

## **P5\_TA(2004)0159**

### **Common taxation of mergers and transfers of assets in different Member States \***

**European Parliament legislative resolution on the proposal for a Council directive amending Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (COM(2003) 613 – C5-0506/2003 – 2003/0239(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2003) 613)<sup>1</sup>,
  - having regard to Article 94 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0506/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A5-0121/2004),
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 the Commission.

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Text proposed by the Commission

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Amendments by Parliament

Amendment 1  
ARTICLE 1, POINT 2

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

Article 1, point (b) (Directive 90/434/EEC)

(b) European companies (Societas Europaea or SE), as established in Council Regulation (EC) No 2157/2001, and European Cooperative Societies (SCE), as established in Council Regulation (EC) No 1435/2003, ***transferring their registered office from one Member State to another Member State***

(b) ***the transfer from one Member State to another of the registered office of a European company*** (Societas Europaea or SE), as established in Council Regulation (EC) No 2157/2001, ***or of a European Cooperative Society***<sup>1</sup> (SCE), as established in Council Regulation (EC) No 1435/2003<sup>2</sup>.

<sup>1</sup> OJ L 294, 10.11.2001, p.1.

<sup>2</sup> OJ L 207, 18.8.2003, p. 1.

Amendment 2

ARTICLE 1, POINT 6

Article 8, paragraph 11a (new) (Directive 90/434/EEC)

***11a. In order to avoid possible abuses related to the rapid exchange of shares, Member States shall apply an anti-abuse provision aimed at establishing a minimum holding period of 1 year, which the Member States may extend to 2 years.***

Amendment 3

ARTICLE 1, POINT 6

Article 8, paragraph 11b (new) (Directive 90/434/EEC)

***11b. In cases of clear double taxation arising from the transfer of shares, Member States may - after consultation with the Commission - address the problem using solutions deemed to be alternative and equivalent to the provisions of this Directive.***

Amendment 4

ARTICLE 1, POINT 6

Article 8, paragraph 12 (Directive 90/434/EEC)

12. The fact that a company acquires a holding in the acquired company from shareholders with tax residence outside the Community shall not prevent the granting

12. The fact that a company acquires a holding in the acquired company from shareholders with tax residence outside the Community shall not prevent the granting

of the tax relief provided for in this Article.

of the tax relief provided for in this Article,  
***provided that the taxing rights of Member States with regards to third countries' shareholders are not significantly infringed.***

Amendment 5

ARTICLE 1, POINT 7

Article 9, paragraph 2a (new) (Directive 90/434/EEC)

***2a. In order to avoid possible abuses related to the rapid resale of assets, Member States shall apply an anti-abuse provision aimed at establishing a minimum holding period of 1 year, which the Member States may extend to 2 years.***

Amendment 6

ARTICLE 1, POINT 7

Article 9, paragraph 2b (new) (Directive 90/434/EEC)

***2b. In cases of clear double taxation arising from the transfer of assets, Member States may - after consultation with the Commission - address the problem using solutions deemed to be alternative and equivalent to the provisions of this Directive.***

Amendment 7

ANNEX

Annex, point (c) (Directive 90/434/EEC)

(c) companies under German law known as  
"Aktiengesellschaft",  
"Kommanditgesellschaft auf Aktien",  
"Gesellschaft mit beschränkter Haftung",  
"bergrechtliche Gewerkschaft";

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