Company taxation: parent companies and subsidiaries of different Member States, common system (amend. Directive 90/435/EEC)

2003/0179(CNS) - 29/07/2003 - Legislative proposal

PURPOSE : to amend Directive 90/435/EEC and improve the rules on company taxation in the internal market. CONTENT : Council Directive 90/435/EEC deals with the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (the Parent-Subsidiary Directive). This proposal for a Directive amends the Parent-Subsidiary Directive. The final goal is to eliminate obstacles to the proper functioning of the internal market found in the tax regimes applicable to parent companies and subsidiaries of different Member States. Eventually, removing the various tax obstacles to cross-border economic activity in the Internal Market would require the introduction of a common consolidated tax base for the EU-wide activities of companies. However, as long as this objective is not achieved, specifically targeted measures are needed to address the most pressing practical tax problems of internationally active companies. Such measures include all those considered absolutely essential in order to improve the existing body of EU company tax law. The main provisions deal with the following: - the Member State where a permanent establishment is situated must grant the benefits of the Directive when this permanent establishment receives distributed profits. Among other situations, the change proposed will ensure that the Directive covers the case where the parent company and its subsidiary are tax residents in the same Member State and the dividend payment is received by a permanent establishment of the parent company situated in a different Member State; - the Parent-Subsidiary Directive is amended in order to reduce from 25% to 10% the shareholding requirements needed to qualify for the status of parent company and subsidiary company, thus increasing the number of companies that will be able to benefit from the relief provided for in the Directive; - a Member State where a permanent establishment is situated must refrain from taxing distributed profits received by it from subsidiaries of the company of which it is a permanent establishment or to allow deduction of the tax paid by the subsidiary which relates to the profits distributed to the permanent establishment; - where there is a chain of companies, it is now proposed to allow deduction not only of the tax paid by the immediate subsidiary but also the tax paid by any other lower-tier subsidiary in relation to the profits distributed. This proposal maintains the current limit: the parent company can deduct taxes paid by its lower- tier subsidiaries subject to the specified limitation of the tax due on the profits received; - there are new provisions as a result of including some of the new entries in the list. Some of these new entities are subject to corporation tax in their Member State of residence but, for tax purposes, are considered transparent in a different Member State. The latter Member States levy tax on their own resident taxpayers that have an interest in such entities. The aim of the text proposed is to provide for a specific tax regime applicable in these cases; - the proposal will permit parent companies to prove, to the extent that they are lower than 5%, the actual management costs incurred in order to reduce the amount of non-deductible costs; - the list of companies, to which the Parent-Subsidiary Directiveapplies, contained in its annex, is replaced by a new one incorporating other types of entities and in particular the European company. This proposal will extend the benefits of the Directive to new legal types of entities, including co-operatives, mutual companies, certain non-capital based companies, saving banks, funds and associations with commercial activity.