Basic information

2003/0179(CNS) CNS - Consultation procedure Directive	Procedure completed
Company taxation: parent companies and subsidiaries of different Member States, common system (amend. Directive 90/435/EEC) **Subject** 3.45.04 Company taxation	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	KARAS Othmar (PPE-DE)	01/09/2003

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market		

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2530	2003-10-07
Environment	2556	2003-12-22

European Commission

Commission DG	Commissioner
Taxation and Customs Union	

Key events

Date	Event	Reference	Summary
29/07/2003	Legislative proposal published	COM(2003)0462	Summary
22/09/2003	Committee referral announced in Parliament		
07/10/2003	Debate in Council		
02/12/2003	Vote in committee		
02/12/2003	Committee report tabled for plenary, 1st reading/single reading	A5-0472/2003	
16/12/2003	Decision by Parliament	T5-0567/2003	Summary
22/12/2003	Act adopted by Council after consultation of Parliament		

22/12/2003	End of procedure in Parliament		
13/01/2004	Final act published in Official Journal		

Technical information

Procedure reference	2003/0179(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 094
Stage reached in procedure	Procedure completed
Committee dossier	ECON/5/19917

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0472/2003	02/12/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0567/2003 OJ C 091 15.04.2004, p. 0028-0084 E	16/12/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0462	29/07/2003	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1408/2003 OJ C 032 05.02.2004, p. 0118-0119	29/10/2003	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2003/0123
OJ L 007 13.01.2004, p. 0041-0044 Summary

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

2003/0179(CNS) - 22/12/2003 - Final act

PURPOSE : to amend Directive 90/435/EEC and improve the rules on company taxation in the internal market. LEGISLATIVE ACT : Council Directive 2003/123/EC amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. CONTENT : Directive 90/435/EEC introduced common rules in relation to dividend payments and other profit distributions, which are intended to be neutral from the point of view of competition. The objective of Directive 90/435/EEC is to exempt dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and to eliminate double taxation of such income at the level of the parent company. Experience gained in the implementation of Directive 90/435/EEC revealed different ways in which that Directive might be improved and the beneficial effects of the common rules as adopted in 1990 extended. Certain forms of companies are not included in the scope of that Directive, even though they are resident for tax purposes in a Member State and are subject to corporation tax there. The scope of Directive 90/435 /EEC is therefore extended to other entities which can carry out cross-border activities in the Community and which meet all the conditions laid down in that Directive. Both the European Company and the European Cooperative Society are brought within the scope of the Directive. Furthermore: - The new entities included in the scope are corporate taxpayers in their Member State of residence but some are considered on the basis of their legal characteristics to be transparent for tax purposes by other Member States. Member States treating non-resident corporate taxpayers as fiscally transparent on this basis must grant the appropriate tax relief in respect of revenue which forms part of the tax base of the parent company. - In order to extend the benefits of Directive 90/435/EEC, the threshold of the shareholding for one company to be considered a parent and the other as its subsidiary will be gradually lowered from 25 % to 10 %. - The payment of profit distributions to a permanent establishment of a parent company will give rise to the same treatment as that applying between a subsidiary and its parent. This includes the situation where a parent company and its subsidiary are in the same Member State and the permanent establishment is in another Member State. On the other hand, situations where the permanent establishment and the subsidiary are situated in the same Member State can be dealt with on the basis of national legislation by the Member State concerned. - In relation to the treatment of permanent establishments Member States may need to determine the conditions and legal instruments in order to protect the national tax revenue and fend off circumvention of national laws, in accordance with the Treaty principles and taking into account internationally accepted tax rules. - When corporate groups are organised in chains of companies and profits are distributed through the chain of subsidiaries to the parent company, double taxation should be eliminated either by exemption or tax credit. In the case of tax credit the parent company will able to deduct any tax paid by any of thesubsidiaries in the chain provided that the requirements set out in Directive 90/435/EEC are met. ENTRY INTO FORCE : 02/02/04. DATE OF TRANSPOSITION : 01/01/05.

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

2003/0179(CNS) - 16/12/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Othmar KARAS (EPP-ED, A) making some amendments: - most Member States do not apply any domestic threshold at all or a very low threshold for the tax treatment of inter company dividends, and in order to bring cross-border cases, as covered by Directive 90/435/EEC, more in line with the treatment of domestic groups, the threshold of the shareholding for one company to be considered a parent and the other as its subsidiary should be lowered from 25% to 5%(rather than 10%); - a parent company must have, inter alia, a minimum holding of 5% (rather than 10%); - where the parent company provides evidence that the real management costs incurred that are to be considered non-deductible are lower than the flat-rate amount, the non-deductible amount may not exceed the real costs; - cooperatives incorporated under Council Regulation 1435/2003/EC are added to the annex.

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.