POSITION PAPER

BUSINESSEUROPE

14 December 2023

Directive establishing a Head Office Tax system for Micro, Small and Medium Sized Enterprises (SMEs)

KEY MESSAGES

1 BusinessEurope welcomes the Commission’s proposed head office tax system rules as these have the potential to reduce tax compliance costs significantly for SMEs operating cross-border through permanent establishments. In particular, we welcome the proposed one-stop-shop approach for tax compliance purposes which would allow in-scope SMEs to interact exclusively with the tax administration of their head office’s member state for opting in, filing obligations and tax payments.

2 In order to maximise the benefits of the proposed rules, the eligibility criteria could be amended to allow taxpayers to benefit from the proposed regime from the first year of existence of permanent establishments, as opposed to the second year, outside the Member State of the head office. In addition, given the potential that the proposed rules have in fostering co-operation between tax administrations in the EU, we recommend a pilot mode at the EU level. This approach would allow for a practical examination helping to draw the benefits and address any challenges that may arise for both businesses and tax administrations.

3 Whilst we recognise that the implementation of the new rules may result in occasional distortions of competition due to the varying tax rules for comparable businesses, we believe that the impact will be limited, given the relatively small number of companies falling within the scope of the proposed regime.

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DIRECTIVE ESTABLISHING A HEAD OFFICE TAX SYSTEM FOR MICRO, SMALL AND MEDIUM SIZED ENTERPRISES

Background

On 12 September 2023, the European Commission published a proposal for a directive establishing an optional head office tax system for micro, small, and medium-sized enterprises (SMEs).

The proposed directive would allow qualifying SMEs that are growing and expanding across Member States through PEs to opt in for applying the tax rules of the Member State of the head office to calculate the taxable result of their PEs in other Member States. Consequently, the local sets of tax rules in the Member State in which the PE is located would not need to be applied.

Only a single tax return is needed to be filed with the tax authority of the SME's head office. This return would then be shared with other Member States where the PEs are located, with any resulting tax revenues also transferred from the head office Member State to the PE Member State.

If the proposed directive is adopted, it would apply as from 1 January 2026.

BusinessEurope's comments

- Small and medium-sized enterprises (SMEs) form the backbone of the economy in Europe, representing almost 99% of all businesses in the EU. With almost two-thirds of employees in the EU working for an SME, these businesses produce over half of all value added in the European economy.

- SMEs operating across multiple Member States often encounter diverse corporate tax obligations. Consequently, these businesses must allocate valuable time and resources to comprehend and adhere to complex corporate tax rules and obligations. Recent studies highlight a distinct challenge for SMEs compared to their larger counterparts. They grapple with a **disproportionate burden of compliance, a consequence of their size, coupled with limited financial and human resources to effectively manage regulatory obligations**.

- In this context, BusinessEurope is supportive of the Commission's proposed rules for establishing a head office tax system as these have the potential to enhance the attractiveness of the Single Market by **relieving SMEs from administrative burdens associated with tax compliance obligations** when conducting operations across different Member States.

- In particular, we welcome the proposed one-stop-shop compliance for the filing, assessment, and collection of taxes with one tax authority in a way that would allow SMEs to interact exclusively with the tax administration of their head office's member state only.

- Whilst we recognise the importance of strict eligibility criteria to prevent the circumvention of the rules, the requirement to have a maximum turnover over the past two fiscal years may unnecessarily restrict the number of eligible SMEs that will have the option to utilise the proposed head office tax rules. In order to maximise the benefits of the proposed rules, a suggested approach could be to **allow taxpayers to benefit from the proposed head office tax rules already from the first year of existence of PEs** outside the Member State of the head office.

- The **identification of PEs** typically introduces complexity and imposes significant financial burdens on taxpayers. There is an opportunity for the proposed rules to be developed more ambitiously, aiming to provide taxpayers with enhanced tax and legal certainty regarding the existence of a PE beyond the Member State of their head office and addressing disputes related to PE determination.

- Whilst the optional application of these rules may create **occasional competition distortions** due to varying tax rules for comparable businesses, we believe that the impact will be limited. This is attributed to the relatively small number of companies falling within the scope of the proposed regime.

- Recognising the potential of the proposed rules to enhance and foster co-operation among tax administrations in the EU, we advocate for testing them in a **pilot mode at the EU level**. This approach would allow for a practical examination of the proposed regime, enabling policymakers to discern the benefits and address any challenges that may emerge for both businesses and tax administrations.

BusinessEurope will continue to make itself available to engage in a constructive dialogue with the European Commission to ensure that the development and specificities of the proposed rules are conducive to increased economic efficiency, growth, and job creation.