







Procedure file

Basic information		
CNS - Consultation procedure Directive	2023/0320(CNS)	Awaiting final decision
Establishing a Head Office Tax system for micro, small and medium sized enterprises		
Amending Directive 2011/16 2009/0004(CNS)		
Subject		
3.45.02 Small and medium-sized enterprises (SME), craft industries		
3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 PEREIRA Lídia	19/09/2023
Council of the European Union		Shadow rapporteur	
		 LALUCQ Aurore	
		 HLAVÁČEK Martin	
		 GRUFFAT Claude	
		 MOŽDŽANOWSKA Andželika Anna	
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	GENTILONI Paolo	

Key events			
12/09/2023	Legislative proposal published	COM(2023)0528	Summary
11/12/2023	Committee referral announced in Parliament		
22/02/2024	Vote in committee		
28/02/2024	Committee report tabled for plenary, 1st reading/single reading	A9-0064/2024	
10/04/2024	Decision by Parliament	T9-0218/2024	Summary

Technical information	
Procedure reference	2023/0320(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2011/16 2009/0004(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/9/13228

Documentation gateway					
Legislative proposal		COM(2023)0528	12/09/2023	EC	Summary
Document attached to the procedure		SEC(2023)0308	13/09/2023	EC	
Document attached to the procedure		SWD(2023)0301	13/09/2023	EC	
Document attached to the procedure		SWD(2023)0302	13/09/2023	EC	
Document attached to the procedure		SWD(2023)0303	13/09/2023	EC	
Committee draft report		PE755.999	17/11/2023	EP	
Amendments tabled in committee		PE757.288	18/12/2023	EP	
Economic and Social Committee: opinion, report		CES4262/2023	17/01/2024	ESC	
Committee report tabled for plenary, 1st reading/single reading		A9-0064/2024	28/02/2024	EP	
Text adopted by Parliament, 1st reading/single reading		T9-0218/2024	10/04/2024	EP	Summary

Additional information		
Research document	Briefing	21/11/2023

Establishing a Head Office Tax system for micro, small and medium sized enterprises

PURPOSE: to establish a Head Office Tax (HOT) system to simplify tax rules for certain small and medium-sized enterprises (SMEs) operating in the internal market.

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: in the EU, there is currently no common approach to the computation of the taxable base for businesses. EU businesses are therefore obliged to comply with the rules of different corporate tax systems, depending on the Member State in which they operate. The co-existence and interaction of 27 different corporate income tax systems in the Union gives rise to complexity in tax compliance and leads to an uneven level playing field for businesses. This state of play has a higher impact on SMEs than on larger taxpayers and has become more evident as globalisation and digitalisation of the economy have significantly altered the perception of borders and business models. The attempts by governments to adapt to this new reality have resulted in a fragmented response among Member States, leading to further distortions in the internal market. Furthermore, the various legal frameworks inevitably lead to different tax administration practices across Member States. This often entails lengthy procedures characterised by unpredictability and inconsistency along with high compliance costs.

With a view to simplifying tax rules for small and medium-sized enterprises (SME) to do business in the internal market, the Commission adopted the SME Relief Package which aims to deliver much-needed support for SMEs to secure cash flow, to simplify and to invest and grow. The present initiative is part of the package.

CONTENT: to address the needs of Europe's SMEs in the current economic environment, the Commission is proposing this draft Directive which aims to provide for a simplified approach to subjecting standalone SMEs operating cross-border in the EU to taxation in respect of their permanent establishments in other Member States. It lays down rules for computing the taxable result of permanent establishments of SMEs.

Head Office Taxation

The proposal aims to set a tax framework in support of the internal market, in particular for SMEs. The Head Office Tax System for SMEs will give SMEs operating cross-border through permanent establishments the option to interact with only one tax administration that of the Head Office instead of having to comply with multiple tax systems. This proposal will increase tax certainty and fairness, reduce compliance costs and distortions in the market that influence business decisions, while minimising the risk of double and over taxation and tax disputes.

One-stop-shop

The proposal aims to provide significant procedural simplification, thus a one-stop-shop should be put in place, whereby the tax filing, tax assessments and the collection of the tax due by the permanent establishments would be dealt with through a single tax authority (filing authority), i.e. the tax authority in the Member State of the head office. SMEs will thus file one single tax return with the tax administration of their head office. This tax administration will then transfer the resulting tax revenues to each Member State where the SME maintains a permanent establishment. Such an approach will eliminate the complexities and related costs of having to deal with multiple tax systems and tax administrations.

The Member State of the head office will apply the rates applicable in the Member State(s) where the SME maintains permanent establishments and subsequently, transfer the resulting tax revenues to the latter.

In full respect of Member States sovereignty in tax matters, audits, appeals and dispute resolution procedures would primarily be kept domestic and in accordance with the procedural rules of the respective Member State. To support the functioning of a one-stop-shop, it would be critical to provide for joint audits, which create an obligation to the Member State of the head office to cooperate if the tax authority of the permanent establishment requests an audit covering the computation of the taxable result of its taxpayer.

Exchange of information

For the purpose of the automatic exchange of information, the Head Office Member States will have to exchange the information required by this proposal with other Host Member States, and the other way around, through a bilateral network between the Member States concerned, by electronic means using the EU common communication network (CCN), accessible to all Member States. The Commission will have the task to provide Member States with the platform for exchange of information CCN and remains data processor with limited access.

Eligibility requirements

SMEs would have to explicitly opt-in. To prevent circumvention, the rules would be coupled with the requirement that an opting-in SME would be under the obligation to apply the rules of the state of the head office for a minimum period of time, for example five years. In addition, SMEs will be entitled to renew their choice every five years without limit as long as they continue to meet the eligibility requirements. The eligibility, but also the termination provisions are designed to discourage abuse and potential tax planning practices, such as the deliberate transfer of the Head Office to a low-tax country.

Establishing a Head Office Tax system for micro, small and medium sized enterprises

The European Parliament adopted by 443 votes to 110, with 51 abstentions, following a special legislative procedure (consultation), a legislative resolution on the proposal for a Council directive establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16/EU.

Simplification of tax rules for certain SMEs

Members stressed that it is essential to support micro-enterprises and SMEs. The 24 million SMEs in the EU account for two-thirds of private sector jobs and 99% of all businesses in the EU. They spend around 2.5% of their turnover on compliance costs related to tax obligations. A calculation of the taxable results based on the rules of the Member State where the head office (headquarters of the SME) is resident for tax purposes should significantly reduce tax compliance cost and free financial resources to allow SMEs to invest.

The aim of the Directive should be to simplify the tax rules for certain SMEs carrying out cross-border activities in the internal market through one or more permanent establishments and a maximum of two subsidiaries. It lays down rules for calculating the taxable income of permanent establishments and subsidiaries of SMEs that meet certain criteria.

Head office taxation

The head office may opt to apply the head office taxation rules in respect of its permanent establishments and subsidiaries in other Member States if it meets the following requirements:

- the joint turnover of its permanent establishments and subsidiaries did not exceed, for the last three fiscal years, an amount equal to triple the turnover generated by the head office;
- it has been resident for tax purposes in the head office Member State during the last fiscal year or, if more recently, since the establishment of the head office;
- the SME is considered to be a micro, small or medium-sized enterprise for the last fiscal year or, if more recently, since the establishment of the head office.

If the head office opts to apply the head office taxation rules, it should apply those rules to all its permanent establishments or subsidiaries in other Member States. If it creates a new permanent establishment in another Member State, it should apply head office taxation rules to such permanent establishment from the moment of its establishment. If it creates a first subsidiary in another Member State, it should apply head office taxation rules to that subsidiary from the moment of its establishment and should inform the host Member State thereof.

Exercise of the option to apply Head office taxation rules

For the establishment of its first permanent establishment or subsidiary in another Member State, an SME may apply the head office taxation rules from the year in which the permanent establishment or subsidiary is established, without having to notify the filing authority three months before the end of the previous tax year.

The filing authority should obtain confirmation from the host Member State that the establishment in the host Member State constitutes a permanent establishment for the purposes of bilateral tax treaties.

Duration of the option to apply the head office taxation rules

The head office that has opted to apply head office taxation rules to its permanent establishments or subsidiaries in one or more host Member States should apply those rules for a renewable period of seven fiscal years.

The option to apply the head office taxation rules should be terminated before the end of the seven-year period for any of the following reasons: (i) the SME transfers its tax residence out of the head office Member State, if the SME wishes to stop applying the taxation rules; (ii) for the last three fiscal years, the joint turnover of its permanent establishments and subsidiaries exceeded an amount which is equal to triple the turnover of the head office; (iii) the SME is no longer considered to be an SME; (iv) the SME sets up more than two subsidiaries.

Audits

To support the functioning of a one-stop-shop, it would be critical to provide for joint audits, creating a cooperation obligation for the Member States tax authorities, whereby the Member State of the head office should cooperate if the tax authority of the permanent establishment or subsidiary requests an audit covering the computation of the taxable result of its taxpayer. In that sense, if the Member State of the head office conducts an audit at its own initiative, it should invite the host Member State to carry out such audit jointly.

Report

The Commissions evaluation report should assess all relevant aspects of implementation of this Directive and focus on the advantages of a possible extension of the scope, the adequacy of the eligibility requirements, the appropriateness of the exclusion situations, namely the set-up of subsidiaries, and the need for the exclusion of shipping activities. The Commission should address those aspects in its possible proposal to amend this Directive, or give reasons to justify why it is not necessary to change the existing rules.

Transposition

Member States should transpose the Directive before 31 December 2024 and it should apply from 1 January 2025.