

Common system of taxation: possibility for certain Member States to apply transitional periods

2004/0076(CNS) - 01/04/2004 - Legislative proposal

PURPOSE : to amend Directive 2003/49/EC so as to incorporate transitional periods, relating to the application of the Directive, following requests by the Czech Republic, Latvia, Lithuania, Poland and Slovakia. **CONTENT** : to recall, Directive 2003/49/EC was adopted at the meeting of the "Economic and Financial Affairs" Council on 3 June 2003 as a part of the "Tax Package". Subsequently, on 30 December 2003, the Commission presented a proposal for a Council Directive amending Directive 2003/49/EC. The intentions of that amending proposal were twofold: - to take account of a Council statement made on 3 June 2003 which states that the benefit of the Interest and Royalty Directive should not accrue to companies that are exempt from tax on income covered by that Directive; - to take account of the recent adoption of the European Company (SE) and European Cooperative Society (SCE) statutes and reflect the developments in relation to the inclusion of other new entities in the scope of Council Directive 2003/123/EC and the proposal for amending the Merger Directive. As the Directive was adopted on 3 June 2003, after the signing of the Act of Accession on 16 April 2003, the Directive was not included in Chapter 9 of Annex II of the Act of Accession. Thus no adaptation, on the basis of Art. 20 of the Act of Accession, was possible. Nevertheless, the Directive constitutes part of the community acquis and therefore applies from the date of accession - 1 May 2004. Since, in its present version, the Directive includes neither the list of companies referred to in Art. 3(a)(i) (reproduced in the Annex to the Directive), nor the relevant taxes of the Acceding States that should be listed in Art. 3(a)(iii), technical adaptations are necessary. For such adaptations, Art. 57 of the Act of Accession provides for a procedure that is regarded as appropriate for the inclusion of the list of relevant taxes and companies in the Acceding States. In May and July 2003, the Acceding States were invited formally to submit their requests for transitional periods. Taking into account their present economic situations, their status as capital importing countries, the ongoing economic transition and their relatively low level of budget revenues, Acceding States might face budgetary difficulties were they required to abolish withholding taxes on interest and royalties payments. At this stage, these countries would not be able to balance the loss of tax revenues, arising from such abolition, by receipts of additional domestic tax on income from interest and royalty payments received by associated companies from abroad, because they are net importers of capital. Therefore, the Commission proposes granting certain transitional arrangements, where these appear to be justified. On this basis, the Commission proposes that, with the exception of Slovakia, which only asked for two years, a transitional period of six years should be granted to all requesting states for the application of the Directive regarding the taxation of payments of royalties; and a transitional period of six years should be granted to Latvia and Lithuania regarding the taxation of payments of interest - it being considered that six years should be sufficient to allow appropriate adjustments to be made. For a period of four years, the rate of tax applied by Latvia and Lithuania, to payments of interest, may not exceed 10% and for the remaining two years, that rate may not exceed 5%. Granting such transitional periods is regarded as going beyond mere technical adaptations under Art. 57 of the Act of Accession, and therefore, it is proposed to provide for the transitional periods by way of a formal amending Directive of the Council.