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**FISC 235**  
**ECOFIN 1199**

**"I/A" ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: 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  
- Adoption of the legislative act **(LA + S)**

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1. On 25 November 2013, the Commission presented a proposal for a 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 (PSD) (doc. 16918/13 FISC 237). The proposal had two main objectives:
  - a) to fill a loophole of the current PSD text by tackling hybrid loan mismatches within the scope of its application, and
  - b) to introduce a general anti-abuse rule in order to protect the functioning of the PSD.
2. The European Economic and Social Committee and the European Parliament delivered their opinions respectively on 25 March and 2 April 2014.

3. The debate in 6 May 2014 ECOFIN has shown that there is wide support for closing the 'hybrid loan mismatch' loophole as quickly as possible, whereas the part of the proposal dealing with the general anti-abuse rule will require more work.
4. As a result, on 8 July 2014, the Council adopted the Directive, amending the PSD, which contained provisions aimed at closing the tax loophole generated by hybrid loans arrangements<sup>1</sup>. The amending Directive has already entered into force and Member States have to transpose its provisions into national law by 31 December 2015.<sup>2</sup>
5. Since the adoption of the first part of the Commission proposal, the work on the general anti-abuse rule for the purposes of the PSD has continued and on 9 December 2014, the Council reached a political agreement on the Presidency compromise text. It was agreed that a number of statements would be made to the Council Minutes, as set out in the Addendum to this note.
6. The Permanent Representatives Committee is therefore asked to suggest that the Council:

adopt as an "A" item on the agenda of a forthcoming meeting the **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**, as finalised by the legal/linguistic experts in doc. 16633/14 FISC 228 ECOFIN 1179;

- request that the statements, set out in the Addendum to this note, be entered in the Minutes of that meeting.

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<sup>1</sup> Council Directive 2014/86/EU of 8 July 2014 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 219, 25.7.2014, p. 40).

<sup>2</sup> Article 2(1) of the amending Directive.