

EC: Harmonization of Company Taxation and of Withholding Taxes on Dividends

*INTERIM REPORT OF THE EUROPEAN PARLIAMENT DRAWN UP ON BEHALF OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

Rapporteur: Mr. K. Nyborg

By letter of 14 August 1975 the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive concerning the harmonization of systems of company taxation and of withholding taxes on dividends.

The European Parliament referred this proposal to the Committee on Budgets as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion. On 14 December 1977 Parliament rejected the motion for a resolution contained in the report of the Committee on Budgets (Doc. 291/77, rapporteur: Mr. van Aerssen).

The Commission's proposal was then referred to the Committee on Economic and Monetary Affairs for further consideration.

On 3 February 1978 the committee appointed Mr. Couste rapporteur. It considered the Commission's proposal at its meetings of 21 March and 17 May 1978.

On 20 June 1978 it appointed Mr. Nyborg rapporteur.

By letter of 3 August 1978 the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on the application to collective investment institutions of the Council Directive concerning the harmonization of the systems of company taxation and of withholding taxes on dividends. The European Parliament referred this proposal also to the Committee on Economic and Monetary Affairs as the committee responsible.

At its meeting of 19 September 1978 the committee appointed Mr. Nyborg rapporteur.

It considered both proposals at its meetings of 26 September, 18 October 1978 and on 29 March and 5 April 1979.

At its meeting of 5 April 1979 the committee decided, with 1 abstention, not to deliver an opinion on the two proposals for directives (Docs 228/75 and 261/78) but instead to deal with the guidelines for the harmonization of company taxation and withholding taxes on dividends in an interim report and to continue at a

* Doc. 104/79 of 2 May 1979.

later date its discussion of the proposals for directives on the basis of the guidelines laid down in the interim report. At the same meeting it adopted the motion for a resolution contained in the interim report with 1 abstention.

Present: Mr. Pisani, chairman; Mr. Notenboom, Sir Brandon Rhys Williams and Mr. Leonardi, vice-chairmen; Mr. Nyborg, rapporteur; Mr. Ansquer, Lord Ardwick, Mr. Baas (deputizing for Mr. Damseaux), Mr. Cifarelli, Mr. van der Gun, Mr. H. W. Müller, Mr. Müller-Hermann, Mr. Schwörer, Mr. Spénale, Mr. Spinelli and Mr. Starke.

The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

A. Motion for a Resolution*

on the harmonization of company taxation and withholding taxes on dividends

The European Parliament.

- having regard to the proposals from the Commission of the European Communities¹,
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Docs 228/75 and 261/78),
 - having regard to the interim report of the Committee on Economic and Monetary Affairs (Doc. 104/79),
1. Points out that the different systems of company taxation in the Member States lead to distortions of competition and to unequal treatment of shareholders; this distorts the nature and direction of investment and constitutes an obstacle to integration;
 2. Emphasizes, therefore, the need to eliminate at the earliest possible date the discrimination practised by certain Member States in their treatment of resident and non-resident shareholders and to achieve greater uniformity in the Member States' systems of company taxation and of withholding taxes on dividends;
 3. Maintains that, in order to achieve neutrality in the matter of taxation systems, rates of taxation and tax credits and systems of assessing companies' taxable profits must be harmonized;
 4. Regrets that the Commission's proposal deals with only one half of the problem; implementation of the Commission's proposal would thus be no more than a limited step towards taxation neutrality;
 5. Notes that the Commission has shown increasing awareness of the fact that

* This resolution was adopted by Parliament in the Sitting of 8 May 1979, see Official Journal of the European Communities No. C 140/19 of 5 June 1979.

1. OJ No. C 253, 5.11.1975, p. 2.

OJ No. C 184, 2.8.1978, p. 8.

harmonization of the rates of taxation and tax credits must take place in parallel with the gradual harmonization of systems of assessing companies' taxable profits; but also notes that amendments to the Commission's proposal will not bring about such parallelism;

6. Invites the Commission, therefore, to draw up a proposal for a Council decision laying down the guidelines for the future harmonization of company taxation and, as soon as possible, proposals for coordinating Member States' systems of assessing and controlling companies' taxable profits;
7. Continues, until then, its discussion of the Commission's present proposal;
8. Instructs its President to forward this resolution to the Council and Commission.

B. Explanatory Statement

I. The Commission's Proposal: Aim and Content

The Commission's proposal is intended as a first step in the gradual harmonization of company taxation and withholding taxes on dividends in the Member States, since the existing differences not only affect economic integration within the Community generally but also, more specifically, lead to distortions of competition and unequal treatment of shareholders. This in turn distorts the nature and direction of investment.

The Commission's proposal lays down rules concerning the taxing of company profits and profits distributed as dividends, on the one hand by introducing some uniformity into the taxation systems used by Member States and on the other by fixing certain limits for tax rates and tax credit rates. It does not, however, provide criteria for the assessment of taxable profits.

The Commission proposes that the Community provisions governing company taxation be based on the partial imputation system. The normal rate of corporation tax to be applied by the Member States would fall within the 45-55% range (with a possibility of derogation in certain cases). The Commission proposes the same limits (45-55%) for the tax credit rate to be fixed by each Member State in respect of dividends distributed in that State. The proposal also includes provisions regarding compensatory tax (to be charged where corporation tax has not been charged at the rate normally applicable in the Member State concerned) and a common withholding tax on dividends (25%) (which is set off against the final tax liability of the recipient of the dividend).

II. The European Parliament's Initial Consideration of the Proposal

The Commission's proposal has been under consideration by the European Parliament since August 1975. It was originally referred to the Committee on Budgets as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion. The two committees adopted a position on it in January

1977 and September 1977 respectively, but in December 1977 Parliament rejected the motion for a resolution contained in the van Aerssen report (Doc. 291/77).

Changes having subsequently been made to the terms of reference of the various committees, the Commission's proposal was duly referred to the Committee on Economic and Monetary Affairs for further consideration.

Wide differences of opinion came to light in the discussions held by the Committee on Economic and Monetary Affairs prior to the adoption of its opinion. Draft amendments were tabled that entailed rejection of the Commission's proposal. At the final vote on 26 January 1977 the committee nevertheless endorsed the proposal, subject to certain reservations (10 votes to three with three abstentions).

The most important of these reservations were²:

- that recourse to the derogations provided for in Article 3 (2) and (3), whereby Member States could in certain circumstances apply a different rate of corporation tax from that proposed by the Commission (45-55%), could be had only 'on the basis of a decision taken by the Community institutions' (paragraph (d));
- that — in contrast to the piecemeal approach adopted by the Commission — there was a need for overall fiscal harmonization; the committee therefore insisted that the objective of harmonizing the basis of assessment and the rate of company taxation should be further pursued (paragraph (g));
- that it was important to avoid creating a situation more favourable to income from capital than to income from work (paragraph (i)).

On 22 September 1977 the Committee on Budgets decided unanimously with one abstention to adopt the Commission's proposal, with certain clear-cut amendments.

Some of the points contained in the Committee on Budgets' motion for a resolution should be mentioned here:

- It stressed the need, in an initial stage, to embark only on the harmonization of systems in a way which would not affect revenue and to leave to a later stage the approximation of bases of assessment, taxation rates and tax credits (paragraph 2 of the motion for a resolution);
- It endorsed the rejection of the classical system and agreed that general application in the partial imputation system was the only method likely to yield satisfactory results at Community level (paragraphs 3, 5 and 6);
- It regarded the proposed withholding tax as absolutely essential (paragraph 8).

The debate in the European Parliament on 13 December 1977 gives very little indication of the reasons why the Committee on Budgets' motion for a resolution was rejected (vote on 14.12.77), since, apart from the committee's chairman and the member of the Commission, only Mr. Yeats took part in the debate. Mr. Yeats criticized the Commission's proposal on the grounds that a common system of withholding taxes would necessitate the registration of shareholders in Ireland.

Your rapporteur's view is that the result of the vote reflected a combination of widely differing and to some extent irreconcilable viewpoints.

2. The proposal for a special directive dealing with investment institutions which the committee called for in its conclusions has in the meantime been submitted by the Commission.

III. The Committee's Remarks

The content and implications of the Commission's proposal are dealt with at length in the Committee on Budgets' original proposal (Doc. 291/77), in the Commission's working documents (SEC (78) 3244 and PE 56.633) and in the summary records of the two exchanges of views held by the Committee on Economic and Monetary Affairs on the subject in spring 1978 (PE 53.041 and PE 54.190).

This being so the Committee on Economic and Monetary Affairs has decided to confine its remarks here to a few fundamental observations and conclusions:

The effects of different systems of company taxation in the Member States

- a. The existence of different systems of taxation on company profits in the Member States leads to distortions of competition and unequal treatment of shareholders; this distorts the nature and direction of investment and constitutes an obstacle to integration.
- b. It is therefore a matter of urgency to introduce a greater degree of uniformity into company taxation.
- c. The Commission's proposal is designed to introduce a greater degree of uniformity into Member States' rates and systems of taxation, but not into the basis of assessment (the criteria for assessing companies' taxable income).
- d. Implementation of the proposal will lessen shareholders'/investors' 'speculative' interest in the tax rates attaining in the different Member States, but the differences in methods of assessing taxable income will continue to influence their decisions.

Choice of taxation system

- e. Since the Commission submitted its proposal in mid-1975 more and more Member States have gone over to one or other form of the imputation system. Luxembourg and the Netherlands alone continue to use the classical system.
- f. Whatever the advantages and disadvantages of the various systems, it would in the rapporteur's view be unrealistic to imagine that it might be possible to base the common system on the classical system. The problem is not, therefore, whether the Community should choose the classical system or the partial imputation system, but the exact form the common partial imputation system is to take.

Some committee members are not however convinced that the time is ripe for introducing a common system based on the imputation principle.

- g. The Commission's proposal restricts Member States' freedom to change company taxation and/or the so-called double taxation of dividends; Italy and the Federal Republic of Germany are to reintroduce a certain degree of 'double taxation', which will influence undertakings' decisions as to the legal form in which to constitute their companies and disrupt the capital markets.
- h. The Commission's calculations (SEC (78) 3244) seem to show that, within the prescribed limits for tax rates and tax credit rates, the changeover from the

existing national system to the common system proposed need not alter the amount of tax revenue; each Member State would thus be at liberty to maintain the burden of taxation at the existing level if it so wished.

- i. The Commission's proposal goes some way towards ending the discrepancies in the treatment of resident and non-resident shareholders in some of the Member States.
- j. Under the system chosen by the Commission, the individual Member State will not be able to apply a uniform system of taxation to shareholders resident in that State, since the tax credit rate depends on the source country of the dividend.

Conclusions

- k. Really uniform taxation of companies' earnings in the Member States can only be achieved over a longer period. The important thing is to decide how and in what stages this long-term objective can be attained.
- l. The first stage must consist of harmonization of the systems so that common guidelines are laid down to help investors to assess the tax implications of investing in different Member States and end the practice of some Member States of discriminating between resident and non-resident shareholders.
- m. In the following stages the basis of assessment and rates should be gradually harmonized.
- n. It is only in this way that any parallelism can be guaranteed in the various obligations on Member States eventually to achieve taxation neutrality. If the basis of assessment and the rates have to be harmonized at different times, then the basis of assessment should be harmonized first and not the rates as proposed by the Commission.
- o. Both the committee and the Commission have made considerable efforts to find out whether and how the provisions of the directive could be amended to ensure that the basis of assessment is harmonized at the same time as the rates of taxation and tax credits.

The committee felt that radical amendments would have to be made to the proposed directive laying down the strategy for overall harmonization of company taxation and deleting those aspects, such as the rates, that could only be harmonized at a subsequent stage (see PE 54.929/rev.).

The Commission, however, felt that parallelism could be achieved by providing for a five-year transitional period during which the rates could be gradually adjusted and rules for harmonizing the systems of assessing companies' taxable profits worked out and adopted. The committee considered this solution impossible.

- p. The committee therefore notes that parallelism cannot be guaranteed by amending the text of the proposed directive.

It does not feel able, moreover, to adopt a position on the form of the common taxation system or the level of the rates on the present inadequate basis.

It feels that in order to speed up the process of harmonizing company

taxation in the longer term guidelines ought to be laid down in a Council decision and that the Commission ought to put forward proposals for gradually harmonizing the basis of assessment.

Debate of the European Parliament on Company Taxation*

President. — The next item is the interim report by Mr. Nyborg (Doc. 104/79), on behalf of the Committee on Economic and Monetary Affairs, on the harmonization of systems of company taxation and of withholding taxes on dividends.

I call Mr. Nyborg.

Mr. Nyborg, rapporteur — (DK) Mr. President, the harmonization of company taxation has been debated here in Parliament on many occasions, and since 1970 an established feature of the European Parliament's position has been its disagreement with the Commission's view that the first step towards the harmonization of company taxation should be the harmonization of tax rates.

We believe that this is the wrong way of looking at the problem. The aim of harmonization is to eliminate the distortions of competition caused by the existence of different taxation systems in the Member States. That means, in the opinion of the European Parliament, that we must first of all attach importance to the creation of transparency in this field and set our sights on genuine fiscal neutrality. None of these objectives can be attained, as long as widely differing rules continue to exist in respect of the calculation of a company's taxable profits. This point of view was expressed by Parliament in the early 1970s. It was maintained in the Van Aerssen report at the end of 1977 and it is the view which has predominated in most of the numerous and lengthy discussions held on this subject. We are able to note today that our viewpoint is now being adopted by the Commission. Both Commissioner Burke and senior Commission officials have said in discussions that there must be harmonization of the basis of calculation.

The only point on which we disagree is the manner in which that harmonization should be carried out. There was literally unanimous agreement in the committee that we cannot today implement the harmonization of rates of taxation and tax rebates, unless we have a clear understanding of how we should harmonize the basis of assessment.

As rapporteur, therefore, I drew up a series of proposed amendments to the Commission's proposal for a directive, the main objective of which already figured in the previous proposal for a directive, in other words, the fixing of a strategy for the overall harmonization of company taxation and the basis of assessment. Part of my intention was to delete from the proposed directive those measures, such

* Sitting of 7 May 1979.

as the special rates, which we could begin to harmonize at a later stage. I would add that those Members of Parliament who might wish to examine the practical amendments which we feel must be contemplated, can find them in the revised draft report (PE 54.929/rev.).

In the meantime, the Commission was unable to take the question of rates out of the proposed directive. The explanation for this seems to be that the Commission is frightened of giving the impression that it is moving towards a comprehensive rebate system rather than a partial rebate system as the basis for a common system of company taxation. I fail to understand this point of view. If the Commission agrees with Parliament that the basis of assessment must be harmonized at the same time as rates, then the Commission should draw up the necessary proposals for directives, instead of adhering — clearly, it would seem, for reasons of prestige — to a proposal dating from 1975 which, as the Commission knows full well, has no chance of getting through the Council.

It is therefore incorrect to claim — as the Commission does — that Parliament's position is delaying harmonization in this field. On the contrary, the latest proposed directive will come to grief in the Council, and the harmonization of company taxation will be postponed indefinitely. If the Commission were to take our advice on this matter, and let the harmonization of tax rates wait until we are also able to harmonize the basis of assessment (the real precondition for fiscal neutrality), then we could get harmonization under way relatively quickly. It would not take long for the Commission to secure the adoption of a directive laying down the principles of and guidelines for a common company taxation system. This would rapidly make it possible to abolish the provisions in certain Member States directly aimed at ensuring that resident and non-resident shareholders are treated differently.

The harmonization of the various tax systems is a particularly sensitive field. Every harmonization involves restrictions on the Member States freedom of action — that is indeed the aim of harmonization. If Member States agree to yield this freedom of action in the field of company taxation, we can only assume that these States are convinced that this restriction on their freedom of action serves a useful purpose. The Commission's latest proposal does not inspire any such conviction. If we implement it, we will of course be able to stand up and say that the EEC has now taken a considerable and important step forward. Part of the electorate and many small and medium-sized companies will possibly believe this at first, but the national authorities and the big international companies will cherish no such illusions and will congratulate themselves on this result — the creation of a new set of rules with a mass of loopholes which they can play about with.

If we wish to ensure transparency and fiscal neutrality, we must first of all harmonize the basis of assessment and not, as the Commission proposes, the rates. I should have liked today to have presented, on the committee's behalf, a final report stating exactly on which amendments in the proposed directive the Commission and ourselves could agree. However, our committee decided to submit an interim report, and I would emphasize that this has been done to prevent the Council from beginning work on the Commission's proposal. I would warn the House against believing that progress can be made in the present situation.

In our committee, we are convinced that, if we are to get harmonization under way in this field — and the urgency of the matter dictates that we must — the Commission should embark upon the course proposed by the European Parliament. Our aim in submitting this interim report is formally to demonstrate this view to the Commission, the Council and the public, and for the Members of the future directly elected European Parliament. We wanted to say that the Commission's arguments for carrying out, at the present time, a harmonization of taxation and tax rebate rates are unconvincing, and we wanted the new Parliament to benefit from our experiences in this field during the 1970s.

We do not consider this the best possible solution. We would have preferred to have seen Parliament and the Commission reach agreement on action to be taken in this field. The fact that this did not happen was not due to any lack of flexibility or imagination on the part of the committee as regards ensuring parallelism between the harmonization of rates and the basis of assessment. As I have already mentioned, we have drawn up extremely detailed proposed amendments. The problems in the committee arose from the fact that the Commission would only agree to introduce a five-year transitional period for the formulation of provisions for the harmonization of rules governing the calculation of companies' taxable profits.

We could not be satisfied with this, as we do not believe that this harmonization of the basis of assessment can be achieved in the course of a five-year period. The result of the Commission's proposal will therefore be that the harmonization of rates will enter into force irrespective of whether or not the basis of assessment has also been harmonized.

The Commission's text opens up the possibility of parallel progress without in any way guaranteeing it. We wish to ensure this parallelism. If we do not do so, our credibility with the public will suffer. On the committee's behalf, therefore, I recommend the adoption of the motion for a resolution contained in the interim report. Adoption of the resolution in this case would not mean that we have completed our consideration of Commission's proposal, but would underline our view that more must be done if we are to achieve transparency and fiscal neutrality in the field of company taxation. The closer the Commission comes to accepting that, the sooner we shall reach our objective.

President. — I call Mr. Starke to speak on behalf of the Christian-Democratic Group (EPP).

Mr. Starke. — (D) To be brief, Mr. President, the Christian-Democratic Group endorses the motion for a resolution in the interim report. We agree with the rapporteur's comments, reservations and proposals.

President. — I call Mr. Burke.

Mr. Burke, Member of the Commission. — May I at the outset thank the rapporteur and the Committee on Economic and Monetary Affairs for their careful examination of this very complicated proposal on company taxation. I feel that by their detailed debates they have given an acknowledged importance to this

matter. The proposal is designed to abolish existing fiscal distortions in the field of taxation of companies and their shareholders' and as such it has important implications for economic, regional and social policies in the Community.

May I say that the last time I had the honour of speaking at this topic during a part-session — in 1977 — I spoke on the basis of a positive report to the parliamentary committee. At that time, the Committee on Budgets report was rejected, it seemed to me, for very divergent, if not indeed, contradictory reasons. May I just make a few points on this very important matter. I feel that if this state of affairs continues, it may have adverse effects on the essential elements of Community policy, on regional policy for example, and on the transfer of resources. I would put it to the House that there is not much point in the Community developing policies intended to encourage investment in particular areas, if the effects of the differing tax structures in the Member States is to pull the available funds even more strongly in a different direction.

May I very briefly say that the distortions of capital movement stemming from the existence of different corporation tax systems in the Community will, in my judgement, become increasingly strong in the future. In the present situation, we still find a considerable amount of exchange control restriction on crossborder transactions and securities. But there is now a much better chance of swift progress towards liberalization, and I am here of course thinking of the beneficial consequences of our European Monetary System. I believe that the next few years will show a rapid development in this monetary field which will have a direct bearing on the fiscal problem before us. It will become abundantly clear that we must move ahead and harmonize our corporation tax systems and their rules on tax credits, in order to prevent progress towards monetary integration in the Community from leading to increased fiscal distortions. I would appeal to Members of the House to give attention to the points. I have made, not only in the Committee but in public speeches and indeed in the House in December 1977. I would conclude by thanking the Members who have addressed themselves to this problem, and to hope, as Mr. Nyborg says, that when the new parliament comes to discuss this matter, there may be a basis of consent between us which will enable us to make better and more rapid progress in the future.

President. — I note that there are no further requests to speak. The motion for a resolution, as it stands, will be put to the vote tomorrow during voting time.

The debate is closed.
