

Establishing a Head Office Tax system for micro, small and medium sized enterprises

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PURPOSE: to establish a Head Office Tax (HOT) system to simplify tax rules for certain small and medium-sized enterprises (SMEs) operating in the internal market.

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: in the EU, there is currently no common approach to the computation of the taxable base for businesses. EU businesses are therefore obliged to comply with the rules of different corporate tax systems, depending on the Member State in which they operate. The co-existence and interaction of 27 different corporate income tax systems in the Union gives rise to complexity in tax compliance and leads to an uneven level playing field for businesses. This state of play has a higher impact on SMEs than on larger taxpayers and has become more evident as globalisation and digitalisation of the economy have significantly altered the perception of borders and business models. The attempts by governments to adapt to this new reality have resulted in a fragmented response among Member States, leading to further distortions in the internal market. Furthermore, the various legal frameworks inevitably lead to different tax administration practices across Member States. This often entails lengthy procedures characterised by unpredictability and inconsistency along with high compliance costs.

With a view to simplifying tax rules for small and medium-sized enterprises (SME) to do business in the internal market, the Commission adopted the SME ‘Relief Package’ which aims to deliver much-needed support for SMEs to secure cash flow, to simplify and to invest and grow. The present initiative is part of the package.

CONTENT: to address the needs of Europe's SMEs in the current economic environment, the Commission is proposing this draft Directive which aims to provide for a simplified approach to subjecting **standalone SMEs** operating cross-border in the EU to taxation in respect of their permanent establishments in other Member States. It lays down rules for computing the taxable result of permanent establishments of SMEs.

Head Office Taxation

The proposal aims to set a **tax framework** in support of the internal market, in particular for SMEs. The Head Office Tax System for SMEs will give SMEs operating cross-border through permanent establishments the option to interact with only one tax administration – that of the Head Office – instead of having to comply with multiple tax systems. This proposal will **increase tax certainty and fairness, reduce compliance costs and distortions** in the market that influence business decisions, while minimising the risk of double and over taxation and tax disputes.

One-stop-shop

The proposal aims to provide **significant procedural simplification**, thus a one-stop-shop should be put in place, whereby the tax filing, tax assessments and the collection of the tax due by the permanent establishments would be dealt with through a single tax authority (‘filing authority’), i.e. the tax authority

in the Member State of the head office. SMEs will thus file **one single tax return** with the tax administration of their head office. This tax administration will then transfer the resulting tax revenues to each Member State where the SME maintains a permanent establishment. Such an approach will eliminate the complexities and related costs of having to deal with multiple tax systems and tax administrations.

The Member State of the head office will apply the rates applicable in the Member State(s) where the SME maintains permanent establishments and subsequently, transfer the resulting tax revenues to the latter.

In full respect of Member States' sovereignty in tax matters, audits, appeals and dispute resolution procedures would primarily be kept domestic and in accordance with the procedural rules of the respective Member State. To support the functioning of a one-stop-shop, it would be critical to provide for **joint audits**, which create an obligation to the Member State of the head office to cooperate if the tax authority of the permanent establishment requests an audit covering the computation of the taxable result of its taxpayer.

Exchange of information

For the purpose of the automatic exchange of information, the Head Office Member States will have to exchange the information required by this proposal with other Host Member States, and the other way around, through a bilateral network between the Member States concerned, by electronic means using the EU common communication network (CCN), accessible to all Member States. The Commission will have the task to provide Member States with the platform for exchange of information CCN and remains data processor with limited access.

Eligibility requirements

SMEs would have to explicitly **opt-in**. To prevent circumvention, the rules would be coupled with the requirement that an opting-in SME would be under the obligation to apply the rules of the state of the head office for a minimum period of time, for example **five years**. In addition, SMEs will be entitled to renew their choice every five years without limit as long as they continue to meet the eligibility requirements. The eligibility, but also the termination provisions are designed to discourage abuse and potential tax planning practices, such as the deliberate transfer of the Head Office to a low-tax country.