



EUROPEAN COMMISSION
Impact Assessment Board

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Opinion

Title

Impact Assessment accompanying the proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments between associated companies of different Member States (recast)

(draft version of 3 December 2010)

(A) Context

On 3 June 2003, the Council adopted Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States which was due to be implemented by 1 January 2004. The Commission adopted an amending proposal to the Directive on 30 December 2003 aiming at its extension to cover a larger range of companies (i.e. the European Company and the European Co-operative Society). This proposal also intended to exclude from its benefits companies already exempted from tax on interest and royalties received in order to exclude tax avoidance opportunities. The discussions in the working groups of the Council between 2004 and 2006 were unsuccessful due to this latter issue. The Commission's report to the Council on the functioning of the Directive was presented on 23 April 2009.

(B) Overall assessment

While the report is generally of adequate quality, it would benefit from additional work to provide a better evidence base and rationale for EU action in the following areas. Firstly, it should present a fuller explanation of the context of this initiative. Secondly, the report should provide more clarity on the types and scale of distortions being addressed including why they cannot be tackled satisfactorily by Member State action. Thirdly, the report should clarify whether aligning the scope of the Interests and Royalties Directive and the Parent-Subsidiary Directive is an objective, present the position of Member States on the options, and explain why certain options (e.g. extending the Interest and Royalty Directive to other types of companies beyond those referred to in the Parent-Subsidiary directive) have not been considered for analysis. Finally, the report should elaborate on the non-quantified benefits of the preferred option, how its impacts would be distributed by Member State, and why it has less negative side-effects than option 2 ("Extending the scope of the Interest and Royalty Directive to transactions between unrelated undertakings").

(C) Main recommendations for improvements

(1) Present a fuller explanation of the context of this initiative. The report should explain more fully the context of this initiative including why the Interests and Royalties Directive and the Parent-Subsidiary Directive differ in scope, why Council negotiations on the proposed amendments to the Directive failed in the past, and why the issue of extending the scope of the Directive to intra-company payments is not subject to analysis (as recommended by the Report on the functioning of the Directive). Also the issue of opportunity costs of not eliminating withholding taxes (currently being part of the problem definition) should rather be presented in the context section given it goes well beyond the scope of this initiative.

(2) Provide more clarity on the types and scale of distortions being addressed including why they cannot be addressed satisfactorily by Member States to establish a better evidence base and rationale for EU action. The problem definition should present more clearly the different types of distortions being addressed and show their actual and / or potential scale (e.g. by referring to the number of companies concerned, volume of transactions, etc.). It should also explain more clearly to what extent recent trends regarding reductions in withholding taxes and conclusions of tax agreements are included in the "no policy change" scenario. For each of the problems the report should provide a fuller analysis of subsidiarity, explaining why they cannot be tackled satisfactorily by action by Member States.

(3) Clarify the objectives, present the position of Member States on the options, and explain why certain options have not been considered for analysis. The report should clarify whether aligning the scope of the Interests and Royalties Directive and the Parent-Subsidiary Directive is an objective as such and if so, explain why. It should also explain why the following potential options have not been considered in the analysis: (i) combining option 2 (extending the scope of the Interest and Royalty Directive to transactions between unrelated undertakings) with abolishing withholding taxes on dividends between unrelated companies, (ii) combining option 2 with the extension of the coverage of the Parent-Subsidiary Directive to below the ten percent minimum shareholding threshold, (iii) extending the Interest and Royalty Directive to other types of companies beyond those referred to in the Parent-Subsidiary Directive (as many of the stakeholders appear to favour). The report should present the position of Member States on the proposed options, and be transparent about possible areas of disagreement. The report should also explain why the views of stakeholders were not sought on option 5 (about addressing tax avoidance).

(4) Elaborate on the non-quantified benefits of the preferred option, how its impacts would be distributed by Member State, and why it has less negative side-effects than option 2. The report should assess the importance of the benefits related to the removal of the different types of distortions and in what proportion they are likely to be achieved under the preferred option. The report should also show how the impacts of the preferred option (including the costs of the changes to Member States' tax systems) will be distributed over Member States. It should better explain the negative side-effects associated with the removal of distortions due to different withholding tax rates, including why they could be used as an argument against option 2. The report should also specify more systematically the assumptions made for the calculation of the monetised impacts (such as compliance cost savings, decrease in tax revenue) and should more clearly explain the related uncertainties.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The inconsistencies between the text and summary table 5 should be removed.

(E) IAB scrutiny process

Reference number	2008/TAXUD/009
External expertise used	No
Date of IAB meeting	12 January 2010