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DRAFT REPORT

on a European Withholding Tax framework
(2021/2097(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Pedro Marques

CONTENTS

Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION3

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on a European Withholding Tax framework (2021/2097(INI))

The European Parliament,

- having regard to Articles 113, 115 and 116 of the Treaty on the Functioning of the European Union,
- having regard to the Commission proposal of 11 November 2011 for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (COM(2011)0714),
- having regard to 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 (Parent-Subsidiary Directive)¹,
- having regard to Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market² and to Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries³,
- having regard to 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 (Interest and Royalties Directive)⁴,
- having regard to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation⁵,
- having regard to Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements⁶,
- having regard to the Commission proposals of 25 October 2016 on a Common Corporate Tax Base (COM/2016/0685) and of 25 October 2016 on a Common Consolidated Corporate Tax Base (COM/2016/0683), the digital taxation package⁷, and

¹ OJ L 345, 29.12.2011, p. 8.

² OJ L 193, 19.7.2016, p. 1.

³ OJ L 144, 7.6.2017, p. 1.

⁴ OJ L 157, 26.6.2003, p. 49.

⁵ OJ L 359, 16.12.2014, p. 1.

⁶ OJ L 139, 5.6.2018, p. 1.

⁷ The package consists of the Commission communication of 21 March 2018 entitled ‘Time to establish a modern, fair and efficient taxation standard for the digital economy’ (COM(2018)0146), the Commission proposal of 21 March 2018 for a Council directive laying down rules relating to the corporate taxation of a significant digital presence (COM(2018)0147), the Commission proposal of 21 March 2018 for a Council directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (COM(2018)0148), and the Commission recommendation of 21 March 2018 relating to the

Parliament's position thereon,

- having regard to the Commission communication of 18 May 2021 entitled 'Business Taxation for the 21st Century' (COM/2021/251),
- having regard to its position adopted at first reading of 11 September 2012 on the proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States⁸,
- having regard to its resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect⁹,
- having regard to its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect¹⁰,
- having regard to its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion¹¹,
- having regard to its resolution of 29 November 2018 on the cum-ex scandal: financial crime and loopholes in the current legal framework¹²,
- having regard to its resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance¹³,
- having regard to the Commission's follow-up to each of the above-mentioned Parliament resolutions¹⁴,
- having regard to its resolution of 21 January 2021 on reforming the EU list of tax havens¹⁵,
- having regard to its resolution of 16 September 2021 on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome¹⁶,
- having regard to the European Securities and Markets Authority's report of 23 September 2020 on cum/ex, cum/cum and withholding tax reclaim schemes,
- having regard to the Commission recommendation of 19 October 2009 on withholding

corporate taxation of a significant digital presence (C(2018)1650).

⁸ OJ C 353E, 3.12.2013, p. 196.

⁹ OJ C 366, 27.10.2017, p. 51.

¹⁰ OJ C 101, 16.3.2018, p. 79.

¹¹ OJ C 369, 11.10.2018, p. 132.

¹² OJ C 363, 28.10.2020, p. 102.

¹³ OJ C 108, 26.3.2021, p. 8.

¹⁴ The joint follow-up of 16 March 2016 on bringing transparency, coordination and convergence to corporate tax policies in the Union and TAXE 1 resolutions, the follow-up of 16 November 2016 to the European Parliament resolution on tax rulings and other measures similar in nature or effect, the follow-up of April 2018 to the PANA recommendation, the follow-up of 26 March 2019 to the resolution on the cum-ex scandal and the follow-up of 27 August 2019 to the TAX3 resolution.

¹⁵ Texts adopted, P9_TA(2021)0022.

¹⁶ Texts adopted, P9_TA(2021)0392.

- tax relief procedures¹⁷,
- having regard to the Commission communication of 11 November 2011 entitled ‘Double Taxation in the Single Market’ (COM(2011)0712),
 - having regard to the Commission communication of 15 July 2020 entitled ‘An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy’ (COM(2020)0312),
 - having regard to the Commission communication of 24 September 2020 entitled ‘A Capital Markets Union for people and businesses-new action plan’ (COM(2020)0590),
 - having regard to the Commission Code of Conduct on Withholding Tax of 2017,
 - having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility¹⁸,
 - having regard to the Commission staff working document of 22 January 2021 entitled ‘Guidance to Member States Recovery and Resilience Plans’ SWD(2021)0012),
 - having regard to the statement of 1 July 2021 by the G20/Organisation for Economic Co-operation and Development (OECD) Inclusive Framework on Base Erosion and Profit Shifting (BEPS) on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy,
 - having regard to the Commission inception impact assessment of 28 September 2021 on the initiative entitled ‘New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes’,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2021),
- A. whereas Member States continue to lose tax revenue due to harmful tax practices, and estimates of the revenue lost due to corporate tax avoidance range from EUR 36-37 billion¹⁹ to EUR 160-190 billion per year²⁰;
- B. whereas high flows of royalty, interest or dividend payments through a certain jurisdiction indicate that profits are being rerouted with the sole purpose of reducing the tax burden;
- C. whereas the G20/OECD Inclusive Framework on BEPS agreed on the key components of a two-pillar reform of the international tax system in order to address the challenges arising from the digitalisation of the economy, including a minimum effective corporate

¹⁷ OJ L 279, 24.10.2009, p. 8.

¹⁸ OJ L 57, 18.2.2021, p. 17.

¹⁹ Commission report of 18 May 2021 entitled ‘Annual Report on Taxation 2021’.

²⁰ Dover, R. et al., ‘Bringing transparency, coordination and convergence to corporate tax policies in the European Union, Part I: Assessment of the magnitude of aggressive corporate tax planning’, European Parliament, Directorate-General for Parliamentary Research Services, European Added Value Unit, September 2015.

tax rate of 15 %;

- D. whereas withholding taxes can reduce the risk of tax evasion and avoidance, thus remaining a reliable policy tool until the implementation of the above-mentioned agreement by the G20/OECD Inclusive Framework on BEPS;
- E. whereas complex refund procedures increase the administrative burden for cross-border investments and may create an obstacle to market integration;
- F. whereas the Interest and Royalties Directive (IRD) and the Parent-Subsidiary Directive (PSD) both exempt certain cross-border payments that take place within the EU and are related to interest, royalties and dividends from withholding tax with the aim of eliminating double taxation; whereas negotiations on a revision of the IRD have stalled in the Council for several years;
- G. whereas the cum-ex and cum-cum schemes both involve reclaims of dividend withholding tax to which the beneficiaries were not entitled and are estimated to have imposed a total cost to taxpayers of about EUR 55 billion between 2001 and 2012 in the 11 Member States concerned;

Putting an end to profit shifting practices

1. Notes that despite continuous efforts, the system of withholding taxes in the EU has remained largely fragmented, creating loopholes which could be abused to shift profits and barriers to cross-border investments in the single market;
2. Welcomes the considerable progress made in the fight against harmful tax practices in recent years, both at EU and international level, while stressing that more efforts are needed;
3. Welcomes the agreement reached by the G20/OECD Inclusive Framework on a two-pillar reform, including a global minimum effective tax rate; considers this an important step towards ending the practice of shifting profits to low-tax jurisdictions; regrets the fact that the scope is limited to multinational enterprises with a global consolidated turnover of at least EUR 750 million;
4. Is pleased that 136 countries and jurisdictions have supported the G20/OECD Inclusive Framework agreement on a two-pillar reform; regrets the fact that one Member State is not part of the Inclusive Framework;
5. Regrets the fact that base erosion and profit shifting are still ongoing and are facilitated by the tax regimes of certain Member States; recalls that the Commission, in the context of the European Semester and the assessment of the National Recovery and Resilience Plans, found that more reforms are needed in order to address aggressive tax planning in six Member States, where the absence or limited application of withholding taxes on outbound payments are likely to be misused for aggressive tax planning;
6. Calls on the Commission and the Member States to set up a harmonised withholding tax framework that ensures that all dividend, interest and royalties payments flowing out the EU are taxed at a minimum effective tax rate;

7. Recalls the proposal by 10 Member States to include an effective minimum tax rate for royalties and interest in the context of the IRD; urges the Council to swiftly resume and conclude the negotiations on the IRD and encourages the inclusion of such a measure in the announced directive for the implementation of Pillar II;
8. Notes that the lack of an effective minimum tax rate on dividend payments to shareholders has triggered a race to the bottom in this field; calls for the adoption of an effective minimum tax rate for dividend payments to shareholders in the EU, thereby reducing harmful tax competition in this realm;

Stepping up the fight against dividend arbitrage

9. Recalls that in October 2018, an investigation disclosed that 11 Member States had lost up to EUR 55.2 billion in tax revenue as a result of cum-ex and cum-cum schemes;
10. Welcomes the inquiry and final report by the European Securities and Markets Authority into cum-ex, cum-cum and withholding tax reclaim schemes, as requested by Parliament; calls on the Commission to propose measures to link tax reclaims to the underlying distribution of dividends, or to entrust a single entity with responsibility for collecting the withholding tax and issuing the relevant certificate;
11. Calls on the Commission to enhance cooperation and mutual assistance between tax authorities, financial market supervisory authorities and, where appropriate, law enforcement bodies regarding the detection and prosecution of withholding tax reclaim schemes;
12. Notes that although Directive 2014/107/EU has facilitated the exchange of information, other obstacles to the detection of cum-ex and cum-cum schemes exist, including the timeliness of exchanges, the scope of the exchange of information on capital gains, and the insufficient spontaneous exchange of information;
13. Recalls that Directive (EU) 2018/822 introduced an obligation on intermediaries to report potentially harmful tax arrangements; calls on the Commission to evaluate to what extent these rules have contributed to revealing harmful tax arrangements such as cum-cum and cum-ex schemes and to what extent they have had a deterrent effect;

Removing barriers to cross-border investments in the single market

14. Notes the Commission's intention to put forward a proposal by the end of 2022 establishing a European withholding tax framework for dividend, interest or royalty payments, accompanied by a mechanism for the exchange of information and cooperation among tax administrations;
15. Encourages the development of a harmonised EU procedure for withholding tax refunds for all Member States, thereby addressing the concerns about regulatory discrepancies;
16. Notes that digitalising these procedures and improving cooperation between national tax administrations could reduce the administrative burden and uncertainty in cross-border investments;
17. Takes note of the option to establish an EU system for relief at source; highlights that a

move towards this type of system cannot be detrimental to the fight against tax abuse; stresses that, in all circumstances, compliance by the destination state with the agreement reached by the G20/OECD Inclusive Framework must be a prerequisite for relief at source;

18. Points out that the PSD and the IRD have gradually removed withholding taxes on dividend, interest and royalty payments between associated companies in the EU which reach certain thresholds, with the aim of reducing the risk of double taxation; notes that withholding taxes continue to be raised on investors below these thresholds and that the procedures for tax exemption or relief are ruled by double tax conventions in this case;

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19. Instructs its President to forward this resolution to the Council and the Commission.