Common corporate tax base

2016/0337(CNS) - 15/03/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 451 to 141, with 59 abstentions, following Parliaments consultation, a legislative resolution on the proposal for a Council directive on a Common Corporate Tax Base.

Parliament approved the Commission proposal subject to the following amendments:

Members noted that in times of globalisation and digitalisation, taxation of in particular financial and intellectual capital on a source base is becoming increasingly harder to retrace and easier to manipulate. The mainstream digitalisation of many sectors of the economy coupled with the fast developing digital economy calls into question the suitability of the Union corporate tax models.

Subject matter: Parliament called a Directive which establishes a system of a common base for the taxation in the Union of certain companies and lays down rules for the calculation of that base, including rules on measures to prevent tax avoidance and on measures relating to the international dimension of the proposed tax system.

Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, Members stated the need to ensure simultaneous entry into force of the Directive on a Common Corporate Tax Base and the Directive on a Common Consolidated Corporate Tax Base.

Once implemented in all Member States, a CCCTB would ensure that taxes are paid where profits are generated and where companies have permanent establishment.

Digital presence in a country to determine taxable profits: the rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent and digital permanent establishments in other Member States, where the company meets specific conditions, in particular, that they belong to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR 750 million during the financial year preceding the relevant financial year. That threshold shall be lowered to zero over a maximum period of seven years.

The amended text stipulates that a taxpayer shall be considered to have a permanent establishment which includes a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes when it has a fixed place of business or a digital presence in that other Member State through which it carries on its business, wholly or partly.

If a taxpayer resident in one jurisdiction provides access to or offers a digital platform such as an electronic application, database, online marketplace, or storage room, or offers search engine or advertising services on a website or in an electronic application, that taxpayer shall be deemed to have a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes if the total amount of revenue of the taxpayer or associated enterprise due to remote transactions generated from aforementioned digital platforms in the non-resident jurisdiction exceeds EUR 5 million per year in the jurisdiction where he does not reside, and provided that the monthly number of individual users domiciled in a Member State other than the jurisdiction in which the taxpayer is resident for tax purposes have logged in or visited the taxpayer's digital platform is at least or equal to a 1000.

A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of permanent establishment or digital permanent establishment.

Deductible expenses: for research and development costs not exceeding EUR 20 million and that relate to staff including wages, subcontractors agency workers and freelancers, the taxpayer shall receive a tax credit of 10% of the costs incurred.

Exceeding borrowing costs shall be deductible in the tax year in which they are incurred for maximum of 10% of the taxpayer's earnings before interest, tax, depreciation and amortisation ('EBITDA') or for a maximum amount of EUR 1 million, whichever is higher.

Specific exemptions: Parliament introduced a new Article which stipulates that earnings retained to a reserve by cooperatives and consortia, both during the current activity of a company and after its expiration, as well as the benefits granted by cooperatives and consortia to their own members, are deductible whenever the deductibility is allowed by fiscal national law.

Losses incurred in a tax year by a resident taxpayer or a permanent establishment of a non-resident taxpayer may be carried forward and deducted in subsequent tax years, up to a maximum period of five years.

Controlled foreign companies: an entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in the Member State of its head office, shall be treated as a controlled foreign company where the profits of the entity are subject to a corporate tax rate lower than 15 %; that rate shall be revised each year in line with economic developments in world trade.

European tax identification number: the Commission is called on to present a legislative proposal for a harmonised, common European taxpayer identification number by 31 December 2018, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Mandatory automatic exchange of information on tax matters: in order to guarantee full transparency and the proper implementation of this Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU. Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of tax administration staff focusing on cross-border tax cooperation, and on automatic exchange of information in order to ensure full implementation of this Directive.

Measures against tax treaty abuses: the amended text called on Member States to amend their bilateral tax treaties in accordance with this Directive to ensure such treaties contain all of the following: (i) a clause ensuring that both parties to the treaty undertake to laying down measures whereby tax is to be paid where economic activities are taking place and where value is created; (ii) an addendum to clarify that the objective of bilateral treaties, beyond avoiding double taxation is also to fight tax evasion and aggressive tax planning; (iii) a clause for a principal purpose test based on a general anti-avoidance rule.

Reporting: the Commission shall, 10 years after the entry into force. It shall communicate its findings in a report to the European Parliament and Member States with the aim of taking those findings into account for the design and implementation of national corporate tax systems accompanied, if appropriate, by a legislative proposal to amend this Directive.