



**2021/0434(CNS)**

12.5.2022

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## **DRAFT REPORT**

on the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM(2021)0565 – C9-0041/2022 – 2021/0434(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Lídia Pereira

### ***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 to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM(2021)0565 – C9-0041/2022 – 2021/0434(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2021)0565),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0041/2022),
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2022),
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) Ensuring fair and effective taxation in the internal market and tackling tax avoidance and evasion remain high political priorities in the Union. While recent years saw important progress in this area, especially with the adoption of Council Directive 2016/1164<sup>10</sup> concerning anti-tax avoidance and the expansion of scope of Council Directive 2011/16/EU<sup>11</sup> on administrative cooperation, further measures are necessary to tackle specifically identified practices of tax avoidance and evasion, which are not fully captured by the existing legal framework of the Union. In particular, multinational groups often create undertakings with no minimal substance, to lower their overall tax liability, including by shifting profits away from certain high-tax Member States in which they carry out economic activity and create value for their business. This proposal complements the progress achieved in corporate transparency through requirements concerning beneficial ownership information introduced by the anti-money laundering framework, which address situations where undertakings are created to conceal true ownership, whether of the undertakings themselves or of the assets they manage and own, such as real estate or property of high value.

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<sup>10</sup> Council Directive 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).

<sup>11</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and

##### *Amendment*

(1) Ensuring fair and effective taxation in the internal market and tackling tax avoidance and evasion remain high political priorities in the Union. While recent years saw important progress in this area, especially with the adoption of Council Directive 2016/1164<sup>10</sup> concerning anti-tax avoidance and the expansion of scope of Council Directive 2011/16/EU<sup>11</sup> on administrative cooperation ***in the field of taxation***, further measures are necessary to tackle specifically identified practices of tax avoidance and evasion, which are not fully captured by the existing legal framework of the Union. In particular, multinational groups often create undertakings with no minimal ***economic*** substance, to lower their overall tax liability, including by shifting profits away from certain high-tax Member States in which they carry out economic activity and create value for their business. This proposal complements the progress achieved in corporate transparency through requirements concerning beneficial ownership information introduced by the anti-money laundering framework, which address situations where undertakings are created to conceal true ownership, whether of the undertakings themselves or of the assets they manage and own, such as real estate or property of high value.

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<sup>11</sup> 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).

repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

Or. en

## Amendment 2

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

*Text proposed by the Commission*

*Amendment*

***(1a) Shell entities, namely companies with minimal economic substance, can be used for legitimate purposes. Therefore, it is important to guarantee a proportionate legal framework that safeguards the situation of small and medium-sized enterprises (SMEs) that use legal structures to promote investments, comply with national laws or operate in different national markets while, at the same time, legislating in concrete, on the misuse of shell entities to avoid taxation.***

Or. en

## Amendment 3

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

*Text proposed by the Commission*

*Amendment*

***(1b) The lack of an international instrument on the misuse of shell entities for tax purposes creates a significant loophole in the global efforts to combat tax fraud and evasion and aggressive tax planning. The absence of such an instrument confirms the importance of the legal standards laid down in this Directive, as it will be the leading example on the matter. It is essential to guarantee that the obligations provided for in this Directive are proportionate, effective and neutral from a taxation point of view, preserving the competitiveness of***

#### **Amendment 4**

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

*Text proposed by the Commission*

*Amendment*

***(1c) The misuse of shell entities for tax purposes leads to a reduction in tax liability and the tax loss within the Union, which is estimated at around EUR 23 billion per year. It is therefore essential that this Directive set ambitious and proportionate standards for the definition of common minimum substance requirements, for the improvement of exchange of information between national tax administrations and for the dissuasion of the use of shell entities promoted by certain intermediaries.***

Or. en

#### **Amendment 5**

##### **Proposal for a directive Recital 2**

*Text proposed by the Commission*

*Amendment*

(2) It is acknowledged that undertakings with no minimal substance may be set up in a Member State with the main objective of obtaining a tax advantage, notably by eroding the tax base of another Member State. While some Member States have developed a legislative or administrative framework to protect their tax base from such schemes, the relevant rules often have a limited effect, as they only apply in the territory of a single Member State and do not effectively capture situations that involve more than one Member State. Furthermore, the national rules that apply in this field

(2) It is acknowledged that undertakings with no minimal substance may be set up in a Member State with the main objective of obtaining a tax advantage, notably by eroding the tax base of another Member State, ***creating a window of opportunity for aggressive tax planning***. While some Member States have developed a legislative or administrative framework to protect their tax base from such schemes, the relevant rules often have a limited effect, as they only apply in the territory of a single Member State and do not effectively capture situations that involve more than one Member State.



significantly differ across the Union while some Member States have no rules at all, to tackle the misuse of undertakings with no or minimal substance for tax purposes.

Furthermore, the national rules that apply in this field significantly differ across the Union while some Member States have no rules at all, to tackle the misuse of undertakings with no or minimal substance for tax purposes. ***It is therefore important to create a Union-wide legal approach to ensure a framework for loyal and fair tax competition and safeguard the integrity of the internal market.***

Or. en

## Amendment 6

### Proposal for a directive Recital 3

#### *Text proposed by the Commission*

(3) It is necessary to lay down a common framework, in order to strengthen Member States' resilience against practices of tax avoidance and evasion linked to the use of undertakings which do not perform an economic activity even if presumably they are engaged with economic activity and therefore do not have any ***or have only*** minimal substance for tax purposes. This is done in order to ensure that undertakings lacking minimal substance are not used as instruments of tax evasion or tax avoidance. As those undertakings may be established in one Member State but may be used with the effect of eroding the tax base of another Member State, it is critical to agree on a common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance. Where an undertaking has been found to have sufficient substance under this Directive, this should not prevent the Member States from continuing to operate anti-tax avoidance and evasion rules, provided that these are consistent with

#### *Amendment*

(3) It is necessary to lay down a common framework, in order to strengthen Member States' resilience against practices of tax avoidance and evasion linked to the use of undertakings which do not perform an economic activity even if presumably they are engaged with economic activity and therefore do not have any minimal substance for tax purposes. This is done in order to ensure that undertakings lacking minimal substance are not used as instruments of tax evasion or tax avoidance. As those undertakings may be established in one Member State but may be used with the effect of eroding the tax base of another Member State, it is critical to agree on a common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance. Where an undertaking has been found to have sufficient substance under this Directive, this should not prevent the Member States from continuing to operate anti-tax avoidance and evasion rules, provided that these are consistent with

Union law.

Union law.

Or. en

## Amendment 7

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

*Text proposed by the Commission*

*Amendment*

***(3a) Taking into consideration the real risk of low capacity of Member States' tax administrations and the risk that the administrative cooperation is inadequate for the purpose of this Directive, it is of utmost importance that the capacities of tax administrations be reinforced and that the exchange of information be improved. It is necessary that Member States enable themselves to administer the information to which they have access, implement the systems supporting the exchange of that information and enforce the proposed sanctions. In support of this Directive, the Commission should suggest specific activities within the Fiscalis programme.***

Or. en

## Amendment 8

### Proposal for a directive Recital 5

*Text proposed by the Commission*

*Amendment*

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used with the main objective of obtaining a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of three cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used with the main objective of obtaining a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of three cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as

aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, artworks, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private, non-business, use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services alone, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition.

aforementioned to justify that they be subjected to reporting requirements. ***Undertakings should do the gateway test by themselves in the form of a self-assessment.*** A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, artworks, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private, non-business, use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services alone,

While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

Or. en

## Amendment 9

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking

#### *Amendment*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking

is resident for tax purposes should therefore deny to issue a certificate of tax residence. ***Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as above.*** This denial of a certificate of tax residence, ***or alternatively the issue of a special certificate of tax residence,*** should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

is resident for tax purposes should therefore deny to issue a certificate of tax residence ***and issue a statement regarding the grounds on which the decision was based.*** This denial of a certificate of tax residence should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

Or. en

## **Amendment 10**

### **Proposal for a directive Recital 16**

#### *Text proposed by the Commission*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules

#### *Amendment*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules

that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings as regards whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk for not fulfilling minimum substance as defined in this Directive. Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to share information on the outcome, even where there is no finding of 'shell' entity.

that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings as regards whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk for not fulfilling minimum substance as defined in this Directive. Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to share information on the outcome, even where there is no finding of 'shell' entity.

*Joint audits allow for the pooling of expertise, thereby ensuring a complete determination of the facts and promoting acceptance of the audit results. Council Directive (EU) 2021/514<sup>1a</sup> created a uniform framework for joint audits and therefore, in appropriate cases, they should be used.*

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<sup>1a</sup> Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104, 25.3.2021, p. 1).

Or. en

## Amendment 11

### Proposal for a directive

#### Article 6 – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) more than **75%** of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

(a) more than **80 %** of the revenues accruing to the undertaking in the preceding two tax years is relevant income ***in accordance with Article 4;***

Or. en

## **Amendment 12**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 – subparagraph 1 – point b – point i**

*Text proposed by the Commission*

*Amendment*

(i) more than **60%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

(i) more than **55 %** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

Or. en

## **Amendment 13**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 – subparagraph 1 – point b – point ii**

*Text proposed by the Commission*

*Amendment*

(ii) ***at least 60%*** of the undertaking's relevant income is earned or paid out via cross-border transactions;

(ii) ***more than 65 %*** of the undertaking's relevant income is earned or paid out via cross-border transactions;

Or. en

## **Amendment 14**

### **Proposal for a directive**

#### **Article 6 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-

(c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-

making on significant functions.

making on significant functions *to an entity that is not an associated enterprise within the same jurisdiction as the reporting undertaking.*

Or. en

## Amendment 15

### Proposal for a directive

#### Article 6 – paragraph 2 – subparagraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

*(ba) entities owned by regulated financial undertakings and which have as their objective the holding of assets or the investment of funds;*

Or. en

## Amendment 16

### Proposal for a directive

#### Article 6 – paragraph 2 – subparagraph 1 – point e

*Text proposed by the Commission*

*Amendment*

(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income;

(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income *and working in the jurisdiction where the undertaking is resident for tax purposes;*

Or. en

## Amendment 17

### Proposal for a directive

#### Article 7 – paragraph 1 – point c – point i – point 3

*Text proposed by the Commission*

*Amendment*

*(3) actively and independently use the authorisation referred to in point (2) on a regular basis;*

*deleted*

Or. en



## Amendment 18

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

*Text proposed by the Commission*

1. An undertaking that declares to meet all the indicators of minimum substance set out in Article 7(1) and provides the **satisfactory** supporting documentary evidence in accordance with Article 7(2) shall be presumed to have minimum substance for the tax year.

*Amendment*

1. An undertaking that declares to meet all the indicators of minimum substance set out in Article 7(1) and provides the supporting documentary evidence in accordance with Article 7(2) shall be presumed to have minimum substance for the tax year.

Or. en

## Amendment 19

### Proposal for a directive Article 8 – paragraph 2

*Text proposed by the Commission*

2. An undertaking that declares not to meet one or more of the indicators set out in Article 7(1) or does not provide **satisfactory** supporting documentary evidence in accordance with Article 7(2) shall be presumed not to have minimum substance for the tax year.

*Amendment*

2. An undertaking that declares not to meet one or more of the indicators set out in Article 7(1) or does not provide **the required** supporting documentary evidence in accordance with Article 7(2) shall be presumed not to have minimum substance for the tax year.

Or. en

## Amendment 20

### Proposal for a directive Article 12 – paragraph 1 – introductory part

*Text proposed by the Commission*

Where an undertaking does not have minimum substance for tax purposes in the Member State where it is resident for tax purposes, that Member State shall **take any of the following decisions**:

*Amendment*

Where an undertaking does not have minimum substance for tax purposes in the Member State where it is resident for tax purposes, that Member State shall **deny any request for a certificate of tax residence to the undertaking for use**

*outside the jurisdiction of this Member State.*

Or. en

## **Amendment 21**

### **Proposal for a directive Article 12 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) deny a request for a certificate of tax residence to the undertaking for use outside the jurisdiction of this Member State;** *deleted*

Or. en

## **Amendment 22**

### **Proposal for a directive Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) grant a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, and of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.** *deleted*

Or. en

## **Amendment 23**

### **Proposal for a directive Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***When denying such certificate, the Member State shall issue an official statement, duly justifying such decision***

*and prescribing that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and, where applicable, capital, or of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.*

Or. en

## **Amendment 24**

### **Proposal for a directive**

#### **Article 13 – paragraph 1 – point 3**

Directive 2011/16/EU

Article 20 – paragraph 5 – subparagraph 1 – point c

#### *Text proposed by the Commission*

(c) for the automatic exchange of information on undertakings required to report on indicators of minimum substance pursuant to Article 8ad before 1 January **2024**.

#### *Amendment*

(c) for the automatic exchange of information on undertakings required to report on indicators of minimum substance pursuant to Article 8ad before 1 January **2025**.

Or. en

## **Amendment 25**

### **Proposal for a directive**

#### **Article 13 – paragraph 1 – point 4**

Directive 2011/16/EU

Article 21 – paragraph 5 – subparagraph 3

#### *Text proposed by the Commission*

The Commission shall by **30 June 2024** develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ad(1), (2) and (3) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

#### *Amendment*

The Commission shall by **1 January 2025** develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ad(1), (2) and (3) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

## Amendment 26

### Proposal for a directive Article 14 – paragraph 2

#### *Text proposed by the Commission*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 5% of the undertaking's turnover in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

#### *Amendment*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 2,5 % of the undertaking's turnover in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

Or. en

## Amendment 27

### Proposal for a directive Article 15 – paragraph 1

#### *Text proposed by the Commission*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a tax audit of the undertaking.

#### *Amendment*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a **joint** tax audit of the undertaking **based on Article 12a of Council Directive (EU) 2021/514**.

Or. en

## Amendment 28

### Proposal for a directive Article 15 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***If the requesting competent authority cannot conduct a joint tax audit for legal reasons, the tax authority of the requested Member State shall initiate a national tax audit within one month of receipt of the request and conduct it in accordance with the rules on tax audits in the requested Member State.***

Or. en

## **Amendment 29**

### **Proposal for a directive**

#### **Article 16 – paragraph 1 – subparagraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

(f) number of audits to undertakings that meet the conditions laid down in Article 6(1),

(f) number of ***audits and joint*** audits to undertakings that meet the conditions laid down in Article 6(1),

Or. en

## **Amendment 30**

### **Proposal for a directive**

#### **Article 18 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

They shall apply those provisions from [1 January **2024**].

They shall apply those provisions from [1 January **2025**].

Or. en

## EXPLANATORY STATEMENT

The proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (UNSHELL) is a key initiative to guarantee a fair and transparent tax system within the European Union. With this new legal framework on the misuse of shell entities, the Union is leading the international efforts to combat tax fraud and evasion through these legal structures. The European Parliament has been calling for an effective legal approach for the misuse of shell entities and has been standing for a stronger commitment with tax transparency in the EU.

The main goal of the rapporteur is to improve the Commission proposal with concrete suggestions on the better prevention of the use of shell entities to engage in tax avoidance and evasion.

The rapporteur tries, on the one hand, to shed light on the necessary differentiation between the legitimate use of specific legal structures to promote investments, comply with national laws or operate cross-border in different national markets. It is, on the other hand, essential to legislate, in concrete, on the misuse of shell entities for tax purposes, namely to avoid taxation or pursue aggressive tax planning using entities with no economic minimal substance.

With this report, the rapporteur pursues three main objectives. First, to guarantee high standards of respect for citizens' rights, as taxpayers, namely in the fields of privacy and data protection. Second, to safeguard a level playing field for companies within the EU, as all undertakings have to pay their fair share. Third, to avoid an excessive administrative burden or compliance cost for operators, in a moment of economic recovery that require strong support for our companies, mainly Small and Medium-Sized Enterprises.

On this ground, the rapporteur specifically addresses three main dimensions of the proposal:

First, getting clarity on the obligations for reporting undertakings. The rapporteur's priority is to guarantee that all the relevant entities are comprehended in the scope of this Directive, with proportionate obligations. At the same time, it is necessary, that the concrete situation of SME's and digital start-ups having minimal economic substance is safeguarded.

Second, at the legal dimension providing clarity on the minimum substance for tax purposes. It is important to reach a maximum of legal clarity, as the legislation has to assure a proportional set of reporting obligations being balanced. At the same time, this legislation needs to provide the necessary legal certainty for economic operators.

Third, being strict about the tax consequences on shell companies not having a minimum substance. This means that this legislation needs to guarantee high standards to combat against aggressive tax planning. At the same time, it needs to set a coherent approach that safeguards the integrity of our internal market and protect Europe's competitiveness.