Transfer pricing

2023/0322(CNS) - 01/03/2024 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, following a special legislative procedure (consultation), the report by Kira Marie PETER-HANSEN (Greens/EFA, DK) on the proposal for a Council directive on transfer pricing.

The committee responsible approved the Commission proposal subject to the following amendments:

Subject matter

The proposed directive lays down rules to harmonise transfer pricing rules of Member States and to ensure a common application of the arm's length principle within the Union with the objective of **simplifying compliance for companies** whilst ensuring enforcement of tax rules within the Union.

The Commission should be empowered to adopt delegated acts in order to incorporate any further amendments to OECD Transfer Pricing Guidelines, that the Member States approved in the context of the OECD Committee on Fiscal Affairs or the Union approved via the adoption of a Union position.

Corresponding adjustments

Member States should ensure that a corresponding adjustment can be made following a request from a taxpayer taking into account a primary adjustment made in another jurisdiction. When a primary adjustment is made, Member States should ensure that they make a corresponding adjustment so as to prevent the double taxation if certain conditions are met.

Members clarified that the taxpayer's request should:

- indicate all factual and legal circumstances necessary to evaluate, under the arm's length principle, the primary adjustment performed in the other jurisdiction, including relevant transfer pricing documentation communicated to the Member States;

- communicate, for each Member State concerned by the adjustment, the effective tax rate calculated within the meaning of Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

Member States should declare the request admissible within **40 days** (instead of 30) by virtue of a notification to the taxpayer if all the necessary information provided has been submitted.

Member States should ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within **200 days** from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection. The procedure can be extended once by a period of **100 days** if the tax payer and the Member States concerned all agree to such extension.

In the absence of a primary adjustment, Member States may perform a downward adjustment only if the downward adjustment does not lead to double non-taxation meaning the downward adjustment is included in the taxable profits of the associated enterprise in the other jurisdiction.

Application of the arm's length principle

The Commission should be empowered to adopt delegated acts to:

- lay down further rules, consistent with the latest internationally recommended Transfer Pricing Guidelines, from either the OECD or the United Nations, on how the arm's length principle and the other provisions laid down in Chapter II of this Directive are to be applied in specific transactions to ensure more tax certainty and mitigate the risk of double non-taxation and double taxation, and reduce tax disputes and tax abuse;

- lay down further rules, such as the introduction of safe harbours, to simplify the application of the arm's length principle in the Union;

- laying down rules to integrate in this Directive the proposed simplified approach to transfer pricing compliance for distribution and manufacturing activities proposed in the Council Directive on Business in Europe: Framework for Income Taxation (BEFIT).

Re-establishment of the EU Joint Transfer Pricing Forum

Members suggested that the Commission should establish and chair the European Forum on Transfer Pricing (EFTP). The EFTP should provide advice and assistance to the committee, notably to assess the need for any adjustment to this Directive with the objective of guaranteeing the continuous uniformity of transfer pricing methodologies within the Union and on the global stage, most importantly taking into account developments at OECD or UN level.

The European Parliament should be a member of the EFTP as an observer. The **European Parliament** may attend as an observer the international negotiations on Transfer Pricing Guidelines in the relevant international fora.

Evaluation

Every three years, the Commission should examine and evaluate the application, the impact as well as the interplay of this Directive with the latest OECD or UN guidelines and submit a report on its evaluation to the European Parliament and to the Council, to be accompanied, if appropriate, by a legislative proposal. The first report should be submitted by 31 December 2029.

Review

The Commission should review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), once that Directive has entered into force.

The directive should apply from **1 January 2025** (instead of 1 January 2026).