

P5_TA(2003)0567

Taxation of parent companies and subsidiaries of different Member States *

European Parliament legislative resolution on the proposal for a Council directive amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (COM(2003) 462 – C5-0427/2003 – 2003/0179(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2003) 462)¹,
 - having regard to Article 94 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0427/2003),
 - having regard to Rule 67 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 and the Internal Market (A5-0472/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 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 amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 7

(7) In order to *extend the benefits of* Directive 90/435/EEC, the threshold of the shareholding for one company to be

(7) *Most Member States do not apply any domestic threshold at all or a very low threshold for the tax treatment of inter-*

¹ Not yet published in OJ.

considered a parent and the other as its subsidiary should be lowered from 25% to **10%**.

company dividends, and in order to **bring cross-border cases, as covered by Directive 90/435/EEC, more in line with the treatment of domestic groups**, the threshold of the shareholding for one company to be considered a parent and the other as its subsidiary should be lowered from 25% to **5%**.

Amendment 2

ARTICLE 1, POINT 1

Article 1, paragraph 1, indent 3 (Directive 90/435/EEC)

- to distributions of profits received by permanent establishments situated in that State of companies of other Member States which come from their subsidiaries of a Member State.

- to distributions of profits received by permanent establishments situated in that State of companies of other Member States which come from their subsidiaries of a Member State ***other than the State in which the permanent establishment is situated.***

Amendment 3

ARTICLE 1, POINT 2

Article 3, paragraph 1, point (a) (Directive 90/435/EEC)

(a) the status of parent company shall be attributed at least to any company of a Member State which fulfils the conditions set out in Article 2 and has a minimum holding of **10 %** in the capital of a company of another Member State fulfilling the same conditions;

(a) the status of parent company shall be attributed at least to any company of a Member State which fulfils the conditions set out in Article 2 and has a minimum holding of **5 %** in the capital of a company of another Member State fulfilling the same conditions;

Amendment 4

ARTICLE 1, POINT 3, POINT (a)

Article 4, paragraph 1, indent 2 (Directive 90/435/EEC)

– tax such profits while authorising the parent company and the permanent establishment to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary and any lower-tier subsidiary which relates to those profits, up to the limit of the amount of the corresponding tax.

– tax such profits while authorising the parent company and the permanent establishment to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary and any lower-tier subsidiary ***fulfilling the same requirements*** which relates to those profits, up to the limit of the amount of the corresponding tax.

Amendment 5
ARTICLE 1, POINT 3, POINT (c)
Article 4, paragraph 2, subparagraph 2 (Directive 90/435/EEC)

The parent company shall be allowed to provide evidence of the real management costs incurred that are to be considered non-deductible.

Where the parent company *provides* evidence *that* the real management costs incurred that are to be considered non-deductible *are lower than the flat-rate amount, the non-deductible amount may not exceed the real costs.*

Amendment 6
ARTICLE 1, POINT 4, POINT (a)
Article 5, paragraph 1 (Directive 90/435/EEC)

1. Profits which a subsidiary distributes to its parent company shall, at least where the latter holds a minimum of **10%** of the capital of the subsidiary, be exempt from withholding tax.

1. Profits which a subsidiary distributes to its parent company shall, at least where the latter holds a minimum of **5%** of the capital of the subsidiary, be exempt from withholding tax.

Amendment 7
ANNEX
Annex, point za (new) (Directive 90/435/EEC)

(za) cooperatives incorporated under Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)¹ and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees².

¹ OJ L 207, 18.8.2003, p. 1.

² OJ L 207, 18.8.2003, p. 25.