

Reasoned opinion from the Riksdag

The Riksdag considers it a high political priority to combat tax evasion, tax avoidance and harmful tax competition. The Riksdag is therefore positive to the proposal to prevent the misuse of shell entities for tax purposes.

The Commission's proposal targets undertakings that do not engage in any economic activities, that lack substance and that enable tax advantages to their beneficial owners or to the group as a whole.

The proposal is structured as a substance test in several steps, whereby undertakings that meet the gateway criteria are considered to be "at risk" and therefore are subject to report on their substance. The undertakings that, after reporting, do not meet the three cumulative criteria for minimal required substance are presumed to be shell entities. The undertaking then has the opportunity to rebut the presumption by submitting supplementary information about its business activities or requesting to be exempt by presenting information that proves that it does not enjoy any improper tax advantages. For undertakings that do not meet the requirements regarding substance or are unable to rebut this, extensive tax consequences will apply according to the proposal, inter alia, in the form of denied rights under the Parent-Subsidiary Directive, the Interest and Royalty Directive and bilateral tax agreements.

The Riksdag notes that the proposal is comprehensive, complex and very far-reaching. The burden of proof lies almost exclusively with the individual undertakings. The Riksdag further notes that the administrative burden as regards obligation to report, evidence and exchange of information is likely to be extensive for both undertakings and tax administrations.

As regards the compatibility of the proposal with existing legal frameworks on tax evasion and tax avoidance, the Commission emphasises that the legal framework at EU level does not contain any specific rules targeting shell entities, and that specific regulation therefore is necessary.

However, the Riksdag finds no detailed analysis in the Commission's proposal of how the proposal relates to already existing legislation in the area clarifying the need for additional legal regulation, inter alia, in order to avoid the risk of overlapping and increased administration.

In summary, the Riksdag considers that the Commission does not provide sufficient justification to support the fact that the proposal does not go beyond what is necessary to achieve the set objectives.

In light of the above, the Riksdag considers that the Commission's proposal cannot be considered to be compliant with the principle of subsidiarity.