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

2023/0320(CNS) - 10/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 443 votes to 110, with 51 abstentions, following a special legislative procedure (consultation), a legislative resolution on the proposal for a Council directive establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16 /EU.

Simplification of tax rules for certain SMEs

Members stressed that it is essential to support micro-enterprises and SMEs. The 24 million SMEs in the EU account for two-thirds of private sector jobs and 99% of all businesses in the EU. They spend around 2.5% of their turnover on compliance costs related to tax obligations. A calculation of the taxable results based on the rules of the Member State where the head office (headquarters of the SME) is resident for tax purposes should significantly reduce tax compliance cost and free financial resources to allow SMEs to invest.

The aim of the Directive should be to simplify the tax rules for certain SMEs carrying out cross-border activities in the internal market through one or more permanent establishments and a maximum of two subsidiaries. It lays down rules for calculating the taxable income of permanent establishments and subsidiaries of SMEs that meet certain criteria.

Head office taxation

The head office may opt to apply the head office taxation rules in respect of its permanent establishments and subsidiaries in other Member States if it meets the following requirements:

- the joint turnover of its permanent establishments and subsidiaries did not exceed, for the **last three fiscal years**, an amount equal to triple the turnover generated by the head office;

- it has been resident for tax purposes in the head office Member State during the last fiscal year or, if more recently, since the establishment of the head office;

- the SME is considered to be a micro, small or medium-sized enterprise for the last fiscal year or, if more recently, since the establishment of the head office.

If the head office opts to apply the head office taxation rules, it should apply those rules to all its permanent establishments or subsidiaries in other Member States. If it creates a new permanent establishment in another Member State, it should apply head office taxation rules to such permanent establishment from the moment of its establishment. If it creates a first subsidiary in another Member State, it should apply head office taxation rules to that subsidiary from the moment of its establishment and should inform the host Member State thereof.

Exercise of the option to apply Head office taxation rules

For the establishment of its first permanent establishment or subsidiary in another Member State, an SME may apply the head office taxation rules from the year in which the permanent establishment or subsidiary is established, without having to notify the filing authority three months before the end of the previous tax year.

The filing authority should obtain confirmation from the host Member State that the establishment in the host Member State constitutes a permanent establishment for the purposes of bilateral tax treaties.

Duration of the option to apply the head office taxation rules

The head office that has opted to apply head office taxation rules to its permanent establishments or subsidiaries in one or more host Member States should apply those rules for a **renewable period of seven fiscal years**.

The option to apply the head office taxation rules should be terminated before the end of the seven-year period for any of the following reasons: (i) the SME transfers its tax residence out of the head office Member State, if the SME wishes to stop applying the taxation rules; (ii) for the last three fiscal years, the joint turnover of its permanent establishments and subsidiaries exceeded an amount which is equal to triple the turnover of the head office; (iii) the SME is no longer considered to be an SME; (iv) the SME sets up more than two subsidiaries.

Audits

To support the functioning of a one-stop-shop, it would be critical to provide for joint audits, creating a cooperation obligation for the Member States' tax authorities, whereby the Member State of the head office should cooperate if the tax authority of the permanent establishment or subsidiary requests an audit covering the computation of the taxable result of its taxpayer. In that sense, if the Member State of the head office conducts an audit at its own initiative, it should **invite the host Member State** to carry out such audit jointly.

Report

The Commission's evaluation report should assess all relevant aspects of implementation of this Directive and focus on the advantages of a possible extension of the scope, the adequacy of the eligibility requirements, the appropriateness of the exclusion situations, namely the set-up of subsidiaries, and the need for the exclusion of shipping activities. The Commission should address those aspects in its possible proposal to amend this Directive, or give reasons to justify why it is not necessary to change the existing rules.

Transposition

Member States should transpose the Directive before 31 December 2024 and it should apply from 1 January 2025.