Text proposed by the Commission

(11a) Tax schemes linked to intellectual property, patents and research and development (R&D) are widely used across the Union. Several studies from the European Commission have however clearly shown that the link between patent boxes and R&D is in most cases arbitrary and/or artificial and, as a result of patent box schemes, all governments, including those engaging in such a policy, often experience large decreases in tax revenue as current models lead to a race to the bottom with regard to the effective tax contribution of MNEs. Moreover, until now, patent, knowledge or R&D boxes have not been proven to foster innovation in the Union and R&D can be better promoted through subsidies or direct tax deductibility of expenses.

Amendment

Or. en
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.

Amendment
2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to 10 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.

Or. en
Amendment 108
Fabio De Masi, Paloma López Bermejo, Marisa Matias, Rina Ronja Kari, Marina Albiol Guzmán, Merja Kyllönen, Kostadinka Kuneva, Ángela Vallina, Marie-Christine Vergiat

Report
Hugues Bayet
Rules against certain tax avoidance practices

Proposal for a directive
Article 4 – paragraph 5

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.

Amendment
5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 10 percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.

Or. en
Amendment 109
Fabio De Masi, Paloma López Bermejo, Marisa Matias, Rina Ronja Kari, Marina Albiol Guzmán, Merja Kyllönen, Kostadinka Kuneva, Ángela Vallina, Marie-Christine Vergiat

Report
Hugues Bayet
Rules against certain tax avoidance practices

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Royalties limitation rule

1. Royalty costs shall be fully deductible in the tax year in which they are incurred if the corresponding income with the recipient of the royalty or licence fee payments by the taxpayer is subject to an effective tax rate at least as high as the effective tax rate that would have applied for the taxpayer in case of non-deductibility.

2. Royalty costs for which the corresponding income with the recipient of the royalty and licence fee payments is, at its final destination, subject to an effective tax rate lower than the effective tax rate that would apply for the taxpayer in case of non-deductibility shall only be deductible proportionally to the difference in effective tax rates.

For the purpose of this paragraph, "proportional" means that for an x % difference between the effective tax rates applicable for the taxpayer and the final recipient of the royalty income, an equal share of x % of the royalty costs are deductible for the taxpayer.
1. A taxpayer who has been benefiting or starts to benefit before 30/06/2016 from preferential tax regimes based on intangible assets (so-called patent or IP boxes) which do not reflect the modified nexus approach shall cease to be granted those benefits after 31/12/2017.

2. No taxpayer who has not already been benefiting before 30/06/2016 from preferential tax regimes based on intangible assets (so-called patent or IP boxes) which do not reflect the modified nexus approach shall be granted those benefits.

3. A taxpayer benefiting from preferential tax regimes based on intangible assets (so-called patent or IP boxes) reflecting the modified nexus approach shall cease to be granted those benefits after 31/12/2021.
Amendment 111
Fabio De Masi, Paloma López Bermejo, Marisa Matias, Rina Ronja Kari, Dimitrios Papadimoulis, Marina Albiol Guzmán, Merja Kyllönen, Kostadinka Kuneva, Ángela Vallina, Marie-Christine Vergiat

Report
Hugues Bayet
Rules against certain tax avoidance practices

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 shall impose a withholding tax on payments from an entity in that Member State to an entity in a secrecy or low tax jurisdiction, as defined in this Directive, where the receiving entity in the secrecy or low tax jurisdiction is not subject to minimum effective taxation.

2. Payments that 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, for example by means of mere intermediaries in other jurisdictions, shall also be covered by the provisions of paragraph 1.

3. Member States shall, in due course, 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.

Or. en