Transfer pricing

2023/0322(CNS) - 12/09/2023 - Legislative proposal

PURPOSE: to harmonise transfer pricing rules within the EU and ensure a common approach to transfer pricing problems.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: transfer pricing refers to the setting of prices for transactions between associated enterprises (i.e. members of the same Multinational Enterprise - MNE) involving the transfer of property or services. A significant volume of global trade consists of international transfers of goods and services, capital and intangibles (such as intellectual property) within an MNE; such transfers are called “intragroup transactions”. Since tax calculations are generally based on entity-level accounts, the prices or other conditions at which cross-border transactions between associated enterprises take place will affect the relevant entities’ income and/or expenses in relation to those transactions, and as a consequence, will impact on the amount of profit each group entity records for tax purposes in the jurisdictions where they operate.

The globally recognised standard for determining the prices between associated enterprises for tax purpose is the so called “**arm’s length principle**”. The arm’s length principle prescribes that individual group members of a MNE must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome (price or margins) was determined by (open) market forces.

Where Member States apply or interpret the arm’s length principle differently, they create situations that could harm the internal market. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting and tax avoidance. Such inconsistency is a serious tax obstacle for businesses operating across borders, is likely to cause economic distortions and inefficiencies and has a negative impact on cross-border investment and growth.

CONTENT: the Commission's proposal aims at **harmonising transfer pricing rules** within the EU and ensuring a common approach to transfer pricing problems. It incorporates the **arm's length principle** and key transfer pricing rules into EU law, clarifies the role and status of the OECD Transfer Pricing Guidelines and creates the possibility to establish common binding rules on specific aspects of the rules within the Union.

The proposal applies to taxpayers that are registered in, or subject to, tax in one or more Member States, including permanent establishments in one or more Member States. The proposal stated that Member States should ensure that, where an enterprise engages in one or more commercial or financial cross-border transactions with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm’s length principle.

The proposal will increase tax certainty and mitigate the risk of litigation and double taxation. In this regard, Member States should have adequate mechanisms in place to enable them, when a primary adjustment is made in another Member State or third country jurisdiction, to make a corresponding **adjustment**.

Furthermore, the prospect for establishing common binding rules for Member States on specific transactions within the framework of the OECD Transfer Pricing Guidelines should improve businesses' resilience in the Union, reduce distortions and contribute towards a level playing field in the Single Market.

This proposal is part of the package known as 'Business in Europe: Framework for Income Taxation', or 'BEFIT' which includes a second separate proposal which lays down a common set of rules for computing the tax base of large groups of companies in the EU.