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## TEXTS ADOPTED

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### **P8\_TA(2018)0088**

#### **Common Corporate Tax Base \***

**European Parliament legislative resolution of 15 March 2018 on the proposal for a Council directive on a Common Corporate Tax Base (COM(2016)0685 – C8-0472/2016 – 2016/0337(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2016)0685),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0472/2016),
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Danish Parliament, Dáil Éireann, Seanad Éireann, the Luxembourg Chamber of Representatives, the Maltese Parliament, the Netherlands Senate, the Netherlands House of Representatives and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rules 78c of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A8-0050/2018),
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*

(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. Although those situations highlight shortcomings that are completely different in nature, they **both** create obstacles which impede the proper functioning of the internal market. **Action to rectify those problems** should therefore address **both** types of market deficiencies.

#### *Amendment*

(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. ***In times of globalisation and digitalisation, taxation of in particular financial and intellectual capital on a source base is becoming increasingly harder to retrace and easier to manipulate.*** Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. ***The mainstream digitalisation of many sectors of the economy coupled with the fast developing digital economy calls into question the suitability of the Union corporate tax models designed for brick and mortar industries, including with regard to the extent that valuation and calculation criteria could be re-invented to reflect the commercial activities of the 21st century.*** Although those situations highlight shortcomings that are completely different in nature, they ***all*** create obstacles which impede the proper functioning of the internal market ***and give rise to distortions between large companies and small and medium-sized enterprises. A new standard for a corporate tax base for the Union*** should therefore address ***those*** types of market deficiencies ***while respecting the aims of long-term legal clarity and certainty and the principle of tax neutrality. More convergence between national tax systems will lead to a significant decrease in costs and administrative burden for businesses operating cross-border within the Union.***

*While taxation policy is a national competence, Article 115 of the Treaty on the Functioning of the European Union clearly stipulates that the Council should, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such taxation laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.*

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 2**

*Text proposed by the Commission*

(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. It is therefore necessary to provide for mechanisms that discourage companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed.

*Amendment*

(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated ***and where companies have permanent establishment. Taking into account the digital change in the business environment, it is necessary to ensure that companies which generate revenues in a Member State without having a physical permanent establishment but having a digital permanent establishment in that Member State should be treated in the same way as companies having a physical permanent establishment.*** It is therefore necessary to provide for mechanisms that discourage companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union

through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed. ***Consolidation is an essential element of the CCCTB system, since the major tax obstacles faced by companies of the same group that operate cross-border in the Union can only be tackled in that way. Consolidation eliminates transfer pricing formalities and intra-group double taxation.***

### **Amendment 3**

#### **Proposal for a directive**

##### **Recital 3**

*Text proposed by the Commission*

(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)<sup>7</sup>, a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies resident in the Union and promote the objective of making it a more competitive location for investment internationally. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in

*Amendment*

(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)<sup>7</sup>, a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies resident in the Union and promote the objective of making it a more competitive location for investment internationally ***especially for small and medium-sized enterprises***. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business

countering tax avoidance. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market.

facilitation and the initiative's function in countering tax avoidance. ***Once implemented in all Member States, a CCCTB would ensure that taxes are paid where profits are generated and where companies have permanent establishment.*** Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market. ***Improving the internal market is a key factor for encouraging growth and job creation. The introduction of a CCCTB would improve economic growth and result in more jobs in the Union by reducing harmful tax competition between companies.***

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<sup>7</sup> Proposal for a Council Directive COM(2011)0121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

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<sup>7</sup> Proposal for a Council Directive COM(2011)0121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

#### **Amendment 4**

##### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The Commission, in its communication of 21 September 2017 entitled 'A fair and efficient tax system in the European Union for the Digital Single Market', believes that a CCCTB offers the basis to address the tax challenges posed by the digital economy.***

#### **Amendment 5**

##### **Proposal for a directive Recital 4**

*Text proposed by the Commission*

*Amendment*

(4) Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the

(4) Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the

one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, it is *necessary to divide the ambitious CCCTB initiative into two separate proposals. At a first stage, rules on a common corporate tax base should be enacted, before addressing, at a second stage, the issue of consolidation.*

one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, it is *very important to ensure simultaneous entry into force of the Directive on a Common Corporate Tax Base and the Directive on a Common Consolidated Corporate Tax Base. Because such a change of regime is a significant step in the completion of the internal market, it needs flexibility in order to be properly executed from the outset. Hence, as the internal market encompasses all Member States, the CCCTB should be introduced in all Member States. If the Council fails to adopt a unanimous decision on the proposal to establish a CCCTB, the Commission should issue a new proposal based on Article 116 of the Treaty on the Functioning of the European Union, whereby the European Parliament and the Council act in accordance with the ordinary legislative procedure to issue the necessary legislation. As a last resort, an enhanced cooperation should be initiated by Member States which should be open at any time to non-participating Member States in accordance with the Treaty on the Functioning of the European Union. It is regrettable that no sufficiently detailed assessment has been conducted in respect of either the CCTB or CCCTB proposals in terms of the impact on Member States' corporate tax revenue on a country-by-country basis.*

## **Amendment 6**

### **Proposal for a directive Recital 5**

*Text proposed by the Commission*

(5) Many aggressive tax planning structures tend to feature in a cross-border context, which implies that the participating groups of companies possess a minimum of resources. On this premise, for reasons of proportionality, the rules on

*Amendment*

(5) Many aggressive tax planning structures tend to feature in a cross-border context, which implies that the participating groups of companies possess a minimum of resources. On this premise, for reasons of proportionality, the rules on

a common base should be mandatory only for companies which belong to a group of a substantial size. For that purpose, a size-related threshold should be fixed on the basis of the total consolidated revenue of a group which files consolidated financial statements. In addition, to ensure coherence between the two steps of the CCCTB initiative, the rules on a common base should be mandatory for companies which would be considered as a group should the full initiative materialise. In order to better serve the aim of facilitating trade and investment in the internal market, the rules on a common corporate tax base should also be available, as an option, to companies which do not meet those criteria.

a common base should be mandatory **initially** only for companies which belong to a group of a substantial size. For that purpose, a size-related **starting** threshold of **EUR 750 million** should be fixed on the basis of the total consolidated revenue of a group which files consolidated financial statements. **Since this Directive sets a new standard for the corporate tax base for all businesses in the Union, the threshold should be lowered to zero over a maximum period of seven years.** In order to better serve the aim of facilitating trade and investment in the internal market, the rules on a common corporate tax base should also be available **in the first phase**, as an option, to companies which do not meet those criteria.

## Amendment 7

### Proposal for a directive

#### Recital 6

##### *Text proposed by the Commission*

(6) It is necessary to define the concept of a permanent establishment situated in the Union and belonging to a taxpayer who is resident for tax purposes within the Union. The aim would be to ensure that all concerned taxpayers share a common understanding and to exclude the possibility of a mismatch due to divergent definitions. ***On the contrary, it should not be seen as essential*** to have a common definition of permanent establishments situated in a third country, or in the Union but belonging to a taxpayer who is resident for tax purposes in a third country. ***This dimension should better be left to bilateral tax treaties and national law due to its complicated interaction with international agreements.***

##### *Amendment*

(6) It is necessary to define the concept of a permanent establishment situated in the Union and belonging to a taxpayer who is resident for tax purposes within the Union. ***Too often, multinational companies make arrangements to transfer their profits to favourable tax regimes without paying any tax or paying very low rates of tax. The concept of a permanent establishment would provide a precise, binding definition of the criteria to be met if a multinational company is to prove that it is situated in a given country. That will compel multinational companies to pay their taxes fairly.*** The aim would be to ensure that all concerned taxpayers share a common understanding and to exclude the possibility of a mismatch due to divergent definitions. ***Similarly, it is important*** to have a common definition of permanent establishments situated in a third country, or in the Union but belonging to a taxpayer who is resident for tax purposes in a third

*country. If transfer pricing gives rise to profit-shifting into a low tax jurisdiction, a system that awards profit via a formula apportionment is preferable. The Union can establish an international standard for modern and efficient corporate taxation by adopting such a system. The Commission should draft guidelines for the transitional phase in which formulary apportionment coexists with other allocation methods in dealing with third countries, while ultimately formulary apportionment should be the standard method of allocation. The Commission should make a proposal to set up a Union model of a tax treaty which could ultimately replace the thousands of bilateral treaties concluded by each of the Member States.*

## **Amendment 8**

### **Proposal for a directive Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

*(6a) Digital goods tend to be highly mobile and intangible. Studies have shown that the digital sector is highly involved in aggressive tax planning practices, since many business models do not require physical infrastructure in order to carry out transactions with customers and make profits. That allows the biggest digital companies to pay taxes of close to zero on their revenue. The treasuries of the Member States lose billions of euros in tax revenues from not being able to tax digital multinationals. To tackle that real and urgent social injustice, current corporate tax law needs to be expanded to include a new digital permanent establishment nexus based on a significant digital presence. A level playing field is needed for similar business models to address the tax challenges that arise from the context of digitalisation, without hampering the*



*potential of the digital sector. Particular account should be taken in that respect of the work carried out by the OECD on an internationally consistent set of rules.*

## Amendment 9

### Proposal for a directive

#### Recital 8

*Text proposed by the Commission*

(8) Taxable revenues should be reduced by business expenses and certain other items. Deductible business expenses should normally include all costs relating to sales and expenses linked to the production, maintenance and securing of income. To support innovation in the economy and modernise the internal market, deductions should be provided for research and development *costs, including super-deductions*, and those should be fully expensed in the year incurred (with the exception of immovable property). *Small starting companies without associated enterprises which are particularly innovative (a category which will in particular cover start-ups) should also be supported through enhanced super-deductions for research and development costs.* In order to ensure legal certainty, there should also be a list of non-deductible expenses.

## Amendment 10

### Proposal for a directive

#### Recital 9

*Text proposed by the Commission*

(9) Recent developments in international taxation have highlighted that, in an effort to reduce their global tax liability, multinational groups of companies have increasingly engaged in tax avoidance arrangements leading to base

*Amendment*

(8) Taxable revenues should be reduced by business expenses and certain other items. Deductible business expenses should normally include all costs relating to sales and expenses linked to the production, maintenance and securing of income. To support innovation in the economy and modernise the internal market, deductions should be provided *and taxpayers should receive a tax credit for genuine expenses of research and development relating to expenses in respect of staff, subcontractors, agency workers and freelancers*, and those should be fully expensed in the year incurred (with the exception of immovable property). *A clear definition of genuine expenses of research and development is needed to avoid misuse of the deductions.* In order to ensure legal certainty, there should also be a list of non-deductible expenses.

*Amendment*

(9) Recent developments in international taxation have highlighted that, in an effort to reduce their global tax liability, multinational groups of companies have increasingly engaged in tax avoidance arrangements leading to base

erosion and profit shifting, through excessive interest payments. It is therefore necessary to limit the deductibility of interest (and other financial) costs, in order to discourage such practices. In that context, the deductibility of interest (and other financial) costs should only be allowed without restrictions to the extent that those costs can be offset against taxable interest (and other financial) revenues. Any surplus of interest costs should however be subject to deductibility restrictions, to be determined by reference to a taxpayer's taxable earnings before interest, tax, depreciation and amortisation ('EBITDA').

erosion and profit shifting, through excessive interest payments. It is therefore necessary to limit the deductibility of interest (and other financial) costs, in order to discourage such practices. In that context, the deductibility of interest (and other financial) costs should only be allowed without restrictions to the extent that those costs can be offset against taxable interest (and other financial) revenues. Any surplus of interest costs should however be subject to deductibility restrictions, to be determined by reference to a taxpayer's taxable earnings before interest, tax, depreciation and amortisation ('EBITDA'). ***Member States could further restrict the amount of the deductibility of interest and other financial costs to ensure a higher level of protection.***

## **Amendment 11**

### **Proposal for a directive**

#### **Recital 10**

##### *Text proposed by the Commission*

(10) The fact that interest paid out on loans is deductible from the tax base of a taxpayer whilst this is not the case for profit distributions creates a definitive advantage in favour of financing through debt as opposed to equity. Given the risks that this entails for the indebtedness of companies, it is critical to provide for measures which neutralise the current bias against equity financing. ***In this light, it is envisaged to give taxpayers an allowance for growth and investment according to which increases in a taxpayer's equity should be deductible from its taxable base subject to certain conditions. Thus, it would be essential to ensure that the system does not suffer cascading effects and to this end, it would be necessary to exclude the tax value of a taxpayer's participations in associated enterprises. Finally, to make the scheme of the allowance sufficiently robust, it would***

##### *Amendment*

(10) The fact that interest paid out on loans is deductible from the tax base of a taxpayer whilst this is not the case for profit distributions creates a definitive advantage in favour of financing through debt as opposed to equity. Given the risks that this entails for the indebtedness of companies, it is critical to provide for measures which neutralise the current bias against equity financing, ***by limiting the possibility of deducting interest paid out on loans from the tax base of a taxpayer. Such an interest limitation rule constitutes an appropriate and sufficient tool for that purpose.***

*also be required to lay down anti-tax avoidance rules.*

## **Amendment 12**

### **Proposal for a directive Recital 12**

#### *Text proposed by the Commission*

(12) In order to discourage the shifting of passive (mainly, financial) income out of highly-taxed companies, any losses that such companies may incur at the end of a tax year should be presumed to mostly correspond to the results of trading activity. Based on that premise, taxpayers should be allowed to carry losses forward ***indefinitely without*** restrictions on the deductible amount per year. ***Since the carry-forward of losses is intended to ensure that a taxpayer pays tax on its real income, there is no reason to place a time limit on carry forward.*** Regarding the prospect for a loss carry-back, no such a rule would need to be introduced because that this is relatively rare in the practice of Member States, and tends to lead to excessive complexity. ***Furthermore, an anti-abuse provision should be laid down*** in order to prevent, thwart or counter attempts to circumvent the rules on loss deductibility through purchasing loss-making companies.

#### *Amendment*

(12) In order to discourage the shifting of passive (mainly, financial) income out of highly-taxed companies, any losses that such companies may incur at the end of a tax year should be presumed to mostly correspond to the results of trading activity. Based on that premise, taxpayers should be allowed to carry losses forward ***during a period of five years with*** restrictions on the deductible amount per year. Regarding the prospect for a loss carry-back, no such a rule would need to be introduced because that this is relatively rare in the practice of Member States, and tends to lead to excessive complexity. ***Council Directive (EU) 2016/1164<sup>1a</sup> lays down a general anti-abuse rule*** in order to prevent, thwart or counter attempts to circumvent the rules on loss deductibility through purchasing loss-making companies. ***That general rule should also be systematically taken into account in the application of this Directive.***

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<sup>1a</sup> ***Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).***

## **Amendment 13**

### **Proposal for a directive Recital 13**

*Text proposed by the Commission*

*Amendment*

**(13) In order to facilitate the cash-flow capacity of businesses – for instance, by compensating start-up losses in a Member State with profits in another Member State – and encourage the cross-border expansion within the Union, taxpayers should be entitled to temporarily take into account the losses incurred by their immediate subsidiaries and permanent establishments situated in other Member States. For that purpose, a parent company or head office located in a Member State should be able to deduct from its tax base, in a given tax year, the losses incurred in the same tax year by its immediate subsidiaries or permanent establishments situated in other Member States in proportion to its holding. The parent company should then be required to add back to its tax base, considering the amount of losses previously deducted, any subsequent profits made by those immediate subsidiaries or permanent establishments. As it is vital to safeguard national tax revenues, the deducted losses should also be reincorporated automatically if this has not already occurred after a certain number of years or if the requisites to qualify as an immediate subsidiary or permanent establishment are no longer met.**

*deleted*

## **Amendment 14**

### **Proposal for a directive Recital 15**

*Text proposed by the Commission*

*Amendment*

(15) It is crucial to provide for appropriate anti-tax avoidance measures in order to reinforce the resilience of the rules on a common base against aggressive tax planning practices. Specifically, the system should include a general anti-abuse rule

(15) It is crucial to provide for appropriate anti-tax avoidance measures in order to reinforce the resilience of the rules on a common base against aggressive tax planning practices. Specifically, the system should include a ***strong and effective***

(‘GAAR’), supplemented by measures designed to curb specific types of avoidance. Given that GAARs have the function of tackling abusive tax practices that have not yet been dealt with through specifically targeted provisions, they fill in gaps, which should not affect the applicability of specific anti-avoidance rules. Within the Union, GAARs should be applied to arrangements that are not genuine. It is furthermore important to ensure that the GAAR apply in a uniform manner to domestic situations, cross-border situations within the Union and cross-border situations involving companies established in third countries, so that their scope and results of application do not differ.

## Amendment 15

### Proposal for a directive

#### Recital 17

##### *Text proposed by the Commission*

(17) Taking into account that the effect of hybrid mismatches is usually a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of another, such situations clearly affect the internal market by distorting its mechanisms and creating loopholes for tax avoidance practices to flourish. Given that mismatches generate from national differences in the legal qualification of certain types of entities or financial payments, they normally do not occur amongst companies which apply the common rules for calculating their tax base. Mismatches would however persist in the interaction between the framework of the common base and national or third-country corporate tax systems. To neutralise the effects of hybrid *mismatch* arrangements, *it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch deny the deduction of a*

general anti-abuse rule (‘GAAR’), supplemented by measures designed to curb specific types of avoidance. Given that GAARs have the function of tackling abusive tax practices that have not yet been dealt with through specifically targeted provisions, they fill in gaps, which should not affect the applicability of specific anti-avoidance rules. Within the Union, GAARs should be applied to arrangements that are not genuine. It is furthermore important to ensure that the GAAR apply in a uniform manner to domestic situations, cross-border situations within the Union and cross-border situations involving companies established in third countries, so that their scope and results of application do not differ.

##### *Amendment*

(17) Taking into account that the effect of ***branch and*** hybrid mismatches is usually a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of another, such situations clearly affect the internal market by distorting its mechanisms and creating loopholes for tax avoidance practices to flourish. Given that mismatches generate from national differences in the legal qualification of certain types of entities or financial payments, they normally do not occur amongst companies which apply the common rules for calculating their tax base. Mismatches would however persist in the interaction between the framework of the common base and national or third-country corporate tax systems. To neutralise the effects of hybrid ***mismatches or related*** arrangements, ***Directive (EU) 2016/1164 lays down rules on hybrid mismatches and reverse hybrid***

*payment or ensures that the corresponding income is included in the corporate tax base.*

*mismatches. Those rules should be systematically taken into account in the application of this Directive.*

## **Amendment 16**

### **Proposal for a directive Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

*(17a) Member States should not be prevented from introducing additional anti-tax avoidance measures in order to reduce the negative effects of shifting profits to low-tax third countries, which do not necessarily automatically exchange tax information in accordance with Union standards.*

## **Amendment 17**

### **Proposal for a directive Recital 17 b (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 18**

### **Proposal for a directive Recital 19**

*Text proposed by the Commission*

*Amendment*

(19) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union

(19) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union

should be delegated to the Commission with respect of (i) taking into account changes to the laws of Member States concerning the company forms and corporate taxes and amend Annexes I and II accordingly; (ii) laying down additional definitions; ***(iii) enacting detailed rules against tax avoidance in a number of specified fields relevant to the allowance for growth and investment ;*** (iv) defining the concepts of legal and economic ownership of leased assets in more detail; (v) calculating the capital and interest elements of lease payments and the depreciation base of leased assets; ***and (vi) defining more precisely the categories of fixed assets subject to depreciation.*** It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

## **Amendment 19**

### **Proposal for a directive Recital 19 a (new)**

*Text proposed by the Commission*

should be delegated to the Commission with respect of (i) taking into account changes to the laws of Member States concerning the company forms and corporate taxes and amend Annexes I and II accordingly; (ii) laying down additional definitions; ***(iii) defining the concepts of legal and economic ownership of leased assets in more detail;*** (iv) calculating the capital and interest elements of lease payments and the depreciation base of leased assets; (v) defining more precisely the categories of fixed assets subject to depreciation; ***and (vi) issuing guidelines for the transitional phase in which formulary apportionment coexists with other allocation methods in dealing with third countries.*** It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

*Amendment*

***(19a) The Commission should monitor the uniform implementation of this Directive in order to avoid situations in which the competent authorities of the Member States each enforce a different regime. Furthermore, the lack of harmonised accounting rules in the Union should not lead to new opportunities for tax planning and arbitrage. Therefore, the harmonisation of accounting rules could strengthen the common regime, especially if and when all Union businesses fall under that regime.***

## Amendment 20

### Proposal for a directive Recital 23

*Text proposed by the Commission*

(23) The Commission should be required to *review* the application of the Directive five years after its entry into force and report to the Council on its operation. Member States should be required to communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive,

*Amendment*

(23) *Since this Directive contains an important change to corporate taxation rules*, the Commission should be required to *conduct a thorough assessment of* the application of the Directive five years after its entry into force and report to the ***European Parliament and*** the Council on its operation. ***That implementation report should include at least the following points: the impact of the system of taxation provided for in this Directive on Member States' revenues, the advantages and disadvantages of the system for small and medium-sized enterprises, the impact on a fair tax collection between Member States, the impact on the internal market as a whole, with particular regard to possible distortion of competition between companies subject to the new rules laid down in this Directive, and the number of undertakings that fall within the scope during the transition period. The Commission should be required to review the application of this Directive 10 years after its entry into force and report to the European Parliament and the Council on its operation.*** Member States should be required to communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive,

## Amendment 21

### Proposal for a directive Article 1 – paragraph 1

*Text proposed by the Commission*

1. This Directive establishes a system of a common base for the taxation of certain companies and lays down rules for

*Amendment*

1. This Directive establishes a system of a common base for the taxation ***in the Union*** of certain companies and lays down



the calculation of that base.

rules for the calculation of that base, ***including rules on measures to prevent tax avoidance and on measures relating to the international dimension of the proposed tax system.***

## **Amendment 22**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent establishments in other Member States, where the company meets all of the following conditions:

*Amendment*

1. The rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent ***and digital permanent*** establishments in other Member States, where the company meets all of the following conditions:

## **Amendment 23**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR 750 000 000 during the financial year preceding the relevant financial year;

*Amendment*

(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR 750 000 000 during the financial year preceding the relevant financial year. ***That threshold shall be lowered to zero over a maximum period of seven years;***

## **Amendment 24**

### **Proposal for a directive**

#### **Article 2 – paragraph 3**

*Text proposed by the Commission*

3. A company that meets the conditions of points (a) and (b) of

*Amendment*

3. A company that meets the conditions of points (a) and (b) of

paragraph 1, but does not meet the conditions of points (c) or (d) of that paragraph, may opt, including for its permanent establishments situated in other Member States, to apply the rules of this Directive *for a period of five tax years. That period shall automatically be extended for successive terms of five tax years, unless there is a notice of termination as referred to in Article 65(3). The conditions under points (a) and (b) of paragraph 1 shall be met each time the extension takes place.*

paragraph 1, but does not meet the conditions of points (c) or (d) of that paragraph, may opt, including for its permanent establishments situated in other Member States, to apply the rules of this Directive.

## **Amendment 25**

### **Proposal for a directive Article 2 – paragraph 4**

*Text proposed by the Commission*

**4. The rules of this Directive shall not apply to a shipping company under a special tax regime. A shipping company under a special tax regime shall be taken into account for the purpose of determining the companies which are members of the same group as referred to in Article 3.**

*Amendment*

**deleted**

## **Amendment 26**

### **Proposal for a directive Article 3 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) it has a right to exercise **more than 50 % of the voting rights**; and

*Amendment*

(a) it has a right to exercise **voting rights exceeding 50%**; and

## **Amendment 27**

### **Proposal for a directive Article 4 – paragraph 1 – point 12**

*Text proposed by the Commission*

(12) 'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance, as defined in national law, including payments under profit participating loans, imputed interest on convertible bonds and zero coupon bonds, payments under alternative financing arrangements, the finance cost elements of finance lease payments, capitalised interest included in the balance sheet value of a related asset, the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, *the defined yield on net equity increases as referred to in Article 11 of this Directive*, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

*Amendment*

(12) 'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance, as defined in national law, including payments under profit participating loans, imputed interest on convertible bonds and zero coupon bonds, payments under alternative financing arrangements, the finance cost elements of finance lease payments, capitalised interest included in the balance sheet value of a related asset, the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

**Amendment 28**

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

*Text proposed by the Commission*

*Amendment*

**(30a) 'non-cooperative tax jurisdiction' means a jurisdiction to which any of the following apply:**

- (a) the jurisdiction does not fulfil international transparency standards;**
- (b) potential preferential regimes exist within the jurisdiction;**
- (c) a tax system with no corporate income tax or a close to zero corporate tax**

*rate exists within the jurisdiction;*

## **Amendment 29**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 30 b (new)**

*Text proposed by the Commission*

*Amendment*

*(30b) 'economic substance' means factual criteria, including in the context of the digital economy, which can be used to define the taxable presence of an undertaking, such as the existence of human and physical resources specific to the entity, its management autonomy, its legal reality, the revenues it generates and, where appropriate, the nature of its assets;*

## **Amendment 30**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 30 c (new)**

*Text proposed by the Commission*

*Amendment*

*(30c) 'letterbox company' means any type of legal entity which has no economic substance and which is set up purely for tax purposes;*

## **Amendment 31**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 30 d (new)**

*Text proposed by the Commission*

*Amendment*

*(30d) 'royalty cost' means costs arising from payments of any kind made as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trade mark, design or model, plan, secret*

*formula or process, or for information concerning industrial, commercial or scientific experience, or any other intangible asset; payments for the use of, or the right to use, industrial, commercial or scientific equipment shall be regarded as royalty costs;*

## **Amendment 32**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 30 e (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 33**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 31**

*Text proposed by the Commission*

*Amendment*

(31) 'hybrid mismatch' means a *situation between a taxpayer and an associated enterprise or a structured arrangement between parties in different tax jurisdictions where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or entity, or in the treatment of a commercial presence as a permanent establishment:*

*(a) a deduction of the same payment, expenses or losses from the taxable base occurs both in the jurisdiction in which the payment has its source, the expenses are incurred or the losses are suffered and in the other jurisdiction ('double deduction');*

*(b) a deduction of a payment from the*

(31) 'hybrid mismatch' means a *hybrid mismatch as defined in point (9) of Article 2 of Directive (EU) 2016/1164;*

*taxable base in the jurisdiction in which the payment has its source without a corresponding inclusion for tax purposes of the same payment in the other jurisdiction ('deduction without inclusion');*

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

*A hybrid mismatch only arises to the extent that the same payment deducted, expenses incurred or losses suffered in two jurisdictions exceed the amount of income that is included in both jurisdictions and which can be attributed to the same source.*

*A hybrid mismatch also includes the transfer of a financial instrument under a structured arrangement involving a taxpayer where the underlying return on the transferred financial instrument is treated for tax purposes as derived simultaneously by more than one of the parties to the arrangement, who are resident for tax purposes in different jurisdictions, giving rise to any of the following outcomes:*

*(a) a deduction of a payment connected with the underlying return without a corresponding inclusion for tax purposes of such payment, unless the underlying return is included in the taxable income of one the parties involved;*

*(b) a relief for tax withheld at source on a payment derived from the transferred financial instrument to more than one of the parties involved;*

## **Amendment 34**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 32**

*Text proposed by the Commission*

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

*Amendment*

**deleted**

## **Amendment 35**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 33 a (new)**

*Text proposed by the Commission*

**(33a) 'digital permanent establishment' means a significant digital presence of a taxpayer that provides services in a jurisdiction directed towards consumers or businesses in that jurisdiction, in accordance with the criteria laid down in Article 5(2a);**

*Amendment*

## **Amendment 36**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point 33 b (new)**

*Text proposed by the Commission*

**(33b) 'European tax identification number' or 'TIN' means a number as defined in the Commission's Communication of 6 December 2012 containing an Action plan to strengthen**

*Amendment*

*the fight against tax fraud and tax evasion.*

### **Amendment 37**

#### **Proposal for a directive Article 4 – paragraph 2**

*Text proposed by the Commission*

The Commission may adopt delegated acts in accordance with Article 66 in order to lay down definitions of more concepts.

*Amendment*

The Commission may adopt delegated acts in accordance with Article 66 in order to ***update current definitions or*** lay down definitions of more concepts.

### **Amendment 38**

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

*Text proposed by the Commission*

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

*Amendment*

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

### **Amendment 39**

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

*Text proposed by the Commission*

*Amendment*

***(fa) a digital platform or any other digital business model based on the collection and exploitation of data for a commercial purpose.***



## **Amendment 40**

### **Proposal for a directive**

#### **Article 5 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. If a taxpayer resident in one jurisdiction provides access to or offers a digital platform such as an electronic application, database, online marketplace, or storage room, or offers search engine or advertising services on a website or in an electronic application, that taxpayer shall be deemed to have a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes if the total amount of revenue of the taxpayer or associated enterprise due to remote transactions generated from aforementioned digital platforms in the non-resident jurisdiction exceeds EUR 5 000 000 per year and where any of the following conditions is met:**

- (a) at least 1000 registered individual users per month domiciled in a Member State other than the jurisdiction in which the taxpayer is resident for tax purposes have logged in or visited the taxpayer's digital platform;**
- (b) at least 1000 digital contracts have been concluded per month with customers or users that are domiciled in the non-resident jurisdiction in a taxable year;**
- (c) the volume of digital content collected by the taxpayer in a taxable year exceeds 10 % of the group's overall stored digital content.**

**The Commission shall be empowered to adopt delegated acts in accordance with Article 66 amending this Directive by adjusting the factors set out in points (a), (b) and (c) of this paragraph on the basis of progress in international agreements.**

**If in addition to the revenue based threshold set out in the first subparagraph of this paragraph, one or more of the**

*three digital factors set out in points (a), (b) and (c) of this paragraph are applicable to a taxpayer in the relevant Member State, the taxpayer shall be deemed to have a permanent establishment in that Member State.*

*A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of permanent establishment or digital permanent establishment in accordance with this Article.*

#### **Amendment 41**

##### **Proposal for a directive**

##### **Article 9 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

*For research and development costs not exceeding EUR 20 000 000 and that relate to staff including wages, subcontractors agency workers and freelancers, the taxpayer shall receive a tax credit of 10 % of the costs incurred.*

#### **Amendment 42**

##### **Proposal for a directive**

##### **Article 9 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*By way of derogation from the first subparagraph, the taxpayer may deduct an extra 100% of its costs for research and development up to EUR 20 000 000 where that taxpayer meets all of the following conditions:*

*(a) it is an unlisted enterprise with*

*Amendment*

*deleted*

*fewer than 50 employees and an annual turnover and/or annual balance sheet total that does not exceed EUR 10 000 000;*

*(b) it has not been registered for longer than five years. If the taxpayer is not subject to registration, the period of five years may be taken to start at the moment that the enterprise either starts, or is liable to tax for, its economic activity;*

*(c) it has not been formed through a merger;*

*(d) it does not have any associated enterprises.*

#### **Amendment 43**

##### **Proposal for a directive Article 11**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

#### **Amendment 44**

##### **Proposal for a directive Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) 50 % of entertainment costs, up to an amount that does not exceed [x] % of revenues in the tax year;*

*(b) 50 % of **ordinary and necessary** entertainment costs **directly related to, or associated with, the business of the taxpayer**, up to an amount that does not exceed [x] % of revenues in the tax year;*

#### **Amendment 45**

##### **Proposal for a directive Article 12 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the transfer of retained earnings to a reserve that forms part of the equity of the company;

*Amendment*

(c) the transfer of retained earnings to a reserve that forms part of the equity of the company, ***other than earnings retained to a reserve by cooperative enterprises and cooperative consortia, both during the current activity of the company and after its expiration, in accordance with national tax rules;***

**Amendment 46**

**Proposal for a directive  
Article 12 – paragraph 1 – point j a (new)**

*Text proposed by the Commission*

*Amendment*

***(ja) expenses to beneficiaries situated in countries appearing on the EU list of non-cooperative jurisdictions for tax purposes (also known as ‘tax havens’);***

**Amendment 47**

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

*Text proposed by the Commission*

*Amendment*

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

Exceeding borrowing costs shall be deductible in the tax year in which they are incurred for maximum of **10%** of the taxpayer's earnings before interest, tax, depreciation and amortisation (‘EBITDA’) or for a maximum amount of EUR **1 000 000**, whichever is higher.

**Amendment 48**

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

*Text proposed by the Commission*

For the purposes of this Article, where a taxpayer is permitted or required to act on behalf of a group, as defined in the rules of a national group taxation system, the entire group shall be treated as a taxpayer. In those circumstances, exceeding borrowing costs and the EBITDA shall be calculated for the entire group. The amount of EUR 3 000 000 shall also be considered for the entire group.

*Amendment*

For the purposes of this Article, where a taxpayer is permitted or required to act on behalf of a group, as defined in the rules of a national group taxation system, the entire group shall be treated as a taxpayer. In those circumstances, exceeding borrowing costs and the EBITDA shall be calculated for the entire group. The amount of EUR 1 000 000 shall also be considered for the entire group.

**Amendment 49**

**Proposal for a directive  
Article 13 – paragraph 6**

*Text proposed by the Commission*

6. Exceeding borrowing costs that cannot be deducted in a given tax year shall be carried forward ***without time limitation***.

*Amendment*

6. Exceeding borrowing costs that cannot be deducted in a given tax year shall be carried forward ***for a period of five years***.

**Amendment 50**

**Proposal for a directive  
Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 14a***

***Specific exemptions***

***Earnings retained to a reserve by cooperatives and consortia, both during the current activity of a company and after its expiration, as well as the benefits granted by cooperatives and consortia to their own members, are deductible whenever the deductibility is allowed by fiscal national law.***

## **Amendment 51**

### **Proposal for a directive Article 29**

*Text proposed by the Commission*

Article 29

Exit taxation

***1. An amount equal to the market value of transferred assets, at the time of exit of the assets, less their value for tax purposes, shall be treated as accrued revenues in any of the following circumstances:***

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

***(b) where 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, to the extent that, due to the transfer, the Member State of the permanent establishment no longer has the right to tax the transferred assets;***

***(c) where 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) where a taxpayer transfers the business carried on by its permanent establishment from a Member State to another Member State or to a third country, to the extent that, due to the transfer, the Member State of the permanent establishment no longer has the right to tax the transferred assets.***

***2. The Member State to where the assets, tax residence or the business carried on by a permanent establishment are transferred shall accept the value established by the Member State of the***

*Amendment*

Article 29

Exit taxation

***For the purposes of this Directive, exit taxation rules laid down in Directive (EU) 2016/1164 shall apply.***

*taxpayer or of the permanent establishment as the starting value of the assets for tax purposes.*

**3.** *This Article shall not apply to asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management where those assets are set to revert to the Member State of the transferor within a period of 12 months.*

## **Amendment 52**

### **Proposal for a directive Article 41 – paragraph 1**

*Text proposed by the Commission*

1. Losses incurred in a tax year by a resident taxpayer or a permanent establishment of a non-resident taxpayer may be carried forward and deducted in subsequent tax years, ***unless otherwise provided by this Directive.***

*Amendment*

1. Losses incurred in a tax year by a resident taxpayer or a permanent establishment of a non-resident taxpayer may be carried forward and deducted in subsequent tax years, ***up to a maximum period of five years.***

## **Amendment 53**

### **Proposal for a directive Article 42**

*Text proposed by the Commission*

#### ***Article 42***

##### ***Loss relief and recapture***

***1. A resident taxpayer that is still profitable after having deducted its own losses pursuant to Article 41 may additionally deduct losses incurred, in the same tax year, by its immediate qualifying subsidiaries, as referred to in Article 3(1), or by permanent establishment(s) situated in other Member States. This loss relief shall be given for a limited period of time in accordance with paragraphs 3 and 4 of***

*Amendment*

***deleted***

*this Article.*

**2.** *The deduction shall be in proportion to the holding of the resident taxpayer in its qualifying subsidiaries as referred to in Article 3(1) and full for permanent establishments. In no case shall the reduction of the tax base of the resident taxpayer result in a negative amount.*

**3.** *The resident taxpayer shall add back to its tax base, up to the amount previously deducted as a loss, any subsequent profits made by its qualifying subsidiaries as referred to in Article 3(1) or by its permanent establishments.*

**4.** *Losses deducted pursuant to paragraphs 1 and 2 shall automatically be reincorporated into the tax base of the resident taxpayer in any of the following circumstances:*

*(a) where, at the end of the fifth tax year after the losses became deductible, no profit has been reincorporated or the reincorporated profits do not correspond to the full amount of losses deducted;*

*(b) where the qualifying subsidiary as referred to in Article 3(1) is sold, wound up or transformed into a permanent establishment;*

*(c) where the permanent establishment is sold, wound up or transformed into a subsidiary;*

*(d) where the parent company no longer fulfils the requirements of Article 3(1).*

## **Amendment 54**

### **Proposal for a directive Article 45 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 45a*



### *Effective tax contribution*

*For as long as the threshold laid down in point (c) of Article 2(1) remains in place, Member States shall monitor and publish the effective tax contribution of small and medium-sized enterprises and multinational enterprises across the Member States, so that Member States can ensure a level playing field for similar companies within the Union and mitigate the administrative burden and costs for small and medium-sized enterprises.*

### **Amendment 55**

#### **Proposal for a directive**

#### **Article 53 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

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

### **Amendment 56**

#### **Proposal for a directive**

#### **Article 53 – paragraph 2**

##### *Text proposed by the Commission*

2. Where paragraph 1 applies, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in the Member State where it is resident for tax purposes. The deduction

##### *Amendment*

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

##### *Amendment*

2. Where paragraph 1 applies, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in the Member State where it is resident for tax purposes. The deduction

shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed. ***In order to benefit from the deduction, the taxpayer shall be required to prove to its tax authorities that the foreign income arises from an active business, which could be done through a certificate to that effect provided by the foreign tax authorities.***

## **Amendment 57**

### **Proposal for a directive Article 58**

*Text proposed by the Commission*

Article 58

General anti-abuse rule

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

***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 in place for valid commercial reasons that reflect economic reality.***

***3. Arrangements or a series thereof that are disregarded in accordance with paragraph 1 shall be treated, for the purpose of calculating the tax base, by reference to their economic substance.***

## **Amendment 58**

### **Proposal for a directive**

*Amendment*

Article 58

General anti-abuse rule

For the purposes of this Directive, ***the general anti-abuse rule laid down in Directive (EU) 2016/1164 shall apply.***

## Article 59 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

An entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in *the* Member State *of its head office*, *shall be treated* as a controlled foreign company where the following conditions are met:

*Amendment*

*The Member State of a taxpayer shall treat* an entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in *that* Member State as a controlled foreign company where the following conditions are met:

## Amendment 59

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) *the actual corporate tax paid by the entity or permanent establishment on its profits is lower than the difference between the corporate tax that would have been charged on the profits of the entity or permanent establishment in accordance with the rules of this Directive and the actual corporate tax paid on those profits by the entity or permanent establishment.*

*Amendment*

(b) *profits of the entity are subject to a corporate tax rate lower than 15 %; that rate shall be assessed on the basis of the profit before implementation of the operations introduced by these countries to reduce the taxable base subject to the rate; that rate shall be revised each year in line with economic developments in world trade.*

## Amendment 60

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*For the purposes of point (b) of the first subparagraph, in computing the corporate tax that would have been charged on the profits of the entity according to the rules of the Directive in the Member State of the taxpayer, the income of any permanent establishment of the entity that is not subject to tax or is exempt from tax in the jurisdiction of the controlled foreign company shall not be taken into account.*

*Amendment*

*deleted*

## Amendment 61

### Proposal for a directive Article 59 – paragraph 2

*Text proposed by the Commission*

2. Where an entity or permanent establishment is treated as a controlled foreign company under paragraph 1, ***non-distributed income of the entity or permanent establishment shall be subject to tax to the extent that it is derived from the following categories:***

- (a) interest or any other income generated by financial assets;
- (b) royalties or any other income generated from intellectual property;
- (c) dividends and income from the disposal of shares;
- (d) income from financial leasing;
- (e) income from insurance, banking and other financial activities;
- (f) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises and add no or little economic value.

***The first subparagraph shall not apply to a controlled foreign company that is resident or situated in a Member State or in a third country that is party to the EEA Agreement where the controlled foreign company has been set up for valid commercial reasons that reflect economic reality. For the purposes of this Article, the activity of the controlled foreign company shall reflect economic reality to the extent that that activity is supported by commensurate staff, equipment, assets and premises.***

*Amendment*

2. Where an entity or permanent establishment is treated as a controlled foreign company under paragraph 1, ***the Member State of the taxpayer shall include in the tax base:***

***(a) the non-distributed income of the entity or the income of the permanent establishment which is derived from the following categories:***

- (i) interest or any other income generated by financial assets;
- (ii) royalties or any other income generated from intellectual property;
- (iii) dividends and income from the disposal of shares;
- (iv) income from financial leasing;
- (v) income from insurance, banking and other financial activities;
- (vi) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises and add no or little economic value.

***This point shall not apply where the controlled foreign company carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances. Where the controlled foreign company is resident or situated in a third country that is not party to the EEA Agreement, Member States may decide to refrain from applying the preceding subparagraph, or***

*(b) the non-distributed income of the entity or permanent establishment arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.*

*For the purposes of this point, an arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity or permanent establishment 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 functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.*

## **Amendment 62**

### **Proposal for a directive**

#### **Article 59 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

*Where, under the rules of a Member State, the tax base of a taxpayer is calculated in accordance with point (a) of paragraph 2, the Member State may opt not to treat* an entity or permanent establishment as a controlled foreign company *under* paragraph 1 *if* one third *or less* of the income accruing to the entity or permanent establishment falls within categories *under point* (a) of paragraph 2.

## **Amendment 63**

### **Proposal for a directive**

#### **Article 59 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Financial undertakings *shall not be treated* as controlled foreign companies *under paragraph 1 where not more than* one third of the income *accruing to the entity*

*Amendment*

*Where, under the rules of a Member State, the tax base of a taxpayer is calculated in accordance with point (a) of paragraph 2, the Member State may opt*

*or permanent establishment* from categories (a) *to* (f) of paragraph 2 comes from transactions with the taxpayer or its associated enterprises.

*not to treat* financial undertakings as controlled foreign companies *if* one third *or less* of the *entity's* income from categories *under point* (a) of paragraph 2 comes from transactions with the taxpayer or its associated enterprises.

## Amendment 64

### Proposal for a directive Article 59 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *Member States may exclude from the scope of point (b) of paragraph 2 an entity or permanent establishment:*

*(a) with accounting profits of no more than EUR 750 000, and non-trading income of no more than EUR 75 000; or*

*(b) of which the accounting profits amount to no more than 10 percent of its operating costs for the tax period.*

*For the purpose of point (b) of the first subparagraph, the operating costs may not include the cost of goods sold outside the country where the entity is resident, or the permanent establishment is situated, for tax purposes and payments to associated enterprises.*

## Amendment 65

### Proposal for a directive Article 61

*Text proposed by the Commission*

*Amendment*

Article 61

Article 61

Hybrid mismatch

Hybrid mismatch

*To the extent that a hybrid mismatch between Member States results in a double deduction of the same payment, expenses or losses, the deduction shall be given only in the Member State where such payment has its source, the expenses*

*For the purposes of this Directive, rules laid down in Article 9 of Directive (EU) 2016/1164 concerning hybrid mismatches shall apply.*

*are incurred or the losses are suffered.*

*To the extent that a hybrid mismatch involving a third country results in a double deduction of the same payment, expenses or losses, the Member State concerned shall deny the deduction of such payment, expenses or losses, unless the third country has already done so.*

*To the extent that a hybrid mismatch between Member States results in a deduction without inclusion, the Member State of the payer shall deny the deduction of such payment.*

*To the extent that a hybrid mismatch that involves a third country results in a deduction without inclusion:*

*(a) if the payment has its source in a Member State, that Member State shall deny the deduction, or*

*(b) if the payment has its source in a third country, the Member State concerned shall require the taxpayer to include such payment in the taxable base, unless the third country has already denied the deduction or has required that payment to be included.*

*To the extent that a hybrid mismatch between Member States involving a permanent establishment results in non-taxation without inclusion, the Member State in which the taxpayer is resident for tax purposes shall require the taxpayer to include in the taxable base the income attributed to the permanent establishment.*

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

*4. To the extent that a payment by a taxpayer to an associated enterprise in a third country is set off directly or indirectly against a payment, expenses or losses which due to a hybrid mismatch are*

*deductible in two different jurisdictions outside the Union, the Member State of the taxpayer shall deny the deduction of the payment by the taxpayer to an associated enterprise in a third country from the taxable base, unless one of the third countries involved has already denied the deduction of the payment, expenses or losses that would be deductible in two different jurisdictions.*

*5. To the extent that the corresponding inclusion of a deductible payment by a taxpayer to an associated enterprise in a third country is set off directly or indirectly against a payment which, due to a hybrid mismatch, is not included by the payee in its taxable base, the Member State of the taxpayer shall deny the deduction of the payment by the taxpayer to an associated enterprise in a third country from the taxable base, unless one of the third countries involved has already denied the deduction of the non-included payment.*

*6. To the extent that a hybrid mismatch results in a relief for tax withheld at source on a payment derived from a transferred financial instrument to more than one of the parties involved, the Member State of the taxpayer shall limit the benefit of such relief in proportion to the net taxable income regarding such payment.*

*7. For the purposes of this Article, 'payer' means the entity or permanent establishment where the payment has its source, the expenses are incurred or the losses are suffered.*

## **Amendment 66**

### **Proposal for a directive Article 61a – title**

*Text proposed by the Commission*

**Tax residency mismatches**

*Amendment*

**Reverse hybrid mismatches**



## **Amendment 67**

### **Proposal for a directive Article 61 a – paragraph 1**

*Text proposed by the Commission*

*To the extent that a payment, expenses or losses of a taxpayer who is resident for tax purposes in both a Member State and a third country, in accordance with the laws of that Member State and that third country, are deductible from the taxable base in both jurisdictions and that payment, those expenses or losses can be set-off in the Member State of the taxpayer against taxable income that is not included in the third country, the Member State of the taxpayer shall deny the deduction of the payment, expenses or losses, unless the third country has already done so.*

*Amendment*

*For the purposes of this Directive, Member States shall treat reverse hybrid mismatches in accordance with Article 9a of Directive (EU) 2016/1164.*

## **Amendment 68**

### **Proposal for a directive Article 65 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 65 a*

#### *European tax identification number*

*The Commission shall present a legislative proposal for a harmonised, common European taxpayer identification number by 31 December 2018, in order to make automatic exchange of tax information more efficient and reliable within the Union.*

## **Amendment 69**

### **Proposal for a directive Article 65 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 65 b**

***Mandatory automatic exchange of information on tax matters***

***In order to guarantee full transparency and the proper implementation of this Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU<sup>1a</sup>.***

***Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of tax administration staff focusing on cross-border tax cooperation, and on automatic exchange of information in order to ensure full implementation of this Directive.***

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***<sup>1a</sup> 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 70**

**Proposal for a directive  
Article 66 – paragraph 2**

*Text proposed by the Commission*

2. The power to adopt delegated acts referred to in Articles 2(5), 4(5), **11(6)**, 32(5) and 40 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

*Amendment*

2. The power to adopt delegated acts referred to in Articles 2(5), 4(5), **5(2a)**, 32(5) and **Article** 40 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

**Amendment 71**

**Proposal for a directive  
Article 66 – paragraph 3**

*Text proposed by the Commission*

3. The delegation of power referred to in Articles 2(5), 4(5), **11(6)**, 32(5) and 40 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

*Amendment*

3. The delegation of power referred to in Articles 2(5), 4(5), **5(2a)**, 32(5) and **Article** 40 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

**Amendment 72**

**Proposal for a directive  
Article 66 – paragraph 5**

*Text proposed by the Commission*

5. A delegated act adopted pursuant to Articles 2(5), 4(5), **11(6)**, 32(5) and 40 shall enter into force only if no objection has been expressed by the Council within a period of [two months] of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by [two months] at the initiative of the Council.

*Amendment*

5. A delegated act adopted pursuant to Articles 2(5), 4(5), **5(2a)**, 32(5) and **Article** 40 shall enter into force only if no objection has been expressed by the Council within a period of [two months] of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by [two months] at the initiative of the Council.

**Amendment 73**

**Proposal for a directive  
Article 66 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 66a**

***Measures against tax treaty abuses***

***Member States shall amend their bilateral tax treaties in accordance with this Directive to ensure such treaties contain all of the following:***

*(a) a clause ensuring that both parties to the treaty undertake to laying down measures whereby tax is to be paid where economic activities are taking place and where value is created;*

*(b) an addendum to clarify that the objective of bilateral treaties, beyond avoiding double taxation is also to fight tax evasion and aggressive tax planning;*

*(c) a clause for a principal purpose test based on a general anti-avoidance rule.*

## **Amendment 74**

### **Proposal for a directive Article 68 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 68a*

*Monitoring*

*The Commission shall monitor and publish its findings on the uniform implementation of this Directive to ensure homogeneous interpretation of its measures by Member States.*

## **Amendment 75**

### **Proposal for a directive Article 69**

*Text proposed by the Commission*

*Amendment*

Article 69

Article 69

*Review*

*Implementation report and review*

The Commission shall, five years after the entry into force of this Directive, ***review its application and report to the Council on*** the operation of this Directive.

The Commission shall, five years after the entry into force of this Directive ***assess*** the operation of this Directive.

***Notwithstanding the first subparagraph,*** the Commission shall, ***three years after the entry into force of this Directive, examine***

The Commission shall ***communicate its findings in an implementation report to the European Parliament and the***

*the functioning of Article 11 and consider adjustments to the definition and calibration of the AGI. The Commission shall undertake a thorough analysis of how the AGI can encourage companies that are entitled to opt for applying the rules of this Directive to finance their activities through equity.*

*Council. The report shall include an analysis of all of the following elements:*

*(a) the impact of this system on Member States tax revenues;*

*(b) the advantages and disadvantages of the system for small and medium-sized enterprises;*

*(c) the impact on a fair tax collection between Member States;*

*(d) the impact on the internal market as a whole, with particular regard to possible distortion of competition between companies subject to the new rules laid down in this Directive.*

*(e) the number of undertakings that are in the scope in the transition period.*

*The Commission shall, 10 years after the entry into force of this Directive, review its application and report to the European Parliament and the Council on the operation of this Directive.*

The Commission shall communicate its findings to Member States with the aim *to take* those findings into account for the design and implementation of national corporate tax systems.

The Commission shall communicate its findings *in a report to the European Parliament and* Member States with the aim *of taking* those findings into account for the design and implementation of national corporate tax systems *accompanied, if appropriate, by a legislative proposal to amend this Directive.*

## **Amendment 76**

### **Proposal for a directive**

#### **Article 70 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall adopt and publish, by **31<sup>st</sup> December 2018** at the latest, the laws,

*Amendment*

Member States shall adopt and publish, by **31 December 2019** at the latest, the laws,

regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

**Amendment 77**

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

*Text proposed by the Commission*

They shall apply those provisions from *1<sup>st</sup>* January *2019*.

*Amendment*

They shall apply those provisions from *1* January *2020*.