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Committee on Legal Affairs

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DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

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
(COM(2013)0814 – C7-0464/2013 – 2013/0400(CNS))

Rapporteur: Lidia Joanna Geringer de Oedenberg

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SHORT JUSTIFICATION

Your rapporteur for opinion welcomes the Commission proposal for amending the Parent-Subsidiary Directive as it is crucial to close existing loopholes in this Directive.

Your rapporteur recalls that an estimated EUR 1 trillion in public money is lost due to tax fraud and tax avoidance every year in the EU¹. This alarming size of the tax gap represents a rough yearly cost of EUR 2000 for every European citizen. The average of the tax lost in Europe today exceeds the total amount that Member States spend on healthcare, and it amounts to more than four times the amount spent on education in the EU.

The current tax gap in Europe represents not only an alarming loss of public revenue but also a danger for the safeguarding of the EU social model based on quality public services available to all. It is a threat to the proper functioning of the Single Market and a dent to the efficiency and fairness of tax systems within the EU. The loss of revenues continues to increase the deficit and debt levels in the Member States right at the most crucial time of fighting the crisis. Due to tax fraud and tax avoidance, funds available to foster public investment, growth and employment are waning.

Against this background, it is most timely and welcome that the Commission takes the initiative to tackle certain cases of double non-taxation concerning certain financial hybrid mismatches.

Your rapporteur has proposed, in her draft opinion, a number of amendments with a view to better illustrating, reinforcing and clarifying the text proposed by the Commission.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) An estimated EUR 1 trillion of potential tax revenue is lost to tax fraud, tax evasion, tax avoidance and aggressive tax planning every year in the EU, representing an approximate cost of EUR 2000 for European citizen each year.

¹ European Parliament resolution of 21 May 2013 on Fight against Tax Fraud, Tax Evasion and Tax Havens, P7_TA(2013)0205.

Appropriate measures in response are therefore indispensable.

Or. en

Amendment 2

Proposal for a directive Recital -1 a (new)

Text proposed by the Commission

Amendment

(-1a) The Action Plan to strengthen the fight against tax fraud and tax evasion adopted by the Commission on 6 December 2012^{14a} identifies tackling mismatches between tax systems as one of the actions to be undertaken in the short term and includes a legislative amendment of Council Directive 2011/96/EU in order to ensure that the application of the directive does not inadvertently prevent effective action against double non-taxation in the area of hybrid loan structures. The Action Plan also announced a review of anti-abuse provisions in the corporate tax directives, including Directive 2011/96/EU, with a view to implement the principles underlying the Commission Recommendation on aggressive tax-planning^{14b}. In its resolution of 21 May 2013 on Fight against Tax Fraud, Tax Evasion and Tax Havens^{14c}, the European Parliament called on the Commission to present in 2013 a proposal for the revision of the Parent-Subsidiary Directive with a view to revise the anti-abuse clause and to eliminate double non-taxation as facilitated by hybrid entities and financial instruments in the EU.

^{14a} COM(2012)0722.

^{14b} C(2012)8806.

^{14c} P7_TA(2013)0205.

Or. en

Amendment 3

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) For the purpose of avoiding situations of double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States, the Member State of the parent company and the Member State of its permanent establishment should not allow those companies to benefit from the tax exemption applied to received distributed profits, to the extent that such profits are deductible by the subsidiary of the parent company.

Amendment

(3) For the purpose of avoiding situations of double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States, the Member State of the parent company and the Member State of its permanent establishment should not allow those companies to benefit from the tax exemption applied to received distributed profits, to the extent that such profits are deductible by the subsidiary of the parent company. ***The Member State of the parent company and the Member States of its permanent establishment should tax the portion of profits that is deductible by the subsidiary of the parent company.***

Or. en

Amendment 4

Proposal for a directive

Article 1 – point 3

Directive 2011/96/EU

Article 4 – paragraph 1 – point a

Text proposed by the Commission

"(a) refrain from taxing such profits to the extent that such profits are not deductible

Amendment

"(a) refrain from taxing such profits, ***but only*** to the extent that such profits are not

by the subsidiary of the parent company;
or"

deductible by the subsidiary of the parent
company; or"

Or. en

Amendment 5

Proposal for a directive Article 1a (new)

Text proposed by the Commission

Amendment

Article 1a

Review

Two years after the transposition date of this Directive, the Commission shall 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 shall be submitted together with a legislative proposal, if appropriate.

Or. en