

Tuesday 11 September 2012

- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 7 December 2011 ⁽¹⁾,
 - having regard to the undertaking given by the Council representative by letter of 23 May 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0068/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

⁽¹⁾ OJ C 43, 15.2.2012, p. 14.

P7_TC1-COD(2011)0226

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation')

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 1024/2012.)

Common system of taxation applicable to interest and royalty payments *

P7_TA(2012)0318

European Parliament legislative resolution of 11 September 2012 on the proposal for a Council directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (recast) (COM(2011)0714 – C7-0516/2011 – 2011/0314(CNS))

(2013/C 353 E/36)

(Special legislative procedure – consultation – recast)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2011)0714),

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- having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0516/2011),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽¹⁾,
 - having regard to the letter of 6 March 2012 from the Committee on Legal Affairs to the Committee on Economic and Monetary Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0227/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 1**Proposal for a directive
Recital 1**

(1) Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(1) Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been amended several times. Since further amendments are to be made, it should be recast in the interests of clarity. **On 19 April 2012, the European Parliament called for concrete ways to combat tax fraud and tax evasion, drawing attention to tax evasion via hybrid financial instruments and calling on the Member States to ensure smooth cooperation and coordination between their tax systems to avoid unintended non-taxation and tax evasion.**

⁽¹⁾ OJ C 77, 28.3.2002, p. 1.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 2**Proposal for a directive
Recital 1 a (new)**

(1a) Persistent and considerable public deficits are closely linked to the current social, economic and financial crisis.

Amendment 3**Proposal for a directive
Recital 4**

(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies.

(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies ***in order to ensure a simplified and more transparent system of taxation.***

Amendment 4**Proposal for a directive
Recital 5**

(5) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State and that the benefits of the Directive should only be applicable when the income derived from the payment is effectively subject to tax in the Member State of the receiving company or in the Member State where the recipient permanent establishment is situated.

(5) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State and that the benefits of the Directive should only be applicable when the income derived from the payment is effectively subject to tax in the Member State of the receiving company or in the Member State where the recipient permanent establishment is situated, ***without there being the possibility of exemption or a substitution or replacement by payment of another tax.***

Amendment 5**Proposal for a directive
Recital 12**

(12) It is moreover necessary not to preclude Member States from ***taking appropriate measures to combat*** fraud ***or*** abuse.

(12) It is moreover necessary ***to take appropriate measures in order*** not to preclude Member States from ***combating tax*** fraud, ***tax evasion and*** abuse.

Amendment 6**Proposal for a directive
Recital 20 a (new)**

(20a) To ensure smooth and cost-efficient implementation of the provisions of this Directive, companies should prepare their annual accounts together with all relevant tax data in eXtensible Business Reporting Language (XBRL).

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 7**Proposal for a directive
Article 1 – paragraph 1**

1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that Member State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and is effectively subject to tax on the income deriving from those payments in that other Member State.

1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that Member State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and is effectively subject to tax on the income deriving from those payments in that other Member State **at a rate not lower than 70 % of the average statutory corporate tax rate applicable in the Member States, without there being the possibility of exemption or a substitution or replacement by payment of another tax. Interest or royalty payments shall not be exempted in the Member State in which they arise if the payment is not taxable according to the national tax law to which the beneficial owner is subject due to a different qualification of the payment (hybrid instruments) or a different qualification of the payer and recipient (hybrid entities).**

Amendment 8**Proposal for a directive
Article 1 – paragraph 3**

3. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent an expense incurred for the purposes of the activity of the permanent establishment.

3. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent an expense incurred for the purposes of the activity of the permanent establishment. **Only a permanent establishment that has met its tax liabilities shall be treated as the beneficiary of a tax exemption or a tax benefit.**

Amendment 10**Proposal for a directive
Article 2 – paragraph 1 – point d – point ii**

(ii) the second company has a minimum holding of **10** % in the capital of the first company, or

(ii) the second company has a minimum holding of **25** % in the capital of the first company, or

Amendment 11**Proposal for a directive
Article 2 – paragraph 1 – point d – point iii**

(iii) a third company has a minimum holding of **10** % both in the capital of the first company and in the capital of the second company.

(iii) a third company has a minimum holding of **25** % both in the capital of the first company and in the capital of the second company.

Amendment 12**Proposal for a directive
Article 4 – title****Fraud** and abuse**Tax fraud, tax evasion** and abuse

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 13**Proposal for a directive
Article 4 – paragraph 2**

2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax ***evasion***, tax ***avoidance*** or abuse, withdraw the benefits of this Directive or refuse to apply this Directive.

2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax ***fraud***, tax ***evasion***, ***tax*** abuse, ***or tax avoidance***, withdraw the benefits of this Directive or refuse to apply this Directive.

Amendment 14**Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) and (3), Article 2(c) and (d), and Annex I, Part A by **1 January 2012** at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) and (3), Article 2(c) and (d), and Annex I, Part A by **31 December 2013** at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment 15**Proposal for a directive
Article 6 – paragraph 2 a (new)**

2a. Companies shall prepare their annual accounts together with all relevant tax data in eXtensible Business Reporting Language (XBRL).

Amendment 16**Proposal for a directive
Article 7**

By 31 December **2016**, the Commission shall report to the Council on the economic impact of this Directive.

By 31 December **2015**, the Commission shall report to **the European Parliament and to** the Council on the economic impact of this Directive.

Amendment 17**Proposal for a directive
Article 8**

This Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation of interest and royalties.

This Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation **and double non-taxation** of interest and royalties.