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Parent-subsidiary directive: Council agrees to add anti-abuse clause against corporate tax avoidance

The Council approved an amendment to an EU directive with the aim of preventing tax avoidance and aggressive tax planning by corporate groups. To this end, it agreed that it would introduce a binding anti-abuse clause as a "de minimis" rule[1] in the EU's parent-subsidiary directive (*16435/14*).

The anti-abuse clause is aimed at preventing misuses of the directive and ensuring a greater consistency in its application in different member states. It requires governments to refrain from granting the benefits of the parent-subsidiary directive to an arrangement, or a series of arrangements, that are not "genuine" and have been put in place to obtain a tax advantage, while not reflecting economic reality.

The amending directive will be adopted at a forthcoming Council session without further discussion.

"The agreement on a binding anti-abuse clause in the parent-subsidiary directive will enable member states to better fight aggressive tax planning by groups of companies, thereby ensuring fairer corporate taxation in the European Union," said Pier Carlo Padoan, minister of economy and finance of Italy and president of the Council. "This amendment will oblige member states to provide for, at least, a minimum level of protection of the directive against abuse."

The issue of corporate tax avoidance is a high political priority internationally. The OECD's work on base erosion and profit shifting has been endorsed as the way forward at recent G20 and G8 meetings.

The parent-subsidiary directive (2011/96/EU), adopted in November 2011, is intended to ensure that profits made by cross-border groups are not taxed twice, and that such groups are thereby not put at a disadvantage compared to domestic groups. It requires member states to exempt from taxation profits received by parent companies from their subsidiaries in other member states.

The Commission in November 2013 proposed to amend the directive with the twofold objective of tackling hybrid loan mismatches and introducing a general anti-abuse rule.

[1] Allowing countries to apply stricter national rules, as long as they meet minimum EU requirements.

The Council in May 2014 agreed to split the proposal and to address the two issues separately. In July 2014, it adopted as a first step provisions preventing corporate groups from using hybrid loan arrangements to benefit from double non-taxation under the directive[2] (*press release* *11647/14*).

Member states will have until 31 December 2015 to transpose the second amendment of the directive by introducing an anti-abuse rule into national law. The same deadline applies for transposition of the amendments to tackle hybrid loan mismatches.

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[2] Hybrid loan arrangements are financial instruments that have characteristics of both debt and equity.