Procedure file

Basic information

CNS - Consultation procedure Directive 2011/0314(CNS)	Awaiting final decision
Corporate taxation: common system of taxation applicable to interest and royalty payments. Recast Repealing Directive 2003/49/EC 1998/0087(CNS) Subject 3.45.04 Company taxation	

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		29/11/2011
		PPE GÁLL-PELCZ Ildikó	
		Shadow rapporteur	
		S&D HOANG NGOC Liem	
		ALDE KLINZ Wolf	
		Verts/ALE GIEGOLD Sven	
		ECR STREJČEK Ivo	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3399	19/06/2015
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events

11/11/2011	Legislative proposal published	COM(2011)0714	Summary
17/01/2012	Committee referral announced in Parliament		
10/07/2012	Vote in committee		
12/07/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0227/2012	Summary
11/09/2012	Results of vote in Parliament		
11/09/2012	Decision by Parliament	T7-0318/2012	Summary
19/06/2015	Debate in Council	3399	

Technical information

Procedure reference	2011/0314(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Recast
Legislative instrument	Directive
	Repealing Directive 2003/49/EC 1998/0087(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Awaiting final decision
Committee dossier	ECON/7/07752

Documentation gateway

Legislative proposal		COM(2011)0714	11/11/2011	EC	Summary
Document attached to the procedure		SEC(2011)1332	11/11/2011	EC	
Document attached to the procedure		SEC(2011)1333	11/11/2011	EC	
Economic and Social Committee: opinion, report		CES0473/2012	22/02/2012	ESC	
Committee draft report		PE487.846	10/05/2012	EP	
Amendments tabled in committee		PE491.094	08/06/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0227/2012	12/07/2012	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0318/2012	11/09/2012	EP	Summary
Commission response to text adopted in plenary		SP(2012)665	11/10/2012	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Corporate taxation: common system of taxation applicable to interest and royalty payments. Recast

PURPOSE: recasting of Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

PROPOSED ACT: Council Directive.

BACKGROUND: the problems addressed by the Directive arise from the existence of particular corporate tax obstacles to the functioning of the internal market: cross-border interest and royalty payments are subject to heavier taxation than domestic transactions. In the case of purely domestic operations, the recipient of the payment is subject to corporate tax as a resident taxpayer in the Member State where it is resident for tax purposes. In case of international payments, they may be also subject to withholding taxes in the source Member State.

The main cause of economic distortions, compliance costs and the risk of excessive or double taxation is the existence of taxes levied at source; also, the disparities in taxation of the different types of cross-border capital flows distort business behaviour. The amendments proposed in this recast aim to extend the Directives scope and apply the tax exemption in a wider number of cases.

The Commission and international tax stakeholders have always been convinced of the need for an EU instrument in this area, as neither unilateral measures taken by Member States nor bilateral tax agreements have provided a satisfactory solution that fully meets the requirements of the internal market. In its Communication entitled A package to tackle harmful tax competition in the European Union, the

Commission stressed the need for coordinated action at European level to tackle harmful tax competition. In April 2009, the Commission presented a report on the application of Directive 2003/49/EC. It indicates that overall implementation of the Directive has been satisfactory and refers to possible amendments in order to extend its coverage.

IMPACT ASSESSMENT: the Commissions impact assessment referred to the problems deriving from withholding taxes on cross-border interest and royalty payments: economic distortions in business behaviour; compliance costs due to paperwork and delays in making tax relief effective; and the risk of double taxation.

While not taking any policy action was rejected, a number of options were examined:

1) Extending the Directives benefits to all payments between unrelated undertakings: under this option, the different taxation of dividends, interest and royalties would continue so that the corresponding economic distortions would remain. It it would also involve steeper reductions in Member States tax revenues.

2) Aligning the Directives requirements with those of the Parent-Subsidiary Directive on dividend taxation. This is the option chosen by this recast since it offers a more balanced result: it is more effective in reducing economic distortions and does not diminish Member States tax revenue as much as the previous option:

- concerning interest payments, the loss should not exceed EUR 200 to EUR 300 million and would affect the 13 EU Member States that still apply withholding taxes to outgoing interest payments Belgium, Bulgaria, the Czech Republic, Greece, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Romania, Slovenia and United Kingdom -;
- concerning royalty payments, the loss should not exceed EUR 100 to EUR 200 million and would affect the seven countries with the largest negative royalty balances as a share of GDP - Bulgaria, the Czech Republic, Greece, Poland, Portugal, Romania and Slovakia.

According to the impact assessment, the initiatives contained in this recast proposal to eliminate withholding taxes in a larger number of cases would entail compliance cost savings estimated at between EUR 38,4 and EUR 58,8 million.

LEGAL BASIS: Article 115 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the aim of this recast is to resolve some of the problems resulting from the limited scope of Directive 2003/49/EC. There are cross-border payments outside its scope that face withholding taxes at source. The purpose of the Directive is to put cross-border interest and royalty payments on an equal footing with domestic payments, by eliminating juridical double taxation, burdensome administrative formalities and cash-flow problems for the companies concerned. It is therefore proposed:

- to extend the list of companies to which the Directive applies and to reduce the shareholding requirements to be met for companies to qualify as associated;
- to add a new requirement for the tax exemption: the recipient has to be subject to corporate tax in the Member State of its establishment on the income derived from the interest or royalty payment. This condition seeks to ensure that the tax relief is not granted when the corresponding income is not subject to tax and thus close a loophole that could be used by tax evaders;
- lastly, a technical amendment is proposed to avoid situations where payments made by a permanent establishment and deriving from its activities are denied the exemption on the grounds that they do not constitute a tax-deductible expense.

BUDGETARY IMPACT: the proposal has no impact on the EUs budget.

Corporate taxation: common system of taxation applicable to interest and royalty payments. Recast

The Committee on Economic and Monetary Affairs adopted the report by Ildikó GALL-PELCZ (EPP, HU), following a special legislative procedure (European Parliament consultation), 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).

The committee suggested that the Parliament should amend its proposal as follows:

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.

Associated company: for the definition of associated company, Members changed the minimum holding to 25% from 10% of capital.

Transposition: certain provisions of the directive must be transposed by 31 December 2013 rather than 1 January 2012 as the Commission had proposed.

Report: the report on economic impact of the directive should be submitted by 31 December 2015, rather than 31 December 2016.

Corporate taxation: common system of taxation applicable to interest and royalty payments. Recast

The European Parliament adopted by 562 votes to 102 with 18 abstentions a legislative resolution 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). Parliament adopted its position in first reading following the special legislative procedure (consultation of Parliament). Parliaments amendments modify the proposal as follows:

Scope: Parliament specifies that, in order for interest or royalty payments to be exempt from taxes in one Member State, the beneficial owner must be a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and be 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).

The resolution recalls that 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.

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.

Associated company: for the definition of associated company, Parliament changed the minimum holding to 25% from 10% of capital.

Preparation of annual accounts: to ensure smooth and cost-efficient implementation of the provisions of the Directive, companies must prepare their annual accounts together with all relevant tax data in eXtensible Business Reporting Language (XBRL).

Transposition: certain provisions of the Directive shall be transposed by 31 December 2013 at the latest (instead of 1 January 2012).

Report: the report on economic impact of the Directive should be submitted by 31 December 2015, rather than 31 December 2016.