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Common Corporate Tax Base (CCTB) and Common Consolidated Corporate Tax Base (CCCTB)

KEY MESSAGES

- 1** A Common EU Consolidated Corporate Tax Base (CCCTB), has the potential, by improving the functioning of the Single Market and making it easier and cheaper for cross-border companies to expand, to promote investment and jobs. A CCCTB would also eliminate transfer pricing within the EU and reduce the risk of double taxation.
- 2** The proposal for a Common Corporate Tax Base (CCTB), i.e. without consolidation, would not bring sufficient benefits to the business environment to offset the reduction in competitiveness and increase in administration costs. Major improvements on the common base are required to make it more competitive vis-a-vis the world. These include especially the depreciation rules, the switch-over rule, CFC rules and specific limitations on deductibility of legitimate business costs and final losses. The initial loss-offset proposed in the CCTB stage is not sufficiently comprehensive to replace full consolidation.
- 3** While some businesses have welcomed the Commission's CCCTB proposal, others believe it needs to be further developed in order to better support competitiveness and growth given the loss in flexibility for Member States particularly for smaller countries. Both the allocation key and the investment allowances could better reflect modern business models if they recognized intangible investment, whilst the allowance for growth and investment risks punishing companies during economic downturns. Many businesses see a need to make the proposed CCCTB optional for all firms.

WHAT DOES BUSINESSEUROPE AIM FOR?

- *We support a corporate tax system that promotes competitiveness, investment, employment and growth.*
- *A CCCTB has the potential to support growth, but putting in place a CCTB (i.e. without consolidation and mandatory for large businesses), will raise costs, without providing competitiveness benefits.*



BusinessEurope's approach to corporate taxation

BusinessEurope believes it is paramount that the corporate tax system in Europe is conducive to investment, innovation, growth and the creation of high-skilled jobs. Tax obstacles to cross-border investments within the internal market -as well as with third countries- must be removed and the administrative burden of complying with tax rules must be substantially reduced. A level-playing field is required to ensure European competitiveness.

BusinessEurope welcomes the renewed emphasis to reduce double taxation in the EU and the efforts to ensure that tax systems are fair and efficient, so that they can support a stronger and more competitive economy. We concur with the EU-Commission that this should be done by creating a more favourable tax environment for businesses that ensures tax certainty and competitiveness while reducing compliance costs and administrative burdens.

1. The Common Corporate Tax Base (CCTB)

On 25 October 2016, the Commission presented a new proposal for a CCCTB as part of its Corporate Tax Reform Package. In contrast with the Commission's 2011 proposal, the 2016 proposal was split into two separate proposals, one including full consolidation (CCCTB), and one without (CCTB). Discussions on the CCCTB are only expected to start after the CCTB has been adopted.

Today, many businesses still face significant administrative burdens and high tax risks to comply with up to 28 national tax regimes within the EU. A common corporate tax base has the potential to play a pivotal role in facilitating business activities and simplifying administration. **However, the element of consolidation is essential in this process. Without full consolidation, we believe that CCTB would entail too many inherent disadvantages that would outweigh the potential benefits from a common tax base.**

Since national tax rules will continue to apply in many situations, the system will not create a level-playing field. It is unclear to what extent national consolidation rules can be retained and can function in situations of restructuring and in conjunction with the proposed loss-offset mechanism.

In addition, a common, but not consolidated, corporate tax base would suffer from the same complexities arising from transfer pricing and lack of loss relief as exists today within entities in the different EU member states. Cross-border loss-relief could replace some elements of consolidation, but the current design is of limited benefit to cross-border groups. Offset losses will be reincorporated once the loss-making subsidiary returns to profit or after five years. In practice, the rules as drafted will result in setting up deferred tax liabilities, which neutralises any Profit and Loss benefit.

Furthermore, the introduction of a CCTB does not resolve the problem of administrative burden. As outlined in the European Commission's own impact assessment, multinationals will see an increase of 4% in time spent on their tax returns in a CCTB-



scenario without consolidation, thus negatively affecting European competitiveness. Moreover, the lack of consolidation results in transfer pricing concerns mainly remaining. In addition, the lack of very clear rules will lead to various interpretations of rules by the different member states, which will create additional complexities and burdens. Therefore, any decision on CCTB should be an integral part of a consolidated system, committed to by Member States from the outset.

Given that cross-border loss offset is not sufficiently comprehensive to replace full consolidation and taking the Commission's own impact assessment into account, the CCTB should at a minimum be optional for all firms until full consolidation, allowing for 'market testing', so that European competitiveness, jobs and growth are not negatively impacted. This approach can be a stepping stone towards a full CCCTB.

Some aspects of the CCTB need to be re-examined and supported by a revised impact assessment:

- **Flexibility:** While common rules are not a bad thing as such, a common EU tax base might put Member States in a much too rigid system in the future that does not allow for addressing future trends in taxation. This could damage EU competitiveness in the long run. Removing this flexibility will have a great impact on Member States, as tax legislation has always been an inherent part of a country's economic policy, and a crucial tool to balance a country's budget. A common EU tax base might make member states more vulnerable. This may lead to member states developing additional local taxes which may cause even more complexity within the EU.
- **The Allowance for Growth & Investment (AGI):** The proposed measure to address the debt/equity issue raises concerns. By adding a reduction of equity capital to taxable income, a cyclical element to corporate taxation is introduced. This is unwarranted. During a recession, equity capital may very well be reduced and it does not give rise to an increase in the ability to pay taxes. This may result in a higher tax bill during economic hardship. In addition, in case of capital decrease, the benefit of AGI is automatically reduced since the yield would be calculated on a lower basis after capital decrease. This might result in high-value and high-risk investments being done outside of the EU. Debt relief for equity should not be ground for further reduction of deductibility of interest as proposed by the Commission.
- **Depreciation Rules:** Depreciation rules should be simple and competitive. The number of depreciation classes should be kept to a minimum and given the rapid transformation of assets, businesses and trade, a shorter economic life-span is called for than presently envisaged by allowing a depreciation rate of 25% declining balance.



- **Support for R&D and intangible investment:** In order to increase investment and EU competitiveness, the super deduction for R&D should be aligned with leading global benchmarks. There is also a need for greater provision to support intangible investment.
- **Tax Avoidance:** While BusinessEurope fully shares the objective to fight fraud and evasion, we do believe that competitiveness should be at the heart of the CCTB-proposal and that profits should be taxed where economic activity takes place and value is created. Member States have already agreed on many measures during the BEPS-discussions, and will be surprised to see that the Commission proposes even more stringent measures in its CCTB-proposal than those that were agreed on in BEPS. This will break the consensus at OECD-level. Moreover, the Commission risks putting the EU at a competitive disadvantage by going faster/further than BEPS-recommendations. We therefore believe that the EU should remain in line with the international consensus and put competitiveness at the heart of the CCTB.

For example, the Switch-Over Rule is now taken into the CCTB-proposal, while this was explicitly excluded from ATAD. The interest limitation rule has also become substantially sharper and the CFC rules lack a substance carve-out. Furthermore, all legitimate business expenses should be allowed relief somewhere.

- **Timetable:** We are concerned that the short implementation time for CCTB would not be suitable for companies. Having regard to the length of the legislative process and given the significant change this proposal would bring to the tax system, it is difficult for companies to already implement the CCTB by December 31st 2018, and to apply the system immediately the day after. We recommend postponing the effectiveness of the CCTB to a later date. At that date, an agreement on CCCTB should have been reached.
- **Final Losses:** The proposal does not entail a specific provision regarding final losses. We refer to scenarios where losses are derived from the termination or cease of activities by winding up a subsidiary or closing a Permanent Establishment (PE).

This is particularly important for the oil & gas industry which deals with finite resources and is characterized as highly intensive in capital investment with a low level of success (high level of risk). Our understanding is that such final losses should be deductible, but limited to the amount in excess of income that previously has been exempt from taxation. Such deductibility of losses should not be restricted to losses arising within the EU as such restriction would imply a competitive disadvantage for EU companies with respect to non-EU companies.

- **Link with accounting rules:** In common with the 2011 proposal, there is no guidance about the proposed relationship between the CCTB and accountancy frameworks. There is a risk that the reconciliation rules will therefore be different in the 28 member states. If a specific and separate tax accounting system has to



be put in place in each member state, this will increase substantially the compliance costs for companies

- **The proposed dispute resolution mechanism** needs to be implemented urgently, and before any steps to implement the CCTB are taken. An agreed proposal must limit scope for Member States to circumvent a solution.
- **EU rulings:** Binding rulings should be allowed at European level, especially regarding transfer pricing issues.
- **Consolidation Calculation:** The proposal is unclear in how the consolidation calculation should be done and to what extent national consolidation rules can function in situations of restructuring and in conjunction with the proposed loss-offset mechanism. Requiring a consolidation for tax purposes that takes into account the local GAAP annual accounts of entities in 28 member states may not be practical and should not be adopted as the required approach. One approach to consider would be to allow MNCs to start with an EU accounting consolidation under IFRS and then make adjustments to come to the tax result.

2. The Common Consolidated Corporate Tax Base (CCCTB)

On the condition that the above-mentioned concerns are adequately addressed, we believe that, with the addition of the crucial condition of consolidation, properly implemented and using an allocation key reflecting economic reality, the benefits of a CCCTB may outweigh the negatives. Only a fully-fledged CCCTB with a one-stop-shop has the potential to provide a boost to investment and the single market and reduce administrative costs.

A CCCTB, properly implemented, has the potential to considerably improve the functioning of the Single Market from a tax perspective. At present, many businesses are frustrated, both by the administrative costs of complying with up to 28 different tax regimes within the EU, and the lack of ability to consolidate profit and losses made in different member states. Transfer pricing concerns are widespread as well as the risk of international double taxation.

The CCCTB through its proposals for businesses to be able to file a single tax return for all EU activities through a "One-Stop-Shop" system, dealing with just the tax authority in one Member State rather than multiple tax authorities, as well as to consolidate losses in one Member State against profits in another, has the potential to significantly improve the growth and investment-friendly climate of the EU tax systems. In particular, companies will have an increased incentive to expand into new EU markets, knowing any initial losses will reduce tax liabilities built up in other Member States, thereby contributing to increased competition, productivity and growth.

- **The Allocation Key:** The allocation key does not reflect current business models or economic reality, particularly in relation to its treatment of intangibles and financial assets. We are concerned that it does not seem to be in line with



international tax rules, transfer pricing guidelines or with the BEPS-principle of substance and value creation. This would potentially create even more tax disputes between EU-countries and third countries and cause more instances of double taxation.

Moreover, we do recognize the concerns, particularly of some smaller Member States, with small domestic markets, regarding the allocation formula. Having the sales factor included in the allocation key, at an equal importance as the production factors labour and capital, could result in considerable revenue losses for these countries. Sales are also interpreted from a “destination” point-of-view which is also not in line with the principles of BEPS. This has the potential to harm the overall economic climate in these smaller Member States, if they try to recover the decline in tax revenue, by raising taxes on investments and corporate taxes.

- **Interaction with third countries:** The interaction of the CCCTB with the tax systems of third countries is very important. The effects on tax treaties, and the multilateral instrument being developed in the G20/OECD context must be analyzed thoroughly.
- **Optionality:** Whilst we welcome the option for SMEs to decide whether to opt into the CCCTB system, particularly given some of the specific drawbacks outlined above, the EU must guard against discrimination between companies or of creating additional barriers to SME expansion. As national rules continue to apply in many situations, there is a risk the system will not create a level-playing field. In this context, many businesses see a need for the CCCTB to be optional for all companies, regardless of size in order to prevent disproportionate negative effects in specific sectors and/or countries.