COMMISSION OF THE EUROPEAN COMMUNITIES

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Amendments to the proposal for a

COUNCIL DIRECTIVE

on the harmonization of the laws of the Member States relating to tax arrangements for the carry-over of losses of undertakings

(presented by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty)

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AMENDMENTS TO THE PROPOSAL

for a Council Directive on the harmonization

of the laws of the Member States

relating to tax arrangements

for the carry-over of losses of undertakings

(presented by the Commission to the Council under
article 149, second paragraph, of the EEC Treaty)

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EXPLANATORY MEMORANDUM

INTRODUCTION

On 11 September 1984 the Commission presented to the Council a proposal for a Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carry-over of losses of undertakings (1).

Parliament and the Economic and Social Committee delivered favourable opinions on that proposal on 17 January 1985 (2) and 27 March 1985 (3) respectively.

Of the amendments requested by Parliament, the Commission has adopted the suggestion that the period of carry-back should be extended from two to three years.

The Commission is also proposing that Article 2 be reworded to make it clear that Member States are free to decide whether or not profits or losses realized by permanent establishments or subsidiaries abroad should be taken into account.

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(1) O.J. No. C 253, 20.9.1984 p. 5

(2) O.J. No. C 46, 18.2.1985 p. 82

(3)

EXPLANATORY NOTES ON THE AMENDMENTS PROPOSED

Article 2

The proposed amendment is designed to clarify the wording of Article 2 by stipulating that Member States may continue to apply national rules in determining whether or not profits or losses realized by permanent establishments or subsidiaries abroad are to be taken into account for the purpose of ascertaining the positive or negative results of a financial year.

The question of the set-off of profits or losses within the same group across frontiers, which raises very difficult problems, cannot be dealt with in this proposal for a Directive.

Article 3

The harmonization of the arrangements for the carry-over of losses is based on the twin aim of reviving productive investment and of improving the competitive position of Community firms.

In order to make it easier to achieve these objectives, it is proposed that the carry-back of losses to preceding financial years, limited in the Commission's original proposal to two years, should be increased to three years; this latter period is already applied by one Member State, the Netherlands, and by a non-member country, the United States.

Again with a view to achieving these objectives, the new wording of Article 3, like the old, permits undertakings to determine the previous financial year with effect from which a loss is to be relieved; in order to prevent tax avoidance and administrative complications, however, once an undertaking has made that choice, it must set the loss against profits of financial years in chronological order.

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AMENDMENTS TO THE PROPOSAL FOR A COUNCIL DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TAX ARRANGEMENTS FOR THE CARRY-OVER OF LOSSES OF UNDERTAKINGS

(presented by the Commission to the Council under Article 149, second paragraph, of the EEC Treaty)

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1. Article 2 is replaced by the following :

Article 2

"For the purposes of this Directive, profit or loss of a financial year shall mean the positive or negative results of an undertaking ascertained, after any possible set-off against other income or against results recorded abroad by permanent establishments or subsidiaries, in accordance with the tax laws of the state in which it is subject to tax."

2. Paragraph 1 of Article 3 is amended as follows :

"1. Where the result of a given financial year for an undertaking shows a loss, that loss shall be set off, at the choice of the undertaking :

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- either against the profits of one or more of the three preceding financial years in chronological order or against the non-distributed portion of those profits, notwithstanding that the tax liability for those financial years has been finally determined; then, if need be, against the profits of the following financial years in chronological order;

- or against the profits of the following financial years in chronological order.

However, the undertaking may choose not to set off losses against profits which have not been taxed in the State where it is subject to tax or which have been taxed at a reduced rate."