

Rules against tax avoidance practices that directly affect the functioning of the internal market

2016/0011(CNS) - 27/05/2016 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, in the framework of a special legislative procedure (Parliament's consultation), the report by Hugues BAYET (ALDE, BE) on the proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

The Committee recommended the European Parliament to approve the Commission proposal as amended:

Permanent establishment: in order to ensure consistency with regard to the treatment of permanent establishments, it is essential that Member States apply, both in relevant legislation and bilateral tax treaties, a **common definition** of permanent establishments. According to the text, it shall mean a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on; 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 presence in the economy of that country.

Secrecy or low tax jurisdictions: a recital stipulated that profit shifting into secrecy or low tax jurisdictions poses a particular risk to Member States' tax proceeds as well as to fair and equal treatment between tax avoiding and tax compliant firms, large and small. In addition to the generally applicable measures proposed in this Directive for all jurisdictions, it is essential to deter Specific measures are therefore proposed to use this directive as a tool to ensure compliance by current secrecy and low tax jurisdictions with the international push for tax transparency and fairness.

In particular, the proposed text specified that Member States may impose a **withholding tax** on payments from an entity in that Member State to an entity in a secrecy or low tax jurisdiction. Member States shall update any Double Tax Agreements which currently preclude such a level of withholding tax with a view to removing any legal barriers to this collective defence measure.

Transfer pricing: the definition of 'transfer prices' shall mean the prices at which an undertaking transfers tangible goods or intangible assets or provides services to associated undertakings.

In a recital, it is stated that the term 'transfer pricing' refers to the conditions and arrangements surrounding transactions effected within a multinational company, including subsidiaries and shell companies whose profits are divested to a parent multinational. 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.

Letterbox companies: the amended text proposed that the use of **letterbox companies** by taxpayers operating in the Union should be **prohibited**. Taxpayers should communicate to tax authorities evidence demonstrating the economic substance of each of the entities in their group, as part of their annual country-by-country reporting obligations.

Double tax agreements: in order to improve the current mechanisms to resolve cross-border taxation disputes in the Union, focusing not only on cases of double taxation but also on double non-taxation, a dispute resolution mechanism with clearer rules and more stringent timelines should be introduced by January 2017.

Hybrid mismatches related to third countries: the amended text stated that where a hybrid mismatch between a Member State and a third country results in a double deduction, the Member State shall deny the deduction of such a payment, unless the third country has already done so. Where a hybrid mismatch between a Member State and a third country results in a deduction without inclusion, the Member State shall deny the deduction or non-inclusion of such a payment, as appropriate, unless the third country has already done so.

Effective tax rate: the Commission is called upon to develop a **common method of calculation** of the effective tax rate in each Member State, so as to make it possible to draw up a comparative table of the effective tax rates across the Member States.

European tax identification number: proper identification of taxpayers is essential to effective exchange of information between tax administrations. It is proposed that the Commission should present a **legislative proposal for a harmonised, common European taxpayer identification number** by 31 December 2016, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Patents: until now, multinationals have used patent incentives to artificially reduce their profits. This has an adverse impact on genuinely innovative countries. Members are proposing that these multinationals should be subject to an **exit tax** where they repatriate proceeds from patents to countries with lower tax rates.

Legislative proposal on CCCTB: Members noted that a fully-fledged Common Consolidated Corporate Tax Base (CCCTB), with an appropriate and fair distribution key, would be the genuine "game changer" in the fight against artificial BEPS strategies. In light of this, the Commission should **publish an ambitious proposal** for a CCCTB as soon as possible, and the legislative branch to conclude negotiations on that crucial proposal as soon as possible.

Penalties: Member States should have in place a system of penalties as provided for in national law and should inform the Commission thereof.

Review and monitoring: the Commission should put in place a **specific monitoring mechanism** to ensure the proper implementation of this Directive and the homogeneous interpretation of its measures by Member States. It 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.