Corporate taxation: common system of taxation applicable to interest and royalty payments. Recast

2011/0314(CNS) - 11/09/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 562 votes to 102 with 18 abstentions a legislative resolution 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 States (recast). Parliament adopted its position in first reading following the special legislative procedure (consultation of Parliament). Parliament's amendments modify the proposal as follows:

Scope: Parliament specifies that, in order for interest or royalty payments to be exempt from taxes in one Member State, the beneficial owner must be a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and be effectively subject to tax on the income deriving from those payments in that other Member State **at a rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States**, without there being the possibility of exemption or a substitution or replacement by payment of another tax. Interest or royalty payments shall not be exempted in the Member State in which they arise if the payment is not taxable according to the national tax law to which the beneficial owner is subject due to a different qualification of the payment (hybrid instruments) or a different qualification of the payer and recipient (hybrid entities).

The resolution recalls that on 19 April 2012, the European Parliament called for concrete ways to combat tax fraud and tax evasion, drawing attention to tax evasion via hybrid financial instruments and calling on the Member States to ensure smooth cooperation and coordination between their tax systems to avoid unintended non-taxation and tax evasion.

Permanent establishment: only a permanent establishment that has met its tax liabilities shall be treated as the beneficiary of a tax exemption or a tax benefit.

Associated company: for the definition of associated company, Parliament changed the minimum holding to 25% from 10% of capital.

Preparation of annual accounts: to ensure smooth and cost-efficient implementation of the provisions of the Directive, companies must prepare their annual accounts together with all relevant tax data in *eXtensible Business Reporting Language* (XBRL).

Transposition: certain provisions of the Directive shall be transposed by 31 December 2013 at the latest (instead of 1 January 2012).

Report: the report on economic impact of the Directive should be submitted by **31 December 2015**, rather than 31 December 2016.