

measures that impose—either of the substances or of procedures concerning them—must not be allowed to jeopardize

the application of the measures taken within the EC.

Done at Brussels, 20 March 1991.

The Chairman
of the Economic and Social Committee
François STAEDELIN

Opinion on the proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States⁽¹⁾

(91/C 120/05)

On 5 February 1991 the Council decided to consult the Economic and Social Committee, under Article 100 of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Economic, Financial and Monetary Questions, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 12 March 1991. The Rapporteur was Mr R. Pelletier.

At its 285th plenary session (meeting of 20 March 1991) the Economic and Social Committee adopted the following Opinion unanimously.

Preliminary comment

The Committee notes that the proposal falls within the framework of the Commission communication to the Parliament and the Council, dated 20 April 1990 (doc. SEC(90) 601 final).

The Committee would like to be kept informed of the conclusions of the study carried out by the Commission on the company taxation problems caused by more advanced economic integration.

In the meantime, the Committee reserves the right to draw up an additional Opinion on the Communication of 20 April 1990.

Introduction

The Committee welcomes the Commission proposal as a step towards the abolition of tax frontiers, which unfairly penalize financial flows between companies

operating in different Member States. In the run up to the Single Market, it is essential that such flows should not be treated less favourably than those between companies in a single country.

Nevertheless, the abolition of withholding taxes on interest and royalties payments between parent companies and subsidiaries established in different Member States is only a first step. All interest and royalty payments within the Community should be exempt from withholding taxes, irrespective of any connection between the companies concerned.

1. General comments

1.1. The Commission defines parent companies and subsidiaries on the same basis as the Directive on parent companies and subsidiaries of 23 July 1990 (minimum holding of 25% in the subsidiary).

⁽¹⁾ OJ No C 53, 28. 2. 1991, p. 26.

The logic of this definition is more apparent than real, however. The parent company-subsidary directive aims principally to facilitate the formation of intra-Community groups of companies, most often leading to the creation of groups of companies located in different Member States. The primary concern was to avoid double taxation of profits distributed within a single group. Under these circumstances, a specific percentage holding is required for the group to be deemed a single economic entity exempt from double taxation of profits ploughed back into investment within the group.

1.2. The intention behind the abolition of withholding taxes on moneys flows in payment of royalties and interests between parent companies and subsidiaries is quite different, representing only the first step in comprehensive arrangements for the complete exemption of financial flows within the Community, applying equally to dividends.

1.3. The 25 % holding requirement, quite responsible for the abolition of double taxation on group profits seems excessive when assessing subsidiary status—which is only an initial step in a process of total abolition of withholding taxes on all financial flows within the Community.

Since a 10% holding is sufficient in most Member States, it should be possible to use the same figure for the Directive.

1.4. Lastly, the scope of the arrangements should be extended to interest and royalty payment flows involving commercial cooperatives.

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2. Specific commentaries

2.1. Commentary on Article 2

It is proposed to add the following sentence after the third paragraph of (b):

'It should be borne in mind moreover that the Organization for Economic Co-operation and Development (OECD) Tax Affairs Committee has spoken out clearly against withholding taxes on non-royalty payments, arising from agreements within a group of companies, or contributions from affiliated companies to central research costs or joint services.'

2.2. Article 4

In Article 4(a), replace '... a minimum holding of 25 % ...' by '... a minimum holding of 10 %'.

2.3. Commentary on Article 7

Word the first paragraph of the comments on Article 7 as follows:

'Steps must be taken to ensure that interest and royalty payments are defined as taxable, since they are in principle tax-deductible for the company from which they are due.'

2.4. Annex

Add the following to paragraphs (a) to (g), (i) and (j): 'together with commercial cooperatives'.

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