

Corporate tax: hybrid mismatches with third countries

2016/0339(CNS) - 27/04/2017 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 591 votes to 36, with 12 abstentions, following the consultation procedure, a legislative resolution on the proposal for a Council directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

Parliament approved the Commission proposal subject to amendments.

The Commission proposal lays down measures to tackle the issue of hybrid mismatch arrangements with third countries. These mismatches, for example, allow corporations established in two jurisdictions (inside and outside the EU) to use the lack of coordination between national tax systems either to have the same expenditure deducted in both jurisdictions (so the firm enjoys a double tax deduction). Through its amendments, Parliament seeks to put an end to the practice of having income or expenditure which is treated as income or expenditure of one or more other persons under the laws of another jurisdiction.

Members stated that it is of great importance to establish rules that **neutralise hybrid mismatches and branch mismatches** in a comprehensive manner. They also stressed the need to include other rules set out in the Commission proposal, such as those on hybrid transfers and imported mismatches and address the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes.

Underlying the BEPS initiative is also the declaration of G20 leaders at their meeting in Saint Petersburg on 5-6 September 2013, expressing their wish to ensure that profits are **taxed where economic activities deriving the profits are performed** and where value is created.

In order to provide for a framework that is consistent with, and no less effective than, the **OECD BEPS report** on hybrid mismatch arrangements, it is essential that Directive (EU) 2016/1164 includes rules on hybrid transfers and imported mismatches and addresses the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes. Those rules should be **standardised and coordinated** to the maximum extent possible between Member States. Member States should consider the introduction of penalties against taxpayers that exploit hybrid mismatches.

According to Members, the rules on hybrid mismatches shall apply automatically whenever a payment **comes across a border** having been deducted at the paying end, without having to prove a tax avoidance motive. These rules should address mismatch situations which result from **double deductions**, conflicts in the legal characterisation of financial instruments, payments and entities, or conflicts in the allocation of payments.

The effects of hybrid mismatch arrangements should also be considered from the viewpoint of **developing countries**. The Union and its Member States should aim to support developing countries in tackling such effects.