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**A5-0150/2004**

16 March 2004

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## **REPORT**

on the proposal for a Council directive amending Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States  
(COM(2003) 841 – C5-0054/2004 – 2003/0331(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Othmar Karas

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 2 February 2004 the Council consulted Parliament, pursuant to Article 94 of the EC Treaty, on the proposal for a Council directive amending Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (COM(2003) 841 – 2003/0331(CNS)).

At the sitting of 9 February 2004 the President of Parliament announced that he had referred the proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0054/2004).

The Committee on Economic and Monetary Affairs had appointed Othmar Karas rapporteur at its meeting of 20 January 2004.

The committee considered the Commission proposal and draft report at its meetings of 16 March 2004 .

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Christa Randzio-Plath (chairwoman), Philippe A.R. Herzog (vice-chairman), John Purvis (vice-chairman), Hans Udo Bullmann, Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Christopher Huhne, Christoph Werner Konrad, Astrid Lulling, David W. Martin, Hans-Peter Mayer, Fernando Pérez Royo, Alexander Radwan, Bernhard Rapkay, Mónica Ridruejo, Peter William Skinner, Helena Torres Marques, Bruno Trentin, Theresa Villiers, Bert Doorn (for Othmar Karas), Werner Langen (for Ingo Friedrich), Thomas Mann (for Generoso Andria), Ieke van den Burg (for Pervenche Berès), Simon Francis Murphy (for Mary Honeyball), José Javier Pomés Ruiz (for José Manuel García-Margallo y Marfil).

The Committee on Legal Affairs and the Internal Market decided on 22 January 2004 not to deliver an opinion.

The report was tabled on 16 March 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive amending Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States  
(COM(2003) 841 – C5-0054/2004 – 2003/0331(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2003) 841)<sup>1</sup>,
  - having regard to Article 94 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0054/2004),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A5-0150/2004),
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  
ARTICLE 1 A (new)  
Article 3, point (b) (Directive 2003/49/EC)

***1a) Article 3, point b) shall be modified as follows:***

***"(b) a company is an 'associated company' of a second company if, at least:***

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<sup>1</sup> Not yet published in OJ.

*(i) the first company has a direct minimum holding of 20 % (from 1 January 2007 the minimum shall be 15 %; from 1 January 2009 the minimum shall be 10 %) in the capital of the second company, or*

*(ii) the second company has a direct minimum holding of 20 % (from 1 January 2007 the minimum shall be 15 %; from 1 January 2009 the minimum shall be 10 %) in the capital of the first company, or*

*(iii) a third company has a direct minimum holding of 20 % (from 1 January 2007 the minimum shall be 15 %; from 1 January 2009 the minimum shall be 10 %) both in the capital of the first company and in the capital of the second company."*

*(Same wording as Directive 2003/49/EC, but percentages changed and brackets added.)*

#### *Justification*

*In order to bring it in line with the adopted amendment to the Parent-Subsidiary directive (2003/123/EC).*

#### Amendment 2 ARTICLE 1, PARAGRAPH 2

2. The annex is ***replaced by the text in the Annex to this Directive.***

2. The annex is ***deleted.***

#### *Justification*

*In order to bring it in line with the adopted amendment to the Parent-Subsidiary directive (2003/123/EC).*

#### Amendment 3 ARTICLE 1, PARAGRAPH 2 A (new) Article 3, point (a)(i) (Directive 2003/49/EC)

***2a) Article 3, point (a)(i) shall be modified as follows:***

*as follows:*

***"(i) taking one of the forms listed in the Annex to Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States\*"; and***

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***\* OJ L 225, 20.8.1990, p. 6. Directive as last amended by Directive 2003/123/EC (OJ L 7, 13.1.2004, p. 41)."***

*Justification*

*In order to bring it in line with the adopted amendment to the Parent-Subsidiary directive (2003/123/EC).*

## **EXPLANATORY STATEMENT**

Recently, the European Parliament has been consulted on the matter of direct taxation to cross-border economic activities. The extension of so-called "Parent-Subsidiary Directive" (90/435/EEC) and "the Merger Directive" (90/434/EEC) are both aimed at encouraging the development of the Common Internal Market. The present Commission's proposal seeks to complete this framework.

However, it should be noted that the directive to be amended - Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (2003/49/EC) - has been discussed already under the previous parliamentary term. As such, your rapporteur would like to draw your attention on this quite new legal text.

The original proposal dates from 1998 with the objective to abolish the deductions at source on interest and royalty payments between associated companies. In the report, adopted on the 17 September 1998, the European Parliament already called upon the Member State not to use the chosen "package approach" as a tool for delaying approval of the various elements of the package, i. e. by demanding simultaneous approval of all its constituent parts. Nevertheless, due to the political compromise searching, the Directive was adopted only on the 3 June 2003. Obviously, the initial proposal could not reflect the subsequent developments in EU legislation.

### **The character of the proposal**

The present proposal is mainly technical. However, it emphasises the fact that the Source State would not be obliged to exempt from withholding tax any company paying corporate tax but benefiting from a special national tax scheme exempting foreign interest or royalty payments received. The Directive should not facilitate tax avoidance.

Secondly, the updated annex broadens the list of companies covered by the Directive that should become coherent with other recently amended legislation on business taxation. Moreover, the list also includes bodies incorporated as the future European Company or the European Co-operative Society. The annex is expected to be extended by companies from the new Member States.

### **Possible modifications during the legislative procedure**

Concerning enlargement, your rapporteur was informed that several new Member States have applied for a transitional period, similarly as is now actually allowed for Greece, Portugal and Spain. Thus, there is the possibility that a modification in the latter stages of the adoption of this report will be necessary to deal with the requested transitional periods.

Your rapporteur suggest only two minor modifications, for the sake of coherence: one bringing in line the direct minimum holding percentage of 25 % for associated companies of directive 2003/49/EC with the 20% agreed (and subsequent reductions) in the amendment to the parent-subsidiary directive, 2003/123/EC; the other replicating the proposed annex of companies to that of the version included in the amendment to the parent-subsidiary directive,



2003/123/EC.