II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive concerning the harmonization of systems of company taxation and of withholding taxes on dividends

(Submitted to the Council by the Commission on 1 August 1975)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the provisions of the Treaty establishing the European Economic Community and particularly Article 100;

Having regard to the proposal of the Commission;

Having regard to the Opinion of the Economic and Social Committee;

Having regard to the Opinion of the European Parliament;

Whereas the free circulation of capital within the Community and the elimination of distortions of competition are fundamental objectives of the Treaty;

Whereas the present systems of company taxation and of withholding tax on dividends have the consequence that the international movements of dividends are hampered by a series of discriminations, double taxations and complicated administrative formalities which tend to reinforce the separation of financial markets; whereas, furthermore, certain differences that exist between these systems may give rise to abnormal capital movements;

Whereas, in order to ensure greater neutrality in the conditions of competition, it is necessary to reduce the differences that exist in the taxation of the profits of enterprises;

Whereas the harmonization of systems of company taxation and of withholding taxes is therefore essential; whereas this harmonization was moreover set out as an objective by the Council in the Resolution of 22 March 1971 relating to the creation by stages of economic and monetary union;

Whereas, in so far as company taxation is concerned, the imputation system, which provides a tax credit for the recipient of dividends, is the most suitable solution for ensuring neutrality as regards not only the various forms of financing enterprises but also the various legal forms under which they may be organized, for reducing the opportunities for tax avoidance by taxpayers with large incomes and for developing the share market through attracting new savers to this form of investment; whereas it has in addition certain advantages in relation to fairness of taxation; whereas it ought therefore to be adopted as the common system;

Whereas it is necessary, for reasons of taxation neutrality, that the rates of corporation tax and of tax credit shall not differ too much from one Member State to another;

Whereas, in order to avoid discrimination, the tax credit attached to the dividends of a company ought to be granted to all the recipients of those dividends, wherever in the Community they are resident; whereas, however, exceptions apart, only those recipients who are subject to a tax on income or on profits ought to be entitled to this tax credit; whereas the tax credit ought to constitute taxable income and ought to be deducted from the tax due by the recipient of the dividend and paid to him in so far as it exceeds the amount of that tax; whereas, to avoid complicated formalities, this payment ought to be made by the Member State in which the recipient is resident;

Whereas, where dividends are derived from profits that have not borne corporation tax at the normal rate, it is necessary to charge a compensatory tax or a non-repayable advance payment of corporation tax so as to offset the tax credit attached to those dividends;

Whereas, where a parent corporation redistributes dividends received from a subsidiary, the recipient of those dividends ought to be treated as far as possible as if he had received them directly from the subsidiary; whereas this principle ought also to be applied to dividends derived from permanent establishments;

Whereas in principle there are grounds for requiring the budgetary cost of the tax credit to be borne by the State where the profits from which the dividends are derived have been subjected to corporation tax; whereas nevertheless there need be no objection to Member States agreeing bilaterally to share this cost;

Whereas the tax credit plays the part of a withholding tax but whereas the rate of this credit is insufficient to discourage recipients of dividends who have large incomes from not declaring their dividends; whereas there are therefore grounds for providing a common withholding tax in order to ensure both taxation neutrality and fairness of taxation; whereas a rate of 25 % appears appropriate for this purpose; whereas it is nevertheless not necessary to charge this withholding tax where there is no risk of tax evasion;

Whereas the withholding tax ought to be simply a payment on account of the final tax liability of the recipient of the dividends; whereas in order to avoid complicated formalities, any excess of tax withheld ought to be repaid by the State in which the recipient is resident; whereas Member States must nevertheless be permitted to rectify the budgetary consequences of applying the common withholding tax system;

Whereas there are grounds for making certain transitional arrangements to facilitate the introduction in Member States of the common system of company taxation;

Whereas, in order to ensure taxation neutrality, it is essential that every Member State shall treat dividends received by its residents in the same way, wherever in the Community those dividends have their source;

Whereas the harmonization of systems of company taxation and of withholding taxes ought to be brought about at the latest on the first day of January of the third year following the date on which the present Directive is adopted,

HAS ADOPTED THE PRESENT DIRECTIVE:

I

General provisions and definitions

Article 1

1. The Member States shall adopt:

— a common imputation system of corporation tax,

— a common system of withholding tax on dividends,

in accordance with the provisions of the following Articles.

2. The Member States shall not maintain or introduce any other provisions the aim of which is to effect a general reduction in the taxation of dividends alone.

Article 2

1. For the purposes of the present Directive, the expression or the term:

— 'corporation of a Member State' means any corporation which fulfills the conditions laid down in Article 2 of Council Directive No of

— 'parent corporation' means any corporation that is recognized as a parent corporation by virtue of the provisions of Council Directive No of

— 'subsidiary' means any corporation that is recognized as a subsidiary by virtue of Council Directive No of

— 'permanent establishment' means any fixed place of business recognized as a permanent establishment by virtue of the provisions of Council Directive No of

— 'dividend' means that part of the profits of any corporation of a Member State, other than a corporation in liquidation, distributed by it by virtue of a proper decision of its competent authorities and divided among its members in proportion to their rights as members of the corporation; distributions of bonus shares are not regarded as dividends within the meaning of the present directive,

— 'tax on income or profits' means any one of the following taxes and any identical or substantially similar taxes which are imposed in addition to, or in place of, the existing taxes:

Belgium

impôt des personnes physiques/personenbelasting,

impôt des personnes morales/rechtspersonenbelasting,

impôt des sociétés / vennootschapsbelasting;

Denmark

indkomstskat,

selskabsskat;

Germany

Einkommensteuer,

Körperschaftsteuer;

France

impôt sur le revenu,

impôt sur les sociétés;

Ireland

income tax,

corporation profits tax;

Italy

imposta sul reddito delle persone fisiche,

imposta sul reddito delle persone giuridiche;

Luxembourg

impôt sur le revenu des personnes physiques,

impôt sur le revenu des collectivités;

Netherlands

inkomstenbelasting,

vennootschapsbelasting;

United Kingdom

income tax,

corporation tax.

2. The provisions of the present Directive do not concern dividends that the final beneficiary receives through the intermediary of investment funds or unit trusts.

II

Provisions relating to corporation tax

Article 3

1. Each Member State shall apply a single rate of corporation tax to the profits, whether distributed or undistributed, of its corporations. This rate, called the normal rate, may not be lower than 45 % nor higher than 55 %.

2. By way of derogation from the provisions of paragraph 1, a Member State may, in particular cases and for well defined reasons of economic, regional or social policy, apply a rate different from the normal rate or complete exemption, either permanently or for a limited period.

If a Member State wishes to avail itself of this option, it shall communicate the proposed provisions to the Commission, which shall make its views known to the Member State concerned within 30 days of the receipt of the communication. The Member State concerned shall not bring into force the provisions in question until this period has expired or after the Commission has made its views known to it.

3. Without prejudice to the application of Article 9 (1) of Council Decision No 74/120/EEC of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community, the provisions of paragraphs 1 and 2 shall not be an obstacle to the application by a Member State, for the purpose of regulating the economy, of temporary increases or reductions of corporation tax. No account shall be taken of these increases or reductions for the purpose of applying the provisions of Article 8 (2).

III

Provisions relating to tax credit

Article 4

1. A dividend distributed by a corporation of a Member State shall confer on its recipient a right to a tax credit at the rate referred to in Article 8, provided:

(a) that he is resident in a Member State; and

(b) that he is subject to a tax on income or profits in such a way that the full amount of the dividend increased by the tax credit is taken into account in arriving at the amount of his taxable income or profits.

2. By way of derogation from the provisions of paragraph 1 (b), the tax credit may be granted to a person resident in a Member State who is exempt from all tax on income or profits either in respect of the whole of his income or in respect of that part of it consisting of dividends, provided that the person in question is an institution which is of public interest.

If use is made of this option, the tax credit shall be granted whatever the Member State in which the dividends have their source.

3. By way of derogation from the provisions of paragraph 1 (b) the tax credit may be granted to the recipient of a dividend where, for reasons of administrative convenience, final taxation is levied, whether by means of a withholding tax or otherwise, on the amount of the dividend not increased by the tax credit.

4. The Council, acting by qualified majority on a proposal of the Commission, shall in case of need adopt any measures necessary for the application of the provisions of paragraph 2, first subparagraph, and paragraph 3.

Article 5

The tax credit shall be set-off against the amount of tax on income or profits to which the recipient of the dividend is liable. Where the tax credit exceeds that amount, the excess shall be paid to him by the Member State which charges that tax.

Article 6

By way of derogation from the provisions of Article 4 (1), tax credits may, pursuant to double taxation agreements, be granted in whole or in part to persons resident in third countries. In no circumstances, however, may such persons be treated more favourably than persons resident in the Community.

The Member States shall cooperate with each other and with the Commission with a view to adopting a common position on this matter.

Article 7

If a corporation of a Member State makes a distribution of profits that does not constitute a dividend within the meaning of Article 2 to a person resident in another Member State, the provisions of Articles 4 and 5 shall apply in so far as that distribution is considered under the legislation of the first Member State to be a dividend conferring a right to tax credit.

Article 8

1. Each Member State shall fix the rate of the tax credit attached to the dividends distributed by the corporations of that State.

2. There shall be only one such rate in each Member State. It shall be determined in such a way that the tax credit shall be neither lower than 45 % nor higher than 55 % of the amount of corporation tax at the normal rate on a sum representing the distributed dividend increased by such tax.

Article 9

1. In so far as a corporation distributes dividends derived from profits in respect of which it has not borne corporation tax, the Member State of that corporation shall charge a compensatory tax equal to the tax credit attached to those dividends.

Where the dividends are derived from profits that have borne tax at a reduced rate, the compensatory tax shall likewise be charged but may to an appropriate extent be reduced.

2. The Member States shall have power to charge the compensatory tax referred to in paragraph 1 where the dividends are derived from profits which have borne corporation tax but which have been placed to reserve for more than five years.

3. The provisions of paragraphs 1 and 2 shall not apply where the legislation of the Member State in question provides that the distribution of dividends gives rise to an advance payment of corporation tax at least equal to the tax credit, provided that this advance payment is not repayable and that it can be deducted from the corporation tax of accounting periods ended within the previous five years.

4. This compensatory tax or this advance payment in so far as it is not effectively deducted from the corporation tax of the preceding accounting period or periods, may be repaid to the recipient of the dividends if he is not entitled to the tax credit.

If use is made of this option, the repayment must be made regardless of the Member State in which the recipient of the dividends is resident.

Article 10

1. Where a parent corporation redistributes dividends received during accounting periods ended not more than five years earlier from a subsidiary resident in another Member State, the amount of the tax credit attached to the dividends from the subsidiary shall be included in the basis used in calculating the amount of the compensatory tax or advance payment referred to in Article 9 to which the parent company is liable and shall then be set-off against the amount of that tax or advance payment, but any excess shall not be repayable.

2. Where a corporation of a Member State is not subject to corporation tax on the dividends which it receives from a corporation of that State and it redistributes those dividends, then:

— either the set-off rule referred to in paragraph 1 shall apply; in this case, the Member State in question may authorize the set-off even if the dividends have been received during accounting periods ended more than five years earlier,

— or, by way of derogation from the provisions of Article 9 (1) and (3), no compensatory tax or advance payment shall be required.

Article 11

In so far as dividends distributed by a corporation of a Member State are derived from the profits of accounting periods ended not more than five years earlier of a permanent establishment situated in another Member State:

— the profits of the permanent establishment shall confer a right to the tax credit in force in the State where the establishment is situated and the rules for corporations laid down in Article 9 shall be applied to this establishment,

— the tax credit attached to the profits of the permanent establishment shall be included in the basis used in calculating the amount of the compensatory tax or advance payment referred to in Article 9 to which the corporation is liable and shall then be set-off against the amount of that tax or advance payment, but any excess shall not be repayable.

Article 12

1. For the application of this Directive, the dividends distributed by a corporation of a Member State shall be considered to be derived:

— firstly from those profits of the last completed accounting period which confer an entitlement to relief from the economic double taxation of dividends, the parts attributable to profits originating within that State, to dividends from subsidiaries in other Member States and to the profits of permanent establishments in other Member States being determined on a proportional basis,

— then, if necessary, from those profits of accounting periods ended not more than five years before the distribution which confer an entitlement to relief from the economic double taxation of dividends, the parts attributable to profits originating within that State, to dividends from subsidiaries in other Member States and to the profits of permanent establishments in other Member States being determined on a proportional basis by reference to the whole of those profits and dividends,

— then, if necessary, from those profits of accounting periods ended more than five years before the distribution which originated within that State, if they confer an entitlement to relief from the economic double taxation of dividends,

— finally, if necessary, from any other sources.

2. For the purpose of this Article, the expression 'profits which confer an entitlement to relief from the economic double taxation of dividends' means profits which, if they were distributed, would not give rise to the charging of the compensatory tax or in respect of which, if they were distributed, the advance payment of corporation tax referred to in Article 9 (3), would be effectively deducted from the tax of the accounting period or of previous accounting periods, and also means the profits referred to in Articles 10 and 11.

Article 13

1. Subject to the provisions of paragraphs 3 and 4, the budgetary cost of the tax credit shall be borne by the Member State of the corporation which distributes the dividends.

2. The provisions of paragraph 1 shall also apply where the recipient of the dividends is an institution which is of public interest and which is not entitled to receive the tax credit.

3. Where a parent corporation resident in a Member State distributes dividends derived from

dividends of a subsidiary resident in another Member State, the State of the subsidiary shall pay to the State of the parent corporation the amount of the tax credit attached to the dividends of the subsidiary.

This payment shall not exceed the amount which would result from applying to the dividends of the subsidiary the rate of tax credit in force in the State of the parent corporation at the date when that corporation makes its distribution.

4. Where a corporation of a Member State distributes dividends derived from the profits of a permanent establishment situated in another Member State, the State in which the permanent establishment is situated shall pay to the State of the corporation the amount of the tax credit attached to those profits.

This payment shall not exceed the amount which would result from applying to the profits of the permanent establishment the rate of tax credit in force in the State of the corporation at the date of the distribution.

5. By way of derogation from the provisions of paragraphs 1 to 4, the Member States may share the cost of the tax credit, under bilateral agreements, provided that such agreements shall in no way affect the rights of recipients of dividends as set out in the present directive.

IV

Provisions relating to the withholding tax on dividends

Article 14

1. Subject to the provisions of the conventions concluded between Member States and third countries, each Member State shall impose a withholding tax of 25 % on the dividends distributed by the corporations of that State, no matter who is the recipient of those dividends.

2. By way of derogation from the provisions of paragraph 1, no Member State shall impose a withholding tax on a dividend distributed by a subsidiary to a parent corporation resident in any Member State.

3. By way of derogation from the provisions of paragraph 1 of this Article, the Member States shall have power not to impose a withholding tax on the dividends distributed to their own residents:

— where the name and address of the recipient and the amount of the dividends received are automatically communicated to the taxation administration, or

— where the securities representing a corresponding share in the capital of the distributing corporation are registered in the names of the holders.

Article 15

Where a Member State imposes a withholding tax on a distribution of profits which does not constitute a dividend within the meaning of Article 2, the provisions of the present Directive relating to the withholding tax shall apply.

Article 16

1. The tax withheld under Article 14 shall be set-off against the amount of the tax on income or profits to which the recipient of the dividends is liable in respect of them.

The tax withheld shall be repaid to the recipient by the Member State which charges the tax on income or profits referred to in the previous subparagraph, to the extent that it exceeds the amount of that tax, or where the recipient has no net liability to tax.

2. By way of derogation from the provisions of paragraph 1, a Member State shall not repay the withholding tax to any body that is not subject in that Member State to a tax on income or profits, where it appears that such repayment would be incompatible with the principle of taxation neutrality.

The Council, acting by qualified majority on a proposal of the Commission, shall in case of need adopt any measures necessary for the application of this provision.

Article 17

1. In so far as withholding tax collected by a Member State is set-off or repaid in another Member State, the State which collected the withholding tax shall refund it to that other Member State.

2. The provisions of paragraph 1 shall also apply where the tax on income or profits is deemed to correspond, or is restricted, to the amount of the withholding tax.

3. By way of derogation from the provisions of paragraph 1, the Member States may share the amount of the withholding tax, under bilateral agreements, provided that such agreements shall in no way affect the rights of recipients of dividends as set out in the present Directive.

V

Provisions common to tax credit and to the withholding tax on dividends

Article 18

The provisions of the present Directive shall not be an obstacle to the application of national provisions whose purpose is to reduce administrative work and which provide for the non-repayment of tax credit or of withholding tax where the sums in question are very small.

Article 19

The provisions of the present Directive shall not be an obstacle to the application of national provisions whose purpose is to prevent the recipient of a dividend from obtaining an unjustified advantage and which make it possible to refuse the set-off or repayment of tax credit or withholding tax.

VI

Transitional provisions

Article 20

1. Where a parent corporation redistributes, after the date referred to in Article 22, a dividend received from a subsidiary before that date, the State of the parent corporation shall have power to charge the compensatory tax referred to in Article 9 (1).

The provisions of Article 10 (1) and of Article 13 (3) shall apply only in the event of agreement between the Member State of the parent corporation and the Member State of the subsidiary.

2. Where a corporation of a Member State distributes, after the date referred to in Article 22, profits earned by a permanent establishment before that date, the State of that corporation shall have power to charge the compensatory tax referred to in Article 9 (1).

The provisions of Article 11 and Article 13 (4) shall only apply in the event of agreement between the Member State of the corporation and the Member State in which the permanent establishment is situated.

3. Within three months from the date of notification of the present Directive the Member States shall communicate to the Commission particulars of the provisions referred to in Article 3 (2) first subparagraph, that are in force on that date.

Within 60 days of the date of that communication the Commission shall make known to the Member States concerned its position with regard to those provisions.

VII

Final provisions

Article 21

Without prejudice to the application of the provisions of Article 92 of the EEC Treaty, a dividend distributed to a person resident in a Member State by a corporation of another Member State shall not be subjected, in the first Member State, to any less favourable taxation treatment or to any more burdensome requirement connected therewith — other than a requirement imposed by the first Member State for the purposes of Article 13 or Article 17 — than if that dividend had been distributed by a corporation of the first Member State.

Article 22

1. The Member States shall bring into force the necessary legislative and administrative provisions in order to comply with the provisions of the present Directive not later than the first day of January of the third year following the year of its adoption, and shall immediately communicate them to the Commission.

2. The Member States shall ensure that the texts of any further main provisions of national law that they adopt in the field covered by the present Directive are communicated to the Commission.

Article 23

The present Directive is addressed to the Member States.