

# Newsalert

## EU Direct Tax Group



### **EU Member States agree to amend the EU Parent-Subsidiary Directive to tackle double non-taxation deriving from hybrid loan arrangements**

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On 20 June 2014, in the context of the fight against tax fraud and evasion and "aggressive tax planning" / BEPS in the EU, the EU-28 Finance Ministers reached final agreement on amending and updating the EU's Parent-Subsidiary Directive (2011/96/EU; hereafter: PSD) on the basis of a Commission proposal issued in November 2013.

The main amendment to the PSD which has now been agreed is to counter the distorting effects of mismatches resulting from differences in the tax treatment of hybrid loans within the scope of application of the PSD between EU Member States.

The main aim of the PSD is to exempt dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes and eliminates double taxation of such income at the level of the parent company.

The Member States have now agreed that the benefits of the PSD should not lead to situations of double non-taxation and, therefore, generate unintended tax benefits for groups of parent companies and subsidiaries of different Member States in comparison with groups of companies of the same Member State.

Under the amended PSD Article 4.1 (a), therefore, the Member State of the receiving company (parent company or its permanent establishment) will be obliged to "(...) refrain from taxing such profits to the extent that such profits are not deductible by the subsidiary, and tax such profits to the extent that such profits are deductible by the subsidiary (...)".

Following today's political agreement in

ECOFIN, the hybrid loans part of the PSD will be adopted at a forthcoming Council session, after linguistic and legal finalisation of the text. Member States will have until 31 December 2015 to transpose it into national law.

In an accompanying statement (added to the ECOFIN Conclusions), the Commission:

- Stresses that the proposed amendments to Article 4.1 (a) of the PSD are applicable in situations of double non-taxation deriving from mismatches in the tax treatment of profit distributions between Member States which generate unintended tax benefits;
- Confirms that the proposed amendments to Article 4.1 (a) of the PSD are not intended to be applicable if there is no double non-taxation or if their application would lead to double taxation of the profit distributions between parent and subsidiary companies;
- And, in the light of the above, confirms that the adoption of this proposal does not oblige Member States to subscribe to any future legislative proposals in the field of direct taxation.

The Commission had also proposed to replace the current anti-abuse provision in the PSD with a common GAAR, based on the clause in its 6 December 2012 Aggressive Tax Planning Recommendation to EU Member States, but this will be discussed further under the incoming Italian 6-monthly rotating EU Council Presidency.

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