Text proposed by the Commission

(7a) Tax schemes linked to intellectual property, patents and research and development (R&D) are widely used across the Union. Several studies from the Commission have however clearly shown that the link between patent boxes and promotion of R&D is in many cases arbitrary. 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 innovation boxes can already be seen. If, by January 2017, the Member States have still not fully implemented the modified nexus approach in a uniform manner in order to eliminate current harmful patent box regimes, the Commission should submit a new, binding legislative proposal under Article 116 of the Treaty on the Functioning of the European Union to postpone to 30 June 2017 the abolition of the old harmful regimes by shortening the period during which the grandfathering rule applies. The CCCTB should eliminate the issue of profit shifting.
through tax planning as regards intellectual property. The CCCTB should eliminate the issue of profit shifting through tax planning as regards intellectual property.
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.

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, supported by commensurate staff, equipment, assets and premises which justify the income attributed to it.
1.6.2016

Amendment 103
Pervenche Berès, Hugues Bayet
on behalf of the S&D Group

Report
Hugues Bayet
Rules against certain tax avoidance practices

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

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.

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 as defined in Article 2 in accordance with national law.

Or. en
(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 40 percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;

(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 15 percent; 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 105
Pervenche Berès, Hugues Bayet
on behalf of the S&D Group

Report
Hugues Bayet
Rules against certain tax avoidance practices

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

Text proposed by the Commission

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.

Amendment

Member States shall 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 taxpayer can establish that the controlled foreign company has been set up for valid commercial reasons and carries on an economic activity supported by commensurate staff, equipment, assets and premises which justify the income attributed to it. 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.

Or. en