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Council agrees to close tax loophole for corporate groups

The Council today[1] agreed to an amendment to EU tax rules in order to prevent the double non-taxation of corporate groups deriving from hybrid loan arrangements[2] (*10419/14*).

The aim is to close a loophole that currently allows corporate groups to exploit mismatches between national tax rules so as to avoid paying taxes on some types of profits distributed within the group.

The amendment to the parent-subsidiary directive[3] will help boost member states' tax revenues. Furthermore, it will help create a level playing field between groups with parent companies and subsidiaries located in different countries and those that have all entities based in a single member state.

The original parent-subsidiary directive, currently in force, was intended to ensure that profits made by cross-border groups are not taxed twice, and that such groups are thereby not put at a disadvantage compared to domestic groups. It requires member states to exempt from taxation profits received by parent companies from their subsidiaries in other member states.

However, this currently applies even if profit distribution is treated as a tax-deductible payment in the country where the paying subsidiary is based. Some member states classify payments from hybrid loan arrangements as tax deductible "debt".

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1 At a meeting of the Economic and Financial Affairs Council.

2 Hybrid loan arrangements are financial instruments that have characteristics of both debt and equity.

3 Directive 2011/96/EU

P R E S S

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The amendment approved today will prevent cross-border companies from planning their intra-group payments in such a manner as to benefit from this provision in order to enjoy double non-taxation. The member state of the parent company will henceforth refrain from taxing profits from the subsidiary only to the extent that such profits are not tax deductible for the subsidiary.

In approving the text, the Council agreed to split it from a broader proposal in order to allow early adoption of the new rule on hybrid loans, whilst allowing work to continue on another aspect, namely the introduction of a common anti-abuse provision.

Following today's political agreement, this part of the legislation will be adopted at a forthcoming Council session, after finalisation of the text. Member states will have until 31 December 2015 to transpose it into national law.
