+European Parliament
2014-2019

Committee on Economic and Monetary Affairs

2016/0337(CNS)

13.7.2017

*

DRAFT REPORT

on the proposal for a Council directive on a Common Corporate Tax Base
(COM(2016)0685 – C8-0472/2016 – 2016/0337(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Paul Tang

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive on a Common Corporate Tax Base (COM(2016)0685 – C8-0472/2016 – 2016/0337(CNS))

(Special legislative procedure – consultation)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2016)0685),

– having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0472/2016),

– having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Danish Parliament, Dáil Éireann, Seanad Éireann, the Luxembourg Chamber of Representatives, the Maltese Parliament, the Netherlands Senate, the Netherlands House of Representatives and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to Rules 78c of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A8-0000/2017),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive
Recital 1

Text proposed by the Commission	*Amendment*
(1) Companies which seek to do business across frontiers within the Union	(1) Companies which seek to do business across frontiers within the Union

encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. Although those situations highlight shortcomings that are completely different in nature, they both create obstacles which impede the proper functioning of the internal market. ***Action to rectify those problems*** should therefore address both types of market deficiencies.	encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. ***In times of globalisation and digitalisation, taxation of especially financial and intellectual capital on a source base is becoming increasingly harder to retrace and easier to manipulate.*** Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. ***As a consequence, the gap between the effective tax rate paid by multinationals and that of small and medium-sized enterprises (SMEs) has widened over time, leading to an unlevel playing field.*** Although those situations highlight shortcomings that are completely different in nature, they both create obstacles which impede the proper functioning of the internal market. ***A new standard for corporate taxation for the Union*** should therefore address both types of market deficiencies. ***In this regard, more convergence between national tax systems will lead to a significant decrease in costs and administrative burden for businesses operating cross-border within the Union.***

Or. en

Amendment 2

Proposal for a directive
Recital 2

Text proposed by the Commission	*Amendment*
(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that	(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that

companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. It is therefore necessary to provide for mechanisms that discourage companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed.	companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. It is therefore necessary to provide for mechanisms that discourage companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed. ***Consolidation is an essential element of such a system, since the major tax obstacles faced by companies of the same group that operate cross-border in the Union can be tackled only in that way. It eliminates transfer pricing formalities and intra-group double taxation.***

Or. en

Amendment 3

Proposal for a directive
Recital 3

Text proposed by the Commission	*Amendment*
(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)[7] , a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies	(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)[7] , a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies

Text proposed by the Commission	Amendment
resident in the Union and promote the objective of making it a more competitive location for investment internationally. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in countering tax avoidance. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market.	resident in the Union and promote the objective of making it a more competitive location for investment internationally. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in countering tax avoidance. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market. ***Improving the internal market is a key factor for encouraging growth and job creation. The introduction of a CCCTB will improve economic growth and lead to more jobs in the Union by reducing harmful tax competition between companies, since small companies currently suffer a competitive disadvantage by paying on average 30% more corporate taxes than multinational enterprises (MNEs).***
[7] Proposal for a Council Directive COM (2011) 121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.	[7] Proposal for a Council Directive COM (2011) 121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

Or. en

Amendment 4

Proposal for a directive
Recital 4

Text proposed by the Commission	*Amendment*
(4) Considering the need to act swiftly	(4) 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, it is ***necessary to divide the ambitious CCCTB initiative into two separate*** proposals***. At a first stage, rules on a*** common corporate tax base ***should be enacted, before addressing, at a second stage, the issue of consolidation***.	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, it is ***vital to deal with the two legislative*** proposals ***on the*** common corporate tax base ***and on the common consolidated tax base in parallel***.

Or. en

Amendment 5

Proposal for a directive
Recital 5

Text proposed by the Commission	*Amendment*
(5) Many aggressive tax planning structures tend to feature in a cross-border context, which implies that the participating groups of companies possess a minimum of resources. On this premise, for reasons of proportionality, the rules on a common base should be mandatory only for companies which belong to a group of a substantial size. For that purpose, a size-related threshold should be fixed on the basis of the total consolidated revenue of a group which files consolidated financial statements. In addition, to ensure coherence between the two steps of the CCCTB initiative, the rules on a common base should be mandatory for companies which would be considered as a group should the full initiative materialise. In order to better serve the aim of facilitating trade and investment in the internal market, the rules on a common corporate tax base should also be available, as an option, to companies which do not meet those criteria.	(5) Many aggressive tax planning structures tend to feature in a cross-border context, which implies that the participating groups of companies possess a minimum of resources. On this premise, for reasons of proportionality, the rules on a common base should ***in the first phase*** be mandatory only for companies which belong to a group of a substantial size. For that purpose, a size-related threshold should be fixed on the basis of the total consolidated revenue of a group which files consolidated financial statements***. Since this Directive works on a new standard for corporate taxation for all business in Europe, no more than five years after implementation the threshold should be lowered to zero***. In addition, to ensure coherence between the two steps of the CCCTB initiative, the rules on a common base should be mandatory for companies which would be considered as a group should the full initiative materialise. In order to better serve the aim of facilitating trade and investment in the internal market, the rules on a common

corporate tax base should also be available, as an option, to companies which do not meet those criteria.

Or. en

Amendment 6

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission	*Amendment*
	(5 a) In order to create a level playing field and to eliminate tax competition conditions having a negative impact on the economic performance of the internal market and leading to a race to the bottom, minimum effective corporate tax rates should be introduced so as to optimise tax efficiency. Such a minimum effective tax rate would furthermore lead to the benefit of better comparing economic performance of Member States across the EU. The average EU top statutory corporate income tax rate is 22.5%, and in some Member States as low as 10%. The declining tendency of this rate should be reversed so as to avoid a race to the bottom. This directive therefore asks the Commission to come up with a legislative proposal for a minimum effective corporate tax rate at 15% in each Member State. Until such a legislation is in place, the Commission should publish statistics of the effective tax rates in Member States, distinguishing between the effective tax rates of SMEs and MNEs.

Or. en

Amendment 7

Proposal for a directive
Recital 5 b (new)

Text proposed by the Commission	*Amendment*
	(5 b) As the High Level Group on Own Resources suggests, a part of the fiscal revenues gained from the common consolidated tax base can be used as an own resource for the Union budget, in order to proportionally reduce Member States' contributions to the same budget. This should lead to a more effective way to levy taxes on exporting and multinational corporations, who benefit most from globalisation and the Single Market, and thus introduce a user-pays principle.

Or. en

Amendment 8

Proposal for a directive
Recital 6

Text proposed by the Commission	*Amendment*
(6) It is necessary to define the concept of a permanent establishment situated in the Union and belonging to a taxpayer who is resident for tax purposes within the Union. The aim would be to ensure that all concerned taxpayers share a common understanding and to exclude the possibility of a mismatch due to divergent definitions. On the contrary, it should not be seen as essential to have a common definition of permanent establishments situated in a third country, or in the Union but belonging to a taxpayer who is resident for tax purposes in a third country. This dimension should better be left to bilateral tax treaties and national law due to its complicated interaction with international	(6) It is necessary to define the concept of a permanent establishment situated in the Union and belonging to a taxpayer who is resident for tax purposes within the Union. ***Too often, multinational companies make arrangements to transfer their profits to favourable tax regimes without paying any tax or paying very low rates of tax. The concept of a permanent establishment will provide a precise, binding definition of the criteria which must be met if a multinational company is to prove that it is situated in a given country. This will compel multinational companies to pay their taxes fairly.*** The aim would be to ensure that all concerned taxpayers share a common understanding

agreements.	and to exclude the possibility of a mismatch due to divergent definitions. On the contrary, it should not be seen as essential to have a common definition of permanent establishments situated in a third country, or in the Union but belonging to a taxpayer who is resident for tax purposes in a third country. This dimension should better be left to bilateral tax treaties and national law due to its complicated interaction with international agreements.

Or. en

Amendment 9

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission	*Amendment*
	(6 a) Digital goods tend to be highly mobile and intangible. Studies have shown that the digital sector is highly involved in aggressive tax planning practices, which allows the biggest companies to pay close to zero taxes over their revenue. A new permanent establishment nexus based on digital presence allows us to address the tax challenges that arise from the context of digitalisation.

Or. en

Amendment 10

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission	*Amendment*
	(10 a) Profit shifting into secrecy or low tax jurisdictions poses a particular risk to

	Member States' tax proceeds as well as to fair and equal treatment between tax avoiding and tax compliant firms, large and small. In addition to the generally applicable measures laid down in this Directive for all jurisdictions, it is essential to deter secrecy and low tax jurisdictions from basing their corporate tax and legal environment on sheltering profits from tax avoidance, while at the same time these do not adequately implement global standards as regards tax good governance, such as the automatic exchange of tax information, or engaging in tacit non-compliance by not properly enforcing tax laws and international agreements, despite political commitments to implementation. Specific anti-tax avoidance measures are therefore proposed as a tool to ensure compliance by current secrecy and low tax jurisdictions with the international push for tax transparency and fairness.

Or. en

Amendment 11

Proposal for a directive
Recital 12

Text proposed by the Commission	*Amendment*
(12) In order to discourage the shifting of passive (mainly, financial) income out of highly-taxed companies, any losses that such companies may incur at the end of a tax year should be presumed to mostly correspond to the results of trading activity. Based on that premise, taxpayers should be allowed to carry losses forward indefinitely without restrictions on the deductible amount per year. Since the carry-forward of losses is intended to ensure that a taxpayer pays tax on its real income, there is no reason to place a time limit on carry forward. Regarding the	***deleted***

prospect for a loss carry-back, no such a rule would need to be introduced because that this is relatively rare in the practice of Member States, and tends to lead to excessive complexity. Furthermore, an anti-abuse provision should be laid down in order to prevent, thwart or counter attempts to circumvent the rules on loss deductibility through purchasing loss-making companies.

Or. en

Amendment 12

Proposal for a directive
Recital 13

Text proposed by the Commission	*Amendment*
(13) In order to facilitate the cash-flow capacity of businesses – for instance, by compensating start-up losses in a Member State with profits in another Member State – and encourage the cross-border expansion within the Union, taxpayers should be entitled to temporarily take into account the losses incurred by their immediate subsidiaries and permanent establishments situated in other Member States. For that purpose, a parent company or head office located in a Member State should be able to deduct from its tax base, in a given tax year, the losses incurred in the same tax year by its immediate subsidiaries or permanent establishments situated in other Member States in proportion to its holding. The parent company should then be required to add back to its tax base, considering the amount of losses previously deducted, any subsequent profits made by those immediate subsidiaries or permanent establishments. As it is vital to safeguard national tax revenues, the deducted losses should also be reincorporated automatically if this has not already	***deleted***

occurred after a certain number of years or if the requisites to qualify as an immediate subsidiary or permanent establishment are no longer met.	

Or. en

Amendment 13

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission	*Amendment*
	(14 a) If transfer pricing gives cause to profit shifting into a low tax jurisdiction, a system that awards profit via a formula apportionment is preferable. The Union can set an international standard for modern and efficient corporate taxation by adopting such a system. The Commission should draft guidelines for the transitional phase in which formulary apportionment coexists with other allocation methods in dealing with third countries, while ultimately formulary apportionment should be the standard method of allocation. Bilateral tax treaties should be revised accordingly.

Or. en

Amendment 14

Proposal for a directive
Recital 17

Text proposed by the Commission	*Amendment*
(17) Taking into account that the effect of hybrid mismatches is usually a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of another, such situations clearly affect the	(17) Taking into account that the effect of hybrid mismatches is usually a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of another, such situations clearly affect the

internal market by distorting its mechanisms and creating loopholes for tax avoidance practices to flourish. Given that mismatches generate from national differences in the legal qualification of certain types of entities or financial payments, they normally do not occur amongst companies which apply the common rules for calculating their tax base. Mismatches would however persist in the interaction between the framework of the common base and national or third-country corporate tax systems. To neutralise the effects of hybrid ***mismatch*** arrangements, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch deny the deduction of a payment or ensures that the corresponding income is included in the corporate tax base.	internal market by distorting its mechanisms and creating loopholes for tax avoidance practices to flourish. Given that mismatches generate from national differences in the legal qualification of certain types of entities or financial payments, they normally do not occur amongst companies which apply the common rules for calculating their tax base. Mismatches would however persist in the interaction between the framework of the common base and national or third-country corporate tax systems. To neutralise the effects of hybrid ***mismatches or related*** arrangements, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch deny the deduction of a payment or ensures that the corresponding income is included in the corporate tax base.

Or. en

Amendment 15

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission	*Amendment*
	(17 a) Member States should have in place a system of penalties for the infringements by undertakings of national provisions adopted in accordance with this Directive as provided for in national law and should inform the Commission thereof.

Or. en

Amendment 16

Proposal for a directive
Recital 19

Text proposed by the Commission	*Amendment*
(19) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission with respect of (i) taking into account changes to the laws of Member States concerning the company forms and corporate taxes and amend Annexes I and II accordingly; (ii) laying down additional definitions; (iii) enacting detailed rules against tax avoidance in a number of specified fields relevant to the allowance for growth and investment ; (iv) defining the concepts of legal and economic ownership of leased assets in more detail; (v) calculating the capital and interest elements of lease payments and the depreciation base of leased assets; ***and*** (vi) defining more precisely the categories of fixed assets subject to depreciation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.	(19) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission with respect of (i) taking into account changes to the laws of Member States concerning the company forms and corporate taxes and amend Annexes I and II accordingly; (ii) laying down additional definitions; (iii) enacting detailed rules against tax avoidance in a number of specified fields relevant to the allowance for growth and investment ; (iv) defining the concepts of legal and economic ownership of leased assets in more detail; (v) calculating the capital and interest elements of lease payments and the depreciation base of leased assets; (vi) defining more precisely the categories of fixed assets subject to depreciation; ***and (vii) issuing guidelines for the transitional phase in which formulary apportionment coexists with other allocation methods in dealing with third countries***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Or. en

Amendment 17

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission	Amendment
	(19 a) The Commission should monitor the uniform implementation of this Directive so as to avoid situations in which 28 competent authorities enforce 28 different regimes. Furthermore, the lack of harmonised accounting rules in the Union should not lead to new opportunities for tax planning and arbitrage. Therefore, the harmonization of accounting rules may strengthen the common regime, especially if and when all Union businesses fall under this regime.

Or. en

Amendment 18

Proposal for a directive
Article 2 – paragraph 1 – point c

Text proposed by the Commission	Amendment
(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR ***750 000 000*** during the financial year preceding the relevant financial year;	(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR ***40 000 000*** during the financial year preceding the relevant financial year***. The total consolidated group revenue of EUR 40 000 000 shall be lowered to zero over a time period of five years***;

Or. en

Amendment 19

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 30 a (new)

Text proposed by the Commission	Amendment
	(30 a) 'permanent establishment' means a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on; this definition should also address situations in which companies which engage in fully dematerialised digital activities are considered to have a permanent establishment in a Member State if they maintain a significant presence in the economy of that country;

Or. en

Amendment 20

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 30 b (new)

Text proposed by the Commission	Amendment
	(30 b) 'royalty cost' means costs arising from payments of any kind made as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or any other intangible asset; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalty costs;

Or. en

Amendment 21

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 30 c (new)

Text proposed by the Commission	*Amendment*
	(30 c) 'secrecy or low tax jurisdiction' means any jurisdiction which from 31 December 2016, meets any of the following criteria:
	(a) a lack of automatic exchange of information with all signatories of the multilateral competent authority agreement in line with OECD's Common Reporting Standard;
	(b) no register of the ultimate beneficial owners of corporations, trusts and equivalent legal structures at least compliant with the minimum standard defined in Directive (EU) 2015/849 of the European Parliament and of the Council;
	(c) legal or administrative provisions or practices which grant favourable tax treatment to undertakings irrespective of whether they engage in genuine economic activity or have a significant economic presence in the country in question;
	(d) a statutory corporate tax rate of less than 60 % of the weighted average corporate tax in the Union;

Or. en

Amendment 22

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 30 d (new)

Text proposed by the Commission	*Amendment*
	(30 d) 'tax haven' means a jurisdiction characterised by one or several of the following criteria:
	(a) no or only nominal taxation for

	non-residents;
	(b) laws or administrative practices preventing the effective exchange of tax information with other governments;
	(c) legal or administrative provisions preventing tax transparency or the absence of requirement of a substantial economic activity to be carried out;

Or. en

Amendment 23

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 30 e (new)

Text proposed by the Commission	*Amendment*
	(30 e) 'transfer prices' means the prices at which an undertaking transfers tangible goods or intangible assets or provides services to associated undertakings;

Or. en

Amendment 24

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 30 f (new)

Text proposed by the Commission	*Amendment*
	(30 f) 'patent box' means a system used to calculate the income deriving from intellectual property (IP) which is eligible for tax benefits by establishing a link between the eligible expenditure effected when the IP assets were created (expressed as a proportion of the overall expenditure linked to the creation of the IP assets) and the income deriving from those IP assets; this system restricts the IP assets to patents or intangible goods with

	an equivalent function and provides the basis for the definition of 'eligible expenditure', 'overall expenditure' and 'income deriving from IP assets';

Or. en

Amendment 25

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 – introductory part

Text proposed by the Commission	*Amendment*
(31) 'hybrid mismatch' means a situation between a taxpayer and ***an associated enterprise or a structured arrangement between parties in different tax jurisdictions*** where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or entity, or in the ***treatment*** of a commercial presence as a permanent establishment:	(31) 'hybrid mismatch' means a situation between a taxpayer and ***another entity*** where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or ***a payment made under it, or is the result of differences in the recognition of payments made to, or payments, expenses or losses incurred by, a hybrid*** entity, or ***permanent establishment, or is the result of differences*** in the ***recognition of a deemed payment made between two parts of the same taxpayer or in the recognition*** of a commercial presence as a permanent establishment:

Or. en

Amendment 26

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 – point b

Text proposed by the Commission	*Amendment*
(b) a deduction of a payment from the taxable base in ***the*** jurisdiction in which the payment ***has its source*** without a corresponding inclusion for tax purposes of the same payment in ***the*** other jurisdiction ('deduction without inclusion');	(b) a deduction of a payment from the taxable base in ***any*** jurisdiction in which the payment ***is treated as being made ('payer jurisdiction')*** without a corresponding inclusion for tax purposes of the same payment in ***any*** other jurisdiction

	where the payment is treated as being received ('payee jurisdiction') ('deduction without inclusion');

Or. en

Amendment 27

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 – point c

Text proposed by the Commission	*Amendment*
(c) in case of differences in the ***treatment*** of a commercial presence as a permanent establishment, non-taxation of income which has its source in a jurisdiction without a corresponding inclusion for tax purposes of the same income in ***the*** other jurisdiction ('non-taxation without inclusion').	(c) in case of differences in the ***recognition*** of a commercial presence as a permanent establishment, non-taxation of income which has its source in a jurisdiction without a corresponding inclusion for tax purposes of the same income in ***any*** other jurisdiction ('non-taxation without inclusion').

Or. en

Amendment 28

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 – point c a (new)

Text proposed by the Commission	*Amendment*
	(c a) a payment to a hybrid entity or permanent establishment giving rise to a deduction without inclusion where the mismatch is attributable to differences in the recognition of payments made to the permanent establishment or hybrid entity;

Or. en

Amendment 29

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 – point c b (new)

Text proposed by the Commission	*Amendment*
	(c b) a payment giving rise to a deduction without inclusion as a result of a payment to a disregarded permanent establishment;

Or. en

Amendment 30

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 – subparagraph 2

Text proposed by the Commission	*Amendment*
A hybrid mismatch ***only arises to the extent that the same payment deducted***, expenses incurred ***or losses suffered in two jurisdictions exceed the amount of income*** that is included in both jurisdictions ***and which can be attributed to the same source***.	A hybrid mismatch ***that is the result of differences in the recognition of payments***, expenses ***or losses*** incurred ***by a hybrid entity or permanent establishment or is the result of differences in the recognition of a deemed payment between two parts of the same taxpayer only arises to the extent that the resulting deduction in the jurisdiction of source is set off against an item*** that is ***not*** included in both jurisdictions ***where the mismatch has arisen. However, in the event that the payment giving rise to that hybrid mismatch also gives rise to a hybrid mismatch that is attributable to differences in the legal characterisation of a financial instrument or of a payment made under it, or is the result of differences in the recognition of payments made to a hybrid entity or to a permanent establishment, the hybrid mismatch only arises to the extent that the payment gives rise to a deduction without inclusion***.

Or. en

Amendment 31

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 a (new)

Text proposed by the Commission	*Amendment*
	(31 a) 'hybrid entity' means any entity or arrangement that is regarded as a person for tax purposes under the laws of one jurisdiction and the income or expenditure of which is treated as income or expenditure of one or more other persons under the laws of another jurisdiction;

Or. en

Amendment 32

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 b (new)

Text proposed by the Commission	*Amendment*
	(31 b) 'disregarded permanent establishment' means any arrangement that is treated as giving rise to a permanent establishment under the laws of the head office jurisdiction and is not treated as giving rise to a permanent establishment under the laws of the jurisdiction in which the permanent establishment is situated;

Or. en

Amendment 33

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 31 c (new)

Text proposed by the Commission	Amendment
	(31 c) 'payer jurisdiction' means the jurisdiction where a hybrid entity or a permanent establishment is established or where a payment is treated as made;

Or. en

Amendment 34

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 32

Text proposed by the Commission	Amendment
(32) 'structured arrangement' means an arrangement involving a hybrid mismatch where the mismatch is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch;	***deleted***

Or. en

Amendment 35

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 1 – point 33 a (new)

Text proposed by the Commission	Amendment
	(33 a) 'European tax identification number' or 'TIN' means a number as defined in the Commission's Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax

evasion.

Or. en

Amendment 36

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. A taxpayer shall be considered to have a permanent establishment in a Member State other than the ***Member State*** in which it is resident for tax purposes when it has a fixed ***place*** in that other Member State through which it carries on its business, wholly or partly, including in particular:	1. A taxpayer shall be considered to have a permanent establishment in a Member State other than the ***jurisdiction*** in which it is resident for tax purposes when it has a fixed ***or digital presence*** in that other Member State through which it carries on its business, wholly or partly, including in particular:

Or. en

Amendment 37

Proposal for a directive
Article 5 – paragraph 1 – point f a (new)

Text proposed by the Commission	*Amendment*
	(f a) a digital platform.

Or. en

Amendment 38

Proposal for a directive
Article 5 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2 a. If a taxpayer resident in one jurisdiction provides access to or offers a digital platform such as an electronic

application, database, online marketplace, storage room or offers search engine or advertising services on a website or in an electronic application, this taxpayer shall be deemed to have a 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 due to remote transactions generated from aforementioned digital platforms in the non-resident jurisdiction exceeds EUR 5 000 000 per year. Furthermore, to determine a significant and sustained digital presence, the Commission shall be empowered to adopt delegated acts in accordance with Article 66 to lay down technical standards for the following digital factors:

(a) the number of registered individual users per month that are domiciled in a Member State other than the jurisdiction in which it is resident for tax purposes who logged in or visited the taxpayer's digital platform;

(b) the number of digital contracts concluded with customers or users that are domiciled in the non-resident jurisdiction in a taxable year;

(c) the volume of digital content collected by the taxpayer in a taxable year.

If on top of the revenue based factor, on or more of the three digital factors above as defined by the Commission are applicable for a taxpayer in the relevant Member State, the taxpayer shall be deemed to have a permanent establishment in that Member State.

Or. en

Amendment 39

Proposal for a directive
Article 8 – paragraph 1 – point e

Text proposed by the Commission	*Amendment*
(e) income of a permanent establishment received by the taxpayer in the Member State where the taxpayer is resident for tax purposes.	***deleted***

Or. en

Amendment 40

Proposal for a directive
Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
In addition to the amounts which are deductible as costs for research and development in accordance with paragraph 2, the taxpayer may also deduct, per tax year, an extra ***50%*** of such costs, with the exception of the cost related to movable tangible fixed assets, that it incurred during that year. To the extent that costs for research and development reach beyond EUR 20 000 000, the taxpayer may deduct 25% of the exceeding amount.	In addition to the amounts which are deductible as costs for research and development in accordance with paragraph 2, the taxpayer may also deduct, per tax year, an extra ***33%*** of such costs, with the exception of the cost related to movable tangible fixed assets, that it incurred during that year. To the extent that costs for research and development reach beyond EUR 20 000 000, the taxpayer may deduct 25% of the exceeding amount.

Or. en

Amendment 41

Proposal for a directive
Article 11 – paragraph 5 a (new)

Text proposed by the Commission	*Amendment*
	5 a. The AGI shall not exceed the maximum of 20% of the taxpayer's earnings before interest, tax, depreciation and amortisation ('EBITDA') or for a

	maximum amount of EUR 2 000 000, whichever is higher. ***For the purposes of this Article, where a taxpayer is permitted or required to act on behalf of a group, as defined in the rules of a national group taxation system, the entire group shall be treated as a taxpayer. In those circumstances, exceeding borrowing costs and the EBITDA shall be calculated for the entire group. The amount of EUR 2 000 000 shall also be considered for the entire group.***

Or. en

Amendment 42

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission	*Amendment*
Exceeding borrowing costs shall be deductible in the tax year in which they are incurred for maximum of ***30 %*** of the taxpayer's earnings before interest, tax, depreciation and amortisation (‘EBITDA’) or for a maximum amount of EUR ***3 000 000***, whichever is higher.	Exceeding borrowing costs shall be deductible in the tax year in which they are incurred for maximum of ***20%*** of the taxpayer's earnings before interest, tax, depreciation and amortisation ('EBITDA') or for a maximum amount of EUR ***2 000 000***, whichever is higher.

Or. en

Amendment 43

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission	*Amendment*
For the purposes of this Article, where a taxpayer is permitted or required to act on behalf of a group, as defined in the rules of a national group taxation system, the entire group shall be treated as a taxpayer. In	For the purposes of this Article, where a taxpayer is permitted or required to act on behalf of a group, as defined in the rules of a national group taxation system, the entire group shall be treated as a taxpayer. In

those circumstances, exceeding borrowing costs and the EBITDA shall be calculated for the entire group. The amount of EUR ***3 000 000*** shall also be considered for the entire group.	those circumstances, exceeding borrowing costs and the EBITDA shall be calculated for the entire group. The amount of EUR ***2 000 000*** shall also be considered for the entire group.

Or. en

Amendment 44

Proposal for a directive
Article 13 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The EBITDA shall be calculated by adding back to the tax base of the taxpayer the tax-adjusted amounts for exceeding borrowing costs, as well as the tax-adjusted amounts for depreciation and amortisation. Tax-exempt revenues shall be excluded from the EBITDA of a taxpayer.	3. The EBITDA shall be calculated by adding back to the tax base of the taxpayer the tax-adjusted amounts for exceeding borrowing costs, as well as the tax-adjusted amounts for depreciation and amortisation. Tax-exempt revenues shall be excluded from the EBITDA of a taxpayer ***for a period of 5 years***.

Or. en

Amendment 45

Proposal for a directive
Article 29 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) where a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country;	(a) where a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country ***insofar as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer***;

Or. en

Amendment 46

Proposal for a directive
Chapter V

Text proposed by the Commission	*Amendment*
[...]	***deleted***

Or. en

Amendment 47

Proposal for a directive
Article 45 a (new)

Text proposed by the Commission	*Amendment*
	Article 45 a
	Minimum effective tax rate
	The Commission shall put forward by 1 January 2019 a legislative proposal for a minimum effective corporate tax rate at 18% in each Member State, for the purpose of maximisation of tax efficiency, so as to make it possible to compare rates across the Union and which feeds into the Union own resources. This rate shall be applied after a phasing-in of five years in line with the convergence code.

Or. en

Amendment 48

Proposal for a directive
Article 45 b (new)

Text proposed by the Commission	*Amendment*
	Article 45 b
	Effective tax rate statistics
	The Commission shall establish by 1 January 2019 a public register of

	comparable effective tax rates of SMEs and MNEs across the Member States.

Or. en

Amendment 49

Proposal for a directive
Article 53 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
By way of derogation from points (c) and (d) of Article 8, a taxpayer shall not be exempt from tax on foreign income that the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country where that entity in its country of tax residence is subject to a statutory corporate tax rate lower than ***half of the statutory tax rate that the taxpayer would have been subject to***, in connection with such foreign income, in the Member State of its residence for tax purposes.	By way of derogation from points (c) and (d) of Article 8, a taxpayer shall not be exempt from tax on foreign income***, that does not arise from active business,*** that the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country where that entity in its country of tax residence is subject to a statutory corporate tax rate lower than ***15%***, in connection with such foreign income, in the Member State of its residence for tax purposes.

Or. en

Amendment 50

Proposal for a directive
Article 53 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Where paragraph 1 applies, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in the Member State where it is resident for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be	2. Where paragraph 1 applies, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in the Member State where it is resident for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be

taxed.	taxed. ***In order to benefit from the exemption, the taxpayer shall be required to prove to its tax authorities that the foreign income arises from an active business. This could be done through a certificate of the foreign tax authorities.***

Or. en

Amendment 51

Proposal for a directive
Article 58 – paragraph 1

Text proposed by the Commission	*Amendment*
1. For the purposes of calculating the tax base under the rules of this Directive, a Member State shall disregard an arrangement or a series of arrangements which, having been put in place for the ***essential*** purpose of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine, having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.	1. For the purposes of calculating the tax base under the rules of this Directive, a Member State shall disregard an arrangement or a series of arrangements which, having been put in place for the ***main*** purpose ***or one of the main purposes*** of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine, having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.

Or. en

Amendment 52

Proposal for a directive
Article 59 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) ***the actual corporate tax paid by*** the entity ***or permanent establishment on its profits is*** lower than ***the difference between the corporate tax that would have been charged on the profits*** of the ***entity or permanent establishment in accordance with the rules of this Directive and the actual corporate tax paid on those***	(b) ***profits of*** the entity***, are subject to an corporate tax rate*** lower than ***15 %; that rate shall be assessed on the basis of the profit before implementation*** of the ***operations introduced by these countries to reduce the taxable base subject to the rate; that rate shall be revised each year in line with economic developments in***

***profits by the entity or permanent establishment*.**	***world trade*.**

Or. en

Amendment 53

Proposal for a directive
Article 59 – paragraph 2 – subparagraph 1 – point f a (new)

Text proposed by the Commission	*Amendment*
	(f a) income from goods traded with the taxpayer or its associated enterprises except such standardised goods that are regularly traded between independent parties and for which publicly observable prices exist;

Or. en

Amendment 54

Proposal for a directive
Article 59 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
An entity or permanent establishment shall not be treated as a controlled foreign company as referred to in paragraph 1 where not more than ***one third*** of the income accruing to the entity or permanent establishment falls within categories (a) to ***(f)*** of paragraph 2.	An entity or permanent establishment shall not be treated as a controlled foreign company as referred to in paragraph 1 where not more than ***25 percent*** of the income accruing to the entity or permanent establishment falls within categories (a) to ***(fa)*** of paragraph 2.

Or. en

Amendment 55

Proposal for a directive
Article 59 – paragraph 3 – subparagraph 2

Text proposed by the Commission	*Amendment*
Financial undertakings shall not be treated as controlled foreign companies under paragraph 1 where not more than one third of the income accruing to the entity or permanent establishment from categories (a) to ***(f)*** of paragraph 2 comes from transactions with the taxpayer or its associated enterprises.	Financial undertakings shall not be treated as controlled foreign companies under paragraph 1 where not more than one third of the income accruing to the entity or permanent establishment from categories (a) to ***(fa)*** of paragraph 2 comes from transactions with the taxpayer or its associated enterprises. ***In the specific case of insurance companies, the fact that a parent company reinsures its risks through its own subsidiaries shall be considered as non-genuine.***

Or. en

Amendment 56

Proposal for a directive
Article 61 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
To the extent that a hybrid mismatch between Member States results in a double deduction of the same payment, expenses or losses, the deduction shall be ***given only*** in the Member ***State where such payment has its source, the expenses are incurred or the losses are suffered***.	To the extent that a hybrid mismatch between Member States results in a double deduction of the same payment, expenses or losses, the deduction shall be ***denied*** in the Member ***State that is the investor jurisdiction***.

Or. en

Amendment 57

Proposal for a directive
Article 61 – paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
To the extent that a hybrid mismatch involving a third country results in a double deduction of the same payment,	***In the event that the deduction is not denied in the investor jurisdiction, the deduction shall be denied in the payer***

expenses or losses, the Member State concerned shall deny the deduction of such payment, expenses or losses, unless the third country ***has already done so***.

jurisdiction. To the extent that a third country is involved, the burden of proof of demonstrating that a deduction has been denied by that third country ***shall be on the taxpayer***.

Or. en

Amendment 58

Proposal for a directive
Article 61 – paragraph 2 – subparagraph 1

Text proposed by the Commission	*Amendment*
To the extent that a hybrid mismatch between Member States results in a deduction without inclusion, the Member State ***of*** the payer shall ***deny the deduction of such*** payment.	To the extent that a hybrid mismatch between Member States results in a deduction without inclusion, the ***deduction shall be denied in the*** Member State ***that is the payer jurisdiction of such payment. Where the deduction is not denied in*** the payer ***jurisdiction, the Member State concerned*** shall ***require the taxpayer to include the amount of the*** payment ***that would otherwise give rise to a mismatch in the income in the payee jurisdiction***.

Or. en

Amendment 59

Proposal for a directive
Article 61 – paragraph 2 – subparagraph 2

Text proposed by the Commission	*Amendment*
To the extent that a hybrid mismatch that involves a third country results in a deduction without inclusion:	***deleted***
(a) if the payment has its source in a Member State, that Member State shall deny the deduction, or	
(b) if the payment has its source in a third country, the Member State	

concerned shall require the taxpayer to include such payment in the taxable base, unless the third country has already denied the deduction or has required that payment to be included.

Or. en

Amendment 60

Proposal for a directive
Article 61 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
To the extent that a hybrid mismatch ***between Member States involving a permanent establishment results in non-taxation without inclusion,*** the Member State in ***which*** the taxpayer is resident for tax purposes shall require the taxpayer to include in ***the*** taxable ***base*** the income attributed to the permanent establishment.	To the extent that a hybrid mismatch ***involves disregarded permanent establishment income which is not subject to tax in*** the Member State in ***which*** the taxpayer is resident for tax purposes***, that Member State*** shall require the taxpayer to include in ***its*** taxable ***income*** the income ***that would otherwise be*** attributed to the ***disregarded*** permanent establishment.

Or. en

Amendment 61

Proposal for a directive
Article 61 – paragraph 3 – subparagraph 2

Text proposed by the Commission	*Amendment*
To the extent that a hybrid mismatch involving a permanent establishment situated in a third country results in non-taxation without inclusion, the Member State concerned shall require the taxpayer to include in the taxable base the income attributed to the permanent establishment in the third country.	***deleted***

Or. en

Amendment 62

Proposal for a directive
Article 61 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3 a. Member States shall deny a deduction for any payment by a taxpayer to the extent that such payment directly or indirectly funds deductible expenditure giving rise to a hybrid mismatch through a transaction or a series of transactions.

Or. en

Amendment 63

Proposal for a directive
Article 61a – title

Text proposed by the Commission	*Amendment*
Tax residency mismatches	***Reverse hybrid*** mismatches

Or. en

Amendment 64

Proposal for a directive
Article 61a – paragraph -1 (new)

Text proposed by the Commission	*Amendment*
	Where one or more associated non-resident entities, holding a share of profit in a hybrid entity that is incorporated or established in a Member State, is located in a jurisdiction or jurisdictions that regard the hybrid entity as a taxable person, the hybrid entity shall be regarded as a resident of that Member State and taxed on its income to the extent that the income is not otherwise taxed under the

laws of that Member State or any other jurisdiction.

Or. en

Amendment 65

Proposal for a directive
Article 61a – paragraph 1

Text proposed by the Commission	*Amendment*
To the extent that a payment, expenses or losses of a taxpayer who is resident for tax purposes in both a Member State and a third country, in accordance with the laws of that Member State and that third country, are deductible from the taxable base in both jurisdictions and that payment, those expenses or losses can be set-off in the Member State of the taxpayer against taxable income that is not included in the third country, the Member State of the taxpayer shall deny the deduction of the payment, expenses or losses, unless the third country has already done so.	To the extent that a payment, expenses or losses of a taxpayer who is resident for tax purposes in both a Member State and a third country, in accordance with the laws of that Member State and that third country, are deductible from the taxable base in both jurisdictions and that payment, those expenses or losses can be set-off in the Member State of the taxpayer against taxable income that is not included in the third country, the Member State of the taxpayer shall deny the deduction of the payment, expenses or losses, unless the third country has already done so. ***Such denial of deduction shall also apply to situations where a taxpayer is 'stateless' for tax purposes. The burden of proof of demonstrating that the third country has denied the deduction of the payment, expense or loss shall be on the taxpayer.***

Or. en

Amendment 66

Proposal for a directive
Article 65 a (new)

Text proposed by the Commission	*Amendment*
	Article 65 a
	European tax identification number

Text proposed by the Commission	Amendment
	The Commission shall 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.

Or. en

Amendment 67

Proposal for a directive
Article 65 b (new)

Text proposed by the Commission	Amendment
	Article 65 b
	Mandatory automatic exchange of information on tax matters
	In order to guarantee full transparency and the proper implementation of the provisions 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.

Or. en

Amendment 68

Proposal for a directive
Article 70 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
Member States shall adopt and publish, by ***31st*** December ***2018*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.	Member States shall adopt and publish, by ***31*** December ***2019*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

Amendment 69

Proposal for a directive
Article 70 – paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
They shall apply those provisions from ***1st*** January ***2019***.	They shall apply those provisions from ***1*** January ***2020***.

Or. en

EXPLANATORY STATEMENT

Introduction

In late 2016 the Commission put forward a major overhaul of the corporate taxation rules in a proposal for the Common Corporate Tax Base (CCTB) and a proposal for the Common Consolidated Corporate Tax Base (CCCTB). At the same time, the Commission withdrew its 2011 CCCTB proposal blocked in the Council. The project should strengthen the internal market by making it easier and cheaper for companies to operate cross-border in the EU, and also to counter practices of corporate aggressive tax planning and to increase corporate tax transparency in the EU.

While the CCTB provides for a single set of rules for calculation of the corporate tax base, the CCCTB introduces a consolidation element which would enable businesses to offset losses in one Member State against profits in another Member State.

The idea of harmonising corporate taxation systems in the EU is not new, it appears already in policy documents in early 1960s. In 1975 the Commission proposed Directive on the harmonisation of systems of company taxation and of withholding tax on dividends, which due to the lack of progress in the Council was eventually withdrawn in 1990. Instead, the Commission issued Guidelines for Company Taxation. In 2001 the Commission published a study on Company taxation in the internal market; however, it was not until 2011 that the Commission proposed the CCCTB.

The European Parliament expressed its support to the CCCTB project on numerous occasions. In 2008 it welcomed the Commission's intention to launch the CCCTB and in 2012 it adopted a report of rapporteur Ms Marianne Thyssen where it called for the CCCTB to be applied as soon as possible and to as many companies as possible. In 2015 in its resolution on tax rulings and other measures similar in nature or effect (TAXE 1) the Parliament called for establishment of a mandatory CCCTB and repeated its calls in its resolution in 2016 (TAXE 2).

Context

A fair corporate taxation moved to the forefront of the international agenda against the backdrop of the global financial crisis and numerous revelations of financial scandals such as Lux leaks and Panama Papers. Fight against tax avoidance resulted in adoption of the OECD initiative on Base Erosion and Profit Shifting (BEPS). In the EU, the BEPS recommendations were implemented i.a. via the anti-tax avoidance package (ATAD 1) adopted in mid-2016 and ATAD 2 on hybrid mismatches adopted earlier this year, as well as the exchange of information of tax rulings (“DAC4”) and country-by-country-reports (“DAC5”)

The CCCTB is a missing brick in the construction of the genuine internal market and in fighting tax avoidance. The CCCTB brings about tax certainty, clear and stable regulatory framework and strong anti-tax avoidance rules including abolition of transfer pricing.

Proposal

A world of globalisation and digitalisation is challenging for Member States to ensure that business income is taxed where the value is created. In particular large multinational companies are able to shift easily profits to Member States with lower corporate tax rates.

The Commission split the file in a consolidation part and a part that determines the common corporate tax base. The first directive provides one set of rules on how a company's profit will be taxed. With the second directive on consolidation, all profits and losses will be added, reaching a net profit or loss for the entire EU. The rapporteur however, believes that one part cannot exist without the other. Therefore the link between the two files must be strengthened, by aligning the implementation date of the two directives, by 2020 at the latest. As a consequence of which temporary provisions (the cross border loss offset) should be excluded.

Existing corporate tax systems reflect economic realities of the last century where businesses were clearly linked to a local market. Globalisation and digitalisation of the world economy represent challenges with regard to prevention of market distortion, tackling tax avoidance and tax evasion. Businesses active in the EU without a physical establishment have to be treated in the same way as businesses having a physical establishment in the EU. Therefore, the rapporteur includes factors to define digital presence in the article on permanent establishment in another Member State.

The rapporteur believes this system should be a widely adopted standard for corporate taxation. The threshold set up at 750 million euros as proposed by the Commission is not fit for the purposes of the CCCTB. The rapporteur proposes to introduce a lower threshold of 40 million euros, capturing most of the companies with cross border activities. In the long term (i.e. within 5 years) there should not be a threshold for the sake of simplicity for companies and tax authorities and to ensure a level-playing field between SMEs and multinationals. The rapporteur invites the Commission to calculate statistics of the effective tax rate paid by MNEs and SMEs in order to better avoid disparities.

The level playing field between multinationals and SMEs is a concern that should be tackled by this report. The gap between taxes paid by multinational enterprises (MNEs) and the share paid by SMEs has widened over the last decades A cause of this problem is that MNEs, unlike SMEs, generally have the resources to shift their business to low-tax jurisdictions. The Commission proposal is not sufficient to address this tendency, because it leaves open the possibility for Member States to compete on their corporate tax rate. Therefore, the principle of a minimum rate should be introduced.

To conclude

The rapporteur believes that the CCCTB proposals represent an essential building block in the completion of the internal market and have the potential to enhance growth of the European economy. A new framework would promote fairer and better integrated internal market and could contribute to achieving objectives of other flagship projects such as the Capital Markets Union, the Digital Single Market and the Investment Plan for Europe. The rapporteur believes that the CCCTB addresses current challenges in the international taxation context and can serve as a powerful tool in the fight against aggressive tax planning.