

Procedure file

Basic information		
CNS - Consultation procedure Directive	2013/0400(CNS)	Procedure completed
Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States: tackling double non-taxation		
Amending Directive 2011/96/EU 2010/0387(CNS)		
Subject 3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		10/12/2013
		S&D KLEVA KEKUŠ Mojca	
		Shadow rapporteur PPE STOLOJAN Theodor Dumitru	
	Verts/ALE LAMBERTS Philippe		
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		16/12/2013
		S&D GERINGER DE OEDENBERG Lidia Joanna	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3324	20/06/2014
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events			
25/11/2013	Legislative proposal published	COM(2013)0814	Summary
13/01/2014	Committee referral announced in Parliament		
18/03/2014	Vote in committee		
24/03/2014	Committee report tabled for plenary, 1st reading/single reading	A7-0243/2014	Summary
02/04/2014	Results of vote in Parliament		
02/04/2014	Decision by Parliament	T7-0275/2014	Summary
20/06/2014	Act adopted by Council after consultation of Parliament		
20/06/2014	End of procedure in Parliament		
25/07/2014	Final act published in Official Journal		

Technical information	
Procedure reference	2013/0400(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2011/96/EU 2010/0387(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/14639

Documentation gateway					
Legislative proposal		COM(2013)0814	25/11/2013	EC	Summary
Document attached to the procedure		SWD(2013)0473	25/11/2013	EC	
Document attached to the procedure		SWD(2013)0474	25/11/2013	EC	
Document attached to the procedure		SWD(2013)0475	25/11/2013	EC	
Committee draft report		PE526.302	28/01/2014	EP	
Committee opinion	JURI	PE526.293	12/02/2014	EP	
Amendments tabled in committee		PE529.823	28/02/2014	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0243/2014	24/03/2014	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0275/2014	02/04/2014	EP	Summary
Reasoned opinion	SE_PARLIAMENT	PE536.048	30/06/2014	NP	
Commission response to text adopted in plenary		SP(2014)471	09/07/2014	EC	

Additional information	
European Commission	EUR-Lex

Final act
Directive 2014/86 OJ L 219 25.07.2014, p. 0040 Summary

Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States: tackling double non-taxation

PURPOSE: to prevent fraud and tax evasion through artificial arrangements and thus fight against corporate base erosion.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (PSD) exempts dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and eliminates double taxation of such income at the level of the parent company.

The Commission considers, however, that the benefits of [Directive 2011/96/EU](#) should not lead to situations of double non-taxation and, therefore, generate unintended tax benefits for groups of parent companies and subsidiaries of different Member States in comparison with groups of companies of the same Member State.

Double non-taxation resulting from hybrid financial instruments deprives Member States of significant revenues and creates unfair competition between businesses in the Single Market.

Hybrid loan arrangements are financial instruments that have characteristics of both debt and equity. Due to different tax qualifications given by Member States to hybrid loans, payments under a cross border hybrid loan are treated as a tax deductible expense in one Member State (the Member State of the payer) and as a tax exempt distribution of profits in the other Member State (the Member State of the payee), thus resulting in an unintended double non-taxation.

To solve the issue, the Code of Conduct Group agreed guidance, which cannot be safely implemented under Directive 2011/96. However, double non-taxation is one of the key areas for urgent and coordinated action to be taken in the EU:

- [The Action Plan to strengthen the fight against tax fraud and tax evasion](#) adopted by the Commission on 6 December 2012 identifies tackling mismatches between tax systems as one of the actions to be undertaken in the short term (in 2013). It also announced a review of anti-abuse provisions in the corporate tax directives, including PSD, with a view to implement the principles underlying its [Recommendation on aggressive tax planning](#).

In a [resolution adopted on 21 May 2013](#), the European Parliament called on the Commission to: (i) address the problem of hybrid mismatches between the different tax systems used in the Member States; (ii) present in 2013 a proposal for the revision of the PSD with a view to revise the anti-abuse clause and to eliminate double non-taxation in the EU as facilitated by hybrid arrangements.

IMPACT ASSESSMENT: the impact assessment found that counteracting double non-taxation deriving from hybrid financial arrangements and aggressive tax planning will have a positive impact on the tax revenue of Member States.

With regard to hybrid loan mismatches, the impact assessment found that the best option is to deny the tax exemption in the PSD to profit distribution payments that are deductible in the source Member State.

The assessment also found that the most effective option would be to update the current anti-abuse provisions of the PSD and make it obligatory for Member States to adopt the common anti-abuse rule.

CONTENT: the proposal seeks to tackle hybrid financial mismatches within the scope of application of Directive 2011/96/EU (PSD) and to replace the current anti-abuse provisions with a general anti-abuse rule, based on the similar clause included in the Recommendation on aggressive tax planning.

To counteract double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States, the Member State of the parent company and the Member State of its permanent establishment should not allow those companies to benefit from the tax exemption applied to received distributed profits, to the extent that such profits are deductible by the subsidiary of the parent company.

Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States: tackling double non-taxation

The Committee on Economic and Monetary Affairs adopted the report, in the framework of a special legislative procedure (Parliament consultation), the report by Mojca KLEVA KEKU (S&D, SI) on the proposal for a Council directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

The committee approved the Commission proposal subject to the following amendments:

Combating tax evasion: Members recalled that an estimated EUR 1 trillion of potential tax revenue is lost to tax fraud, tax evasion, tax avoidance or aggressive tax planning in the Union every year, representing an approximate cost of EUR 2 000 per annum for each Union citizen. It is therefore vital to take appropriate measures against tax fraud and to amend [Council Directive 2011/96/EU](#) in order to ensure that the application of that directive does not prevent effective action against double non-taxation in the area of hybrid loan structures.

In order to prevent tax avoidance and abuse through artificial arrangements, the report suggested adding a common, compulsory anti-abuse provision tailored to the purpose and objectives of Directive 2011/96/EU should be inserted.

It is stipulated that this Directive should not preclude the application of domestic or agreement based provisions required in order to prevent tax evasion or to permit the taxation of activities at the place of production or consumption, in so far as they are compatible with this Directive.

Parent company: by derogation of the provisions of the Directive, Member States should be able to add, by means of bilateral agreement, the criterion of a holding in the capital by that of a holding of voting rights.

Review: by 31 December 2016, the Commission should report to the European Parliament and the Council reviewing the operation of this Directive and in particular its effectiveness in preventing tax avoidance and abuse. The report should be submitted together with a legislative proposal, if appropriate.

Common system of taxation applicable in the case of parent companies and subsidiaries of

different Member States: tackling double non-taxation

The European Parliament adopted by 513 votes to 32, with 81 abstentions, in the framework of a special legislative procedure (Parliament consultation), a legislative resolution on the proposal for a Council directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

Parliament approved the Commission proposal subject to the following amendments:

Combating tax evasion: Parliament recalled that an estimated EUR 1 trillion of potential tax revenue is lost to tax fraud, tax evasion, tax avoidance or aggressive tax planning in the Union every year, representing an approximate cost of EUR 2 000 per annum for each Union citizen. It is therefore vital to take appropriate measures against tax fraud and to amend [Council Directive 2011/96/EU](#) in order to ensure that the application of that directive does not prevent effective action against double non-taxation in the area of hybrid loan structures.

In its [resolution of 21 May 2013](#) on Fight against Tax Fraud, Tax Evasion and Tax Havens, the European Parliament called on the Commission to put forward a proposal in 2013 to amend Directive 2011/96/EU with a view to revising the anti-abuse provision and eliminating double non-taxation, as facilitated by hybrid entities and financial instruments in the Union.

Anti-abuse provision: in order to prevent tax avoidance and abuse through artificial arrangements, the report suggested adding a common, compulsory anti-abuse provision tailored to the purpose and objectives of Directive 2011/96/EU should be inserted.

Application of domestic or agreement based provisions: it is stipulated that this Directive should not preclude the application of domestic or agreement-based provisions required in order to prevent tax evasion or to permit the taxation of activities at the place of production or consumption, in so far as they are compatible with this Directive.

Artificial arrangement: in order to determine whether an arrangement or series of arrangements is artificial, Member States should ascertain, in particular, but not exclusively, whether they involve one or more of the following situations outlined in the Directive.

Parent company: by derogation of the provisions of the Directive, Member States should be able to add, by means of bilateral agreement, the criterion of a holding in the capital by that of a holding of voting rights.

Review: by 31 December 2016, the Commission should report to the European Parliament and the Council reviewing the operation of this Directive and in particular its effectiveness in preventing tax avoidance and abuse. The report should be submitted together with a legislative proposal, if appropriate.

Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States: tackling double non-taxation

PURPOSE: to amend EU tax rules on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

LEGISLATIVE ACT: Council Directive 2014/86/EU amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

CONTENT: the original parent-subsidiary directive (Directive 2011/96/EU) exempts dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and eliminates double taxation of such income at the level of the parent company.

The benefits of Directive 2011/96/EU should not lead to situations of double non-taxation and, therefore, generate unintended tax benefits for groups of parent companies and subsidiaries of different Member States when compared to groups of companies of the same Member State.

To counteract double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States, Directive 2011/96/EU is amended to ensure that the Member State of the parent company and the Member State of its permanent establishment should not allow those companies to benefit from the tax exemption applied to received distributed profits, to the extent that such profits are deductible by the subsidiary of the parent company.

ENTRY INTO FORCE: 26.07.2014.

TRANSPOSITION: 31.12.2015.