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N Ä R I N G S L I V E T S
S K A T T E -
D E L E G A T I O N

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**The European Commission Proposal for a Council Directive
establishing a Head Office Tax system for micro, small and
medium sized enterprises, and amending Directive 2011/16/EU,
COM(2023) 528 final**

Opinion

Näringslivets Skattedelegation(NSD) welcomes the Commission's ambition to strengthen the competitiveness of SMEs in the EU. NSD agrees with the Commission that the current systems of business taxation in the EU gives rise to a significant degree of complexity, translating into business facing high compliance costs, barriers to cross-border operations, and risks of double and/or over-taxation.

NSD acknowledges the importance of the proposal's objective to facilitate the initial steps of internationalization for SMEs. However, NSD is not convinced that this limited form of simplification will have the desired effect. The proposal foresees a one-stop shop approach for tax compliance purposes, limited to standalone SMEs operating exclusively through permanent establishments (PE) in one or more Member States. Consequently, SME groups with subsidiaries are excluded from the scope.

In addition, even though the proposal might, to some extent, reduce the administrative burden for SMEs, SMEs that opt in will still have to, for example, deduct preliminary tax regarding wage payments and pay social contributions for their employees according to the legislation in the state where their PE is located.

Furthermore, NSD is concerned that the proposal will create competitive distortions in the local market since PEs in the same Member State will be subject to different levels of taxation depending on where the company in question is domiciled. For example, a Swedish PE of a foreign company with its head office in a Member State with more generous tax regulations than in Sweden will be taxed more favorably than a locally competing Swedish company or another foreign-owned PE. In our view, this is not acceptable.

The principals of NSD are:

**Stockholm Chamber of Commerce * Confederation of Swedish Enterprise
Swedish Bankers' Association * Insurance Sweden * Swedish Property Federation**

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While NSD supports the Commission's overall ambition to simplify for SMEs, we find it difficult to support a system that gives rise to competitive distortions and where the extent of the benefits for the SMEs in scope seems unclear. NSD therefore urges the Swedish Government to oppose the Head Office Tax System proposal.

Background

On September 12, 2023, the Commission presented its SME Relief Package – a Communication aimed at Europe's small and medium-sized enterprises.¹ The package includes measures to reduce administrative burdens and enhance conditions for SMEs in the EU. One of these measures is a proposal for a Council Directive on establishing a Head Office Tax system for micro, small and medium sized enterprises and amending Directive 2011/16/EU (HOT).

If adopted by Member States, the proposal is expected to come into force on January 1, 2026.

The proposal in short

The proposal provides for a simplified tax approach to subjecting standalone SMEs operating cross-border in the EU in respect of their PEs in other Member States. It allows SMEs to opt in for applying the tax rules of the Member State where their head office is located. This simplified approach is referred to as "Head Office Taxation".

Under this regime, qualifying SMEs would calculate their tax liability based only on the tax rules of the Member State of their head office, while the applicable tax rate(s) will remain that/those of the Member State(s) where the PE(s) is/are located.

SMEs that opt in would only need to file a single tax return with the tax administration in the Member State of the head office. This return would then be shared with other Member States where the PEs are located, and any resulting tax revenues would also be transferred from the head office Member State to the PE Member State/s. This approach is meant to simplify tax compliance for SMEs and eliminate the complexities associated with the involvement of multiple tax systems and administrations.

Once an SME chooses to opt in, it will have to remain under this system for five fiscal years unless the head office changes residence in the meantime, or its foreign activity grows exponentially in comparison to the business activity in the Member State of origin.

To prevent circumvention of the rules, the directive lays down certain eligibility criteria. The head office would be eligible to utilize the HOT rules for its PEs in other Member States only if, over the past two fiscal years, the combined turnover of its PEs has not exceeded twice the turnover generated by the head office, and it has maintained tax residency in the head office's Member State during the same period.

¹ [Press release September 12, 2023, Championing Europe's SMEs: Commission provides new relief to boost the competitiveness and resilience of SMEs.](#)

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The scope is limited to standalone SMEs that operate exclusively through PEs in one or more Member States.² A company would only be in scope if, on the date of its balance sheet, it does not exceed the limits of at least two of the three following criteria:

- Balance sheet total: EUR 20 million;
- Net turnover: EUR 40 million; and/or
- Average number of employees during the financial year: 250

Comments

NSD agrees with the Commission that the current systems of business taxation in the EU give rise to significant degree of complexity, translating into high compliance cost for businesses, barriers to cross-border operations, and risks of double and/or over-taxation.

According to a Commission report, corporate income tax-related compliance costs in the EU could amount to as much as EUR 54 billion a year. Moreover, 90 % of this amount is incurred by very small enterprises, with less than 10 employees. SMEs spend approximately 2,5 % of their turnover on compliance with their tax obligations (e.g., CIT, VAT and income taxes), while large enterprises spend 0,7 %.³

Consequently, NSD welcomes the Commission's ambition to strengthen the competitiveness of SMEs in the EU and acknowledges the importance of the proposal's objective to facilitate the initial steps of internationalization for SMEs. However, NSD is not convinced that this limited form of simplification will have the desired effect.

The scope is limited to standalone SMEs that operate exclusively through PEs in one or more Member States. Hence, SME groups with subsidiaries are out of scope. NSD believes that a taxation system based on the domicile of SMEs may not be entirely relevant and practical, as it will only apply to individual companies that solely operate through PEs in another Member State.

In addition, SMEs that opt in will have to continue to, for example, deduct preliminary tax regarding wage payments and pay social contributions for their employees according to the legislation in the state where their PE is located. Furthermore, companies might also have to keep accounting records for their operations according to the relevant account act of the Member State where the PE is located.

NSD is also concerned that the proposal will create competitive distortions in the local market since PEs in the same Member State will be subject to different levels of taxation depending on where the company in question is domiciled. For example, a Swedish PE of a foreign company with its head office in a Member State with more generous tax regulations than in Sweden will be taxed more favorably than a locally competing Swedish company or another foreign-owned PE. According to the Commission, the benefits of the proposal outweigh these risks and will lead to significant reductions in tax compliance costs for SMEs

² Head offices carrying out shipping activities subject to a tonnage tax regime would be excluded from applying the HOT rules in respect of its PEs in other Member States to the extent that these derive income from shipping activities.

³ [Tax compliance costs for SMEs. An update and a complement: final report, European Commission, 2022.](#)

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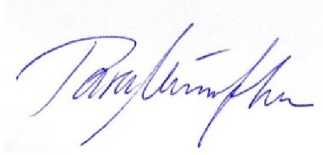
with PEs, making the system advantageous overall. NSD is not convinced that this will be the case.

NSD fully supports the Commission's overall ambition to reduce the compliance costs for SMEs and to simplify for SMEs to develop their business cross-border. However, we find it difficult to support a system that gives rise to competitive distortions and where the extent of the benefits for the SMEs in scope seems unclear. NSD therefore urges the Swedish Government to oppose the Head Office Tax System proposal.

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