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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Proposal for a

COUNCIL DIRECTIVE

laying down rules against tax avoidance practices that directly affect the functioning of the internal market

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Council Conclusions of 18 December 2014 cite "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and European Union (EU) levels". Since December 2014, the Commission has quickly launched the first steps towards an EU approach. Meanwhile, the Organisation for Economic Cooperation and Development (OECD) finalised its work on defining the global rules and standards to these ends.

This Directive, which is often referred to as the Anti- Tax Avoidance Directive, lays down rules against tax avoidance practices that directly affect the functioning of the internal market. It is one of the constituent parts of the Commission's Anti- Tax Avoidance Package, which addresses a number of important new developments and political priorities in corporate taxation that require quick reaction at the level of the EU. In particular, it responds to the finalisation of the project against Base Erosion and Profit Shifting (BEPS) by the G20 and the OECD as well as to demands from the European Parliament, several Member States, businesses and civil society, and certain international partners for a stronger and more coherent EU approach against corporate tax abuse.

The schemes targeted by this Directive involve situations where taxpayers act against the actual purpose of the law, taking advantage of disparities between national tax systems, to reduce their tax bill. Taxpayers may benefit from low tax rates or double deductions or ensure that their income remains untaxed by making it deductible in one jurisdiction whilst this is not included in the tax base across the border either. The outcome of such situations distorts business decisions in the internal market and unless it is effectively tackled, could create an environment of unfair tax competition. Having the aim of combating tax avoidance practices which directly affect the functioning of the internal market, this Directive lays down anti- tax avoidance rules in six specific fields: deductibility of interest; exit taxation; a switch-over clause; a general anti-abuse rule (GAAR); controlled foreign company (CFC) rules; and a framework to tackle hybrid mismatches.

• Consistency with existing policy provisions in the policy area

This Directive builds on the Action Plan for Fair and Efficient Corporate Taxation, presented by the Commission on 17 June 2015. It sets out legally binding rules to enable Member States to effectively tackle corporate tax avoidance in a way which preserves their collective competitiveness and respects the Single Market, Treaty Freedoms, the EU Charter of Fundamental Rights and EU law in general. In this respect, it draws on two major areas of work at EU and international level.

First, in the context of the OECD BEPS, most Member States have committed to implement the measures contained in the BEPS Final Reports, which were published on 5 October 2015 and endorsed by G20 leaders in November 2015. However, the unilateral and divergent implementation of BEPS by each Member State could fragment the Single Market by creating national policy clashes, distortions and tax obstacles for businesses in the EU. It could also create new loopholes and mismatches that could be exploited by companies seeking to avoid taxation, thereby undermining Member States' efforts to prevent such practices. It is therefore essential for the good functioning of the Single Market that Member States – as a minimum - transpose the OECD BEPS measures into their national systems in a coherent and coordinated fashion.

Second, the Commission announced in the June 2015 Action Plan that it will re-launch its Proposal for a Common Consolidated Corporate Tax Base (CCCTB), as a holistic solution to creating fairer and more efficient taxation. It also called on Member States to continue work on some international aspects of the common base, linked to the OECD BEPS project, while the revised CCCTB proposal was being prepared. This Directive takes account of the outcome of Member States' discussions on these issues in Council.

This Directive aims to achieve a balance between the need for a certain degree of uniformity in implementing the BEPS outputs across the EU and Member States' needs to accommodate the special features of their tax systems within these new rules. The text thus lays down principle-based rules and leaves the details of their implementation to Member States, on the understanding that they are better placed to shape the precise elements of the rules in a way that best fits their corporate tax systems. As such, the Directive should create a level-playing field of minimum protection for all Member States' corporate tax systems.

The Directive is broadly inclusive and aims to capture all taxpayers which are subject to corporate tax in a Member State. Its scope also embraces permanent establishments, situated in the Union, of corporate taxpayers which are not themselves subject to the Directive.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Direct tax legislation falls within the ambit of Article 115 of the Treaty on the Functioning of the EU (TFEU). The clause stipulates that legal measures of approximation under that article shall be vested the legal form of a Directive.

- **Subsidiarity (for non-exclusive competence)**

This proposal complies with the principle of subsidiarity. The nature of the subject requires a common initiative across the internal market.

The rules of this Directive aim to tackle cross-border tax avoidance practices and provide a common framework for implementing the outputs of BEPS into Member States' national laws in a coordinated manner. Such aims cannot be sufficiently achieved through action undertaken by each Member State while acting on its own. Such an approach would in fact only replicate and possibly worsen the existing fragmentation in the internal market and perpetuate the present inefficiencies and distortions in the interaction of a patchwork of distinct measures. If the objective is to adopt solutions that function for the internal market as whole (e.g. elimination of mismatches as a result of disparities in national tax systems) and improve its (internal and external) resilience against aggressive tax planning, the appropriate way forward involves coordinated initiatives at the level of the EU.

Furthermore, an EU initiative would add value, as compared to what a multitude of national implementation methods can attain. Given that the envisaged anti-abuse rules have a cross-border dimension, it is imperative that any proposals balance divergent interests within the internal market and consider the full picture, to identify common objectives and solutions.

This can only be achieved if legislation is designed centrally. Finally, if the measures to implement BEPS are enacted according to the acquis, taxpayers can have the legal certainty that they comply with EU law.

Such an approach is therefore in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union.

- **Proportionality**

The envisaged measures do not go beyond ensuring the minimum necessary level of protection for the internal market. The Directive does not therefore prescribe full harmonisation but only a minimum protection for Member States' corporate tax systems. Thus, the Directive ensures the essential degree of coordination within the Union for the purpose of materialising its aims. In this light, the proposal does not go beyond what is necessary to achieve its objectives and is therefore compliant with the principle of proportionality.

- **Choice of the instrument**

The proposal is for a Directive, which is the only available instrument under the legal base of Article 115 TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The topics dealt with in this Directive have been discussed with stakeholders in the framework of the proposed Directive for a CCCTB over a number of years. Member States' delegates have regularly contributed their observations at the technical Working Party on Tax Questions in Council. Since March 2011 that the College adopted the CCCTB Proposal, the Working Party has met several times during each Presidency, to go through technical and policy questions in detail. In addition, the Commission Services have liaised with all major business stakeholders and heard their views on various topics of the Proposal. Similarly, many - primarily technical – themes of the Directive were debated in academic conferences where the Commission Services have participated.

Most Member States are members of the OECD and have participated in lengthy and detailed discussions on the anti-BEPS Actions, including on the elaboration of technicalities, between 2013 and 2015. The OECD organised extensive public consultations with stakeholders on each of the anti-BEPS Actions. Furthermore, the Commission has debated internally and with OECD experts several BEPS topics (e.g. CFC legislation), in particular where the Commission has had doubts about the compatibility of certain ideas and/or proposed solutions with EU law.

In the second half of 2014, the Italian Presidency of the Council launched the idea of an 'EU - BEPS Roadmap'. The Council discussed the CCCTB proposal and specifically focused on its international and BEPS-related elements. In this context, the Presidency encouraged consistency with parallel OECD initiatives, while respecting EU law. This approach was endorsed by the High Level Working Party on Taxation and pursued by the subsequent Presidencies. Discussions on the EU - BEPS Roadmap continued into 2015. The aim was to contribute to the OECD debate and pave the way towards a smooth implementation of the future OECD Recommendations, whilst taking account of EU specificities.

The elements of this proposal for a Directive were presented in broad terms and discussed with Member States' delegations, business and non-governmental organisations' representatives at a meeting of the Platform for Tax Good Governance on 30 November 2015.

- **Impact assessment**

After its report on *Addressing Base Erosion and Profit Shifting* was published in early 2013 and the so-called *Action Plan on BEPS* was endorsed by the G20 Leaders in September 2013, the OECD embarked on a 2-year period of intensive work which led to the delivery of 13 reports, in November 2015. These reports lay down new or reinforced international standards as well as concrete measures to help countries tackle BEPS. In this framework, OECD/G20 members are committed to this comprehensive package and to its consistent implementation.

Many Member States, in their capacity as OECD Members, have undertaken to transpose the output of the BEPS project into their national laws, and to do so urgently. Considering this, it is critical to make fast progress on agreeing rules for coordinating the implementation of the conclusions on BEPS in the EU. In the light of a great risk of fragmentation of the internal market, which would possibly result from uncoordinated unilateral actions by Member States, the Commission is putting forward, in this proposal, common minimum solutions for implementation. The Commission has made every effort to respond simultaneously to both the urgency to act, and the imperative need to avoid that the functioning of the internal market is compromised either by unilateral measures adopted by Member States (whether OECD members or not) acting on their own, or lack of action by other Member States altogether. The possibility of proposing soft law was also considered as an option but was discarded as inappropriate for securing a coordinated approach.

To provide up-to-date analysis and evidence, a separate Staff Working Document (SWD) accompanying the draft Directive gives an extensive overview of existing academic work and economic evidence in the field of base erosion and profit shifting. This is based on recent studies, amongst others, by the OECD, the European Commission and European Parliament. The SWD highlights the drivers and most common identified mechanisms which, according to the OECD reports, are linked to aggressive tax planning. It summarises the conclusions of an in-depth review of key mechanisms for aggressive tax planning on a basis of analysis per Member State, as carried out on behalf of the Commission in 2015. The SWD outlines how the Directive is complementary to other initiatives aimed to implement the output of the OECD BEPS reports in the EU and contribute towards a common minimum level of protection against tax avoidance.

Against this background, no impact assessment was carried out for this proposal on the following grounds: there is a strong link to the OECD BEPS work; the SWD supplies a significant body of evidence and analysis; stakeholders were extensively involved in consultations on the technical elements of the proposed rules at a previous stage; and, in particular, there is an urgent current demand for coordinated action in the EU on this matter of international political priority.

4. BUDGETARY IMPLICATIONS

This proposal for a Directive does not have any budgetary implications for the EU.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The Directive is broadly inclusive and aims to capture all taxpayers which are subject to corporate tax in a Member State. Its scope also embraces permanent establishments, situated in the Union, of corporate taxpayers which are not themselves subject to the Directive.

The schemes targeted by this Directive involve situations where taxpayers act against the actual purpose of the law, taking advantage of disparities between national tax systems, to reduce their tax bill. Taxpayers may benefit from low tax rates or double deductions or ensure that their income remains untaxed by making it deductible in one jurisdiction whilst this is not included in the tax base across the border either. The outcome of such situations distorts business decisions in the internal market and unless it is effectively tackled, could create an environment of unfair tax competition. Having the aim of combating tax avoidance practices which directly affect the functioning of the internal market, this Directive lays down anti- tax avoidance rules in six specific fields: deductibility of interest; exit taxation; a switch-over clause; a general anti-abuse rule (GAAR); controlled foreign company (CFC) rules; and a framework to tackle hybrid mismatches.

- The deductibility of interest

Multinational groups often finance group entities in high-tax jurisdictions through debt and arrange that these companies pay back 'inflated' interest to subsidiaries resident in low-tax jurisdictions. In this way, the tax base of the group (or more precisely, of the entities paying out 'inflated' interest) decreases in the high-tax jurisdictions whilst it increases in the low-tax State where the interest payment is received. Overall, the outcome is a reduced tax base for the multinational group as a whole.

The aim of the proposed rule is to discourage the above practice by limiting the amount of interest that the taxpayer is entitled to deduct in a tax year. In this way, it is also expected to mitigate the bias against equity financing. For this purpose, net interest expenses will only be deductible up to a fixed ratio based on the taxpayer's gross operating profit. Given that this Directive fixes a minimum level of protection for the internal market, it is envisaged setting the rate for deductibility at the top of the scale (10 to 30%) recommended by the OECD. Member States may then introduce stricter rules.

Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. This is chiefly because, contrary to other sectors of the economy, financial costs and revenues are incurred by, or accrue to, financial undertakings as part of their core trade. Given that the discussions in this field are not yet sufficiently conclusive in the international and Union context, it has not yet been possible to provide for specific rules in the financial and insurance sectors. It is however necessary to clarify that despite the temporary exclusion of these financial undertakings, the intention is to ultimately conclude an interest limitation rule of broad scope which is not subject to exceptions.

- Exit taxation

Taxpayers may try to reduce their tax bill by moving their tax residence and/or assets to a low-tax jurisdiction. Such practices distort the market because they erode the tax base of the State of departure and shift future profits to be subject to tax in the low-tax jurisdiction of destination. If taxpayers move their tax residence out of a certain Member State, this State will be deprived of its future right to tax revenues of these taxpayers, which may have already been created but not yet realised. The same complication arises where taxpayers transfer assets (without disposing of them) out of a Member State and those assets incorporate unrealised profits.

Exit taxation serves the purpose of preventing tax base erosion in the State of origin when assets which incorporate unrealised underlying gains are transferred, without a change of ownership, out of the taxing jurisdiction of that State. As the application of exit taxation within the Union shall be in line with the fundamental freedoms and in line with the case law of the Court of Justice of the European Union (CJEU), this Directive also addresses the EU law angle of exit taxation by giving taxpayers the option for deferring the payment of the amount of tax over a certain number of years and settling through staggered payments.

- A switch-over clause

Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt foreign income from taxation. The unintended negative effect of this approach is that it may encourage untaxed or low-taxed income to enter the internal market and then, circulate – in many cases, untaxed - within the Union, making use of available instruments within the Union law.

Switch-over clauses are commonly used against such practices. Namely, the taxpayer is subjected to taxation (instead of being exempt) and given a credit for tax paid abroad. In this way, companies are discouraged from shifting profits out of high-tax jurisdictions towards low-tax territories, unless there is sufficient business justification for these transfers.

The threshold of low taxation

In its proposal for a Directive on a CCCTB, the Commission introduced a switch-over clause to capture situations where the income flowing into the internal market from a third country had been subject to a tax on profits in the third country at a statutory corporate tax rate lower than 40 percent of the average of statutory corporate tax rates in the Union. This rule would ensure that income of a third-country origin enters the Union after having been taxed at a level which at least equals the lowest level of taxation that this payment would have been subject to had it originated in a Member State. For this purpose, the proposal for a CCCTB refers, as a comparator, to the average of statutory corporate tax rates in the Union.

Considering that this Directive does not establish a standalone corporate tax system, neither does it include a mechanism for consolidating the tax bases of group companies across the Union in such a way as under the proposal for a CCCTB, it would be logical to use, as a reference, the statutory corporate tax rate in the Member State of the taxpayer receiving the foreign income – at least, until the plans to re-launch the CCCTB materialise, as announced by the Commission.

The proposed scheme takes into account the fact that there is no harmonisation of corporate tax rates in the Union. In order to target tax avoidance practices, the threshold should, in any event, be set to capture situations where taxation is at a level below 50 percent as compared to the State of the recipient taxpayer. Yet, neither should the threshold be fixed so low as to deprive the measure of any meaning by capturing only the most aggressive tax jurisdictions. In this light, a test whereby the statutory corporate tax rate in the entity's country of residence or the country in which the permanent establishment is situated is lower than 40 percent of the statutory corporate tax rate in the Member State of the taxpayer would strike a balance between recognising the scope for fair tax competition and the need to prevent tax avoidance practices.

Furthermore, by applying the switch-over clause, income of a third-country origin that flows into the Union would be taxed by the Member State of the taxpayer at the same level as income of a domestic origin, which would ensure equal treatment between Union and third-country origin payments. In this way, Member States would remain compliant with their undertaken obligations under both European and international law.

- A general anti-abuse rule (GAAR)

Tax planning schemes are very elaborate and tax legislation does not usually evolve fast enough in order to include all necessary specific defences to tackle such schemes. This is why a GAAR is useful in a tax system; it thus allows abusive tax practices to be captured despite the absence of a specific anti- tax avoidance rule.

The GAAR is designed to cover gaps that may exist in a country's specific anti-abuse rules against tax avoidance. It would allow authorities the power to deny taxpayers the benefit of abusive tax arrangements. In compliance with the *acquis*, the proposed GAAR is designed to reflect the artificiality tests of the CJEU where this is applied within the Union.

- Controlled foreign company (CFC) rules

Taxpayers with controlled subsidiaries in low-tax jurisdictions may engage in tax planning practices whereby they shift large amounts of profits out of the (highly-taxed) parent company towards subsidiaries which are subject to low taxation. The effect is to reduce the overall tax liability of the group. The analysis above about the threshold of low taxation is also valid for CFC rules.

The income shifted to the subsidiary is usually mobile passive income. For example, a common scheme would consist of first transferring, within a group, the ownership of intangible assets (e.g. IP) to the CFC and as a second step, shifting large amounts of income in the form of royalty payments in consideration for the right to use the assets owned and managed by the CFC. The functioning of the internal market is clearly affected by such practices of profit shifting, primarily where the income is shifted out of the EU towards low-tax third countries.

CFC rules re-attribute the income of a low-taxed controlled foreign subsidiary to its parent company. As a result of this, the parent company is charged to tax on this income in its State of residence – usually, this is a high-tax State. CFC legislation, therefore, aims to eradicate the incentive of shifting income, so that this is taxed at a low rate in another jurisdiction.

- A framework to tackle hybrid mismatches

Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities when two legal systems interact. Such mismatches may often lead to double deductions (i.e. deduction on both sides of the border) or a deduction of the income on one side of the border without its inclusion on the other side. Taxpayers, especially those engaged in cross-border structures, often take advantage of such disparities amongst national tax systems and reduce their overall tax liability in the Union.

This problem has been explored by both the Group of the Code of Conduct on Business Taxation and the OECD. In order to ensure that Member States introduce rules to effectively combat against these mismatches, this Directive prescribes that the legal characterisation given to a hybrid instrument or entity by the Member State where a payment, expense or loss, as the case may be, originates shall be followed by the other Member State which is involved in the mismatch..

2016/0011 (CNS)

Proposal for a

COUNCIL DIRECTIVE

laying down rules against tax avoidance practices that directly affect the functioning of the internal market

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[3] (the Action Plan).

(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against base erosion and profit shifting, released to the public on 5 October 2015. It is therefore essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need

1 OJ C , , p. .

2 OJ C , , p. .

3 Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.

for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against BEPS. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the Union would provide taxpayers with legal certainty in that those measures would be compatible with Union law.

(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. As these rules would have to fit in 28 separate corporate tax systems, they should be limited to general provisions and leave the implementation to Member States as they are better placed to shape the specific elements of those rules in a way that fits best their corporate tax systems. This objective could be achieved by creating a minimum level of protection for national corporate tax systems across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 Action Items against base erosion and profit shifting with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields.

(4) It is necessary to establish rules applicable to all taxpayers that are subject to corporate tax in a Member State. Those rules should also apply to permanent establishments of those corporate taxpayers which may be situated in other Member State(s). Corporate taxpayers may be resident for tax purposes in a Member State or be established under the laws of a Member State. Permanent establishments of entities resident for tax purposes in a third country should also be covered by those rules if they are situated in one or more Member State.

(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up

to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.

(7) Exit taxes have the function of ensuring that where a taxpayer moves assets or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even if this gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets. In order to compute the amounts, it is critical to fix a market value for the transferred assets based on the arm's length principle. Within the Union, it is necessary to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax, possibly together with interest and a guarantee, over a certain number of years and to settle their tax liability through staggered payments. Exit tax should not be charged where the transfer of assets is of a temporary nature and as long as the assets are intended to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral.

(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are 'wholly artificial' (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the subsidiary. It is desirable to address situations both in third-countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm's length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules.

(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often 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 the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. Although Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities[4] and hybrid permanent establishments[5] within the Union as well as on the tax treatment of hybrid entities in relations with third countries, it is still necessary to enact binding rules. Finally, it is necessary to limit the scope of these rules to hybrid mismatches between Member States. Hybrid mismatches between Member States and third countries still need to be further examined.

(12) It is necessary to clarify that the implementation of the rules against tax avoidance provided in this Directive should not affect the taxpayers' obligation to comply with

[4] Code of Conduct (Business Taxation) – Report to Council, 16553/14, FISC 225, 11.12.2014.
[5] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.

the arm's length principle or the Member State's right to adjust a tax liability upwards in accordance with the arm's length principle, where applicable.

(13) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[6]. The right to protection of personal data according to Article 8 of the EU Charter of fundamental rights as well as Directive 95/46/EC of the European Parliament and of the Council[7] applies to the processing of personal data carried out within the framework of this Directive.

(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on 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. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives.

(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

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[6] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

[7] Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1
Scope

This Directive applies to all taxpayers that are subject to corporate tax in one or more Member State, including permanent establishments in one or more Member State of entities resident for tax purposes in a third country.

Article 2
Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'borrowing costs' means interest expenses and other equivalent costs that a taxpayer incurs in connection with the borrowing of funds, including any difference between the borrowed funds and the maturity amount, the interest element in a leasing contract where the economic owner is entitled to deduct such interest and expenses incurred in connection with the raising of finance;

(2) 'exceeding borrowing costs' means the amount by which the borrowing costs of a taxpayer exceed interest revenues and other equivalent taxable revenues from financial assets that the taxpayer receives;

(3) 'financial asset' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council[8] and deposit and structural deposits, loan claims and insurance-based investment products;

(4) 'financial undertaking' means any of the following entities:

(a) a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council[9];

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council[10];

[8] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

[9] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

(c) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(d) an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council [11], unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive or the delegate of an institution for occupational retirement provision as referred to in Article 19(1) of Directive 2003/41/EC;

(e) an alternative investment fund managed by an alternative investment fund manager as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council[12];

(f) undertakings for collective investment in transferable securities (UCITS) in the meaning of Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council[13];

(g) a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012[14];

(h) a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[15].

(5) 'transfer of assets' means an operation whereby the right to tax the transferred assets passes to another Member State or third country, whilst the assets remain under the beneficial ownership of the same taxpayer, excluding transfers of assets of a temporary nature as long as the assets are intended to revert to the Member State of the transferor;

(6) 'transfer of tax residence' means an operation whereby a taxpayer ceases to be resident for tax purposes in a Member State, whilst acquiring tax residence in another Member State or third country;

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10 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

11 Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

12 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

13 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

14 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

15 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(7) 'transfer of permanent establishment' means an operation whereby a taxpayer ceases to have taxable presence in a Member State whilst acquiring such presence in another Member State or third country without becoming resident for tax purposes in that Member State or third country.

Article 3
Minimum level of protection

This Directive shall not preclude the application of domestic or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases.

CHAPTER II

MEASURES AGAINST TAX AVOIDANCE

Article 4
Interest limitation rule

1. Borrowing costs shall always be deducted to the extent that the taxpayer receives interest or other taxable revenues from financial assets.

2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

3. By derogation from paragraph 2, the taxpayer may be given the right to fully deduct exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group.

The first subparagraph shall apply subject to the following conditions:

(a) the ratio of the taxpayer’s equity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer’s equity over its total assets is lower by up to 2 percentage points;

(b) the group consists of all entities which are included in audited consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State or the Generally Accepted Accounting Principles of the United States (GAAP);

(c) all assets and liabilities are valued using the same method as in the consolidated financial statements;

(d) the taxpayer's equity and total assets are reduced by contributions made in the six months preceding the relevant balance sheet date insofar as these contributions are matched by withdrawals or distributions during the six months that follow the relevant balance sheet date;

(e) payments to associated enterprises do not exceed 10 percent of the group's total net interest expense.

4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years.

5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 30 percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.

6. Paragraphs 2 to 5 shall not apply to financial undertakings.

Article 5
Exit taxation

1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes, in any of the following circumstances:

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country;

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country;

(c) a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in the first Member State;

(d) a taxpayer transfers its permanent establishment out of a Member State.

For the purposes of point (c) of the first subparagraph, any subsequent transfer to a third country of assets out of the permanent establishment which is situated in the first Member State and which the assets are effectively connected with shall be deemed to be a disposal at market value.

2. A taxpayer may defer the payment of an exit tax referred to in paragraph 1, by paying it in instalments over at least 5 years, in any of the following circumstances:

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country that is party to the European Economic Area Agreement (EEA Agreement);

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;

(c) a taxpayer transfers its tax residence to another Member State or to a third country that is party to the EEA Agreement;

(d) a taxpayer transfers its permanent establishment to another Member State or a third country that is party to the EEA Agreement.

3. If a taxpayer defers the payment in accordance with paragraph 2, interest may be charged in accordance with the legislation of the Member State of the taxpayer or of the permanent establishment, as the case may be, to the extent necessary to preserve the value of the assessed tax liability.

If there is a demonstrable and actual risk of non-recovery, taxpayers may also be required to provide a guarantee as a condition for deferring the payment in accordance with paragraph 2.

The second subparagraph shall not apply where the legislation in the Member State of the taxpayer or of the permanent establishment provides for the possibility of recovery of the tax debt through another taxpayer which is member of the same group and is resident for tax purposes in that Member State.

4. The deferral of payment in accordance with paragraph 2 shall be immediately discontinued and the tax debt becomes recoverable in the following cases:

(a) the transferred assets are disposed of;

(b) the transferred assets are subsequently transferred to a third country;

(c) the taxpayer's tax residence or its permanent establishment is subsequently transferred to a third country;

(d) the taxpayer goes bankrupt or is wound up.

5. Where the transfer of assets, tax residence or permanent establishment is to another Member State, that Member State shall accept the market value established by the Member State of the taxpayer or of the permanent establishment as the starting value of the assets for tax purposes.

6. For the purposes of paragraphs 1 to 5, 'market value' is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor.

Article 6
Switch-over clause

1. Member States shall not exempt a taxpayer from tax on foreign income which 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 or as income from a permanent establishment situated in a third country where the entity or the

permanent establishment is subject, in the entity's country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer. In those circumstances, 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 its state of residence 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.

2. Paragraph 1 shall not apply to the following types of losses:

(a) losses incurred by the permanent establishment of a resident taxpayer situated in a third country;

(b) losses from the disposal of shares in an entity which is tax resident in a third country.

Article 7
General anti-abuse rule

1. Non-genuine arrangements or a series thereof carried out for the essential purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.

2. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with national law.

Article 8
Controlled foreign company legislation

1. The tax base of a taxpayer shall include the non-distributed income of an entity where the following conditions are met:

(a) the taxpayer by itself, or together with its associated enterprises, as defined under the applicable corporate tax system, holds a direct or indirect participation of more than 50 percent of the voting rights, or owns more than 50 percent of capital or is entitled to receive more than 50 percent of the profits of that entity;

(b) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 40 percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;

(c) more than 50 percent of the income accruing to the entity falls within any of the following categories:

    (i) interest or any other income generated by financial assets;

    (ii) royalties or any other income generated from intellectual property or tradable permits;

    (iii) dividends and income from the disposal of shares;

    (iv) income from financial leasing;

    (v) income from immovable property, unless the Member State of the taxpayer would not have been entitled to tax the income under an agreement concluded with a third country;

    (vi) income from insurance, banking and other financial activities;

    (vii) income from services rendered to the taxpayer or its associated enterprises;

(d) the entity is not a company whose principal class of shares is regularly traded on one or more recognised stock exchanges.

Point (c) of the first subparagraph shall apply to financial undertakings only if more than 50 percent of the entity’s income in these categories comes from transactions with the taxpayer or its associated enterprises.

2. Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.

Paragraph 1 shall not apply to financial undertakings which are tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of their permanent establishments in one or more Member State.

For the purposes of the first subparagraph, an arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people’s functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

Where the entity engages in non-genuine arrangements, the income to be included in the tax base of the controlling company shall be limited to amounts generated through assets and risks which are linked to significant people's functions carried out by the controlling company. The attribution of controlled foreign company income shall be calculated in accordance with the arm's length principle.

Article 9
Computation of controlled foreign company income

1. The income to be included in the tax base shall be calculated in accordance with the rules of the corporate tax law of the Member State where the taxpayer is resident for tax purposes. Losses of the entity shall not be included in the tax base but shall be carried forward and taken into account when applying Article 8 in subsequent tax years.

2. The income to be included in the tax base shall be calculated in proportion to the entitlement of the taxpayer to receive profits of the entity.

3. The income shall be included in the tax year in which the tax year of the entity ends.

4. Where the entity distributes profits to the taxpayer, the amounts of income previously included in the tax base pursuant to Article 8 shall be deducted from the tax base when calculating the amount of tax due on the distributed profits, in order to ensure there is no double taxation.

5. Where the taxpayer disposes of its participation in the entity, the part of the proceeds from the disposal previously included in the tax base pursuant to Article 8 which has not yet been distributed shall be deducted from the tax base when calculating the amount of tax due on those proceeds, in order to ensure there is no double taxation.

Article 10
Hybrid mismatches

Where two Member States give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member State, and this leads to either a situation where a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in another Member State or a situation where there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid entity by the Member State in which the payment has its source, the expenses are incurred or the losses are suffered shall be followed by the other Member State.

Where two Member States give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid instrument by the Member State in which the payment has its source shall be followed by the other Member State.

CHAPTER III

FINAL PROVISIONS

Article 11
Review

1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon.

2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive.

Article 12
Transposition

1. Member States shall adopt and publish, by […] 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.

   They shall apply those provisions from […].

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 14
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Council Directive laying down rules against tax aviodance practices that directly affect the functioning of the internal market

1.2. Policy area(s) concerned in the ABM/ABB structure[16]

14 14.03

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[17]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

The Commission work programme for 2015 lists among its priorities that of A Fairer Approach to Taxation. Following up on this, one key area for action in the Commission work programme for 2016 is to improve the legal framework for the taxation of company profits by proposing measures against unacceptable tax planning, profit shifting and base erosion.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

<u>Specific objective</u> To establish, through coordinated measures, a minimum level of protection for the internal market against the most relevant tax planning strategies which directly affect the functioning of the market. <u>ABM/ABB activity(ies) concerned</u> ABB 3

[16] ABM: activity-based management; ABB: activity-based budgeting.
[17] As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Taxation will take place in the jurisdiction where profits are generated and value is created. This will enhance fairness in attributing the tax burden between companies in the EU. Thus, internationally active groups of companies will no longer benefit from tax planning opportunities which are not available to taxpayers (in particular, SMEs) who are only domestically active. The tax bases of the Member States will be better protected against practices of base erosion and profit shifting. The trust of the public, citizens and taxpayers in general to the fairness of the tax systerms will be strenghtened.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

The proposal will be governed by the requirements in the articles 11 (review) and article 12 (transposition).

1.5. Grounds for the proposal/initiative

1.5.1. *Requirement(s) to be met in the short or long term*

To better protect the internal market against the most relevant tax planning strategies which directly affect the functioning of the market. To agree to a common EU approach to implementing the output of BEPS.

1.5.2. *Added value of EU involvement*

To ensure consistency and avoid mismatches through common rules and procedures in all Member States. Inconsistencies and gaps in the implementation by Member States would endanger the success of the whole project.

1.5.3. *Lessons learned from similar experiences in the past*

Already in 1990, the Council had adopted two of the so-called 'Corporate Tax Directives' to tackle obstancles to the functioning of the internal market. More legislation in the area of company taxation, and precisely in respect of cross-border activities in the EU, was adopted at the end of the 1990s.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

The proposal is part of a package that comprises several initiatives. Positive synergy effects may be derived from the interaction between measures within the package and with proposals which feature in the Transparency Package of March 2015 and the Action Plan of June 2015.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

Implementation with a start-up period from YYYY to YYYY,

followed by full-scale operation.

1.7. Management mode(s) planned[18]

☐ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

As the proposal is of legislative nature, there is no management mode or budget implementation tasks for the Commission.

[18] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

None

2.2. Management and control system

2.2.1. Risk(s) identified

None

2.2.2. Information concerning the internal control system set up

None

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

N/A

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number None [Heading………………………...……………]	Diff./Non-diff.[19]	from EFTA countries[20]	from candidate countries[21]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	None	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number None	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	None		YES/NO	YES/NO	YES/NO	YES/NO

19 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
20 EFTA: European Free Trade Association.
21 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

[This section should be filled in using the **spreadsheet on budget data of an administrative nature** (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	Not relevant……………..……………………………………………………………….]

DG: TAXUD			Year **N**[22]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope of specific programmes[23]										
Number of budget line		(3)								
TOTAL appropriations for DG TAXUD	Commitments	=1+1a +3								
	Payments	=2+2a +3								

[22] Year N is the year in which implementation of the proposal/initiative starts.

[23] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING Not relevant of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework	**5**	'Administrative expenditure'

EUR million (to three decimal places)

		Year N	**Year N+1**	**Year N+2**	**Year N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
DG: TAXUD									
• Human resources									
• Other administrative expenditure									
TOTAL DG TAXUD	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		Year N[24]	**Year N+1**	**Year N+2**	**Year N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments								
	Payments								

24 Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

– ☒ The proposal/initiative does not require the use of operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[25]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[26]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

25 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

26 As described in point 1.4.2. ‘Specific objective(s)…’

3.2.3. *Estimated impact on appropriations of an administrative nature*

3.2.3.1. Summary

– ☒ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N**[27]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5[28] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[27] Year N is the year in which implementation of the proposal/initiative starts.

[28] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

– ☒ The proposal/initiative does not require the use of human resources.

– ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
• XX 01 01 01 (Headquarters and Commission's Representation Offices)							
• XX 01 01 02 (Delegations)							
• XX 01 05 01 (Indirect research)							
• 10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)[29]							
• XX 01 02 01 (AC, END, INT from the 'global envelope')							
• XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
• **XX** 01 04 **yy**[30] • - at Headquarters							
• - in Delegations							
• **XX** 01 05 02 (AC, END, INT - Indirect research)							
• 10 01 05 02 (AC, END, INT - Direct research)							
• Other budget lines (specify)							
• **TOTAL**							

XX is the policy area or budget title concerned.

29 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

30 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

3.2.4. *Compatibility with the current multiannual financial framework*

– ☒ The proposal/initiative is compatible the current multiannual financial framework.

– ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. […]

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. […]

3.2.5. *Third-party contributions*

– The proposal/initiative does not provide for co-financing by third parties.

~~– The proposal/initiative provides for the co-financing estimated below:~~

Appropriations in EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

– ☐ on own resources

– ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[31]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ………….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

N/A

Specify the method for calculating the impact on revenue.

N/A

31 As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.