BUSINESSEUROPE
THE DIRECTOR GENERAL

Mr Ioannis Stournaras
Minister for Finance
Hellenic Republic
Ministry of Finance
Kar. Servias 10
GR-105 62 Athens
Greece

25 February 2014

REVISION OF THE PARENT SUBSIDIARY DIRECTIVE

Dear Mr Stournaras,

The Commission has proposed on 25th November to introduce new measures in the Parent Subsidiary Directive. One revision aims in particular at addressing unintended double non-taxation by excluding hybrid loans from the Parent Subsidiary Directive. It would limit the Member States' obligation to allow tax exemption on dividends received from subsidiaries in other Member States, only to profits that are not deductible by the subsidiary. Furthermore, the Commission has proposed to introduce a new General Anti Abuse Rule in the Parent-Subsidiary Directive.

We agree with the specific purpose of the revisions of the Parent Subsidiary Directive to address unintended double non-taxation in situations with hybrid loan arrangements.

However, it is crucial that the new provisions do not undermine the Parent Subsidiary Directive's broader aim to reduce cross border tax obstacles and do not create uncertainties with respect to the tax treatment of normal commercial arrangements.

It is paramount that the new provisions do not dent the Parent Subsidiary Directive's purpose to avoid double taxation on profit distributions between parent companies and their subsidiaries.

It is essential that the EU doesn't act unilaterally and avoid any conflicting decisions with the outcome of the current revisions of the international corporate tax rules in the OECD BEPS project.

Furthermore the wide formulation of the new provisions would catch situations that go beyond transfers of hybrid nature initially targeted by the Commission. We are concerned that they do not draw a clear line between unintended double non-taxation and intended exemptions in the Member State's national tax legislation. This distinction is important because it gives meaning to differences between tax efficiency and aggressive tax planning on the side of business and normal tax policy and harmful tax practices on the side of governments. It is important that the proposed amendment to target hybrid mismatches is limited to cases where the dividends as such are deductible by the subsidiary, and that the provision does not target intended tax exemptions in the Member State where the subsidiary is established.

We also support the Commission's work on addressing abuse and wholly artificial tax arrangements. It is however not appropriate to introduce a general anti-abuse rule in a directive with such a specific and limited purpose. The introduction of a general anti-abuse rule could create uncertainty since it may have a broader impact on national anti-fraud legislation. National laws and European jurisprudence already exist which enable Member States to ignore wholly artificial arrangements intended to avoid national tax.

Yours sincerely,

Markus J. Beyrer