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Council adopts amendment closing tax loophole for corporate groups

The Council today[1] formally adopted an amendment to EU tax rules that will prevent the double non-taxation of dividends distributed within corporate groups deriving from hybrid loan arrangements[2] (*10996/14* + *11291/14* + *11291/14 ADD1*).

This follows political agreement at the Council's meeting on 20 June.

"The adoption of this amendment to the parent-subsidiary directive is an important step change in the fight against aggressive tax planning. It represents a concrete achievement of the EU in this area, in line with international efforts to combat tax evasion and avoidance", said Pier Carlo Padoan, minister of economy and finance of Italy and president of the Council. *"The Italian presidency is committed to bringing forward work in this field to promote a fairer tax system for the benefit of all EU citizens and businesses".*

The amendment to the parent-subsidiary directive[3] will prevent cross-border companies from planning their intra-group payments so as to result in double non-taxation where hybrid loan arrangements are involved. The member state of the parent company will henceforth refrain from taxing profits from the subsidiary only to the extent that such profits are not tax deductible for the subsidiary.

Such tax planning was not ruled out before, as the provisions of the original parent-subsidiary directive required member states to exempt from taxation the profits that parent companies received from their subsidiaries in other member states. The intention was to ensure that profits were not taxed twice, and that cross-border groups were thereby not put at a disadvantage compared to domestic groups.

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[1] At a meeting of the Economic and Financial Affairs Council, without discussion.

[2] Hybrid loan arrangements are financial instruments that have characteristics of both debt and equity.

[3] Directive 2011/96/EU

However, hybrid loan arrangements enabled cross-border groups to avoid paying taxes altogether by exploiting mismatches between national tax rules. In such cases, the received distributed profits were not taxable in the member state of the parent company, whilst they were treated as a tax-deductible expense in the member state of the subsidiary.

Member states will have until 31 December 2015 to transpose the amendment into national law.

The amendment adopted today will help increase member states' tax revenues, and help create a level playing field between groups with parent companies and subsidiaries located in different countries and those that have all entities based in a single member state.

The amendment is part of a broader proposal that the Council agreed to split in order to allow early adoption of the new rule on hybrid loans, whilst enabling work to continue on another aspect, namely the introduction of a common anti-abuse provision.