anti-abuse provision and eliminating double non-taxation, as facilitated by hybrid entities and financial instruments in the Union.

Anti-abuse provision: in order to prevent tax avoidance and abuse through artificial arrangements, the report suggested adding a common, compulsory anti-abuse provision tailored to the purpose and objectives of Directive 2011/96/EU should be inserted.

Application of domestic or agreement based provisions: it is stipulated that this Directive should not preclude the application of domestic or agreement-based provisions required in order to prevent tax evasion or to permit the taxation of activities at the place of production or consumption, in so far as they are compatible with this Directive.

Artificial arrangement: in order to determine whether an arrangement or series of arrangements is artificial, Member States should ascertain, in particular, but not exclusively, whether they involve one or more of the following situations outlined in the Directive.

Parent company: by derogation of the provisions of the Directive, Member States should be able to add, by means of bilateral agreement, the criterion of a holding in the capital by that of a holding of voting rights.

Review: by 31 December 2016, the Commission should report to the European Parliament and the Council reviewing the operation of this Directive and in particular its effectiveness in preventing tax avoidance and abuse. The report should be submitted together with a legislative proposal, if appropriate.