Company taxation: parent companies and subsidiaries of different Member States, common system (amend. Directive 90/435/EEC)

2003/0179(CNS) - 22/12/2003 - Final act

PURPOSE : to amend Directive 90/435/EEC and improve the rules on company taxation in the internal market. LEGISLATIVE ACT : Council Directive 2003/123/EC amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. CONTENT : Directive 90/435/EEC introduced common rules in relation to dividend payments and other profit distributions, which are intended to be neutral from the point of view of competition. The objective of Directive 90/435/EEC is to exempt dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and to eliminate double taxation of such income at the level of the parent company. Experience gained in the implementation of Directive 90/435/EEC revealed different ways in which that Directive might be improved and the beneficial effects of the common rules as adopted in 1990 extended. Certain forms of companies are not included in the scope of that Directive, even though they are resident for tax purposes in a Member State and are subject to corporation tax there. The scope of Directive 90/435/EEC is therefore extended to other entities which can carry out cross-border activities in the Community and which meet all the conditions laid down in that Directive. Both the European Company and the European Cooperative Society are brought within the scope of the Directive. Furthermore: - The new entities included in the scope are corporate taxpayers in their Member State of residence but some are considered on the basis of their legal characteristics to be transparent for tax purposes by other Member States. Member States treating non-resident corporate taxpayers as fiscally transparent on this basis must grant the appropriate tax relief in respect of revenue which forms part of the tax base of the parent company. - In order to extend the benefits of Directive 90/435/EEC, the threshold of the shareholding for one company to be considered a parent and the other as its subsidiary will be gradually lowered from 25 % to 10 %. - The payment of profit distributions to a permanent establishment of a parent company will give rise to the same treatment as that applying between a subsidiary and its parent. This includes the situation where a parent company and its subsidiary are in the same Member State and the permanent establishment is in another Member State. On the other hand, situations where the permanent establishment and the subsidiary are situated in the same Member State can be dealt with on the basis of national legislation by the Member State concerned. - In relation to the treatment of permanent establishments Member States may need to determine the conditions and legal instruments in order to protect the national tax revenue and fend off circumvention of national laws, in accordance with the Treaty principles and taking into account internationally accepted tax rules. - When corporate groups are organised in chains of companies and profits are distributed through the chain of subsidiaries to the parent company, double taxation should be eliminated either by exemption or tax credit. In the case of tax credit the parent company will able to deduct any tax paid by any of thesubsidiaries in the chain provided that the requirements set out in Directive 90/435/EEC are met. ENTRY INTO FORCE : 02/02/04. DATE OF TRANSPOSITION : 01/01 /05.