

Question for written answer E-001991/2023
to the Commission
Rule 138
Romana Tomc (PPE)

Subject: Does part of the Corporation Tax Act contravene EU law?

The Slovenian tax authority is able to reclassify certain transactions of a Slovenian taxable person with its parent company from another country as hidden distribution of profits and impose a withholding tax.

In principle, this hidden distribution of profits within the EU would be exempt from withholding tax, in accordance with Directive 2011/96/EU, but the Slovenian legislator, in Article 71(2) of the Corporation Tax Act (ZDDPO-2), has explicitly provided that the benefit under this Directive does not apply to hidden profit distribution resulting from non-compliance with transfer pricing rules.

The objective of this EU Directive is to prevent discrimination and double taxation and to ensure the effective functioning of the EU's internal market.

In view of the above, I would like to ask:

1. Does Slovenia have the competence to disallow benefits for all hidden profit distribution resulting from non-compliance with Article 16 ZDDPO-2 (rules on transfer pricing)?
2. Can any failure to comply with Article 16 ZDDPO-2 which results in the classification of a given payment as hidden distribution of profits be regarded, *prima facie*, as fraudulent or abusive (in the context of Article 71(6) ZDDPO-2, having regard to Article 1(2) of the aforementioned directive)?
3. Is the Commission aware that Slovenian legislation may be in contravention of EU law?

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