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

2016/0011(CNS) - 08/06/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 486 votes to 88, with 103 abstentions, in the framework of a special legislative procedure (Parliament's consultation), a legislative resolution on the proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

Parliament approved the Commission proposal subject to the following amendments:

A political priority: according to Members, the Union should consider that combatting fraud, tax evasion and tax avoidance are overriding political priorities, as aggressive tax planning practices are **unacceptable from the point of view of the integrity of the internal market and social justice**.

The resolution stated that it is essential to give tax authorities the appropriate means to fight effectively against BEPS, and, in so doing, improve transparency in respect of the activities of large multinationals, in particular with regard to profits, tax paid on profits, subsidies received, tax rebates, numbers of employees and assets held.

Permanent establishment: Parliament stated that the concept of permanent establishment will provide a precise, **binding definition** of the criteria which must be met if a multinational company is to prove that it is situated in a given country. This will compel multinational companies to pay their taxes fairly.

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: Members recalled 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 secrecy and low tax jurisdictions from basing their corporate tax and legal environment on sheltering profits from tax avoidance while at the same time not adequately implementing global standards as regards tax good governance, such as the automatic exchange of tax information, or engaging in tacit non-compliance by not properly enforcing tax laws and international agreements, despite political commitments to implementation. Specific measures are therefore proposed to use this Directive as a tool to ensure compliance by current secrecy or low tax jurisdictions with the international push for tax transparency and fairness.

In particular, the amended 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.

Switch-over clause: Member States shall not exempt a taxpayer from tax on foreign income, that does not arise from active business, which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 15 %.

Letterbox companies: the amended text stipulates 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.

Black list: Members considered that a Union-wide definition and an exhaustive 'black list' should be drawn up of the **tax havens and countries**, including those in the Union, which distort competition by granting favourable tax arrangements. The black list should be complemented with a list of sanctions for non-cooperative jurisdictions and for financial institutions that operate within tax havens.

Dispute resolution mechanism: 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: Members 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. Parliament 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: Parliament 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.