



Future of Corporate Taxation in the European Union

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Overview

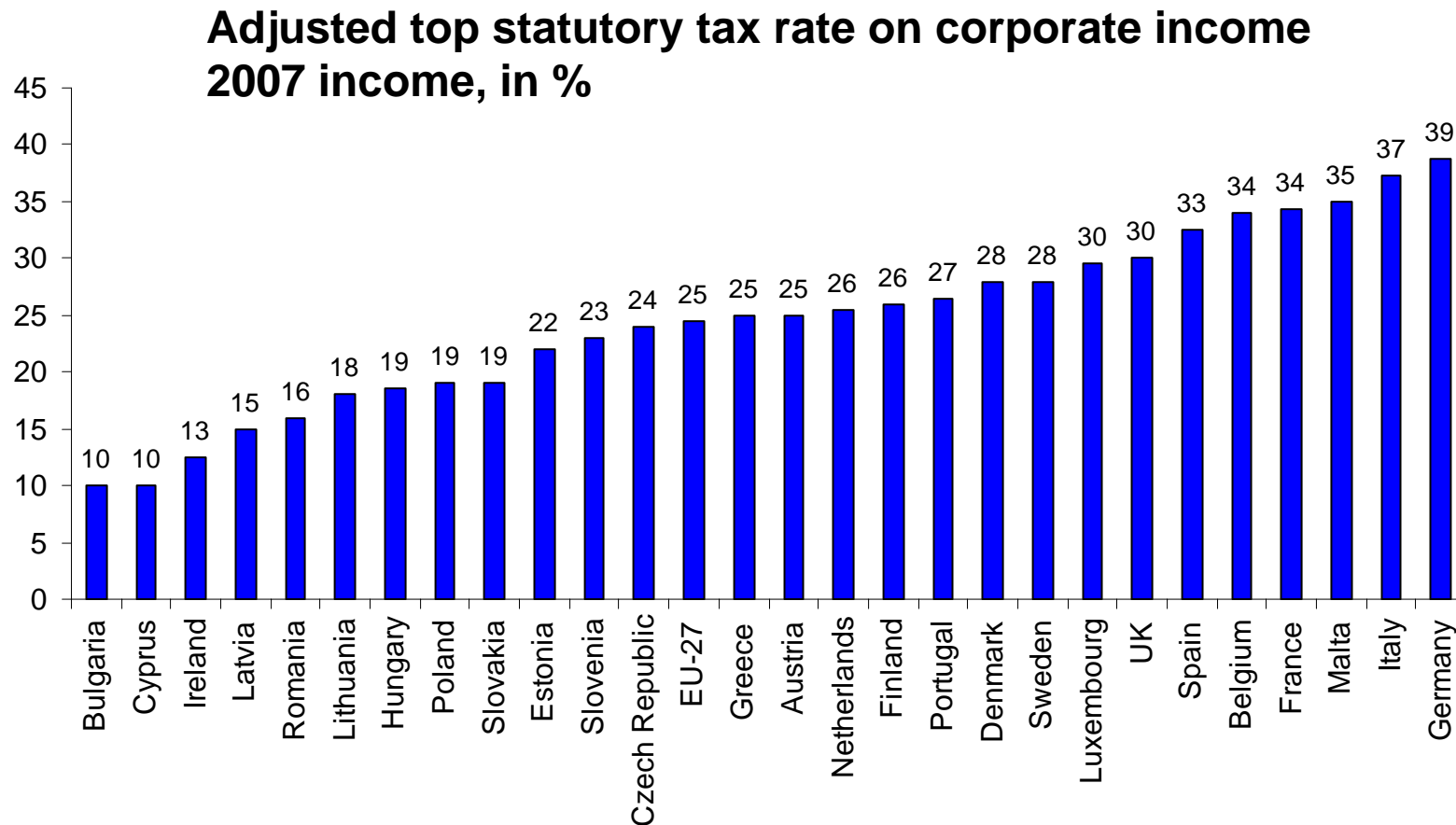
- I. Corporate tax obstacles in the EU
- II. EC corporate tax legislation: what changes to expect in the medium to long term?
- III. Activity of taxation working groups at **BUSINESSEUROPE**



I. Corporate tax obstacles in the EU



I.1 Rate differentials no obstacle!!



Source: Eurostat, *Taxation trends in the European Union (2007)*



I.2 Main obstacles to cross-border activity

- Separate tax rules and filing arrangements in each MS → 5x higher compliance costs for companies with foreign subsidiaries
- 81.9% of companies in the EU face problems when complying with transfer pricing rules (EU Tax Survey)
- Transfer pricing requirements most costly (€4-5.5m yearly for a multinational, excluding cost of disputes)
- Other tax obstacles in the EU (ECJ jurisprudence):
 - Anti-Abuse Measures: CFC/Thin Cap rules, etc.
 - Limited possibility for cross-border loss consolidation
 - Taxation of Mergers and Acquisitions
 - Double taxation on repatriated profits and other income from subsidiaries and branches



II. EC corporate tax legislation: what changes to expect in the medium to long term?



II. EC corporate tax legislation: what changes to expect in the medium to long term?



- 1- Basis for tax legislation at EU level
- 2- Solutions at EU level
- 3- Current EC corporate tax legislation
- 4- Outlook
 - CCCTB
 - Coordination initiatives



II.1- Basis for tax legislation at EU level

- Art. 94 EC Treaty on approximation of national legislation → if non-respect of fundamental freedoms
- Requirement for unanimity in Council on tax matters → coordination mostly preferred to harmonization
- Art. 226-228 EC Treaty allows Commission to enforce EC rules by opening infringement procedures against Member States → effective but slow
- Art. 87 EC Treaty on State Aid rules → any kind of tax relief can represent state aid.



II.2- Solutions at EU level

- ***Litigation:*** more pro-active strategy in the field of tax infringements, building up European Court of Justice jurisprudence;
- ***Harmonisation:*** replacing national systems by a common EU system (as for VAT);
- ***Coordination of tax systems:*** build on national systems but render them compatible with the Treaty and with each other.



II.3- Current EC corporate tax legislation

- 1990: adoption of two Directive and one Convention
 - Merger Directive 90/434/EEC (Update of 2005)
 - Parent-Subsidiary Directive 90/435/EEC (Update of 2003)
 - Arbitration Convention 90/436/EEC
- 1999: Code of Conduct for Business Taxation – 66 tax measures with harmful features (Primarolo Report)
- Interest and Royalty Directive 2003/49/EC



II.4- Outlook

- (a) Proposal for a Common Consolidated Corporate Tax Base (CCCTB)

- (b) Coordination Initiatives (align national tax legislation with ECJ jurisprudence):
 - Anti-abuse measures: supported by MS
 - Cross-border loss consolidation: reluctance
 - Exit taxes: supported in principle but slow progress



II.4(a)- CCCTB: general approach

For opting consolidated groups:

- One set of tax rules (the common base)
- One consolidated tax return filed in one State (one stop shop)
- Intra-group transfer pricing replaced by consolidation and apportionment of the consolidated base
- Automatic offset of losses within the group



II.4(a)- CCCTB: defining the base

- Systematic reference to IAS/IFRS but no formal link
- Depreciation: Pooling versus individual asset approach / mixed approach
- General methodology: Balance sheet method (separate tax balance sheet) or Profit and loss account method
- Local Taxes: deductible against consolidated base or after sharing ?
- Foreign income: include/exclude? If included exemption method general rule and switch to credit method where local taxation too low



II.4(a)- CCCTB: allocation of base

- Need of a mechanism that is difficult to manipulate but easy to apply
- Formulary apportionment

$$\text{Tax Base MS A} = \left(\frac{1}{3} \frac{\text{Sales}^{\text{MS A}}}{\text{Sales}^{\text{Group}}} + \frac{1}{3} \frac{\text{Payroll}^{\text{MS A}}}{\text{Payroll}^{\text{Group}}} + \frac{1}{3} \frac{\text{Assets}^{\text{MS A}}}{\text{Assets}^{\text{Group}}} \right) * \text{CCCTB}$$

- Which factors? Sales, payroll, assets
- Valuation and location of these factors
- Weighting of the factors?
- Uniform formula; sector-specific adjustments?



II.4(a)- CCCTB Commission proposal



Proposal for CCCTB scheduled for October 2008

- Optional
- Consolidated – with apportionment mechanism
- ‘One stop shop’ administration
- Tax Base only (no initiative on rates)
- Proposal to be adopted by the Commission in 2008 (FR presidency)
- Unanimity & Enhanced Cooperation (9 MS to decide for themselves)



II.4(b)- Coordination initiatives

- Problem: in many cases, national tax legislation are creating obstacles (discriminations, double taxation, double non taxation) to cross-border business because:
 - measures are incompatible with the treaty provisions;
 - and/or they are incompatible with measures in force in other Member states.
- CCCTB alone will not resolve all problems as:
 - Not all companies in (optional);
 - Not all Member states in (enhanced cooperation);
 - Not all taxes in: personal income tax, interaction between CCCTB and other elements of direct tax systems.



II.4(b)- Coordination initiatives

- **Commission has adopted several Communications on coordination in the following areas (19 December 2006 and 6 December 2007):**
 - Content and scope of « coordination »
 - Exit taxes: related to business restructuring
 - Tax treatment of cross border losses
 - Anti-Abuse measures: align with ECJ jurisprudence, i.p. “wholly artificial arrangement”
- **Now Member States need to take work forward**



II.4(b) Coordination initiatives

- Other areas envisaged or suggested by Member States:
 - Charities
 - Gambling
 - Bilateral treaties and binding dispute resolution mechanism (“compulsory arbitration”) -2009;
 - Withholding taxes – Initiative – end of 2008
 - Real Estate Investment Tax Schemes?
 - Inheritance taxes - 2009



III. Activity of Taxation Working Groups at BUSINESSEUROPE



III.1- Fiscal Affairs Group

Chairman: Krister Andersson (Swedish Federation)

- **Sub-groups: VAT Group and Green Tax Group**

Focus: : remove double taxation, achieve cross-border loss consolidation and reduce compliance burden; economic efficiency and Lisbon Agenda

Activities:

- Positions on short- and long-term Commission proposals:
 - Better coordination of Anti-Abuse Measures (Direct Taxation)
 - Continuous input on work on CCCTB
 - Follow-up on international/OECD policies
- Participation in EU Joint Transfer Pricing Forum
- Survey 'Corporate tax Obstacles in the Single Market'



III.2- Value-Added Tax Group

Chairman: Henk Wildeboer (Philips, VNO-NCW)

Focus: improve functioning of VAT system

Activities:

- Positions on short- and long-term Commission proposals
 - Position on Commission Proposals to fight VAT Fraud
 - Follow-up on implementation of the adopted VAT Package
 - VAT on Financial Services and Insurances, ongoing
 - Revision of Invoicing Directive (before end-year)
 - Consultation on the extended use of reduced VAT rates
- Note on VAT-related obstacles in the Single Market



III.3- Green Tax Group

Since January 2008

Chairman: Chris Lennon (Rio Tinto, CBI)

Focus: environmental/energy taxation

Activities:

- Positions on short- and long-term Commission proposals
 - Green Paper on Market-Based Instruments for Environmental Purposes (July 2007)
 - Feed-in on positions of other working groups
 - Revision of Energy Tax Directive until end-2008
- Activity in Market-Based Instruments Forum (mid-year)



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Thank you for your attention!

