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From:	Parliament of Malta
date of receipt:	26 December 2016
To:	General Secretariat of the Council

Subject:	Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) [doc. 13731/16 FISC 171 - COM(2016) 683 final] Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) [doc. 13730/16 FISC 170 IA 99 - COM(2016) 685 final] – Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality
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Delegations will find attached the above-mentioned reasoned opinion.



L-iSpeaker

The Speaker

24 December 2016

**President of the European Parliament
President of the Council of the European Union
President of the European Commission**

**PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CONSOLIDATED
CORPORATE TAX BASE (CCCTB) (COM(2016)683)**

**PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CORPORATE TAX
BASE (COM(2016)685)**

The House of Representatives of Malta examined the two legislative proposals indicated above and concluded that they do not satisfy the principle of subsidiarity and proportionality.

Therefore, attached to this letter please find the reasoned opinions of the Parliament of Malta as provided for in Protocol No. 2 of the Lisbon Treaty.

Yours sincerely,



**Anglu Farrugia
Speaker**



PARLAMENT TA' MALTA

**Proposal for a Council Directive on a Common Consolidated Corporate Tax Base -
CCCTB (COM (2016) 683)**

Reasoned Opinion of the House of Representatives of Malta

Subsidiarity Issues

Whilst recalling its reasoned opinion on COM (2011) 121 of 17 May 2011, the House of Representatives of Malta reiterates that the scope behind the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (COM(2016) 683) (herein referred as 'CCCTB') falls outside the Union's exclusive competence and retains that the objectives thereof may be effectively achieved by national means.

The House of Representatives of Malta notes that the principles of subsidiarity and proportionality become relevant where the Union and the Member States share competence in a sector in terms of the Treaty on European Union and the Treaty on the Functioning of the European Union. Although the Commission's aim behind the initiative is to facilitate business throughout the internal market by means of uniform tax legislation, the House of Representatives of Malta sees that the proposed CCCTB will inevitably affect domestic tax revenues and fiscal regimes.

According to the proposal's legal basis (Article 115 of the Treaty on the Functioning of the European Union), the Council acting unanimously and according to a special legislative procedure, and after consulting the European Parliament and the European Economic and Social Committee, shall issue directives for the *approximation* of such laws, regulations or administrative provisions of the Member States directly affecting the establishment or the functioning of the internal market. Despite the Commission's aims to eradicate distortions in the functioning of the internal market, the House of Representatives of Malta holds that 'approximation of laws' contemplates the achievement of a CCCTB system, through consolidation and apportionment impacting national fiscal and budgetary sovereignty which is an essential function of a Member State.

The House of Representatives of Malta further retains that the proposed CCCTB system infringes the principle of subsidiarity for the following reasons:

- Since the CCCTB is optional for companies with global revenues which do not exceed EUR 750 million per annum, smaller companies will not only be faced with 28 different current rule books, but also by the CCCTB and thus may find themselves in difficulty to choose the best system to apply to them. While the proposal does not affect the tax rates applied by Member States, there is a possibility that Member States would be required to change their tax rates.

- Despite the impression that each tax contributor will be dealing with one tax administration, under the CCCTB individual companies would have to interact with the principal tax contributor, both when the consolidation takes place as well as when audits are held by the main competent authority. This is owing to the fact that individual companies are bound under the CCCTB to keep every record and document bearing proof.
- In addition, the proposed CCCTB does not eliminate transfer pricing since this still applies insofar as relating to non-CCCTB companies or between companies in different CCCTB groups.
- Mechanisms aimed at reducing unwarranted or unintended opportunities of tax avoidance are already regulated by the Code of Conduct Group (Business Taxation) and the Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (herein referred as the 'ATAD I') and the Proposal for a Directive as regards hybrid mismatches with third countries (herein referred as the 'ATAD II'), and hence further action at Union level is not required for the attainment of this aim.
- Finally, the apportionment formula causes distortion to the comparative and competitive advantage of Member States which have economies primarily depending on labour-intensive economic sectors and penalises those economies where the productivity level is relatively high, and/or which are moving towards economic activities which have a higher added value, and/or where the market size is limited. Several elements of consolidation could be implemented by the Member States individually or jointly by using mechanisms which do not impact in this manner and so extensively on the powers of Member States, and offer a good enough prospect to encourage cross-border activities.

The House of Representatives of Malta thus holds that less intrusive choices can lead to the achievement of the objectives behind the CCCTB mechanism, both in the short term as well as in the long term, without interfering with the principles of subsidiarity and proportionality.

Position of the House of Representatives of Malta

The House of Representatives of Malta is not supportive of this dossier. As with the 2011 proposal, the House of Representatives of Malta is not in favour of the revenue apportionment formula (the consolidation therefore) which rewards those economies that are still dependent on old labour-intensive economic sectors and penalises those economies where productivity is relatively high and / or that have moved to higher value-added economic activities and / or where market size is limited.

As a result of this, the proposed CCCTB will redistribute wealth between Member States such that you can, technically speaking, get a transfer of wealth from a relatively poor developing EU economy to a much more developed and richer EU economy. It will also

improve the fiscal position and sustainability of some countries while decreasing that of others, not least through the erosion of their tax base.

Also, implementing the CC(C)TB as a whole does not preclude the possibility that there will be an increase in tax competition since the likelihood of Member States to resort to tax rate reductions will continue as a tax incentive to attract foreign investment. Also one must not lose sight of the fact that tax administrations would need to fully cooperate and coordinate their activities to achieve fiscal control in the manner as envisaged by the CC(C)TB package, thus placing additional administrative burdens on tax administrations.

Possible Implications

The apportionment formula will lead to a loss of revenue as the components of sale by destination, employment & salaries, and assets in jurisdiction all militate against small jurisdictions like Malta.



Angelo Farrugia M.P.
Speaker

26 December 2016



PARLAMENT TA' MALTA

Proposal for a Council Directive on a Common Corporate Tax Base - CCTB (COM (2016) 685)

Reasoned Opinion of the House of Representatives of Malta

Subsidiarity Issues

Whilst recalling its reasoned opinion on COM (2011) 121 of 17 May 2011, the House of Representatives of Malta reiterates that the scope behind the Proposal for a Council Directive on a Common Corporate Tax Base (COM(2016) 685) (herein referred as 'CCTB') falls outside the Union's exclusive competence and retains that the objectives thereof may be effectively achieved by national means.

The House of Representatives of Malta notes that the principles of subsidiarity and proportionality become relevant where the Union and the Member States share competence in a sector in terms of the Treaty on European Union and the Treaty on the Functioning of the European Union. Although the Commission's aim behind the initiative is to facilitate business throughout the internal market by means of uniform tax legislation, the House of Representatives of Malta holds the proposed CCTB will inevitably affect domestic tax revenues and fiscal regimes.

According to the proposal's legal basis (Article 115 of the Treaty on the Functioning of the European Union), the Council acting unanimously and according to a special legislative procedure, and after consulting the European Parliament and the European Economic and Social Committee, shall issue directives for the *approximation* of such laws, regulations or administrative provisions of the Member States directly affecting the establishment or the functioning of the internal market. Despite the Commission's aims to eradicate distortions in the functioning of the internal market, the House of Representatives of Malta holds that 'approximation of laws' contemplates the achievement of a CCTB system, through consolidation and apportionment impacting national fiscal and budgetary sovereignty which is an essential function of a Member State.

The House of Representatives of Malta further retains that the proposed CCTB system infringes the principle of subsidiarity for the following reasons:

- Since the CCTB is optional for companies with global revenues which do not exceed EUR 750 million per annum, smaller companies will not only be faced with 28 different current rule books, but also by the CCTB and thus may find themselves in difficulty to choose the best system to apply to them. While the proposal does not affect the tax rates applied by Member States, there is a possibility that Member States would be required to change their tax rates.
- Whereas the CCTB can offer some kind of deduction in the costs incurred to obtain conformity, a choice between a separate estimate of profits and the CCTB is inadmissible.

- In addition, the proposed CCTB does not eliminate transfer pricing since this still applies insofar as relating to non-CCTB companies or between companies in different CCTB groups.
- Mechanisms aimed at reducing unwarranted or unintended opportunities of tax avoidance are already regulated by the Code of Conduct Group (Business Taxation) and the Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (herein referred as the 'ATAD I') and the Proposal for a Directive as regards hybrid mismatches with third countries (herein referred as the 'ATAD II'), and hence further action at Union level is not required for the attainment of this aim.

The House of Representatives of Malta thus holds that less intrusive choices can lead to the achievement of the objectives behind the CCTB mechanism, both in the short term as well as in the long term, without interfering with the principles of subsidiarity and proportionality.

Position of the House of Representatives of Malta:

The House of Representatives is not supportive of this dossier for the following reasons:

- The CCTB will impose additional administrative burdens on tax administrations as they would have to administer two tax bases in parallel.
- It will create uncertainty for smaller businesses as they need to figure out which tax Base is most appropriate for them;
- The CCTB will also create uncertainty for tax administrations as an impact assessment that would reveal the effects on revenue needs to be had. The novel aspects, e.g. the cross-border loss relief, can reduce the tax base significantly leading to a loss of revenue. Also, a study needs to be had on the effect on certain sectors, e.g. revenue from property companies.
- It is not envisaged that the pro-business aspects introduced by the Commission in this CCTB proposal will offset the above negative effects.

Finally, implementing the CC(C)TB as a whole does not preclude the possibility that there will be an increase in tax competition since the likelihood of Member States to resort to tax rate reductions will continue as a tax incentive to attract foreign investment. Also, one must not lose sight of the fact that tax administrations would need to fully cooperate and coordinate their activities to achieve fiscal control in the manner as envisaged by the CC(C)TB package, thus placing additional administrative burdens as stated above.

Possible Implications

The setting of a Europe-wide common tax base will lead to a loss of revenue to the Maltese exchequer.



Angelo Farrugia M.P.
Speaker

26th December 2016
