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DRAFT REPORT

on the proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market
(COM(2016)0026 – C8-0031/2016 – 2016/0011(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Hugues Bayet

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 laying down rules against tax avoidance practices that directly affect the functioning of the internal market
(COM(2016)0026 – C8-0031/2016 – 2016/0011(CNS))**

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2016)0026),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0031/2016),
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2016),
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 5

Text proposed by the Commission

(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

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 clear definition of permanent***

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.

establishment, precise rules governing transfer pricing, a framework for patent box systems, 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.

Or. fr

Amendment 2

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. 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 force multinational companies to pay their taxes fairly.

Or. fr

Amendment 3

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) The term transfer prices refers to the

conditions and arrangements surrounding transactions effected within a multinational company. 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 may 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 economic taxation which may 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).

Or. fr

Amendment 4

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. If, by June 2016, the Member States have still not implemented the modified nexus approach in a uniform manner, the Commission should submit a new, binding legislative proposal under Article 116 of the Treaty on the Functioning of the European Union.

Or. fr

Amendment 5

Proposal for a directive Recital 11

Text proposed by the Commission

(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 entities⁴ and hybrid permanent establishments⁵ 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***

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 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 entities⁴ and hybrid permanent establishments⁵ 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.

States and third countries still need to be further examined.

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.

Or. fr

Amendment 6

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) An exhaustive 'black list', accepted by all 28 Member States, should be drawn up of the tax havens and countries, including those in the EU, which distort competition by granting favourable tax arrangements.

Or. fr

Amendment 7

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 good time to comprehensive and relevant information about tax planning strategies. The availability of such information, in particular at the start of the process, makes it possible to react quickly to tax risks, by assessing those risks more

effectively, targeting checks and making the changes required to the legislation in force.

Or. fr

Amendment 8

Proposal for a directive Recital 15

Text proposed by the Commission

(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,

Amendment

(15) The Commission 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,

Or. fr

Amendment 9

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

Text proposed by the Commission

Amendment

(7a) 'permanent establishment': situation of a taxpayer who is taxed in the country where the economic activity takes place or where the value is created; this definition should also address 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 digital presence in the economy of that country;

Or. fr

Amendment 10

Proposal for a directive

Article 2 – paragraph 1 – point 7 b (new)

Text proposed by the Commission

Amendment

(7b) 'tax haven': country which implements tax measures characterised by zero or very low rates of effective taxation, by the use of measures which reduce the tax base to such an extent that the nominal rate of tax is levied on a very small base, by a refusal to engage in genuine exchanges of information with foreign tax authorities and by a lack of transparency in its legislative, legal or administrative provisions, or which grants 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;

Or. fr

Amendment 11

Proposal for a directive

Article 2 – paragraph 1 – point 7 c (new)

Text proposed by the Commission

Amendment

(7c) 'minimum economic substance': the factual criteria, also 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;

Or. fr

Amendment 12

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': number as defined in the Commission's 2012 action plan to step up the fight against fraud and tax evasion;

Or. fr

Amendment 13

Proposal for a directive

Article 2 – paragraph 1 – point 7 e (new)

Text proposed by the Commission

Amendment

(7e) 'transfer prices': the prices at which an undertaking transfers tangible goods or intangible assets or provides services to associated undertakings;

Or. fr

Amendment 14

Proposal for a directive

Article 2 – paragraph 1 – point 7 f (new)

Text proposed by the Commission

Amendment

(7f) 'patent box': system used to 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';

Or. fr

Amendment 15

Proposal for a directive

Article 2 – paragraph 1 – point 7 g (new)

Text proposed by the Commission

Amendment

(7g) "'letterbox" company': any type of legal entity which has no economic substance and which is set up purely for tax purposes.

Or. fr

Amendment 16

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 **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. fr

Amendment 17

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

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.

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 *for a period of two years*.

Or. fr

Amendment 18

Proposal for a directive

Article 4 – paragraph 5

Text proposed by the Commission

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. fr

Amendment 19

Proposal for a directive

Article 4 – paragraph 6

Text proposed by the Commission

6. Paragraphs 2 to 5 shall not apply to financial undertakings.

Amendment

6. Paragraphs 2 to 5 shall not apply to financial undertakings *for a period of two years from ... [date of entry into force of this Directive]. After that date, the Commission shall be responsible for proving the need for this exemption by means of an impact study.*

Amendment 20

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

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 on business activities at the same place or at another place in the same State and:

a) that place or 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 on by the taxpayer and the closely related person at the same place, or by the same taxpayer or closely related persons at the two 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 the two 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, or

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. The Member States shall adapt their bilateral treaties to this definition.

Or. fr

Amendment 21

Proposal for a directive Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5b

Transfer pricing

As indicated in the OECD's 2010 document entitled 'Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations':

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one Contracting State and an enterprise of the

other Contracting 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, the profits that would have been made by one of these enterprises but for these conditions and have not been made owing to these conditions may be included in the profits of the enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this directive and the competent authorities of the Contracting States shall if necessary consult each other.

Or. fr

Amendment 22

Proposal for a directive Article 5 c (new)

Text proposed by the Commission

Amendment

Article 5c

Patent box regime

1. The Commission shall clarify what corresponds to investment in research and development in order to guarantee minimum effective taxation of patent boxes.

2. The Commission shall submit a legislative proposal by June 2016 on the basis of Article 116 of the Treaty on the Functioning of the European Union if the Member States are still not applying the modified nexus approach as agreed by the 'code of conduct' group in a harmonised manner.

3. Within the Union, the consolidated tax base shall make it possible to eliminate the issue of profit shifting through tax planning as regards intellectual property.

4. That system shall take account of the location of profit attribution.

5. The common consolidated corporate tax base (CCCTB) shall include:

- a common corporate tax base under which a single set of rules shall apply with regard to calculating the taxable result for the purposes of corporation tax, in all the Member States;

- consolidated results for members of the group.

Or. fr

Amendment 23

Proposal for a directive Article 5 d (new)

Text proposed by the Commission

Amendment

Article 5d

'Letterbox' companies

The Member States may not transfer assets or income to a 'letterbox' company.

Amendment 24**Proposal for a directive
Article 6 – paragraph 1***Text proposed by the Commission*

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.

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 in another European Union country** or as proceeds from the disposal of shares held in an entity in a third country **or in another European Union country** or as income from a permanent establishment situated in a third country **or in another European Union 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 **an effective corporate tax rate of 25 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**. 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.

Amendment 25

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.

Or. fr

Amendment 26

Proposal for a directive Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they lead to different taxation of certain types of income, such as those generated by patents.

Or. fr

Amendment 27

Proposal for a directive Article 7 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3a. The European Parliament may call for an investigation to be opened if it considers that tax abuse is taking place.

Or. fr

Amendment 28

Proposal for a directive Article 7 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. In order to prevent the creation of special purpose entities such as ‘letterbox companies’ or shell companies with a lower tax treatment, enterprises must correspond to the definitions of permanent establishment and minimum economic substance laid down in Article 2.

Or. fr

Amendment 29

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 ***distributed and*** non-distributed income of an entity where the following conditions are met:

Or. fr

Amendment 30

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***

(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate ***of 25*** 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***

of the taxpayer;

*rate; that rate shall be revised each year
in line with economic developments in
world trade;*

Or. fr

Amendment 31

Proposal for a directive

Article 8 – paragraph 1 – point c – introductory part

Text proposed by the Commission

(c) more than **50** percent of the income accruing to the entity falls within any of the following categories:

Amendment

(c) more than **25** percent of the income accruing to the entity falls within any of the following categories:

Or. fr

Amendment 32

Proposal for a directive

Article 8 – paragraph 1 – point c – point vii

Text proposed by the Commission

vii) income from services rendered to the taxpayer or its associated enterprises;

Amendment

vii) income from **assets and from** services rendered to the taxpayer or its associated enterprises;

Or. fr

Amendment 33

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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.

with the taxpayer or its associated enterprises.

Or. fr

Amendment 34

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

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 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.

Or. fr

Amendment 35

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

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*

Amendment

Where two Member States *or a Member State and a third country* give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member *States or third countries*, 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

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

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 the other State.

Or. fr

Amendment 36

Proposal for a directive Article 10 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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.

Or. fr

Amendment 37

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to

Amendment

1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to

the Council thereon.

the *European Parliament and the* Council thereon.

Or. fr

Amendment 38

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive.

Amendment

2. Member States shall communicate to the *European Parliament and the* Commission all information necessary for evaluating the implementation of this Directive.

Or. fr

Amendment 39

Proposal for a directive Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

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/EU¹.

¹ ***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).***

EXPLANATORY STATEMENT

An OECD study has estimated that aggressive tax optimisation by multinationals causes losses to state budgets all over the world amounting to between USD 100 and 240 billion every year. This represents between 4 and 10% of global corporate tax revenues. Above all, it represents a significant loss of revenue for States, thus reducing their ability to invest in action that would promote employment, combat poverty and develop effective health systems for all.

Building economic and monetary union must be achieved through a harmonisation of European taxation. Fair and effective corporate taxation must become the cornerstone of the single market.

If we are to have a reliable single market, the Member States must come to an agreement on tax matters.

A coordinated and harmonised approach to the implementation of tax systems is vital in order to guarantee the proper functioning of the single market and the success of the capital markets union.

The rapporteur welcomes the Commission's proposal as a positive step towards limiting tax evasion by multinationals. He nevertheless considers that the proposal would gain in clarity and effectiveness with the proposed amendments.

The main aim of this report is to ensure that enterprises pay their taxes where they make their profits.

To this end, the rapporteur has decided to introduce 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 is the only way of forcing it to pay its taxes fairly. Too often, multinational companies currently make arrangements to transfer their profits to tax havens without having paid any tax.

The rapporteur has clarified and unified legislation on patents. Until now, multinationals have used patent incentives to artificially reduce their profits. This has an adverse impact on genuinely innovative countries. Parliament is proposing that these multinationals should be subject to an exit tax where they repatriate proceeds from patents to countries with lower tax rates.

The rapporteur has also strengthened the European Parliament's role. The European Parliament should be the body responsible for verifying that this directive is being implemented effectively in the 28 Member States. It should also be able to carry out an independent assessment to gauge its effectiveness.

Finally, the rapporteur regrets that the Commission has not yet submitted a legislative proposal on the CCCTB. The common consolidated corporate tax base would offer enterprises a one-stop-shop system for filling in their tax declarations and consolidating the profits and losses they record throughout the European Union.