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*Plenary sitting*

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**A9-0387/2023**

4.12.2023

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## **REPORT**

on the proposal for a Council directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes  
(COM(2022)0216 – C9-0197/2022 – 2022/0154(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Luděk Niedermayer

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes**

**(COM(2022)0216 – C9-0197/2022 – 2022/0154(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2022)0216),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0197/2022),
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0387/2023),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive

#### Recital 1

##### *Text proposed by the Commission*

(1) Promoting a fair and sustainable business environment, including through targeted tax measures that incentivise investment and growth, is a high political priority of the Union. To support sustainable and long-term corporate financing, the tax system should minimise unintended distortions of business decisions, for example towards debt rather than equity financing. While the Commission's Capital Markets Union 2020 Action Plan<sup>14</sup> includes important actions to support such financing, for example Action 4 - Encouraging more long-term and equity financing from institutional investors, targeted tax measures should be adopted in order to enhance such actions. Such measures should take into account fiscal sustainability considerations.

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<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Capital Markets Union for people and businesses-new action plan', COM(2020) 590 final ([https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF))

##### *Amendment*

(1) Promoting a fair and sustainable business environment **and improving the corporate tax system**, including through targeted tax measures that incentivise investment and growth, is a high political priority of the Union. To support sustainable, **robust** and long-term corporate financing, **in particular after the three economic crises since 2008, with many companies having to rely on debt financing in order to cover economic losses**, the tax system should minimise unintended distortions of business decisions, for example towards debt rather than equity financing. While the Commission's Capital Markets Union 2020 Action Plan<sup>14</sup> includes important actions to support such financing, for example Action 4 - Encouraging more long-term and equity financing from institutional investors, targeted tax measures should be adopted in order to enhance such actions. Such measures should take into account fiscal sustainability considerations.

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<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Capital Markets Union for people and businesses-new action plan', COM(2020) 590 final ([https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF))

## Amendment 2

### Proposal for a directive Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) The promotion of a competitive and resilient capital markets union, with a strong equity market as one of its pillars, is essential for the promotion of jobs, economic growth and investment. More private investment through equity is needed in order to tackle the economic challenges that lie ahead. Therefore, the creation of a legal instrument to harmonise existing legislative provisions for reducing taxpayers' bias towards debt when making investment choices, without prejudice to the legitimate and effective use of debt instruments, is strongly advisable.***

## Amendment 3

### Proposal for a directive Recital 2

*Text proposed by the Commission*

*Amendment*

(2) Member States' tax systems allow the taxpayers to deduct interest payments on debt financing, and thereby reduce the corporate income tax liability, while costs related to equity financing are non-tax deductible in most Member States. The asymmetric tax treatment of debt and equity financing across the Union induces a bias towards debt in investment decisions. Moreover, where Member States provide for a tax allowance on equity financing in their domestic law, such national measures differ significantly in terms of policy design.

(2) Member States' tax systems allow the taxpayers to deduct interest payments on debt financing, and thereby reduce the corporate income tax liability, while costs related to equity financing are non-tax deductible in most Member States. The asymmetric tax treatment of debt and equity financing across the Union induces a bias towards debt in investment decisions. ***The recent crises associated with the debt problems of companies in the internal market demonstrated that there is a need for a reform that puts equity and debt on equal footing and brings an end to the advantage of debt financing. This Directive is an answer to the numerous calls by Parliament to address the tax-related debt-equity bias<sup>1a</sup>.***

Moreover, where Member States provide for a tax allowance on equity financing in their domestic law, such national measures differ significantly in terms of policy design. *It is therefore essential to safeguard a level playing field for equity solutions and debt instruments, having regard to the need to guarantee minimum levels of systematic coherence between national tax frameworks, namely at the level of tax benefits.*

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*<sup>1a</sup> See:*

- *the European Parliament resolution of 8 October 2020 on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation (2020/2036(INI)) (OJ C 395, 29.9.2021, p. 89);*
- *the European Parliament legislative resolution of 15 March 2018 on the proposal for a Council directive on a Common corporate tax base (2016/0337(CNS)) (OJ C 162, 10.5.2019, p. 181);*
- *the European Parliament resolution of 10 March 2022 with recommendations to the Commission on fair and simple taxation supporting the recovery strategy (EP follow-up to the July Commission’s Action Plan and its 25 initiatives in the area of VAT, business and individual taxation) (2020/2254(INL)) (OJ C 347, 9.9.2022, p. 211);*
- *the European Parliament resolution of 15 February 2022 on the impact of national tax reforms on the EU economy ([2021/2074\(INI\)](#)) (OJ C 342, 6.9.2022, p. 14).*



## Amendment 4

### Proposal for a directive Recital 3

*Text proposed by the Commission*

(3) In order to remove possible tax related distortions among Member States, it is necessary to lay down a common framework of rules to address the tax related debt-equity bias across the Union in a coordinated manner. Such rules should ensure that equity and debt financing are treated in a similar way for tax purposes across the single market. At the same time, a common Union legislative framework should be sustainable also in the short term for Member States' budgets. Such framework should therefore include rules, on the one hand, for the tax deductibility of equity financing costs and, on the other, for limiting the tax deductibility of debt financing costs.

*Amendment*

(3) In order to remove possible tax related distortions among Member States, it is necessary to lay down a common framework of rules to address the tax related debt-equity bias across the Union in a coordinated manner, ***while respecting in full the Union's institutional framework on tax matters as established by the Treaties***. Such rules should ensure that equity and debt financing are treated in a similar way for tax purposes across the single market. At the same time, ***given the extensive tax deductibility of debt and the fact that creating an allowance on increases in equity could have a direct impact on public revenues***, a common Union legislative framework should be sustainable also in the short term for Member States' budgets. Such framework should therefore include rules, on the one hand, for the tax deductibility of equity financing costs and, on the other, for limiting the tax deductibility of debt financing costs. ***This Directive should aim to strike a better balance between the different challenges related to the sustainability of Member States' public finances in the short term and, in doing so, should avoid Member States incurring substantial losses in revenues and aim to improve companies' financial stability.***

## Amendment 5

### Proposal for a directive Recital 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) In order to further develop the capital markets union, this Directive***

*should aim to diversify funding sources for Union companies, especially for SMEs. Therefore, it should avoid creating new costs and barriers in respect of access to financing for those companies that cannot yet easily access capital markets. Limiting the deductibility of those companies' interest costs could hamper investment across the Union, hence the interest deduction should not be limited for SMEs and medium-sized groups.*

## Amendment 6

### Proposal for a directive Recital 5

*Text proposed by the Commission*

(5) To neutralise the bias against equity financing, an allowance should be envisaged so that increases in a taxpayer's equity from one tax period to the next are deductible from its taxable base, subject to certain conditions. The allowance should be calculated by multiplying the increase in equity with a notional interest rate based on risk-free interest rate as laid down in the implementing acts adopted pursuant to Article 77e(2) of Directive 2009/138/EC. Such risk-free interest rates are already part of EU law and have been practically and effectively applied as such. Any part of the allowance that cannot be deducted in a tax period due to insufficient taxable profits may be carried forward. Taking into account the specific challenges that small- and medium-sized enterprises (SMEs) face in accessing capital markets, an increased allowance on equity should be envisaged for taxpayers that are SMEs. In order for the deduction of an allowance on equity to be sustainable for public finances in the short term, it should be limited in time. To safeguard the system from abuses, it is necessary to exclude the tax value of a taxpayer's own shares as well as that of its participation in associated enterprises from

*Amendment*

(5) To neutralise the bias against equity financing, an allowance should be envisaged so that increases in a taxpayer's equity from one tax period to the next are deductible from its taxable base, subject to certain conditions. The allowance should be calculated by multiplying the increase in equity with a notional interest rate based on risk-free interest rate as laid down in the implementing acts adopted pursuant to Article 77e(2) of Directive 2009/138/EC. Such risk-free interest rates are already part of EU law and have been practically and effectively applied as such. Any part of the allowance that cannot be deducted in a tax period due to insufficient taxable profits may be carried forward. Taking into account the specific challenges that small- and medium-sized enterprises (SMEs) **and medium-sized groups** face in accessing capital markets, **their higher financing costs, the lower availability of capital and the higher probability of them experiencing longer periods of losses**, an increased allowance on equity **as well as a longer period for tax deductibility** should be envisaged for taxpayers that are SMEs **or medium-sized groups**. In order for the deduction of an allowance on equity to be

the calculation of changes in equity. In the same vein, it is necessary to provide for the taxation of a decrease in a taxpayer's equity from one tax period to the following one, to prevent an equity increase from being effected in an abusive manner. Such a rule would also encourage the retention of a level of equity. It would apply so that where there is a decrease in equity of a taxpayer that has benefitted from an allowance on equity increase, an amount calculated in the same way as the allowance would become taxable for 10 tax periods; unless the taxpayer provides evidence that this decrease is exclusively due to losses incurred during the tax period or due to a legal obligation.

sustainable for public finances in the short term, it should be *properly and proportionately* limited in time. To safeguard the system from abuses, it is necessary to exclude the tax value of a taxpayer's own shares as well as that of its participation in associated enterprises from the calculation of changes in equity. In the same vein, it is necessary to provide for the taxation of a decrease in a taxpayer's equity from one tax period to the following one, to prevent an equity increase from being effected in an abusive manner. Such a rule would also encourage the retention of a level of equity. It would apply so that where there is a decrease in equity of a taxpayer that has benefitted from an allowance on equity increase, an amount calculated in the same way as the allowance would become taxable for 10 tax periods *for SMEs and medium-sized groups and for 7 consecutive tax periods for any taxpayer other than an SME or a medium-sized group*, unless the taxpayer provides evidence that this decrease is exclusively due to losses incurred during the tax period or due to a legal obligation. *The Commission and Member States should implement information and communication actions relating to this Directive, especially as regards its possibilities and benefits for SMEs.*

## Amendment 7

### Proposal for a directive

#### Recital 6

##### *Text proposed by the Commission*

(6) In order to avoid a misuse of the deduction of the allowance on equity, it is necessary to lay down specific anti-tax avoidance rules. Such rules should target, in particular, schemes put in place to circumvent the conditions on which an equity increase qualifies for an allowance under this Directive, for instance, through

##### *Amendment*

(6) In order to avoid a misuse of the deduction of the allowance on equity, it is necessary to lay down specific anti-tax avoidance rules. Such rules should target, in particular, schemes put in place to circumvent the conditions on which an equity increase qualifies for an allowance under this Directive, for instance, through

the intra-group transfer of participations in associated enterprises. Such rules should also target schemes put in place to claim an allowance in the absence of any equity increase at group level. For example, intra-group debt financing or contributions in cash could be used for these purposes. Specific anti-tax avoidance rules should also prevent schemes from being put in place to claim that an increase in equity, and the corresponding allowance, is higher than it actually is, for example, through an increase in loan financing receivables or overvaluation of assets. Moreover, the general anti-tax abuse rule in Article 6 of Council Directive (EU) 2016/1164<sup>15</sup> applies against abusive acts which are not covered by the specific anti-tax avoidance framework of this Directive.

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<sup>15</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

## Amendment 8

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

the intra-group transfer of participations in associated enterprises. Such rules should also target schemes put in place to claim an allowance in the absence of any equity increase at group level. For example, intra-group debt financing or contributions in cash could be used for these purposes. Specific anti-tax avoidance rules should also prevent schemes from being put in place to claim that an increase in equity, and the corresponding allowance, is higher than it actually is, for example, through an increase in loan financing receivables or overvaluation of assets. Moreover, the general anti-tax abuse rule in Article 6 of Council Directive (EU) 2016/1164<sup>15</sup> applies against abusive acts which are not covered by the specific anti-tax avoidance framework of this Directive. ***Member States should also ensure that the measures they adopt to transpose this Directive into national law comply with the guidance provided by the Code of Conduct Group (business taxation).***

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<sup>15</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

*Amendment*

***(6a) The possible fiscal costs arising from the implementation of this Directive should be assessed together with the benefits of ensuring a more robust financing base for Union companies, which would be of utmost importance in cases of financial stress.***

## Amendment 9

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) To effectively address the tax-related debt-equity bias in a manner sustainable for the Union's public finances, an allowance for equity financing should be accompanied by a **limitation on the deductibility of debt financing costs. An interest limitation rule should therefore limit the deductibility of exceeding borrowing costs and apply independently from the allowance.** Given the different objectives between such a rule and the existing anti-tax avoidance rule on interest limitation of Article 4 of Directive (EU) 2016/1164, both rules should be maintained. Taxpayers should first calculate the deductibility of exceeding borrowing costs under this Directive and then under ATAD. In the event that the latter results in a lower amount of deductible exceeding borrowing costs, the taxpayer should deduct this lower amount and carry forward or back any difference between the two amounts in accordance with Article 4 of ATAD.

#### *Amendment*

(7) To effectively address the tax-related debt-equity bias in a manner sustainable for the Union's public finances, an allowance for equity financing should be accompanied by a **rule limiting the deductibility of exceeding borrowing costs for groups that are not medium-sized groups and undertakings that are not SMEs. However, given the adverse economic conditions stemming from the COVID-19 crisis and from the Russian war of aggression against Ukraine, that limitation rule should only be introduced as of 2027.** Given the different objectives between such a rule and the existing anti-tax avoidance rule on interest limitation of Article 4 of Directive (EU) 2016/1164, both rules should be maintained. Taxpayers should first calculate the deductibility of exceeding borrowing costs under this Directive and then under ATAD. In the event that the latter results in a lower amount of deductible exceeding borrowing costs, the taxpayer should deduct this lower amount and carry forward or back any difference between the two amounts in accordance with Article 4 of ATAD.

## Amendment 10

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) In order to evaluate the effectiveness of this Directive, the Commission should prepare and publish an evaluation report on the basis of the information provided by Member States

#### *Amendment*

(9) In order to evaluate the effectiveness of this Directive, **as well as its impact on SMEs and on tax revenues in Member States,** the Commission should prepare and publish an evaluation report on the basis of the information provided by

and of other available data.

Member States and of other available data.  
***That report should pay special attention to SMEs, and should in particular assess whether the special conditions made available to SMEs have proven to be sufficient to increase the attractiveness to them of equity financing. In the case of a negative evaluation in that report, the Commission should, without undue delay, submit to the European Parliament and to the Council a legislative proposal addressing that issue. The Commission's report should be published.***

### **Amendment 11**

**Proposal for a directive  
Article 3 – paragraph 1 – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) 'large undertaking' means a large undertaking within the meaning of Article 3(4) of Directive 2013/34/EU;***

### **Amendment 12**

**Proposal for a directive  
Article 3 – paragraph 1 – point 5 b (new)**

*Text proposed by the Commission*

*Amendment*

***(5b) 'medium-sized group' means a medium-sized group within the meaning of Article 3(6) of Directive 2013/34/EU;***

### **Amendment 13**

**Proposal for a directive  
Article 3 – paragraph 1 – point 5 c (new)**

*Text proposed by the Commission*

*Amendment*

***(5c) 'large group' means a large group within the meaning of Article 3(7) of Directive 2013/34/EU;***

## Amendment 14

### Proposal for a directive Article 4 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

An allowance on equity shall be deductible, for 10 consecutive tax periods, from the taxable base of **a taxpayer** for corporate income tax purposes up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (“EBITDA”).

*Amendment*

An allowance on equity shall be deductible, for:

- 10 consecutive tax periods, from the taxable base of **an SME or medium-sized group** for corporate income tax purposes up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (“EBITDA”);
- **7 consecutive tax periods, from the taxable base of any large undertaking or large group for corporate income tax purposes up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (“EBITDA”).**

## Amendment 15

### Proposal for a directive Article 4 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that taxpayers are able to carry forward, for a maximum of 3 tax periods, the part of the allowance on equity which exceeds the percentages of EBITDA in a tax period laid down in the first subparagraph.***

## Amendment 16

### Proposal for a directive

#### Article 4 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

If the deductible allowance on equity, in accordance with the first subparagraph, is higher than the taxpayer's net taxable income in a tax period, Member States shall ensure that the taxpayer may carry forward, ***without time limitation***, the excess of allowance on equity ***to the following periods***.

*Amendment*

If the deductible allowance on equity, in accordance with the first subparagraph, is higher than the taxpayer's net taxable income in a tax period, Member States shall ensure that the taxpayer may carry forward the excess of allowance on equity ***as follows***:

- ***for a maximum of 3 tax periods, where the taxpayer is a large undertaking or a large group;***
- ***without time limitation, where the taxpayer is an SME or a medium-sized group.***

## Amendment 17

### Proposal for a directive

#### Article 4 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

***Member States shall ensure that the taxpayers may carry forward, for a maximum of 5 tax periods, the part of the allowance on equity which exceeds 30% of EBITDA in a tax period.***

*Amendment*

***deleted***

## Amendment 18

### Proposal for a directive

#### Article 4 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

Subject to Article 5, the base of the allowance on equity shall be calculated as the difference between the level of net equity at the end of the tax period and the

*Amendment*

Subject to Article 5, the base of the allowance on equity shall be calculated as the difference between the level of net equity at the end of the tax period and the



level of net equity at the end of the previous tax period.

level of net equity at the end of the previous tax period, ***in other words, the year-on-year increase in net equity.***

## **Amendment 19**

### **Proposal for a directive**

#### **Article 4 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

The allowance on equity shall be equal to the base of the allowance multiplied by the 10-year risk-free interest rate for the relevant currency ***and*** increased by a risk premium of 1% ***or, where the taxpayer is an SME, a risk premium of 1.5%.***

*Amendment*

The allowance on equity shall be equal to the base of the allowance multiplied by the 10-year risk-free interest rate for the relevant currency, increased by a risk premium of 1% ***for SMEs.***

## **Amendment 20**

### **Proposal for a directive**

#### **Article 4 – paragraph 3**

*Text proposed by the Commission*

3. If, after having obtained an allowance on equity, the base of the allowance on equity is negative in a tax period, an amount equal to the negative allowance on equity shall become taxable for 10 consecutive tax periods, up to the overall increase of net equity for which such allowance has been obtained under this Directive, unless the taxpayer provides sufficient evidence that this is due to accounting losses incurred during the tax period or due to a legal obligation to reduce capital.

*Amendment*

3. If, after having obtained an allowance on equity, the base of the allowance on equity is negative in a tax period, an amount equal to the negative allowance on equity shall become taxable for 10 consecutive tax periods ***for SMEs or medium-sized groups or 7 consecutive tax periods for any taxpayer other than an SME or a medium-sized group,*** up to the overall increase of net equity for which such allowance has been obtained under this Directive, unless the taxpayer provides sufficient evidence that this is due to accounting losses incurred during the tax period or due to a legal obligation to reduce capital.

## **Amendment 21**

### **Proposal for a directive**

## Article 5 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *Member States shall ensure that the measures they adopt to transpose this Article into national law, comply with the guidance provided by the Code of Conduct Group (business taxation) on notional interest deduction regimes.*

## Amendment 22

### Proposal for a directive Article 6 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that a taxpayer is able to deduct from its taxable base for corporate income tax purposes exceeding borrowing costs as defined in Article 1, point (2), of Council Directive (EU) 2016/1164<sup>35</sup> up to an amount (a) corresponding to 85% of such costs incurred during the tax period. If such amount is higher than the amount (b) determined in accordance with Article 4 of Directive (EU) 2016/1164, Member States shall ensure that the taxpayer be entitled to deduct only the lower of the two amounts in the tax period. The difference between the two amounts (a) and (b) shall be carried forward or back in accordance with Article 4 of Directive (EU) 2016/1164.

1. Member States shall ensure that a taxpayer, ***other than an SME or a medium-sized group***, is able to deduct from its taxable base for corporate income tax purposes exceeding borrowing costs as defined in Article 1, point (2), of Council Directive (EU) 2016/1164<sup>35</sup> up to an amount (a) corresponding to 85% of such costs incurred during the tax period. If such amount is higher than the amount (b) determined in accordance with Article 4 of Directive (EU) 2016/1164, Member States shall ensure that the taxpayer be entitled to deduct only the lower of the two amounts in the tax period. The difference between the two amounts (a) and (b) shall be carried forward or back in accordance with Article 4 of Directive (EU) 2016/1164.

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<sup>35</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

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<sup>35</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

## Amendment 23

### Proposal for a directive Article 6 – paragraph 2

*Text proposed by the Commission*

2. Paragraph 1 shall apply to exceeding borrowing costs incurred from **[OP insert the date of entry into force of this Directive]**.

*Amendment*

2. Paragraph 1 shall apply to exceeding borrowing costs incurred from **1 January 2027**.

## Amendment 24

### Proposal for a directive Article 7 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the number of SMEs that have benefitted from the allowance in the tax period, including as a percentage of the total number of SMEs falling within the scope of this Directive and the number of SMEs that have benefitted from the allowance, which are part of large groups within the meaning of Article 3(7) of Directive 2013/34/EU;

*Amendment*

(b) the number of SMEs **and medium-sized groups** that have benefitted from the allowance in the tax period, including as a percentage of the total number of SMEs **and medium-sized groups** falling within the scope of this Directive and the number of SMEs that have benefitted from the allowance, which are part of large groups within the meaning of Article 3(7) of Directive 2013/34/EU;

## Amendment 25

### Proposal for a directive Article 8 – title

*Text proposed by the Commission*

Reports

*Amendment*

Reports **and review**

## Amendment 26

### Proposal for a directive Article 8 – paragraph 1

*Text proposed by the Commission*

1. By 31 December **2027**, the Commission shall present a report to the European Parliament and to the Council on the implementation of this Directive.

*Amendment*

1. By 31 December **2028**, the Commission shall present a report to the European Parliament and to the Council on the implementation **and impact** of this **Directive accompanied, if appropriate, by a legislative proposal to amend this** Directive.

***That report shall assess the impact of this Directive, paying special attention to:***

***(a) SMEs, in particular assessing whether the special conditions available to SMEs have proven to be sufficient to increase the attractiveness of equity financing to them;***

***(b) the limitation to interest deduction, in particular as regards the impact of amount (a) referred to in Article 6(1) on the fiscal revenues of Member States;***

***(c) the link with legislative acts in the field of corporate tax, namely a Directive ensuring a minimum effective tax rate for the global activities of large multinational groups and a Directive on a Framework for Income Taxation in Europe (BEFIT).***

## Amendment 27

### Proposal for a directive Article 11 – paragraph 2

*Text proposed by the Commission*

2. Member States may defer the application of the provisions of this Directive to taxpayers that on [1 January 2024] benefit from an allowance on equity under national law for a period up to **10** years and in no case for a period longer than the duration of the benefit under

*Amendment*

2. Member States may defer the application of the provisions of this Directive to taxpayers that on [1 January 2024] benefit from an allowance on equity under national law for a period up to **five** years and in no case for a period longer than the duration of the benefit under

national law.

national law.

## **Amendment 28**

### **Proposal for a directive**

#### **Article 11 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Each Member State shall, before it transposes this Directive into national law, make public an assessment of the estimated fiscal costs of the measures to be adopted and the resulting decrease in the effective tax rate for companies, and take proper measures to protect tax revenues if needed.***

## EXPLANATORY STATEMENT

The rapporteur welcomes the European Commission's initiatives in improving the corporate tax systems in the EU, aiming at having fairer and simpler tax systems. This would in turn further strengthen the economy of the EU as well as the Capital Markets Union.

The COVID19 and the current crisis stemming from the Russian invasion emphasises the need for addressing the corporate debt bias, with many companies having to rely on debt financing in order to cover economic losses. As the energy crisis is deepening and interest rates are going up in response to a very high level of inflation, this can put many EU companies, especially SMEs, under a financial strain.

The unequal treatment between debt and equity leads to a tax-led bias toward debt, while this choice can make firms more vulnerable in bad times. It also leads to a bias towards an increase in indebtedness in the EU Single Market and undermines the development of the equity market. Some Member States have already a tax allowance on equity in place at national level, but differences in their design increases compliance costs for businesses active in several Member States. Therefore, the rapporteur welcomes the Commission's proposal to address the debt equity bias at the EU level.

Despite some reservations on the proposal, the rapporteur believes that there is a strong economic reason to consider this proposal positively. To address some concerns, the option to roll out the rules gradually provides a good response.

The rapporteur introduces minor changes to the Commission's text, which aim to assist SMEs. Namely, since SME's are more exposed to longer periods of losses, increased allowance on equity as well as a longer period for tax deductibility should be considered. In addition, the rapporteur proposes higher equity allowance to better reflect the higher costs of capital for SMEs. A gradual introduction of the limitation to interest deduction's rule as well as permanent full deduction of interests for small loans ensures that the proposal will not have a negative impact for smaller SMEs that cannot effectively use equity financing.

Overall, the proposal does not put an end to debt bias, but at least partly increases the attractiveness of equity financing. As such, it could contribute to better stability of EU firms. The rapporteur is of a view that the proposal should not be rejected by the Council, but rather, be fine-tuned and gradually implemented.

**ANNEX: ENTITIES OR PERSONS  
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that he has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

<b>Entity and/or person</b>
Head of Unit Company Taxation Initiatives, DG TAXUD, European Commission

The list above is drawn up under the exclusive responsibility of the rapporteur.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes
<b>References</b>	COM(2022)0216 – C9-0197/2022 – 2022/0154(CNS)
<b>Date Parliament was consulted</b>	8.6.2022
<b>Committee responsible</b> Date announced in plenary	ECON 9.6.2022
<b>Rapporteurs</b> Date appointed	Luděk Niedermayer 21.6.2022
<b>Discussed in committee</b>	12.1.2023                      1.3.2023
<b>Date adopted</b>	28.11.2023
<b>Result of final vote</b>	+:                      35 -:                      8 0:                      9
<b>Members present for the final vote</b>	Rasmus Andresen, Anna-Michelle Asimakopoulou, Gunnar Beck, Marek Belka, Isabel Benjumea Benjumea, Stefan Berger, Engin Eroglu, Markus Ferber, Jonás Fernández, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Claude Gruffat, José Gusmão, Enikő Győri, Eero Heinäluoma, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtzos, Aurore Lalucq, Philippe Lamberts, Pedro Marques, Denis Nesci, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Kira Marie Peter-Hansen, Eva Maria Poptcheva, Antonio Maria Rinaldi, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Inese Vaidere, Johan Van Overtveldt, Roberts Zīle
<b>Substitutes present for the final vote</b>	Ivars Ijabs, Andželika Anna Moźdzanowska, Erik Poulsen, René Repasi
<b>Substitutes under Rule 209(7) present for the final vote</b>	Barry Andrews, Alessandra Basso, Theresa Bielowski, Carlos Coelho, Francisco Guerreiro, Fabienne Keller, Liudas Mažylis
<b>Date tabled</b>	4.12.2023



## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

35	+
ECR	Andželika Anna Mozdzanowska, Denis Nesci, Dorien Rookmaker, Johan Van Overtveldt, Roberts Zīle
NI	Enikő Győri
PPE	Anna-Michelle Asimakopoulou, Isabel Benjumea Benjumea, Stefan Berger, Carlos Coelho, Markus Ferber, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Othmar Karas, Liudas Mažylis, Luděk Niedermayer, Ralf Seekatz, Inese Vaidere
Renew	Engin Eroglu, Ivars Ijabs, Fabienne Keller, Georgios Kyrtzos, Eva Maria Poptcheva
S&D	Marek Belka, Theresa Bielowski, Jonás Fernández, Eero Heinäluoma, Pedro Marques, René Repasi, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli

8	-
NI	Lefteris Nikolaou-Alavanos
The Left	José Gusmão
Verts/ALE	Rasmus Andresen, Claude Gruffat, Francisco Guerreiro, Stasys Jakeliūnas, Philippe Lamberts, Kira Marie Peter-Hansen

9	0
ID	Alessandra Basso, Gunnar Beck, France Jamet, Antonio Maria Rinaldi
Renew	Barry Andrews, Billy Kelleher, Ondřej Kovařík, Erik Poulsen
S&D	Aurore Lalucq

Key to symbols:

+ : in favour

- : against

0 : abstention