Tuesday 15 January 2008

Tax treatment of losses in cross-border situations

P6_TA(2008)0008

European Parliament resolution of 15 January 2008 on Tax treatment of losses in cross-border situations (2007/2144(INI))

(2009/C 41 E/02)

The European Parliament,

— having regard to the Commission communication on Tax Treatment of Losses in Cross-Border Situations (COM(2006)0824),

— having regard to the Commission communication on The Contribution of Taxation and Customs Policies to the Lisbon Strategy' (COM(2005)0532),

— having regard to the relevant case-law of the Court of Justice of the European Communities (Court of Justice), notably Cases C-250/95 *Futura Participations SA and Singer* v *Administration des contributions* [1] and C-141/99 *AMID* v *Belgische Staat* [2], Joined Cases C-397/98 and C-410/98 *Metallgesellschaft Ltd and Others* v *Commissioners of Inland Revenue and HM Attorney General* [3], Case C-446/03 *Marks & Spencer plc* v *David Halsey (HM Inspector of Taxes)* [4], and Case C-231/05 *Oy AA* [5],

— having regard to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees [6],

— having regard to its resolution of 13 December 2005 on taxation of undertakings in the European Union: a common consolidated corporate tax base [7],

— having regard to the Commission communication on Implementing the Community Programme for improved growth and employment and the enhanced competitiveness of EU business: Further Progress during 2006 and next steps towards a proposal on the Common Consolidated Corporate Tax Base (CCCTB) (COM(2007)0223),

— having regard to its resolution of 4 September 2007 on the Single Market Review: Tackling barriers and inefficiencies through better implementation and enforcement [8],

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0481/2007),

A. whereas Member States' national tax systems need increasingly to take account of the globalisation of the economy and cope with the rules and functioning of the internal market, with a view to achieving the Lisbon Strategy objectives in terms of growth and competitiveness,

B. whereas the globalisation of the economy has increased tax competition in such a way as to result in the drastic decrease of average corporate tax rates in industrialised countries in the last 30 years,

C. whereas that decrease in tax rates has been intensified since the last enlargement of the European Union and whereas there is a clear trend in the Member States to put in place specific tax schemes by which to attract particularly mobile companies,

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[1] [1997] ECR I-2471.
[2] [2000] ECR I-11619.
[3] [2001] ECR I-1727.
[4] [2005] ECR I-10837.
[5] Judgment of 18 July 2007.
[6] OJ L 254, 30.9.1994, p. 64.
[7] OJ C 286 E, 23.11.2006, p. 229.
[8] Texts Adopted, P6_TA(2007)0367.

D. whereas the existence of 27 different tax systems in the European Union constitutes an impediment to the smooth functioning of the internal market, causes significant additional costs for cross-border trade and business in terms of administration and compliance, hinders corporate restructuring, and leads to cases of double taxation,

E. whereas the reduction of compliance costs as regards differing national corporate tax laws, the transparency of rules, the removal of tax barriers hampering cross-border activities and the creation of a level playing-field for EU undertakings operating in the internal market may lead to EU-wide economic gains by way of a dynamic corporate environment,

F. whereas an appropriate EU-level tax coordination that does not attempt to harmonise tax rates can contribute to avoiding distortions of competition and can generatebenefits that can be widely shared between undertakings, their employees and consumers, Member States and citizens,

G. whereas achieving the Lisbon Strategy objectives necessitates the increasing coordination of Member States' fiscal policy,

H. whereas Member States have traditionally tried to coordinate their tax regimes through an extensive network of bilateral tax treaties that do not fully cover issues such as cross-border loss relief; whereas, within the European Union, the bilateral approach is less efficient and leads to less consistency than a multilateral and coordinated approach; whereas a common EU approach on a consolidated corporate tax base — such as the CCCTB proposal — is the most appropriate solution for the cross-border offsetting of losses and profits within the internal market and will lead to greater transparency, investment and competitiveness,

I. whereas Member States implement different rules on granting tax relief for losses incurred by branches, subsidiaries and entities of corporate groups thereby distorting business decisions and investment policies in the internal market with consequences in terms of their appropriate long-term industrial strategies and tax revenues,

J. whereas virtually all tax systems in the European Union tax profits and losses asymmetrically, in other words, profits are taxed for the year in which they are earned but the tax value of a loss is not refunded automatically to the company at the time when it is incurred; whereas the recent case law of the Court of Justice does not properly analyse that time factor and its importance as regards increasing cross-border investments in the European Union,

K. whereas the implementation of a cross-border tax-relief regime on losses would be tantamount to waiving corporate tax revenues in certain Member States without certain legal assurances,

L. whereas losses by domestic branches will automatically be taken into account in the net result of the parent company, but the situation is less clear-cut for losses incurred by foreign branches, as well as domestic and foreign members of a group,

M. whereas the absence of cross-border loss relief constitutes a barrier to entering some markets, favouring establishment in large Member States where the size of the home market is sufficient to help absorb possible losses,

N. whereas the situation described puts small and medium-sized enterprises (SMEs) at a disadvantage because they are less able to carry out cross-border investments amid uncertainty over loss relief and frequently incur start-up losses,

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1. Expresses its grave concern over the negative impact that the different treatment of cross-border losses by Member States has on the functioning of the internal market;

2. Notes that any measure which impedes the freedom of establishment is contrary to Article 43 of the EC Treaty and that its removal ought thus to be the focus of targeted action; recalls that differing company tax regimes create obstacles to entering different national markets and the proper functioning of the internal market, distort competition, and prevent the maintenance of a level playing field for undertakings at EU level and thus merit attention of this kind;

3. Takes the view that targeted action at EU level in respect of tax deductions of cross-border losses could be of greater benefit to the functioning of the internal market;

4. Signals its support for the Commission communication on Tax Treatment of Losses in Cross-Border Situations as an important step in addressing the situation and calls for adequate coordination among Member States as regards timing and solutions;

5. Stresses that any targeted measure to introduce cross-border loss relief should be defined and implemented on the basis of a multilateral, common approach and coordinated action by the Member States in order to guarantee the coherent development of the internal market; recalls that such targeted measures represent an intermediate solution pending the adoption of the CCCTB; considers that the CCCTB constitutes a comprehensive long-term solution for tax obstacles linked to the cross-border offsetting of losses and profits, as well as for transfer pricing and cross-border merger and acquisition and restructuring operations and will complete the achievements of an internal market with fair competition;

6. Points out that some Member States apply various methods for the elimination of double taxation, either by crediting taxes paid abroad (the credit method) or by exempting foreign income from the tax base (the exemption method); notes that only some of the Member States applying the exemption method do not provide for relief on losses incurred by foreign branches;

7. Draws attention to the fact that where losses incurred by permanent establishments may not be set off against the profits of a head office there is a difference in treatment in comparison with a purely domestic situation which constitutes an impediment to the freedom of establishment;

8. Considers that action in favour of groups of companies that conduct business in several Member States should be a priority, as that it is precisely those groups that suffer from different treatment as regards cross-border losses, compared to groups of companies that conduct business in a single Member State;

9. Takes the view that the distortions arising from the difference in national systems penalise SMEs in particular in comparison with their potential competitors and therefore asks the Commission to adopt specific measures in that area;

10. Recalls that few overall arrangements exist for loss relief between subsidiaries and parent companies (groups) across borders and that, therefore, within a group of companies, losses are not taken into account automatically in the same way as within a company;

11. Points out that the majority of Member States provide for domestic loss relief for groups, thereby treating them effectively as one entity, but that few do so as regards cross-border situations; recalls that the lack of cross-border group relief can distort investment decisions regarding both its location and legal form (branch or subsidiary);

12. Acknowledges that simply extending domestic regimes to cross-border situations is difficult as the tax bases are different;

13. Urges that the relevance of cross-border loss relief must be acknowledged although it should be pointed out that further in-depth elaboration is necessary as regards the cross-border loss relief scheme; suggests that a decision should be taken as to whether cross-border loss relief should be limited to subsidiaries as regards their parent company or vice versa and that a thorough assessment should therefore be made of the budgetary effects of the scheme whereby the subsidiaries' profits are allowed to set off the parent company's losses;

14. Regards the judgment of the Court of Justice in the *Marks & Spencer* case as deferring to Member States' right to maintain their tax systems, especially as regards concerns of tax avoidance;

15. Notes that the judgment of the Court of Justice in the *Oy AA* case shows that the different national tax systems vary in their treatment for losses and that it is thus unclear if the losses can be consolidated within a group in all cross-border situations even when the losses are final and thus result in a disproportionate situation as indicated by the *Marks & Spencer* case;

16. Believes that corporate groups should be treated as far as possible in the same way whether they are present in several Member States or in a single Member State only; stresses that in situations involving cross-border losses by foreign subsidiaries, double-taxation of the parent company must be avoided, fiscal competence must be fairly distributed between Member States, losses may not be offset twice and tax avoidance must be prevented;

17. Considers that it would be useful to launch a debate on the definition and characteristics of corporate groups in the European Union, taking into account the existence of common European institutions such as the 'European company' and the 'European cooperative society', without the intention, however, of limiting the scope of cross-border loss relief measures exclusively to such institutions;

18. Reiterates the importance of defining the concept of 'corporate group' in order to prevent firms from opportunistically distributing profits and losses among Member States; considers that, for the purpose of defining a corporate group, it might be useful to identify specific critical features within the undertaking such as foreseen in the Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees;

19. Welcomes the three options proposed in the Commission communication on Tax Treatment of Losses in Cross-Border Situations; signals its support for targeted measures which would enable the effective and immediate deduction of losses by foreign subsidiaries (on an annual and not simply terminal basis, as in the *Marks and Spencer* case) which would be recaptured once the subsidiary returns to profit through a corresponding additional tax on the parent company;

20. Recommends, in order that those proposals can be implemented in such a way as to prevent tax evasion, considering whether it would be appropriate to establish an automatic information exchange system, similar to the VIES for VAT, so that the Member States can check the existence of negative tax bases declared by subsidiary companies in other Member States;

21. None the less, urges the Commission to investigate further the possibilities of providing companies with a consolidated corporate tax base for their EU-wide activities;

22. Notes that a further thorough analysis is of great importance with respect to assessing the extent to which the proposed cross-border loss relief scheme could promote the cross-border activity of SMEs;

23. Points out that any targeted measure concerning the tax treatment of losses in cross-border situations put in place by individual Member States will not, alone, solve the problem of distortion of competition and high compliance costs for EU undertakings operating in the internal market, which derive from the maintenance of 27 different tax systems;

24. Underlines the need for Member States to proceed in a coordinated manner when introducing targeted measures for the relief of cross-border losses within one company or group; recalls the need for stronger coordination on tax matters between Member States and calls on the Commission to take on a proactive role;

25. Supports the Commission's efforts to establish a pan-European and uniform CCCTB; notes that the CCCTB will lead to greater transparency and efficiency by enabling companies to operate on the same rules abroad as at home, creating a level playing field and enhancing the competitiveness of EU undertakings, increasing cross-border trade and investment thus creating the conditions to reap the full benefits of the internal market as regards investment and growth, as well as significantly reducing administrative burdens and compliance costs and the possibility of tax evasion and fraud;

26. Recalls that the CCCTB involves common rules regarding the tax base and does not in any way affect Member States' freedom to continue to set their own tax rates;

27. Welcomes the Commission's intention to launch the CCCTB even in the framework of enhanced cooperation; points out, however, that this is a second-best solution as, in the absence of a comprehensive EU-wide system, the benefits of transparency and lower administrative costs may be partly mitigated;

28. Instructs its President to forward this resolution to the Council and the Commission.

Community strategy 2007-2012 on health and safety at work

P6_TA(2008)0009

European Parliament resolution of 15 January 2008 on the Community strategy 2007-2012 on health and safety at work (2007/2146(INI))

(2009/C 41 E/03)

The European Parliament,

— having regard to the Commission communication on Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work (COM(2007)0062) and the accompanying Commission staff working documents (SEC(2007)0214), (SEC(2007)0215) and (SEC(2007)0216),

— having regard to the EC Treaty, and in particular Articles 2, 136, 137, 138, 139, 140, 143 and 152 thereof,

— having regard to the Charter of Fundamental Rights of the European Union [1] and in particular Articles 27, 31 and 32 thereof,

— having regard to the ILO conventions and recommendations in the field of health and safety at the workplace,

— having regard to Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (framework directive) [2] and to its individual directives,

— having regard to Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work [3],

— having regard to Directive 2007/30/EC of the European Parliament and of the Council of 20 June 2007 amending Council Directive 89/391/EEC, its individual directives and Council Directives 83/477/EEC, 91/383/EEC, 92/29/EEC and 94/33/EC with a view to simplifying and rationalising the reports on practical implementation [4],

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[1] OJ C 303, 14.12.2007, p. 1.
[2] OJ L 183, 29.6.1989, p. 1.
[3] OJ L 262, 17.10.2000, p. 21.
[4] OJ L 165, 27.6.2007, p. 21.