3.6.2016 A8-0189/ 001-091

AMENDMENTS 001-091
by the Committee on Economic and Monetary Affairs

Report
Hugues Bayet **A8-0189/2016**
Rules against tax avoidance practices

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

Amendment 1

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) ***in which it recognises that a fully-fledged Common Consolidated Corporate Tax Base (CCCTB), with an appropriate and fair***

distribution key, would be the genuine "game changer" in the fight against artificial BEPS strategies. In light of this, the Commission should publish an ambitious proposal for a CCCTB as soon as possible, and the legislative branch should conclude negotiations on that crucial proposal as soon as possible.

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).

[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)0302 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)0302 final of 17 June 2015.

Amendment 2

Proposal for a directive
Recital 1 a (new)

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

Amendment 3

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	(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against ***genuine*** base

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.	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 competitiveness 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.***

Amendment 4

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.

Amendment 5

Proposal for a directive
Recital 4 a (new)

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

Amendment 6

Proposal for a directive
Recital 4 b (new)

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

Amendment 7

Proposal for a directive
Recital 4 c (new)

Text proposed by the Commission	*Amendment*
	(4c) To avoid inconsistent allocation of profits to permanent establishments, Member States should follow rules for profits attributable to permanent establishment which are in accordance with Article 7 of the OECD Model Tax Convention on Income and on Capital and should align their applicable law and bilateral treaties to those rules, when such

rules are reviewed.

Amendment 8

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 ***and royalty payments, basic defence measures against the use of secrecy or low tax jurisdictions for BEPS***, exit taxation, ***a clear definition of permanent establishment, precise rules governing transfer pricing, a framework for patent box systems,*** a switch-over clause ***in the absence of a sound tax treaty of similar effect with a third country***, 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. ***To correctly apply those rules, tax authorities in Member States must be properly resourced. Nevertheless, it is also necessary to urgently lay down a single set of rules for calculating the 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.***

Amendment 9

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). ***I***t 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 ***or royalty*** payments, out of high tax jurisdictions into countries with lower tax regimes. The interest ***and royalty*** limitation rule***s are*** 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) ***and royalty payments***. ***With respect to interest costs, i***t 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

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 of interest, ***perhaps with*** a more customised approach.

Amendment 10

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission	*Amendment*
	(6a) In the event of the funding of long term infrastructure projects that are in public interest by debt to a third party, where that debt is higher than the threshold for exemption established by this Directive, it should be possible for Member States to grant an exemption to third party loans funding public infrastructure projects under certain conditions, as the application of the proposed provisions on interest limitation in such cases would be counterproductive.

Amendment 11

Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission	*Amendment*
	(6b) Profit shifting into secrecy or low tax jurisdictions poses a particular risk to Member States' tax proceeds as well as to 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 essential 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 tacit 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 or low tax jurisdictions with the international push for tax transparency and fairness.

Amendment 12

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 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	(7) Exit taxes have the function of ensuring that where a taxpayer moves assets ***or 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 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

Text proposed by the Commission	Amendment
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.	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, it should be possible for Member States to provide for deduction in such cases.***

Amendment 13

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 or paying 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 compel multinational companies to pay their taxes fairly.

Amendment 14

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 might 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 might 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).

Amendment 15

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, the difficulty for Member States in applying the concepts of nexus and economic substance to their patent boxes can already be seen. If, by January 2017, 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. The CCCTB should eliminate the issue of***

profit shifting through tax planning as regards intellectual property.

Amendment 16

Proposal for a directive
Recital 7 d (new)

Text proposed by the Commission	*Amendment*
	(7d) 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 optimisation and tax avoidance, and should therefore be exempt from such provisions.

Amendment 17

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 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	(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. This income should be taxable in the Union, if it has been taxed below a certain level in the country ***of***

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.

origin and in the absence of a sound tax treaty of similar effect with that country. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

Amendment 18

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.
	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[1a] should be amended.

	*[1a] **Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).***

Amendment 19

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	(9a) An arrangement or a series of arrangements can be regarded as non-genuine insofar as it leads to different taxation of certain types of income, such as those generated by patents.

Amendment 20

Proposal for a directive
Recital 9 b (new)

Text proposed by the Commission	*Amendment*
	(9b) Member States should implement more detailed provisions that clarify what is meant by non-genuine arrangements that make use of its tax jurisdiction. Companies that incentivise such non-genuine arrangements should be subject to penalties. In order to provide for a higher level of protection against tax avoidance practices, Member States should target arrangements which have been put in place of which the main purpose or one of the main purposes is to obtain an unfair tax advantage.

Amendment 21

Proposal for a directive
Recital 9 c (new)

Text proposed by the Commission	Amendment
	(9c) Member States should have in place a system of penalties as provided for in national law and should inform the Commission thereof.

Amendment 22

Proposal for a directive
Recital 9 d (new)

Text proposed by the Commission	Amendment
	(9d) In order to prevent the creation of special purpose entities such as letterbox companies or shell companies with a lower tax treatment, enterprises should correspond to the definitions of permanent establishment and minimum economic substance laid down in Article 2.

Amendment 23

Proposal for a directive
Recital 9 e (new)

Text proposed by the Commission	Amendment
	(9e) The use of letterbox companies by taxpayers operating in the Union should be prohibited. Taxpayers should communicate to tax authorities evidence demonstrating the economic substance of each of the entities in their group, as part of their annual country-by-country reporting obligations.

Amendment 24

Proposal for a directive
Recital 9 f (new)

Text proposed by the Commission	Amendment
	(9f) In order to improve the current mechanisms to resolve cross-border

taxation disputes in the Union, focusing not only on cases of double taxation but also on double non-taxation, a dispute resolution mechanism with clearer rules and more stringent timelines should be introduced by January 2017.

Amendment 25

Proposal for a directive
Recital 9 g (new)

Text proposed by the Commission	*Amendment*
	(9g) Proper identification of taxpayers is essential for the effective exchange of information between tax administrations. The creation of a harmonised, common European taxpayer identification number (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).

Amendment 26

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	(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.***	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 ***of*** 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. ***Overlaps between CFC rules and the switch over clause should be avoided.***

Amendment 27

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	(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 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.***	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 mismatch arises between a Member State and a third country, proper taxation of such operation must be safeguarded by the Member State.*** 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. [5] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.	______________ [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.

Amendment 28

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 black list should be complemented with a list of sanctions for non-cooperative jurisdictions and for financial institutions that operate within tax havens.

Amendment 29

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 Multinational Enterprises' tax planning strategies. Such information should be made available, in order for tax authorities to react quickly to tax risks, by assessing those risks more effectively, targeting checks and highlighting changes required to the laws in force.

Amendment 30

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	(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.	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.***

Amendment 31

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.

Amendment 32

Proposal for a directive
Recital 14 b (new)

Text proposed by the Commission	*Amendment*
	(14b) 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.

Amendment 33

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**.**

Amendment 34

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

Text proposed by the Commission	Amendment
	(1a) 'taxpayer' means a corporate entity within the scope of this Directive;

Amendment 35

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;

Amendment 36

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, from 31 December 2016, 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 the standards of OECD published on 21 July 2014 entitled 'Standard for Automatic Exchange of Financial Account Information in Tax Matters';
	(b) no register of the ultimate beneficial owners of corporations, trusts and equivalent legal structures at least compliant with the minimum standard defined in the Directive (EU) 2015/849 of the European Parliament and of the Council[1a];
	(c) laws or administrative provisions or practices which grant favourable tax treatment to undertakings irrespective of whether they engage in genuine economic activity or have a significant economic presence in the country in question;
	(d) a statutory corporate tax rate of less than 60 % of the weighted average corporate tax in the Union.
	__________________
	[1a] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141,

5.6.2015, p. 73).

Amendment 37

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 covers 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 presence in the economy of that Member State;

Amendment 38

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:
	(a) no or only nominal taxation for non-residents;
	(b) laws or administrative practices preventing the effective exchange of tax information with other jurisdictions;
	(c) laws or administrative provisions preventing tax transparency or the absence of requirement of a substantial economic activity to be carried out.

Amendment 39

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

Text proposed by the Commission	*Amendment*
	(7c) 'minimum economic substance' means factual criteria, including in the context of the digital economy, which can be used to define an undertaking, such as the existence of human and physical resources specific to the entity, its management autonomy, its legal reality and, where appropriate, the nature of its assets;

Amendment 40

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

Text proposed by the Commission	*Amendment*
	(7d) 'European tax identification number' or 'TIN' means a number as defined in the Commission's Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax evasion;

Amendment 41

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

Text proposed by the Commission	*Amendment*
	(7e) 'transfer pricing' means the pricing at which an undertaking transfers tangible goods or intangible assets or provides services to associated undertakings;

Amendment 42

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

Text proposed by the Commission	*Amendment*
	(7f) 'patent box' means a system used to

Text proposed by the Commission	Amendment
	calculate the income deriving from intellectual property (IP) which is eligible for tax benefits by establishing a link between the eligible expenditure effected when the IP assets were created (expressed as a proportion of the overall expenditure linked to the creation of the IP assets) and the income deriving from those IP assets; this system restricts the IP assets to patents or intangible goods with an equivalent function and provides the basis for the definition of 'eligible expenditure', 'overall expenditure' and 'income deriving from IP assets';

Amendment 43

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

Text proposed by the Commission	*Amendment*
	(7g) 'letterbox company' means any type of legal entity which has no economic substance and which is set up purely for tax purposes;

Amendment 44

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

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

Amendment 45

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

Text proposed by the Commission	*Amendment*
	(7i) '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 Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in the other Member State or third country ('double deduction'); or

(b) there is a deduction of a payment in the Member State or third country in which the payment has its source without a corresponding inclusion of the same payment in the other Member State or third country (deduction without inclusion).

Amendment 46

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 ***20*** % of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR ***2 000 000***, 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.

Amendment 47

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

Text proposed by the Commission	Amendment
	2a. 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 lasts at least 10 years and is considered to be in the general public interest by a Member State or the Union.

Amendment 48

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 future tax years ***for a period of five years***.

Amendment 49

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 ***20 %*** of the EBITDA in ***the five following*** tax years in the same way as the borrowing costs for those years.

Amendment 50

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***

OECD level and when the Commission determines that the OECD agreement can be implemented at Union level.

Amendment 51

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission	*Amendment*
	Article 4a
	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 State and:
	(a) that place or the 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 both 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 both 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;

(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. Member States shall align their applicable legislation and any bilateral double tax treaties to this Article.

4. The Commission is empowered to adopt delegated acts concerning the notions of preparatory or auxiliary character.

Amendment 52

Proposal for a directive
Article 4 b (new)

Text proposed by the Commission	*Amendment*
	Article 4b
	Profits attributable to permanent establishment
	1. Profits in a Member State that are attributable 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 they were separate and independent enterprises engaged in the same activity and similar conditions, taking into account the assets and risks of the permanent establishments 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 avoid double taxation.
	3. As part of the OECD BEPS Action 7, the OECD is currently reviewing the rules defined in Article 7 of the OECD Model Tax Convention on Income and on Capital dealing with profits attributable to permanent establishments and, once those rules are updated, the Member states shall align their applicable legislation accordingly.

Amendment 53

Proposal for a directive
Article 4 c (new)

Text proposed by the Commission	*Amendment*
	Article 4c
	Secrecy or low tax jurisdictions
	1. A Member State may impose withholding tax on payments from an entity in that Member State to an entity in a secrecy or low tax jurisdiction, .
	2. Payments which are not directly made to an entity in a secrecy or low tax jurisdiction, but which can be reasonably assumed to be made to an entity in a secrecy or low tax jurisdiction indirectly, e.g. by means of mere intermediaries in other jurisdictions, shall also be covered by paragraph 1.
	3. In due course, 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.

Amendment 54

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:

Amendment 55

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 ***insofar as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer***;

Amendment 56

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 ***insofar as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer***;

Amendment 57

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 insofar as the*** Member State ***of the permanent establishment no longer has the right to tax the transferred assets due to the transfer***.

Amendment 58

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 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.	For the purposes of point (c) of the first 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.

Amendment 59

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);

Amendment 60

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	(b) a taxpayer transfers assets***, including profits,*** from its permanent establishment

State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;	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;

Amendment 61

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;

Amendment 62

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.

Amendment 63

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***. ***In order to benefit from the exemption, the taxpayer will have to prove to its tax authorities that the foreign income arises from an active business, for example through a certificate from the foreign tax authorities.***

Amendment 64

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission	*Amendment*
	Article 5a
	Transfer pricing
	1. In accordance with the OECD guidelines published on 18 August 2010 entitled 'Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations', the profits that would have been made by an enterprise but have not been made as a result of the following conditions may be included in the profits of that enterprise and taxed accordingly:
	(a) an enterprise of a State participates directly or indirectly in the management, control or capital of an enterprise of the other State; or
	(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one State and an enterprise of the other State; and
	(c) in either case, the two enterprises are linked, in their commercial or financial relations, by agreed or imposed conditions that differ from those that would be agreed between independent enterprises,
	2. Where a State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which the enterprise of the first-mentioned State would have made if the conditions between the two enterprises had been those which would have existed between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, due regard shall be had

	to the other provisions of this Directive and the tax authorities of the States shall, if necessary, consult each other.

Amendment 65

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 corporate tax rate lower than ***15 %***. 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. ***In order to benefit from the exemption, the taxpayer will have to prove to its tax authorities that the foreign income arises from an active business, for example through a certificate of the foreign tax authorities.***

Amendment 66

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

Text proposed by the Commission	*Amendment*
	1a. Paragraph 1 shall also apply within the Union.

Amendment 67

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Paragraph 1 shall not apply to ***the following types of*** losses***:*** ***(a) losses incurred by the permanent establishment of a resident taxpayer situated in a third country;*** ***(b) losses from the disposal of shares in an entity which is tax resident in a third country.***	2. Paragraph 1 shall not apply to ***foreign*** losses**.**

Amendment 68

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.

Amendment 69

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***.

Amendment 70

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, in particular 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.

Amendment 71

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:

Amendment 72

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) ***profits*** of the entity, are subject to an corporate tax rate lower than ***15 %; that rate shall be assessed on the basis of the profit before implementation of the operations introduced by these countries to reduce the taxable base subject to the rate; that rate shall be revised each year in line with economic developments in world trade;***

Amendment 73

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:

Amendment 74

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

Text proposed by the Commission	*Amendment*
	(viia) income from goods traded with the taxpayer or its associated enterprises except such standardised goods that are regularly traded between independent parties and for which publicly observable prices exist.

Amendment 75

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

Text proposed by the Commission	*Amendment*
Point (c) of the first subparagraph shall apply to financial undertakings only if more than ***50*** percent of the entity's income in these categories comes from transactions with the taxpayer or its associated enterprises.	Point (c) of the first subparagraph shall apply to financial undertakings only if more than ***25*** percent of the entity's income in these categories comes from transactions with the taxpayer or its associated enterprises.

Amendment 76

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

Text proposed by the Commission	*Amendment*
2. 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	2. 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.	respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity ***does not pass a substance test*** 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. ***In the specific case of insurance companies, the fact that a parent company reinsures its risks through its own subsidiaries shall be considered as non-genuine.***

Amendment 77

Proposal for a directive
Article 10 – title

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

Amendment 78

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, 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	Where two Member States give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member ***States***, and this leads to 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 be followed by

expenses are incurred or the losses are suffered shall be followed by the other ***Member*** State.	the other State.

Amendment 79

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 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 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 instrument by the State in which the payment has its source shall be followed by the other State.

Amendment 80

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.

Amendment 81

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission	*Amendment*
	Article 10a
	Hybrid mismatches related to third countries

Text proposed by the Commission	Amendment
	Where 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.
	Where 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 appropriate, unless the third country has already done so.

Amendment 82

Proposal for a directive
Article 10 b (new)

Text proposed by the Commission	*Amendment*
	Article 10b
	Effective tax rate
	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.

Amendment 83

Proposal for a directive
Article 10 c (new)

Text proposed by the Commission	*Amendment*
	Article 10c
	Measures against tax treaty abuses
	1. Member States shall 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 treaties, 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 of 28 January 2016 on the implementation of measures against tax treaty abuse (C(2016)0271 final);
	(d) a definition of permanent establishment, as defined in Article 5 of the OECD Model Tax Convention on Income and on Capital.
	2. The Commission shall make a proposal by 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 State.
	3. Member States shall denounce or refrain from signing bilateral treaties with jurisdictions not respecting minimum standards of Union agreed principles of good governance in tax matters.

Amendment 84

Proposal for a directive
Article 10 d (new)

Text proposed by the Commission	*Amendment*
	Article 10d
	Good governance in tax matters
	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 Union is party.

Amendment 85

Proposal for a directive

Article 10 e (new)

Text proposed by the Commission	*Amendment*
	Article 10e
	Penalties
	Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it of any subsequent amendment affecting them.

Amendment 86

Proposal for a directive
Article 11 – title

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

Amendment 87

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.

Amendment 88

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall communicate to	2. Member States shall communicate to

the Commission all information necessary for evaluating the implementation of this Directive.	the ***European Parliament and the*** Commission all information necessary for evaluating the implementation of this Directive.

Amendment 89

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 BEPS.

Amendment 90

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission	*Amendment*
	Article 11a
	European tax identification number
	The Commission shall present a legislative proposal for a harmonised, common European taxpayer identification number by 31 December 2016, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Amendment 91

Proposal for a directive
Article 11 b (new)

Text proposed by the Commission	*Amendment*
	Article 11b
	Mandatory automatic exchange of information on tax matters

In order to guarantee full transparency and the proper implementation of the provisions of this Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU[1a].

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[1a] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).