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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 25 November 2013

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: SWD(2013) 475 final

Subject: COMMISSION STAFF WORKING DOCUMENT IMPLEMENTATION
PLAN Accompanying the document Proposal for a Council Directive
amending Directive 2011/96/EU on the common system of taxation
applicable in the case of parent companies and subsidiaries of different
Member States

Delegations will find attached document SWD(2013) 475 final.

Encl.: SWD(2013) 475 final



Brussels, 25.11.2013
SWD(2013) 475 final

COMMISSION STAFF WORKING DOCUMENT

IMPLEMENTATION PLAN

Accompanying the document

Proposal for a Council Directive

amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

{ COM(2013) 814 final }

{ SWD(2013) 473 final }

{ SWD(2013) 474 final }

COMMISSION STAFF WORKING DOCUMENT

IMPLEMENTATION PLAN

Accompanying the document

Proposal for a Council Directive

amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

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2. Deliverables and implementation challenges

The original Directive was due to be implemented by 31 December 1991 and the latest changes were due for implementation by 1 January 2007. In principle, the amendments should not give rise to significant difficulties as the Member States are already applying its benefits. The amendments are only minor. Firstly, the benefits of the tax exemption for parent companies should be denied to distributions of profits that are deductible in the source Member State and the profits should be taxed at the level of the parent company in order to tackle hybrid financial mismatches. Secondly, all Member States should implement a common anti-abuse provision.

Technical challenges

a. Risk for the Member States of not being in a position to implement timely and correctly the amendments to the Directive.

This risk is associated with the process that Member States have to follow for the purpose of properly transposing the amendments into national law.

b. Risks relating to business involve insufficiently informing companies and business organisations about the discussions on the proposal in Council and the final agreed text.

At first glance it might appear that in the first few years after the adoption of the proposal by the Commission businesses will be less involved and less concerned than tax administrations. However, businesses need to be informed about how the proposal is progressing (future rules, approaches accepted, solutions discussed and agreed upon) to allow them to prepare properly for the eventual transition from the application of domestic and treaty based provisions to an EU wide system.

Compliance challenges:

a. Risk for the Member States of not being in a position to administer properly the amendments to the tax directive.

Ensuring that the amendments are properly applied requires experienced national tax administrations. Knowledge of the provisions and supporting guidelines relating to cross-border exemptions are the prerequisites for a proper application of the Directive by tax authorities.

All actors are well aware of these requirements and it is also commonly understood that the main responsibilities for and tasks associated with the proper preparation of the tax inspectors and officials involved rest with the Member States. The amendments will not change existing administrative structures or impose common administrative systems on the Member States. The supporting efforts required by the amendments can therefore be only be minor.

The main administrative issue seems to be whether Member States are sufficiently able to identify whether the 'profit distributions' are deducted in the source state.

Policy challenges:

a. Internal risks - Risk of not taking into consideration other tax policies

Over the past 18 months, taxation of international companies has been in the public and political spotlight. The general public no longer accepts that some internationally active businesses do not proportionally contribute to the need for fiscal consolidation. They escape their perceived - and sometimes legal - duties by exploiting cross-border mismatches, by choosing to locate activities and functions where taxes are lowest and by benefitting from the fact that international rules have not kept pace with the modern way of doing business and by the arising of new digital business models.

Many of the present problems in international company tax, however, concern deficiencies in international tax rules and global standards. They therefore require solutions that go beyond the borders of the EU. On request of the G20, the OECD on 19 July 2013 presented an Action Plan on Base Erosion and Profit Shifting (BEPS) which was prepared and agreed also with all non-OECD G20 countries. It addresses several deficiencies in the existing international tax rules and standards, which are exploited to erode the tax base in high tax countries and to shift the tax base to reduce the overall tax bill.

The amendments proposed are fully in line with the developments in the international tax world. However, there is a need to follow the BEPS project closely in order to ensure coherence between the developments in the EU and on a global level.

3. Support Actions

Possible Commission Actions:

Technical challenges

a. Risk relating to Member States - Risk of not being in a position to implement timely and correctly the amendments to the Directive.

With only two new provisions, it does not seem necessary to take any particular action. In any case, the Commission departments will have to check that Member

States transpose the amendments into their national tax systems and that they apply its rules.

b. Risk relating to business - Risk relating to business involves insufficiently informing companies and business organisations about the discussions on the proposal in Council and the final agreed text.

To neutralise the above risk, the Commission departments intend to be as transparent as possible on any developments throughout the discussion and negotiation period in Council.

Compliance challenges:

a. Risk for the Member States of not being in a position to administer properly the amendments to the tax directive.

To neutralise the above risk, the Commission departments may consider:

- supporting initiatives to identify where mismatches occur (development of best practices, Fiscalis training, working group meeting (WPIV) and implementation studies);
- actively participating in bilateral or multilateral meetings, seminars, conferences and other fora with representatives of the tax authorities;
- supporting training initiatives in the Member States (under Fiscalis, participation in conferences, through the drafting and publication of guidance notes).

Policy challenges:

a. Internal risks - Risk of not taking into consideration other tax policies

To neutralise the above risk, the Commission departments will continue to monitor – and if possible influence - the tax framework in the area of International taxation (OECD/G20s BEPS project).

Possible Member State Actions:

Technical challenges

a. Risk relating to Member States - Risk of not being in a position to implement timely and correctly the amendments to the Directive.

- Ensuring there is a network responsible for the implementation phase in Member States
- Informing the Commission about any potential problems related to implementation as soon as they are identified

Compliance challenges:

- a. **Risk for the Member States of not being in a position to administer properly the amendments to the tax directive.**
- Sharing information related to administration of amendments
 - Awareness-raising among the target groups