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Interim Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the harmonization of company taxation and of withholding taxes on dividends

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 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.

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

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;

¹ OJ No. C 253, 5.11.1975, p.2
OJ No. C 184, 2.8.1978, p.8

5. Notes that the Commission has shown increasing awareness of the fact that 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 Commission and the Council.

EXPLANATORY STATEMENTI. 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 were¹:

- 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 of 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.

¹ 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.

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

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.

