



Plenary sitting

A9-0064/2024

28.2.2024

REPORT

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
(COM(2023)0528 – C9-0340/2023 – 2023/0320(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Lídia Pereira

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.

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DRAFT EUROPEAN PARLIAMENT 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 (COM(2023)0528 – C9-0340/2023 – 2023/0320(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2023)0528),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0340/2023),
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0064/2024),
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) In the Union, there is currently no

(1) In the Union, 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.

common approach to the computation of the taxable base for businesses **when operating across borders. Union** businesses are therefore obliged to comply with the rules of different corporate tax systems, depending on the Member State in which they operate, **which constitutes a barrier for small and medium-sized enterprises (SMEs) when accessing the internal market. Union businesses, in particular SMEs, face significant compliance costs linked to taxation, due to the absence of a solution for the computation of their taxable base.**

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

(2) 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.

Amendment

(2) The co-existence and interaction of 27 different corporate income tax systems in the Union gives rise to complexity in tax compliance ***costs*** and leads to ***a*** playing field for businesses ***that can negatively impact cross-border investments, hampering the development of the internal market compared to third countries.*** This state of play has a ***significant*** impact on SMEs and has become more evident as globalisation and digitalisation of the economy have significantly altered the perception of borders and business models ***particularly the further development of the internal market, which requires that further measures be taken.*** Furthermore, the various legal frameworks lead to different tax administration practices across Member States. This often entails lengthy procedures characterised by unpredictability and inconsistency along with high compliance costs ***which largely affect SMEs, discouraging them from investing in more than one Member State. Mutual trust and good faith among***

Member States are required in order to achieve cooperation on tax decisions and complete, improve and further develop the internal market.

Amendment 3

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The 24 million SMEs established in the Union represent two thirds of private sector jobs and 99 % of all businesses in the Union and are the backbone of the Union economy. It is therefore essential to support micro enterprises and SMEs in order to promote job creation, enhance growth, to encourage fair and transparent competition, support competitiveness and attract investment. Regulatory obstacles or administrative burden continues to be the key challenge for Union SMEs.

Amendment 4

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) SMEs spend approximately 2,5 % of their turnover on compliance costs related to tax obligations. The situation of very small enterprises is particularly serious, as their corporate income taxes-related compliance costs represent 90 % of the estimated yearly Union businesses compliance costs of EUR 54 billion. 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

Amendment 5

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) The variety of ways for doing business in the internal market requires different solutions for different businesses when it comes to tackling the current challenges posed by their cross-border operations. For smaller businesses ***which are not part of a group***, it is more difficult to expand cross-border than for larger businesses. It is thus more burdensome for those smaller businesses to grapple with complex procedures and high compliance costs. It is therefore evident that micro, small and medium-sized enterprises, at the initial stages of expansion, need a solution such as a simplified mechanism for the computation of their taxable result when they operate across the border exclusively by way of permanent establishments.

Amendment

(3) The variety of ways for doing business in the internal market requires different solutions for different businesses when it comes to tackling the current challenges posed by their cross-border operations. For smaller businesses, it is more difficult to expand cross-border than for larger businesses. It is thus more burdensome for those smaller businesses to grapple with complex procedures and high compliance costs, ***as well as the uncertainty involved in investing their own assets in an unknown market.*** It is therefore evident that micro, small and medium-sized enterprises, at the initial stages of expansion, need a solution such as a simplified mechanism for the computation of their taxable result when they operate across the border exclusively by way of permanent establishments ***or a maximum of two subsidiaries.*** ***Transparency is essential for the smooth functioning of the internal market.***

Amendment 6

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Combatting fraud, tax evasion and tax avoidance are overriding political priorities, as aggressive tax planning practices are unacceptable from the point of view of the integrity of the internal market and social justice.

Amendment 7

Proposal for a directive Recital 4

Text proposed by the Commission

(4) To remedy tax uncertainty and the difficulty in complying with the rules of an unknown tax system when operating in (an)other Member State(s) (which is one of the key impeding factors for SMEs to expanding abroad), the taxable result of permanent establishments should be computed on the basis of the rules of the Member State where the Head Office (headquarters of the SME) is resident for tax purposes. This also means that the principles governing the attribution of income to a permanent establishment, set out in the applicable bilateral convention for the avoidance of double taxation between the Member State of the permanent establishment and the Member State of the Head Office, would also continue to apply. To ensure that any new rules constitute a source of simplification for SMEs, their application should be optional, and thus left to the choice of the taxpayer.

Amendment

(4) To remedy tax uncertainty and the difficulty in complying with the rules of an unknown tax system when operating in (an)other Member State(s) (which is one of the key impeding factors for SMEs to expanding abroad), the taxable result of permanent establishments ***or subsidiaries*** should be computed on the basis of the rules of the Member State where the Head Office (headquarters of the SME) is resident for tax purposes. This also means that the principles governing the attribution of income to a permanent establishment ***or subsidiary***, set out in the applicable bilateral convention for the avoidance of double taxation between the Member State of the permanent establishment ***or subsidiary*** and the Member State of the Head Office, would also continue to apply. To ensure that any new rules constitute a source of simplification for SMEs, their application should be optional, and thus left to the choice of the taxpayer ***and enough leeway should be provided for their application and adaptation to the new rules.***

Amendment 8

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Equality of tax treatment for all taxpayers, and in particular for all undertakings, is a sine qua non for the internal market. A coordinated approach to the implementation of this rule by

national tax systems is vital for the proper functioning of the internal market, and would contribute to preventing tax avoidance and profit shifting.

Amendment 9

Proposal for a directive Recital 5

Text proposed by the Commission

(5) To prevent abusive tax practices, specific anti-tax abuse rules are designed, for example to address the tax avoidance risks associated with transferring the tax residence of an SME, and thus to avoid that the location of the head office is determined on the basis of tax motives. Accordingly, it would be necessary to monitor the evolution of the turnover attributed to the permanent establishment(s) in order to maintain their operations as secondary to the main activity which should be carried out by the head office. In this way, the rules would not risk being misused by setting up empty head offices while the bulk of business activities takes place abroad. ***In the same vein, the eligibility to the tax simplification system as well as the termination and renewal of the option should be subject to strict conditions. Such conditions should be coupled with requirements relating to the turnover of the head office as compared to that of the permanent establishment(s). The aim would be to further underline that the business operated through the permanent establishment(s) can merely be an extension of the main activity of the head office. Additionally, once the option is made to apply the tax simplification framework, it should have an obligatory duration, to prevent situations where the residence of the head office is frequently moved to take advantage of occasional***

Amendment

(5) To prevent abusive tax practices, ***robust and*** specific anti-tax abuse rules are designed, for example to address the tax avoidance risks associated with transferring the tax residence of an SME, and thus to avoid that the location of the head office is determined on the basis of tax motives. Accordingly, it would be necessary to monitor the evolution of the turnover attributed to the permanent establishment(s) ***and/or subsidiaries*** in order to maintain their operations as secondary to the main activity which should be carried out by the head office. In this way, the rules would not risk being misused by setting up empty head offices while the bulk of business activities takes place abroad.

and short-term tax beneficial situations.

Amendment 10

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) International shipping is a specific sector of activity subject to special tax regimes in several Member States. Those regimes mostly consist of computing the tax base on the basis of the tonnage (i.e. the carrying capacity) of the operated ships rather than on the basis of actual profits or losses incurred by the company. On this premise, SMEs that derive income from shipping activities covered by a tonnage tax regime should be excluded from opting in the SME simplification rules in respect of such income attributed to a permanent establishment. This exclusion would avoid additional complication, which would be expected to arise from the interaction between the SME tax simplification framework and tonnage tax regimes. In addition, such a potential complication would appear disproportionate, considering the absence of such special tax regimes in some Member States. No other **sectors of** activity would be excluded from the scope of the Directive.

Amendment

(6) International shipping is a specific sector of activity subject to special tax regimes in several Member States. Those regimes mostly consist of computing the tax base on the basis of the tonnage (i.e. the carrying capacity) of the operated ships rather than on the basis of actual profits or losses incurred by the company. On this premise, SMEs that derive income from shipping activities covered by a tonnage tax regime should be excluded from opting in the SME simplification rules in respect of such income attributed to a permanent establishment **or the subsidiary**. This exclusion would avoid additional complication, which would be expected to arise from the interaction between the SME tax simplification framework and tonnage tax regimes. In addition, such a potential complication would appear disproportionate, considering the absence of such special tax regimes in some Member States. ***In any event, that exclusion should be properly evaluated after five years of implementation of this Directive.*** No other activity ***than the one covered by the tonnage tax regime*** would be excluded from the scope of the Directive.

Amendment 11

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) The proposal aims to provide

Amendment

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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 establishment(s) would be dealt with through a single tax authority ('filing authority'), i.e. the tax authority in the Member State of the head office. 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.

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 establishment(s) ***or subsidiaries*** would be dealt with through a single tax authority ('filing authority'), i.e. the tax authority in the Member State of the head office. ***The one-stop-shop should provide all the features of simplification so as not to become another obstacle for businesses that wish to invest abroad.*** 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, ***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.***

Amendment 12

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The one-stop-shop solution is valued by Union SMEs and its creation represents an optional facilitation tool for the tax-related procedures of SMEs. The positive experience with the VAT return via the one-stop-shop, with 130 000 companies filling their VAT return via the one-stop-shop and more than EUR 17 billion collected in VAT revenue, in 2022,

motivates the model replication in the context of this Directive.

Amendment 13

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The Commission's 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.

Amendment 14

Proposal for a directive Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) As the potential reduction of tax compliance costs by SMEs depends directly from their voluntary adoption of the rules set out in this Directive, a thorough and comprehensive Union-wide information campaign targeting SMEs should be envisaged by the Commission. Such information campaign should be integrated in a wider communication strategy on the new tax-related Union law and its impact on Union businesses. All information should be provided in all the official languages of the Member States.

Amendment 15

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Member States may process personal data under this Directive solely for the purpose of verifying the eligibility requirements or determining the tax liability of permanent establishments. Any processing of personal data carried out for this purpose should comply with Regulation (EU) 2016/679.

Amendment

(14) Member States may process personal data under this Directive solely for the purpose of verifying the eligibility requirements or determining the tax liability of permanent establishments **and subsidiaries**. Any processing of personal data carried out for this purpose should comply with Regulation (EU) 2016/679.

Amendment 16

Proposal for a directive Recital 15

Text proposed by the Commission

(15) A retention period is provided to allow Member States to comply with most of the statute of limitation rules, thus following closely such domestic rules in respect of its starting point or suspension. The retention period should not however go further than what is necessary to ensure that the competent tax authorities are able to determine the tax liabilities, thus striking a balance between the ability of the tax authority to ensure proper assessment and collection of taxes and taxpayers' right to legal certainty.

Amendment

(15) A **proportionate** retention period is provided to allow Member States to comply with most of the statute of limitation rules, thus following closely such domestic rules in respect of its starting point or suspension. The retention period should not however go further than what is necessary to ensure that the competent tax authorities are able to determine the tax liabilities, thus striking a balance between the ability of the tax authority to ensure proper assessment and collection of taxes and taxpayers' right to legal certainty.

Amendment 17

Proposal for a directive Recital 17

Text proposed by the Commission

(17) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered its opinion on [...].

Amendment

(17) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered its opinion on **3 November 2023**.

Amendment 18

Proposal for a directive Recital 18

Text proposed by the Commission

(18) Since the objective of this Directive, namely the simplification of tax rules for certain SMEs operating in the internal market through permanent establishment(s), cannot sufficiently be achieved by the Member States but can rather, by reason of the existing challenges which are caused by the interaction between 27 different corporate tax systems, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective;

Amendment

(18) Since the objective of this Directive, namely the simplification of tax rules for certain SMEs operating **cross border** in the internal market through permanent establishment(s) **and up to two subsidiaries**, cannot sufficiently be achieved by the Member States **individually** but can rather, by reason of the existing challenges which are caused by the interaction between 27 different **national** corporate tax systems, be better achieved at Union level **through mutual cooperation between Member States**, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective;

Amendment 19

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

This Directive lays down rules for computing the taxable result of permanent establishments of SMEs which fulfil the criteria set out in Article 2(1) (“Head Office Taxation” rules).

Amendment

This Directive lays down rules for computing the taxable result of permanent establishments **and subsidiaries** of SMEs which fulfil the criteria set out in Article 2(1) (“Head Office Taxation” rules).

Amendment 20

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

Text proposed by the Commission

(e) they operate in other Member States **exclusively** through one or more permanent establishments;

Amendment

(e) they operate in other Member States through one or more permanent establishments **and/or up to two subsidiaries**;

Amendment 21

Proposal for a directive
Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

2. The Commission is empowered to adopt delegated acts in accordance with Article 16 to amend Annexes I to IV, in order to take account of changes to the laws of the Member States concerning:

Amendment

2. The Commission is empowered to adopt delegated acts in accordance with Article 16 to amend Annexes I to IV, in order to take account of changes to the laws of the Member States **and based on the information provided by the relevant Member State** concerning:

Amendment 22

Proposal for a directive
Article 2 – paragraph 3

Text proposed by the Commission

3. This Directive shall not affect the

Amendment

3. This Directive shall not affect the

right of the Member State where a permanent establishment is situated to determine the applicable tax rate, nor the applicability of bilateral conventions for the avoidance of double taxation, or the rules on the social protection of workers in the Member State of the permanent establishment.

right of the Member State where a permanent establishment ***or the subsidiary*** is situated to determine the applicable tax rate, nor the applicability of bilateral conventions for the avoidance of double taxation, or the rules on the social protection of workers in the Member State of the permanent establishment ***or the subsidiary***.

Amendment 23

Proposal for a directive

Article 3 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) ‘subsidiary’ means a subsidiary within the meaning of Article 3(1), point (b), of Council Directive Council Directive 2011/96/EU situated in another Member State and controlled by the head office;

Amendment 24

Proposal for a directive

Article 3 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) ‘head office’ means an SME, as referred to in Article 2(1), which operates in (an)other Member State(s) ***exclusively*** through one or more permanent establishment;

(2) ‘head office’ means an SME, as referred to in Article 2(1), which operates in (an)other Member State(s) through one or more permanent establishment ***and/or up to two subsidiaries;***

Amendment 25

Proposal for a directive

Article 3 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) ‘head office taxation rules’ means the taxation rules of the head office

(4) ‘head office taxation rules’ means the taxation rules of the head office

Member State which are used to compute the taxable result of the head office and its permanent establishments;

Member State which are used to compute the taxable result of the head office and its permanent establishments **or subsidiaries**;

Amendment 26

Proposal for a directive

Article 3 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘host Member State’ means the Member State in which the permanent establishment of an SME referred to in Article 2(1) is situated;

Amendment

(5) ‘host Member State’ means the Member State in which the permanent establishment **or subsidiary** of an SME referred to in Article 2(1) is situated;

Amendment 27

Proposal for a directive

Article 3 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘taxable result of the permanent establishment’ means the taxable income or loss computed in accordance with the Head Office Taxation rules;

Amendment

(6) ‘taxable result of the permanent establishment’ means the taxable income or loss **attributed to the permanent establishment and up to two subsidiaries** and computed in accordance with the Head Office Taxation rules;

Amendment 28

Proposal for a directive

Article 3 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘Head office taxation tax return’ means the tax return filed by an SME referred to in Article 2(1) covering the taxable results of the head office and of the permanent establishment(s), as computed in accordance with the head office taxation rules.

Amendment

(8) ‘Head office taxation tax return’ means the tax return filed by an SME referred to in Article 2(1) covering the taxable results of the head office and of the permanent establishments **or subsidiaries**, as computed in accordance with the head office taxation rules.

Amendment 29

Proposal for a directive

Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. The head office may opt to apply the head office taxation rules in respect of its permanent establishment(s) in other Member States if it meets the following requirements:

Amendment

1 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:

Amendment 30

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) the joint turnover of its permanent establishments did not exceed, for the last ***two*** fiscal years, an amount equal to ***double*** the turnover generated by the head office;

Amendment

(a) 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;

Amendment 31

Proposal for a directive

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) it has been resident for tax purposes in the head office Member State during the last ***two*** fiscal ***years***;

Amendment

(b) 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***;

Amendment 32

Proposal for a directive

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) it has met the conditions laid down in Article 2(1), point d) for the last **two** fiscal **years**.

Amendment

(c) it has met the conditions laid down in Article 2(1), point d) for the last fiscal **year or, if more recently, since the establishment of the head office**.

Amendment 33

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

2. If the head office opts to apply the head office taxation rules in accordance with paragraph 1, it shall apply those rules to all its permanent establishments in other Member States. If it creates a new permanent establishment in another Member State, it shall apply head office taxation rules to such permanent establishment from the moment of its establishment.

Amendment

2. If the head office opts to apply the head office taxation rules in accordance with paragraph 1, it shall 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 shall 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 shall apply head office taxation rules to that subsidiary from the moment of its establishment and shall inform the host Member State thereof.***

Amendment 34

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The requirement referred to in paragraph 1, point (a), shall not be applied when the head office was established less than three years before the date of the option to apply the head office taxation rules.

Amendment 35

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

Where the head office derives income from shipping activities and this income is subject in the head office Member State to a tonnage tax regime, such head office shall be excluded from applying the head office taxation rules in respect of its permanent establishment(s) in other Member States to the extent that these derive income from shipping activities.

Amendment

Where the head office derives income from shipping activities and this income is subject in the head office Member State to a tonnage tax regime, such head office shall be excluded from applying the head office taxation rules in respect of its permanent establishments **and the subsidiaries** in other Member States to the extent that these derive income from shipping activities.

Amendment 36

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. The head office which opts to apply the head office taxation rules to its permanent establishment(s) shall notify its choice to the filing authority, together with the name of the host Member State(s). The notification shall be made at least **three** months before the end of the fiscal year preceding the fiscal year in which that SME wishes to start applying the head office taxation rules.

Amendment

1. The head office which opts to apply the head office taxation rules to its permanent establishment(s) **and/or subsidarie(s)** shall notify its choice to the filing authority, together with the name of the host Member State(s). The notification shall be made at least **two** months before the end of the fiscal year preceding the fiscal year in which that SME wishes to start applying the head office taxation rules.

Amendment 37

Proposal for a directive
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. 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.

Amendment 38

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

2. The filing authority shall verify whether the eligibility requirements set out in Article 4 are met and shall inform the head office of its findings within **two months** of the notification referred to in paragraph 1.

Amendment

2. The filing authority shall verify whether the eligibility requirements set out in Article 4 are met and shall inform the head office of its findings within **one month** of the notification referred to in paragraph 1.

Amendment 39

Proposal for a directive Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The filing authority shall 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.

Amendment 40

Proposal for a directive Article 6 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. If the eligibility requirements are met, the filing authority shall inform the tax authorities of the host Member States within **two months** of the notification referred to in paragraph 1 that the taxable

Amendment

3. If the eligibility requirements are met, the filing authority shall inform the tax authorities of the host Member States within **one month** of the notification referred to in paragraph 1 that the taxable

result of the relevant permanent establishments shall be computed in accordance with the head office taxation rules as of the following fiscal year, as applied in the head office Member State. The tax authority of the host Member State(s) shall communicate to the filing Authority the applicable tax rate.

result of the relevant permanent establishments **and subsidiaries** shall be computed in accordance with the head office taxation rules as of the following fiscal year, as applied in the head office Member State. The tax authority of the host Member State(s) shall communicate to the filing Authority the applicable tax rate.

Amendment 41

Proposal for a directive

Article 6 – paragraph 3 – subparagraph 3

Text proposed by the Commission

The host Member State may challenge the decision of the filing authority regarding the fulfilment of the eligibility requirements in accordance with the provisions set out in Article 13. Notwithstanding such proceedings, the SMEs may start applying the head office taxation rules.

Amendment

The host Member State may challenge the decision of the filing authority regarding the fulfilment of the eligibility requirements in accordance with the provisions set out in Article 13. ***In that case, the national rules of the head office Member State are applied.*** Notwithstanding such proceedings, the SMEs may start applying the head office taxation rules.

Amendment 42

Proposal for a directive

Article 6 – paragraph 3 – subparagraph 4

Text proposed by the Commission

If the filing authority concludes that the eligibility requirements are not met, it shall inform the head office within **two months** of the notification referred to in paragraph 1 and the head office may appeal against it in accordance with the national law.

Amendment

If the filing authority concludes that the eligibility requirements are not met, it shall inform the head office within **one month** of the notification referred to in paragraph 1 and the head office may appeal against it in accordance with the national law ***and continue to apply the head office taxation rules. The final decision shall only have legal effects as of the following fiscal year.***

Amendment 43

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

4. Where a host Member State concludes that the presence of an SME in its territory qualifies as a permanent establishment, it shall inform the filing authority. Upon that information, the filing authority shall inform the competent tax authority of the host Member State on whether the head office applies the head office taxation rules in respect of its permanent establishments.

Amendment

4. Where a host Member State concludes that the presence of an SME in its territory qualifies as a permanent establishment **or a subsidiary**, it shall inform the filing authority. Upon that information, the filing authority shall inform the competent tax authority of the host Member State on whether the head office applies the head office taxation rules in respect of its permanent establishments **or subsidiaries. The head office must be duly informed about these procedures, without undue delay.**

Amendment 44

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. The head office that has opted to apply head office taxation rules to its permanent establishments in one or more host Member States shall apply those rules for a period of **five** fiscal years.

Amendment

1. 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 shall apply those rules for a **renewable** period of **seven** fiscal years.

Amendment 45

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

2. At the end of the period referred to in paragraph 1, the head office taxation rules shall cease to apply in respect of the permanent establishments situated in the

Amendment

2. At the end of the period referred to in paragraph 1, the head office taxation rules shall cease to apply in respect of the permanent establishments **and subsidiaries**

host Member States, unless the head office notifies to the filing authority its option to renew the application of the head office taxation rules, in accordance with the procedure set out in Article 9.

situated in the host Member States, unless the head office notifies to the filing authority its option to renew the application of the head office taxation rules, in accordance with the procedure set out in Article 9.

Amendment 46

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

1. The option to apply the head office taxation rules shall be terminated before the end of the **five**-year period referred to in Article 7(1) for any of the following reasons:

Amendment

1. The option to apply the head office taxation rules shall be terminated before the end of the **seven**-year period referred to in Article 7(1) for any of the following reasons:

Amendment 47

Proposal for a directive

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) the SME referred to in Article 2(1) transfers its tax residence out of the head office Member State;

Amendment

(a) the SME referred to in Article 2(1) transfers its tax residence out of the head office Member State, **if the SME wishes to stop applying the taxation rules**;

Amendment 48

Proposal for a directive

Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) for the last **two** fiscal years, the joint turnover of its permanent establishments exceeded an amount which is equal to triple the turnover of the head office.

Amendment

(b) 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;

Amendment 49

Proposal for a directive

Article 8 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the SME referred in Article 2(1) is no longer considered to be an SME;

Amendment 50

Proposal for a directive

Article 8 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) the SME referred to in Article 2(1) sets up more than two subsidiaries.

Amendment 51

Proposal for a directive

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. ***In any of the cases referred to in paragraph 1***, the head office taxation rules shall cease to apply as of the fiscal year that follows the one in which the reasons referred to in paragraph 1 occur.

2. The head office taxation rules shall cease to apply as of the fiscal year that follows the one in which the reason referred to in paragraph 1 occur.

Amendment 52

Proposal for a directive

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. The filing authority shall inform the host Member States of the termination referred to in paragraph 1 before the end of the fiscal year in which the reasons for ***that*** termination occurred.

3. The filing authority shall inform the host Member States of the termination referred to in paragraph 1 ***as soon as possible and, in any case,*** before the end of the fiscal year in which the reasons for ***the*** termination occurred.

Amendment 53

Proposal for a directive Article 8 – paragraph 4

Text proposed by the Commission

4. If the SME referred in Article 2(1) transfers its tax residence to another Member State, it may opt to apply the head office taxation rules of its new Member State of tax residence in accordance with Articles 4 to 7. This shall be considered a new option.

Amendment

4. If the SME referred in Article 2(1) transfers its tax residence to another Member State, it may opt to apply the head office taxation rules of its new Member State of tax residence in accordance with Articles 4 to 7. This shall be considered a new option. ***The requirement set out in Article 4(1), point (b), shall not apply if the transfer of the tax residence of the SME has been carried out for valid commercial reasons within the meaning of Article 15(1), point (a), of Council Directive 2009/133/EC.***

Amendment 54

Proposal for a directive Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

The head office shall not be entitled to renew the option for applying the head office taxation rules if ***during the five-year period when head office taxation rules initially applied***, any of the following situations occurred:

Amendment

The head office shall not be entitled to renew the option for applying the head office taxation rules if any of the following situations occurred:

Amendment 55

Proposal for a directive Article 10 – paragraph 1 – point a

Text proposed by the Commission

(a) for any ***two*** fiscal years taken separately, the joint turnover of the

Amendment

(a) for any ***three*** fiscal years taken separately, the joint turnover of the

permanent establishments exceeded an amount which is equal to **double** the turnover of the Head Office;

permanent establishments **or subsidiaries** exceeded an amount which is equal to **triple** the turnover of the Head Office;

Amendment 56

Proposal for a directive Article 10 – paragraph 1 – point b

Text proposed by the Commission

(b) the SME set up **one or** more subsidiaries within **or outside** the Union;

Amendment

(b) the SME set up more **than two** subsidiaries within the Union;

Amendment 57

Proposal for a directive Article 10 – paragraph 1 – point c

Text proposed by the Commission

(c) the criterion set out in Article 2(1), point (d) has not been met for **two** consecutive fiscal years.

Amendment

(c) the criterion set out in Article 2(1), point (d) has not been met for **three** consecutive fiscal years.

Amendment 58

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. The head office shall file the Head office taxation tax return with the filing authority.

Amendment

1. The head office shall file the Head office taxation tax return with the filing authority. ***The head office Member State shall assist the SME in the elaboration of the tax return, in particular regarding the attribution of taxable result to each permanent establishment and subsidiary in other Member States.***

Amendment 59

Proposal for a directive
Article 11 – paragraph 2 – point b

Text proposed by the Commission

(b) the tax liability of the SME with regard to the taxable result of each permanent establishment in other Member States. The tax liability shall be computed by applying the national tax rate of the respective host Member State to the taxable result, as it was computed in accordance with the head office taxation rules.

Amendment

(b) the tax liability of the SME with regard to the taxable result of each permanent establishment **and up to two subsidiaries** in other Member States. The tax liability shall be computed by applying the national tax rate of the respective host Member State to the taxable result, as it was computed in accordance with the head office taxation rules.

Amendment 60

Proposal for a directive
Article 11 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where one or more permanent establishment of the SME are not required to prepare separate financial accounting statements under the law of the host Member State, the **HOT** tax return shall include the following information:

Amendment

3. Where one or more permanent establishment of the SME are not required to prepare separate financial accounting statements under the law of the host Member State, the **head office taxation** tax return shall include the following information:

Amendment 61

Proposal for a directive
Article 11 – paragraph 3 – point a

Text proposed by the Commission

(a) assets and liabilities attributed to the permanent establishment(s);

Amendment

(a) assets and liabilities attributed to the permanent establishments **and up to two subsidiaries**;

Amendment 62

Proposal for a directive
Article 11 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) profits attributable to the permanent establishment(s) in other Member States.

(b) profits attributable to the permanent establishments) **and up to two subsidiaries** in other Member States.

Amendment 63

Proposal for a directive

Article 11 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) a draft tax assessment notice for each permanent establishment.

(b) a draft tax assessment notice for each permanent establishment **and subsidiary**.

Amendment 64

Proposal for a directive

Article 11 – paragraph 5 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) a draft tax assessment notice for the relevant permanent establishment(s);

(b) a draft tax assessment notice for the relevant permanent establishments **and the subsidiaries**;

Amendment 65

Proposal for a directive

Article 11 – paragraph 8

Text proposed by the Commission

Amendment

8. If the tax authority of the host Member State rejects the draft tax assessment notice, it shall revise this draft tax assessment in connection with the attribution of profits to the permanent establishment in accordance with the provisions laid down in the applicable **bilateral** convention for the avoidance of double taxation **between** the host and head office Member States. After the attribution of profits to the permanent establishment

8. If the tax authority of the host Member State rejects the draft tax assessment notice, it shall revise this draft tax assessment in connection with the attribution of profits to the permanent establishment **and the subsidiaries** in accordance with the provisions laid down in the applicable convention for the avoidance of double taxation **to which** the host and head office Member States **are party**. After the attribution of profits to the

has been revised and communicated to the filing authority in accordance with Article 8ae of Directive 2011/16/EU, the filing authority shall re-compute the taxable result in accordance with the taxation rules of the head office Member State, and a revised tax assessment shall be issued by this Member State. The taxpayer shall be entitled to appeal against this revised tax assessment before the courts of the head office Member State. Any dispute concerning the amount of profits attributable to the permanent establishment shall be settled in accordance with the applicable ***bilateral*** convention for the avoidance of double taxation, or the provisions set out in Council Directive (EU) 2017/1852 of 10 October 2017¹⁷.

¹⁷ Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (*OJ L* 265, 14.10.2017, p. 1–14).

permanent establishment ***and the subsidiaries*** has been revised and communicated to the filing authority in accordance with Article 8ae of Directive 2011/16/EU, the filing authority shall re-compute the taxable result in accordance with the taxation rules of the head office Member State, and a revised tax assessment shall be issued by this Member State. The taxpayer shall be entitled to appeal against this revised tax assessment before the courts of the head office Member State. Any dispute concerning the amount of profits attributable to the permanent establishment ***and the subsidiaries*** shall be settled in accordance with the applicable convention for the avoidance of double taxation, or the provisions set out in Council Directive (EU) 2017/1852 of 10 October 2017.

¹⁷ Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (*OJ L* 265, 14.10.2017, p. 1–14).

Amendment 66

Proposal for a directive Article 11 – paragraph 9

Text proposed by the Commission

9. Where, under the tax rules of the host Member State, certain expenses associated with the employees of the permanent establishment are deductible for tax purposes insofar as the respective amounts are taxed at the level of the employee or are subject to social security charges, and there is no similar tax treatment in the head office Member State allowing for such deduction, the head office and host Member States shall take appropriate measures to prevent possible mismatches.

Amendment

9. Where, under the tax rules of the host Member State, certain expenses associated with the employees of the permanent establishment ***or the subsidiary*** are deductible for tax purposes insofar as the respective amounts are taxed at the level of the employee or are subject to social security charges, and there is no similar tax treatment in the head office Member State allowing for such deduction, the head office and host Member States shall, ***with the guidance of the Commission***, take appropriate measures to

prevent possible mismatches.

Amendment 67

Proposal for a directive

Article 11 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. The Commission shall, by means of implementing acts, lay down guidance on appropriate measures regarding mismatches as referred to in paragraph 8 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15.

Amendment 68

Proposal for a directive

Article 12 – title

Text proposed by the Commission

Amendment

Collection of tax due by the permanent establishment(s) in the host Member State(s)

Collection of tax due by the permanent establishments **and subsidiaries** in the host Member States

Amendment 69

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. The head office shall settle, through the filing authority, the income tax liabilities with regard to both its taxable result and the taxable result of its permanent establishment(s) in the host Member State(s).

1. The head office shall settle, through the filing authority, the income tax liabilities with regard to both its taxable result and the taxable result of its permanent establishments **and subsidiaries** in the host Member States.

Amendment 70

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

2. The filing authority shall collect the tax corresponding to the tax liability of each permanent establishment of the head office in the Union, apply the tax rate the respective host Member State and transfer the relevant amount to the competent authority of the respective host Member State.

Amendment

2. The filing authority shall collect the tax corresponding to the tax liability of each permanent establishment **and subsidiary** of the head office in the Union, apply the tax rate the respective host Member State and transfer the relevant amount to the competent authority of the respective host Member State **without delay**.

Amendment 71

Proposal for a directive
Article 12 – paragraph 3

Text proposed by the Commission

3. The Commission shall, by means of implementing acts, lay down the practical arrangements necessary to ensure the collection and transfer of the tax corresponding to the tax liability of the permanent establishment(s) from the head office Member State to the host Member State. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15.

Amendment

3. The Commission shall, by means of implementing acts, lay down the practical arrangements necessary to ensure the collection and transfer of the tax corresponding to the tax liability of the permanent establishments **or the subsidiaries** from the head office Member State to the host Member State. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15.

Amendment 72

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

1. Unless specified otherwise, the rules of this Directive shall not affect the national rules of Member States that govern local tax audits, legal remedies and proceedings, or the dispute resolution

Amendment

1. Unless specified otherwise, the rules of this Directive shall not affect the national rules of Member States that govern local tax audits, legal remedies and proceedings, or the dispute resolution

mechanisms available at the level of the Union or provided for in the applicable bilateral tax conventions on the avoidance of double taxation.

mechanisms available at the level of the Union or provided for in the applicable bilateral tax conventions on the avoidance of double taxation. ***The commercial, accounting and fiscal obligations of a permanent establishments and subsidiaries pursuant to the national rules of the host Member State shall not be affected by this Directive.***

Amendment 73

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

2. The tax **authority** of the host Member State may request that an audit be carried out jointly with the filing authority covering the computation of the taxable result of the permanent establishment in accordance with the head office taxation rules, the attribution of profits to the permanent establishment and/or the applicable tax rate. Joint audits shall be conducted in accordance with Council Directive 2011/16/EU¹⁸. Notwithstanding the provisions in the aforementioned Directive, the ***requested competent authority shall accept such request by the authorities*** of the host Member State.

¹⁸ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1)

Amendment 74

Proposal for a directive Article 13 – paragraph 2 a (new)

Amendment

2. The tax **authorities** of the host Member State may request that an audit be carried out jointly with the filing authority covering the computation of the taxable result of the permanent establishment ***or the subsidiary*** in accordance with the head office taxation rules, the attribution of profits to the permanent establishment ***and/or the subsidiary*** and/or the applicable tax rate. Joint audits shall be conducted in accordance with Council Directive 2011/16/EU¹⁸. Notwithstanding Directive 2011/16/EU, the ***request for a joint audit may be also made by the tax authority of the head office Member State to the tax authority of the host Member State of each permanent establishment or subsidiary.***

¹⁸ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1)

2a. If an audit is to be carried out at the initiative of the head office Member State, the head office Member State shall invite the host Member State to carry out such audit jointly.

Amendment 75

Proposal for a directive

Article 14 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8ae – paragraph 1

Text proposed by the Commission

1. If a head office as defined in Article 3, point (2), of Directive on establishing a Head Office taxation rules for micro, small and medium sized enterprises²⁰, which opts to apply the head office taxation rules to its permanent establishment(s) in accordance with Article 6 of that, meets the eligibility requirements for applying such rules, the competent authority of the Member State of the head office shall by means of automatic exchange of information communicate to the competent authority of the Member State of the permanent establishment that the taxable result of the relevant permanent establishment is to be computed in accordance with the head office taxation rules. Such communication shall take place within **two months** from the notification by the Head Office of its option to apply head office taxation rules.

²⁰ Directive...[OJ: Please insert the number, date, title and OJ reference of that Directive].

Amendment

1. If a head office as defined in Article 3, point (2), of Directive on establishing a Head Office taxation rules for micro, small and medium sized enterprises²⁰, which opts to apply the head office taxation rules to its permanent establishments **or its subsidiaries** in accordance with Article 6 of that, meets the eligibility requirements for applying such rules, the competent authority of the Member State of the head office shall by means of automatic exchange of information communicate to the competent authority of the Member State of the permanent establishment **or the subsidiaries** that the taxable result of the relevant permanent establishment **or the subsidiaries** is to be computed in accordance with the head office taxation rules. Such communication shall take place within **one month** from the notification by the Head Office of its option to apply head office taxation rules.

²⁰ Directive...[OJ: Please insert the number, date, title and OJ reference of that Directive].

Amendment 76

Proposal for a directive

Article 14 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8ae – paragraph 2

Text proposed by the Commission

2. The competent authority of the Member State of the permanent establishment shall communicate to the competent authority of the Member State of the head office the tax rate applicable for the purpose of determining the tax liability of the permanent establishment(s) situated on its territory, within **three** months from the notification by the competent authority of the Member State of the head office of the decision on the application of the head office taxation rules.

Amendment

2. The competent authority of the Member State of the permanent establishment **or the subsidiary** shall communicate to the competent authority of the Member State of the head office the tax rate applicable for the purpose of determining the tax liability of the permanent establishments **or the subsidiaries** situated on its territory, within **two** months from the notification by the competent authority of the Member State of the head office of the decision on the application of the head office taxation rules.

Amendment 77

Proposal for a directive

Article 14 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8ae – paragraph 3

Text proposed by the Commission

3. The competent authority of the Member State of the head office shall by means of automatic exchange of information communicate the information specified in paragraph 2 of this Article to the competent authority(ies) of the Member State(s) of the permanent establishment(s) in accordance with the practical arrangements adopted pursuant to Article 21.

Amendment

3. The competent authority of the Member State of the head office shall by means of automatic exchange of information communicate the information specified in paragraph 2 of this Article to the competent authorities of the Member States of the permanent establishments **or the subsidiaries** in accordance with the practical arrangements adopted pursuant to Article 21.

Amendment 78

Proposal for a directive

Article 14 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8ae – paragraph 4 – point iii

Text proposed by the Commission

(iii) a draft tax assessment notice for the relevant permanent establishment(s);

Amendment

(iii) a draft tax assessment notice for the relevant permanent establishments **and subsidiaries**;

Amendment 79

Proposal for a directive

Article 14 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8ae – paragraph 6

Text proposed by the Commission

6. Where the tax authority of the Member State of the permanent establishment(s) revises the draft tax assessment notice in connection with the attribution of profits to the permanent establishment in accordance with the provisions laid down in the applicable bilateral convention for the avoidance of double taxation between the host and head office Member States, after rejection of the draft tax assessment notice issued by the head office Member State, the competent authority of the Member State of the permanent establishment(s) shall communicate such revised tax assessment notice to the competent authority of the Member State of the head office, within one month from its issuance, for the purpose of re-computing the taxable result of the permanent establishment, issuance of a revised tax assessment and collecting the tax.

Amendment

6. Where the tax authority of the Member State of the permanent establishments **or subsidiaries** revises the draft tax assessment notice in connection with the attribution of profits to the permanent establishment **or subsidiary** in accordance with the provisions laid down in the applicable bilateral convention for the avoidance of double taxation between the host and head office Member States, after rejection of the draft tax assessment notice issued by the head office Member State, the competent authority of the Member State of the permanent establishments **or subsidiaries** shall communicate such revised tax assessment notice to the competent authority of the Member State of the head office, within one month from its issuance, for the purpose of re-computing the taxable result of the permanent establishment **or subsidiary**, issuance of a revised tax assessment and collecting the tax.

Amendment 80

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

The European Parliament shall be informed by the Commission of the adoption of delegated acts, of any objection formulated to them, and of the revocation of the delegation of powers by the Council.

Amendment

The European Parliament shall be informed by the Commission of the adoption of delegated **and implementing acts**, of any objection formulated to them, and of the revocation of the delegation of powers by the Council.

Amendment 81

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

2. Information, including personal data, processed in accordance with this Directive shall be retained only as long as necessary to achieve the purposes of this Directive, in particular, verification of eligibility requirements and determination of the tax liability of the taxpayers, in accordance with each data controller's domestic rules on the statute of limitations, **but in any case no longer than ten years.**

Amendment

2. Information, including personal data, processed in accordance with this Directive shall be retained only as long as **strictly** necessary to achieve the purposes of this Directive **(the 'retention period')**, in particular, verification of eligibility requirements and determination of the tax liability of the taxpayers, in accordance with each data controller's domestic rules on the statute of limitations. **The retention period shall start when personal data is processed for the purposes of this Directive for the first time and shall in any event not exceed seven years.**

Amendment 82

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

1. Five years after this Directive starts to apply, the Commission shall examine and evaluate its functioning and report to the European Parliament and the Council

Amendment

1. Five years after this Directive starts to apply, the Commission shall examine and evaluate its functioning and report to the European Parliament and the Council

to that effect. The report shall, where appropriate, be accompanied by a proposal to amend this Directive.

to that effect. *In the report, the Commission shall, inter alia, examine whether the head office taxation rules should be also applied to one or more subsidiaries of the SMEs.* The report shall, where appropriate, be accompanied by a proposal to amend this Directive.

Amendment 83

Proposal for a directive

Article 19 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The report referred in the first subparagraph of this paragraph shall also evaluate the possible extension of the scope of this Directive, in particular to other companies referred to in Article 3(5) and (6) of Directive 2013/34/EU, the adequacy of the eligibility requirements laid down in Article 4 of this Directive in view of adhesion of SMEs to the head office taxation rules and, in particular, the appropriateness of the requirement related to the joint turnover of the permanent establishments and/or subsidiaries. The report shall also evaluate the appropriateness of the criteria laid down in Article 10 of this Directive, namely the exclusion of SMEs that have more than two subsidiaries, and the adequacy of the exclusion of the shipping activities laid down in article 5 of this Directive. The report shall also assess if and how the procedures laid down in this Directive can be further streamlined to reduce compliance costs and if there are lessons to be learnt from the application of this Directive for corporate taxation in general.

Amendment 84

Proposal for a directive

Article 19 – paragraph 2

Text proposed by the Commission

2. Member States shall communicate to the Commission relevant information for the evaluation of the Directive, in accordance with paragraph 3, including aggregated data regarding the number of eligible SMEs compared to SMEs that opted in, their turnover and compliance costs relative to turnover; data on the number of SMEs that expanded cross-border by setting up a permanent establishment and the number of SMEs that disqualified due to creating *a subsidiary*, or the compliance costs for SMEs that apply the option.

Amendment

2. Member States shall communicate to the Commission relevant information for the evaluation of the Directive, in accordance with paragraph 3, including aggregated data regarding the number of eligible SMEs compared to SMEs that opted in, their turnover and compliance costs relative to turnover; data on the number of SMEs that expanded cross-border by setting up a permanent establishment and the number of SMEs that disqualified due to creating ***more than two subsidiaries***, or the compliance costs for SMEs that apply the option.

Amendment 85

Proposal for a directive

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall evaluate potential legal obstacles in applying this Directive such as the lack of a common and harmonised definition of permanent establishments and subsidiaries in the Union, taking into account international standards.

Amendment 86

Proposal for a directive

Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

By 31.**12.2025**, the Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

Amendment

By 31 ***December 2024***, the Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

Amendment 87

Proposal for a directive

Article 20 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall apply those measures from
1.1.2026.

Amendment

They shall apply those measures from 1
January 2025.

EXPLANATORY STATEMENT

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, the HOT Initiative, represents a window of opportunity for Member States to facilitate the business environment in the Single Market. As part of the SME Relief Package, this proposal pursues the fundamental goal of simplifying the legal and administrative framework in which Europe's 24 million SMEs create jobs, growth and wealth.

Tax compliance represents an excessive burden on companies, especially on Small and Medium Enterprises (SME) that spend approximately 2,5% of their turnover on tax-related administrative procedures. These companies are the core of the European economy, amounting to 99% of EU's businesses. SMEs are strategic to create jobs, to boost the competitiveness of our economy and to promote a fair and transparent competition within our Single Market.

The main priorities of EU legislation must be facilitation, simplification and reduction of excessive burdens, including administrative and tax burdens. The HOT Initiative must be interpreted in the context of a broader legislative agenda to support SMEs and to take on the combat against bureaucracy. This perspective requires that any new piece of legislation represent less burden and more accessibility to the opportunities of the Single Market. We want our SMEs to prosper in their national markets, but in a fully integrated Single Market, we have to guarantee the conditions for any company to operate in any of the 27 EU jurisdictions without any obstacle. The HOT Initiative pursues this goal and the Commission proposal represents, already, a step ahead on this direction.

The rapporteur understands that, although the nature of the legislative procedure (a consultation procedure under Article 115° TFEU), the European Parliament has an important role on calling the Council for a swift and efficient adoption of the HOT Initiative. That is why the rapporteur proposes to shorten the deadline for the transposition of this Directive. European businesses need a strong signal of support from the EU in the complex and volatile context of today.

The report intends to go beyond the proposal and transform the good starting point into a real instrument at the service of European SMEs. The proposed amendments try to increase the ambition of the proposal while safeguarding the feasibility of this new system. First, the rapporteur proposes to limit the eligibility requirements to widen the access to the system while maintaining the scope. Second, the rapporteur proposes to transform the system and guarantee an indefinite duration for the application of the rules, freeing SMEs from more compliance costs regarding renovation processes. Third, the rapporteur shortens the deadlines for applications from SMEs and for national authorities to exchange information, guaranteeing a quicker and more efficient system of applications.

The HOT Initiative represents an opportunity for the EU to send a clear signal to European SMEs and to reconfirm our Single Market as a place of opportunities for European business to thrive and contribute for the creation of jobs and for the boost of our market's competitiveness.

**ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
European Commission – DG TAXUD
SME United
Business Europe
Accountancy Europe

The list above is drawn up under the exclusive responsibility of the rapporteur.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16/EU
References	COM(2023)0528 – C9-0340/2023 – 2023/0320(CNS)
Date Parliament was consulted	13.11.2023
Committee responsible Date announced in plenary	ECON 11.12.2023
Rapporteurs Date appointed	Lídia Pereira 19.9.2023
Discussed in committee	4.12.2023 22.1.2024
Date adopted	22.2.2024
Result of final vote	+: 30 –: 3 0: 0
Members present for the final vote	Anna-Michelle Asimakopoulou, Gilles Boyer, Valentino Grant, Claude Gruffat, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, Othmar Karas, Georgios Kyrtos, Aurore Lalucq, Philippe Lamberts, Pedro Marques, Caroline Nagtegaal, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Piernicola Pedicini, Lídia Pereira, Sirpa Pietikäinen, Antonio Maria Rinaldi, Alfred Sant, Aušra Seibutytė, Paul Tang, Irene Tinagli
Substitutes present for the final vote	Andželika Anna Mozdżanowska, René Repasi, Eleni Stavrou
Substitutes under Rule 209(7) present for the final vote	João Albuquerque, Jordi Cañas, Deirdre Clune, Bernard Guetta, Nacho Sánchez Amor, Michal Wiezik
Date tabled	28.2.2024

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

30	+
ID	Valentino Grant, Antonio Maria Rinaldi
PPE	Anna-Michelle Asimakopoulou, Deirdre Clune, Danuta Maria Hübner, Othmar Karas, Luděk Niedermayer, Lídia Pereira, Sirpa Pietikäinen, Aušra Seibutytė, Eleni Stavrou
Renew	Gilles Boyer, Jordi Cañas, Bernard Guetta, Georgios Kyrtos, Caroline Nagtegaal, Michał Wiezik
S&D	João Albuquerque, Eero Heinäluoma, Aurore Lalucq, Pedro Marques, René Repasi, Nacho Sánchez Amor, Alfred Sant, Paul Tang, Irene Tinagli
Verts/ALE	Claude Gruffat, Stasys Jakeliūnas, Philippe Lamberts, Piernicola Pedicini

3	-
ECR	Michiel Hoogeveen, Andżelika Anna Możdżanowska
NI	Lefteris Nikolaou-Alavanos

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention