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COVER NOTE

From: British House of Representatives
date of receipt: 10 January 2017
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

Delegations will find attached the above-mentioned reasoned opinion.

Resolution of the UK House of Commons – 9 January 2017

Taxation: a Common Consolidated Corporate Tax Base

That this House takes note of European Union Document No. 13730/16 and Addenda 1 to 3, a Proposal for a Council Directive on a Common Corporate Tax Base; further takes note of European Union Document No. 13731/16 and Addenda 1 to 3, a Proposal for a Council Directive on a Common Consolidated Corporate Tax Base; considers that the proposals do not comply with the principle of subsidiarity for the reasons set out in the Twenty-third Report of the European Scrutiny Committee (HC 71-xxi); regrets that because of the inflexibility of the deadline for providing a Reasoned Opinion over the Christmas period it has not proved possible in the time available for the House to serve a Reasoned Opinion in accordance with Article 6 of Protocol No. 2 annexed to the EU Treaties on the application of the principles of subsidiarity and proportionality; and instructs the Clerk of the House to forward this motion and the Reasoned Opinion recommended by the European Scrutiny Committee to the European Commission by way of political dialogue.

Annex:

DRAFT Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission pursuant to Article 6 of protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

Draft Directive on a Common Corporate Tax Base

Draft Directive on a Common Consolidated Corporate Tax Base

The proposals have been presented by the Commission as a package accompanied by a single Impact Assessment. This reasoned opinion covers both and, to the extent that they are separable, each.

The proposals substantially follow a former single proposal for a Directive on the Common Consolidated Corporate Tax Base (subsequently withdrawn by the Commission) which attracted reasoned opinions from: the Bulgarian National Assembly, the Dáil Éireann, the House of Representatives of the Netherlands, the Polish Sejm, the Romanian Chamber of Deputies, the National Council of the Slovak Republic, the Swedish Parliament, and the House of Commons.

The subsidiarity objections of the House of Commons to the previous proposal were: that the Commission had assumed, without clear evidence, that the objectives could not be achieved by informal co-ordination by Member States; and also assumed, without clear evidence, that the burdens identified by the Commission amounted to an impediment to the functioning of the internal market: and that the negative impact on investment, employment and GDP at the EU level outweighed savings in compliance costs and benefits for Member States which were in any event questionable.

The main stated objectives of these proposals are:

- To remove obstacles for companies seeking to do business across frontiers within the Union;
- To ensure that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated;
- To counter tax avoidance;
- To neutralise the current imbalance against equity financing; and
- To encourage research and innovation.

The proposals seek to do this by providing (a) a common corporate tax base which is compulsory for large cross border groups (and optional for smaller groups), which incorporates specific tax avoidance measures and specific allowances for research and development and innovation; and (b) by requiring the group accounts to be submitted to the tax authorities of a single Member State which then apportions the tax base amongst other Member States according to a fixed formula intended to reflect economic reality.

Direct taxation is a matter for which individual Member States have a particularly strong interest as it not only governs the revenue available to each Member State but is also inextricably linked to their social and other policy choices. This is reflected in the fact that powers in this area can only be exercised by the EU if Member States unanimously agree.

With this consideration in mind the House of Commons does not consider that these proposals adequately satisfy the principle of subsidiarity for the following reasons:

- The Commission has not adequately provided evidence of the change in circumstances since its previous proposal which had acknowledged adverse effects on investment, employment and GDP;
- The tax base is an essential element of Member States' tax sovereignty, effecting not only the tax revenue but social and other policy choices. The common corporate tax base removes many of these choices, for example imposing an EU level choice of exemptions for R&D and innovation and leaving Member States the limited options not to tax gifts, charitable donations and pension provisions. Leaving Member States freedom to choose the tax rate without leaving them freedom in respect of the tax base interferes too much with their legitimate freedom in respect of corporation tax;
- The fairness of its tax system, including the balance between equity and debt, is a matter for which Member States are pre-eminently responsible and accountable to their own people, and which needs to be looked at in the round in the context of each Member States' tax system taken as a whole, without the EU imposing its solution in respect of one tax;

- Regulating corporation tax at an EU level means that any changes have to be unanimously agreed at the EU level. This is too cumbersome to react to changes in circumstances, for example, to address a perceived unfairness which in may not be of the same scale or effect in all Member States. That greater flexibility, which can be exercised at Member State level, is needed is demonstrated by the fact that a safeguard mechanism is necessary to allow deviation from the apportionment formula in the Common Consolidated Tax Base. However this degree of flexibility is too limited. Member States need the flexibility to act across the whole area covered by these proposals;
- The Common Consolidated Corporate Tax Base is mostly limited in its effects to the EU, whereas the tax avoidance problems that these proposals are seeking to address are global or at least extend beyond the EU. Member States remain in a better position to address these problems, including on the global scale, through their effective co-ordination within the OECD Base Erosion and Profit Shifting initiative; and
- The advantage of the proposals to corporates is focussed on a reduction of compliance costs rather than an increase in the opportunity to trade. The reduction in compliance costs is balanced by increased administrative costs for Member States and in any event does not outweigh the disadvantages outlined above.



House of Commons
European Scrutiny Committee

Taxation: a common consolidated corporate tax base

Twenty-third Report of Session 2016–17

Documents considered by the Committee on 7 December 2016,
including the following recommendations for debate:

Taxation: a common consolidated corporate tax base

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 7 December 2016*

HC 71-xxi
Published 9 December 2016
by authority of the House of Commons

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Staff

The staff of the Committee are Eve Samson (Clerk), David Griffiths, Terry Byrne, Leigh Gibson, Sibel Taner, Alistair Dillon (Clerk Advisers), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Mike Winter (Second Clerk), Julie Evans (Senior Committee Assistant), Beatrice Woods, Sue Beeby and Rob Dinsdale (Committee Assistants), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk.

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1 Taxation: a common consolidated corporate tax base

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; a draft Reasoned Opinion recommended for debate; drawn to the attention of the Treasury Committee
Document details	(a) Proposed Council Directive on a Common Corporate Tax Base; (b) Proposed Council Directive on a Common Consolidated Corporate Tax Base
Legal base	Article 115 TFEU, special legislative procedure, unanimity
Department	HM Treasury
Document Number	(a) (38210), 13730/16 + ADDs 1–3, COM(16) 685; (b) (38211), 13731/16 + ADDs 1–3, COM(16) 683

Summary and Committee's conclusions

1.1 Direct taxation is a matter for which individual Member States have a particularly strong interest as it not only governs the revenue available to each Member State but is also inextricably linked to their social and other policy choices. This is reflected in the fact that powers in this area can only be exercised by the EU if Member States unanimously agree. Therefore the principle of subsidiarity in this area needs to be exercised with particular rigour.

1.2 In the past the Commission has made plain its hope of introducing harmonisation of direct taxation for companies, in particular by establishing a "Common Consolidated Corporate Tax Base" (CCCTB). In March 2011, it sought, with a proposed Council Directive, to introduce a CCCTB, which would have provided for a single set of harmonised rules for calculating the tax base for taxable profits of companies resident in Member States, allowed companies to opt into this CCCTB or to continue to operate within national tax systems, allowed groups of companies to calculate their total EU-wide consolidated profit for tax purposes, provided for that profit to be allocated to companies making up the group on the basis of an apportionment formula composed of sales, payroll, number of employees and assets in each Member State, and provided that Member States would then tax the profit apportioned to companies in their Member State at their own corporation tax rate. This House and seven other national parliament chambers issued reasoned opinions that this proposal failed to comply with the principle of subsidiarity.

1.3 Achieving agreement on the proposal proved very difficult so the Commission has now formally withdrawn it and replaced it with two proposed Council Directives. One would introduce as a first step a common corporate tax base (CCTB) with application from 1 January 2019 and the other would introduce as a second step a CCCTB with application from 1 January 2021. Although the two proposals would largely repeat the content of the original proposal, the system would only be mandatory for companies in large groups. For others it would be voluntary. The Commission has also proposed additional provisions

concerning allowances for growth and investment and for research and development and to address a bias, inherent in present taxation rules, towards debt for investment, rather than equity.

1.4 The Government makes only a cursory reference to the possibility that the new proposals continue to breach the subsidiarity principles. However, it does repeat to us its belief that:

- the proposals would diminish the sovereign right of Member States to set and control their own taxes;
- they would be ineffective in tackling tax avoidance, particularly at the global level; and
- the most effective way to tackle tax avoidance is through implementing the OECD Base Erosion and Profit Shifting outputs agreed by the G20, to ensure profits are taxed where they are generated

1.5 Clearly the Commission is determined to push on with its attempt to introduce a CCCTB for the EU. We will keep these proposals under scrutiny pending developments in their negotiation, which we imagine may end with the Government having to veto them (as unanimity would allow). This would open the way for enhanced co-operation should a sufficient number of willing Member States want to proceed among themselves.

1.6 Meanwhile, the Government, in its very late Explanatory Memorandum has completely failed to provide either any substantive analysis or its view on whether the proposals are compatible with the principle of subsidiarity. However, we have considered this matter and recommend that the House issue a reasoned opinion for the reasons set out in the annexed draft. We are also drawing these proposals to the attention of the Treasury Committee.

1.7 Given the Government's stance on these proposals we are surprised that it felt able to acquiesce in paragraphs 6, 7 and 8 of the ECOFIN Council Conclusions of 6 December 2016 about an EU corporate tax system.¹

Full details of the documents

(a) Proposed Council Directive on a Common Corporate Tax Base: (38210), [13730/16](#) + ADDs 1–3, COM(16) 685; (b) Proposed Council Directive on a Common Consolidated Corporate Tax Base (CCCTB): (38211), [13731/16](#) + ADDs 1–3, COM(16) 683.

Background

1.8 In the past the Commission has made plain its hope of introducing harmonisation of direct taxation for companies, in particular by establishing a “Common Consolidated Corporate Tax Base” (a CCCTB). In Communications in October 2001, April 2006 and May 2007 it reported on efforts to develop a proposal for a CCCTB. In February 2007, in its Annual Policy Strategy for 2008, the Commission announced its intention to introduce a proposal for a CCCTB in 2008—however this did not happen. In response to all this the

¹ See http://www.consilium.europa.eu/press-releases-pdf/2016/12/47244651630_en.pdf.

then Government consistently made clear that direct taxation is primarily a matter for Member States and that in its view fair tax competition, not tax harmonisation, was the basis on which the EU could compete with the rest of the world.

1.9 In March 2011, the Commission sought, with a proposed Council Directive, to introduce a CCCTB. The proposal would have:

- provided for a single set of harmonised rules for calculating the tax base for taxable profits of companies resident in Member States;
- allowed companies to opt into this CCCTB or to continue to operate within national tax systems;
- allowed groups of companies to calculate their total EU-wide consolidated profit for tax purposes;
- provided for that profit to be allocated to companies making up the group on the basis of an apportionment formula composed of sales, payroll, number of employees and assets in each Member State; and
- provided that Member States would then tax the profit apportioned to companies in their Member State.

1.10 Allocating profit on this basis would be a significant change from the status quo—the current arrangements are for separate accounting in each Member State to determine location of income and thus tax due. These proposals would (a) provide for a single tax base applicable across all Member States and (b) allow large cross border groups to provide a single consolidated corporation tax return for the group to one Member States' tax authority, with the share of the tax base being then apportioned according to a formula intended to reflect economic activity. Member States would continue to be able to set their own corporate tax rates applicable to their share of the tax base.

1.11 Our predecessor Committee was concerned about five matters: the basic justification for the proposal; its legal base and its actual legality; the detailed content of the proposal; subsidiarity; and proportionality. On its recommendation the House debated and adopted a Reasoned Opinion on the proposal.² However, it saw no advantage in further debating with the Government the issue of the correct legal base, its view being that Article 115 TFEU was not appropriate for approximation of direct taxation.³

1.12 In June 2015 the Commission presented an Action Plan it had developed to review the corporate tax framework in the EU. It discussed a series of measures, focused on five areas for EU action: a relaunch of its proposal for a CCCTB; ensuring effective taxation where profits are generated; additional measures for a better tax environment for business; further progress on tax transparency; and EU tools for coordination. The Government told us that it would support those measures that would help to prevent aggressive tax

² HC Hansard, 11 May 2011, cols 1282–1304.

³ (32617), 7263/11 + ADDs 1–2: see Thirty-seventh Report, HC 219-xxxvi (2014–15) [chapter 16](#) (18 March 2015), Forty-third Report HC 428-xxxviii (2010–12), [chapter 11](#) (19 October 2011), Fortieth Report HC 428-xxxv (2010–12), [chapter 5](#) (7 September 2011) and Twenty-seventh Report HC 428-xxv (2010–12), [chapter 2](#) (4 May 2011).

planning by multinational enterprises and enable the international tax rules to be applied more effectively. But it emphasised that the UK would not sign up to any measure that would undermine its tax sovereignty, or damage the prospects for growth in the EU.⁴

The documents

1.13 The Commission now presents its relaunch of its March 2011 CCCTB proposal (which was formally withdrawn) in the form of a proposed Council Directive to introduce a Common Corporate Tax Base (CCTB), document (a), and a proposed Council Directive for a CCCTB, document (b). The CCTB proposal is the first step and the CCCTB proposal is the second step of the Commission's proposed legislation for a common and consolidated corporate tax base in the EU. Its aim is for the proposed CCTB Directive to come into effect from 1 January 2019 and for the proposed CCCTB Directive to come into effect from 1 January 2021. The two legislative proposals are presented as a package and are accompanied by a single Impact Assessment common to both.

1.14 The objective remains the same: a single set of rules for calculating companies' tax bases across the EU, making them accountable to a single tax administration, and attributing income to where the value is created through a formula based on three equally weighted factors—assets, labour and sales. Consolidation of the tax base of companies in a group would provide automatic cross-border loss relief. Transfer pricing rules would not apply within the group, with revenue distribution carried out through a formulated apportionment. The relaunched initiative would provide new mandatory rules for groups above a certain size to enhance resilience, which the 2011 original proposal did not have. The Commission suggests that work on the consolidation element should be postponed until agreement is reached first on rules for a common base, that is, the CCTB.

1.15 The proposed CCTB Council Directive would be mandatory for companies with a permanent establishment in a Member State, of defined types subject to certain defined taxes, in groups with consolidated revenue exceeding €750,000,000 (£676,500,000) during the financial year preceding the relevant financial year. It would be voluntary for such companies which are not part of a group. There are provisions as to how for companies, with a permanent establishment in a Member State, which are part of third country groups would come within scope. The original proposal would have applied to all groups. The definition of a permanent establishment for tax purposes differs from the 2011 proposal by covering only those situated within the EU and belonging to a resident taxpayer.

1.16 The proposed CCTB Council Directive would also:

- contain rules for calculating the corporate tax base, with provisions against tax avoidance, such as the General Anti-Abuse Rule in the original proposal, and on the international dimension of the proposed tax system;
- introduce a new provision for a super-deduction for research and development (R&D) costs—taxpayers would be entitled, for R&D expenditure up to €20 million (£18.04 million), to a yearly extra super-deduction of 50% and beyond €20 million, taxpayers would be able to deduct 25% of the exceeding amount;

⁴ (36940), 9949/15 + ADDs 1–2: see First Report HC 342-I (2015–16), [chapter 80](#) (21 July 2015).

- grant an enhanced super-deduction for small newly-starting innovative companies, without associated enterprises—taxpayers who qualify would be able to deduct 100% of their R&D costs up to the limit of €20 million;
- introduce new rules on interest limitation, allowing the full deductibility of interest, to discourage profit-shifting to low-tax countries;
- include a new rule against debt bias, to neutralise the current framework which discourages equity financing;
- use temporary loss relief with recapture during the first step to compensate for the absence of consolidation, while the CCCTB proposal remained pending, although the rules on depreciation and losses would remain the same as under the 2011 proposal; and
- include rules on hybrid mismatches, to ensure that one of the two jurisdictions in a mismatch, would either deny the deduction of payment or ensure income was included in the common base.

1.17 The proposed CCCTB Council Directive, also differing from the original proposal, would have mandatory and voluntary applicability criteria and many definitions very similar to the CCTB proposal. A two-part test would be used for the eligibility of a consolidated tax group based on controlling more than 50% of voting rights and ownership of more than 75% equity or profits, with a nine consecutive month requirement for establishing group membership. Business reorganisation, withholding taxes preventing circumvention of tax exemptions, formulary apportionment, and taxation of losses and unrealised capital gains provisions are unchanged from the 2011 proposal. The administrative procedures of the new proposal differ from 2011, with the common administrative rules limited to the consolidated group. Single taxpayers who opt to apply the rules under the first step would fall within their national administrative provisions. Groups would deal with a single tax administration in the EU, referred to as the “one-stop-shop”, which would be based in the Member State where the parent company of the group was resident for tax purposes.

1.18 The Commission would be required to review both proposed Council Directives five years after their entry into force and to report findings to the Council.

1.19 The Commission, in discussing the consistency of its proposals with existing policy provisions in relation to taxation, notes that a CCCTB is one of five key areas identified in its 2015 Action Plan⁵ and that the relaunched CCCTB would include rules to address key actions of the OECD Base Erosion and Profit Shifting (BEPS) project.⁶ It says that a CCCTB is one of the initiatives supporting its aim of fairer taxation. Asserting that both proposals fall within the ambit of Article 115 TFEU, the Commission:

- says that the CCTB and CCCTB would apply across the single market and aim to counter aggressive tax planning practices, particularly those of a cross-border nature;

5 *Op Cit.*

6 See <http://www.oecd.org/tax/beps/>.

- argues that the objectives require a common approach as they seek to tackle problems beyond a single Member State and so the initiative complies with the principle of subsidiarity;
- says that the CCCTB initiative does not affect Member States' rights to set their own corporate tax rates;
- suggests that the scope of the relaunched initiative would target companies above a certain size, because they own sufficient resources to engage in aggressive tax planning;
- argues that the envisaged rules would not exceed what is necessary to achieve the objectives of the Treaty for a better functioning of the single market; and
- asserts that soft law would be risky as Member States might not implement rules, thus creating legal uncertainty, and so proposes binding law based on Article 115 TFEU.

1.20 In support of its proposals the Commission says that:

- 175 companies participated in its public consultation;
- non-governmental organisations and public bodies emphasised the impact of a CCCTB on tax planning activities, whilst businesses emphasised the importance of reducing compliance costs and creating a business-friendly environment; and
- feedback from the consultation was reflected in its Impact Assessment.

The Government's view

1.21 In her Explanatory Memorandum of 29 November 2016 the Financial Secretary to the Treasury (Jane Ellison) first, in relation to subsidiarity, says merely that:

“The Reasoned Opinion [of 11 May 2011] sets out Parliament's view [actually that of the Commons alone] that the CCCTB proposal contravenes EU principles of proportionality and subsidiarity, and is therefore unlawful.”

1.22 On the policy and financial implications the Minister says that:

- the Government maintains competency concerns over the relaunched CCCTB proposal;
- it envisages that the proposed CCTB and CCCTB Council Directives represent a ceding of Member State sovereignty over tax—a CCCTB for all Member States diminishes the right of Member States to set and control their own taxes;
- the Government has concerns over the effectiveness of the proposal in tackling tax avoidance, particularly at the global level;
- a CCCTB would only apply to the Member States and therefore this would risk creating mismatches outside the EU—multinational enterprises would still be able to exploit differences in tax systems between the EU and the rest of the world;

- the most effective way to tackle tax avoidance is through implementing the OECD BEPS outputs agreed by the G20, to ensure profits are taxed where they are generated;
- the Government is yet to see evidence that apportioning profits using the formula set out in the CCCTB would remove the ability for tax planning any more than the current transfer pricing rules; and
- the Government has not carried out a study of the likely fiscal impact, but has concerns that UK tax receipts could be impacted if this measure were to change how the tax base is calculated.

1.23 The Minister comments further that:

- the Government is supportive of action to tackle tax avoidance, and has taken action to counter this, for example through committing to implement the G20/OECD BEPS outputs and the EU's Anti-Tax Avoidance Package;⁷ and
- it is supportive of coordinated action at the EU level that is proportionate, respects Member States competency and the principle of subsidiarity.

1.24 Of the Impact Assessment it says that:

- a key choice of the proposals relates to the scope of the tax base—the two options were to either make it mandatory for all or just for a subset of companies;
- it identified two principal actions to address the bias towards debt induced by current tax systems—to allow both or disallow both of debt and equity financing costs;
- for R&D, a tax allowance was considered at varying degrees of generosity;
- it identified the preferred option as “a CCCTB mandatory for large companies, equipped with an ‘Allowance for Growth and Investment’ and with an allowance for R&D expenses”;
- the preferred option aims to increase the fairness of tax systems by creating a level-playing field, and removing incentives for aggressive tax planning in the EU;
- under the preferred option, compulsory application would apply to groups accounting for a turnover above €750 million, a threshold consistent with other EU initiatives on tax avoidance;
- the proposal would offer companies, for which the application of the CCCTB would not be compulsory, the possibility to opt-in to the CCCTB system, so allowing a maximum of flexibility for SMEs and micro-enterprises to benefit from the advantages of a CCCTB without making it compulsory for this set of companies;

⁷ (37480) 5636/16 + ADD 1: see Twenty-fifth Report HC 342–xxlv (2015–16), [chapter 7](#) (9 March 2016).

- a CCTB with cross-border loss relief and an allowance for growth and investment would lead to an increase in investment and employment of up to 3.6% and 0.5%, respectively;
- overall, growth would increase by up to 1.3%;
- compliance costs would be expected to decrease, notably under the CCCTB (10% in compliance time and 2.5% in compliance costs); and
- the cost of setting up a subsidiary would decrease by up to 67%, making it easier for companies (including SMEs) to go abroad.

Previous Committee Reports

None.

Annex: Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission pursuant to Article 6 of protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

Draft Directive on a Common Corporate Tax Base⁸

Draft Directive on a Common Consolidated Corporate Tax Base⁹

The proposals have been presented by the Commission as a package accompanied by a single Impact Assessment. This reasoned opinion covers both and, to the extent that they are separable, each.

The proposals substantially follow a former single proposal for a Directive on the Common Consolidated Corporate Tax Base¹⁰ (subsequently withdrawn by the Commission) which attracted reasoned opinions from: the Bulgarian National Assembly, the Dáil Éireann, the House of Representatives of the Netherlands, the Polish Sejm, the Romanian Chamber of Deputies, the National Council of the Slovak Republic, the Swedish Parliament, and the House of Commons.

The subsidiarity objections of the House of Commons to the previous proposal were: that the Commission had assumed, without clear evidence, that the objectives could not be achieved by informal co-ordination by Member States; and also assumed, without clear evidence, that the burdens identified by the Commission amounted to an impediment to the functioning of the internal market: and that the negative impact on investment, employment and GDP at the EU level outweighed savings in compliance costs and benefits for Member States which were in any event questionable.

8 COM(2016) 683.

9 COM(2016) 685.

10 COM(2011) 121.

The main stated objectives of these proposals are:

- To remove obstacles for companies seeking to do business across frontiers within the Union;
- To ensure that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated;
- To counter tax avoidance;
- To neutralise the current imbalance against equity financing; and
- To encourage research and innovation.

The proposals seek to do this by providing (a) a common corporate tax base which is compulsory for large cross border groups (and optional for smaller groups), which incorporates specific tax avoidance measures and specific allowances for research and development and innovation; and (b) by requiring the group accounts to be submitted to the tax authorities of a single Member State which then apportions the tax base amongst other Member States according to a fixed formula intended to reflect economic reality.

Direct taxation is a matter for which individual Member States have a particularly strong interest as it not only governs the revenue available to each Member State but is also inextricably linked to their social and other policy choices. This is reflected in the fact that powers in this area can only be exercised by the EU if Member States unanimously agree.

With this consideration in mind the House of Commons does not consider that these proposals adequately satisfy the principle of subsidiarity for the following reasons:

- The Commission has not adequately provided evidence of the change in circumstances since its previous proposal which had acknowledged adverse effects on investment, employment and GDP;
- The tax base is an essential element of Member States' tax sovereignty, effecting not only the tax revenue but social and other policy choices. The common corporate tax base removes many of these choices, for example imposing an EU level choice of exemptions for R&D and innovation and leaving Member States the limited options not to tax gifts, charitable donations and pension provisions. Leaving Member States freedom to choose the tax rate without leaving them freedom in respect of the tax base interferes too much with their legitimate freedom in respect of corporation tax;
- The fairness of its tax system, including the balance between equity and debt, is a matter for which Member States are pre-eminently responsible and accountable to their own people, and which needs to be looked at in the round in the context of each Member States' tax system taken as a whole, without the EU imposing its solution in respect of one tax;
- Regulating corporation tax at an EU level means that any changes have to be unanimously agreed at the EU level. This is too cumbersome to react to changes in circumstances, for example, to address a perceived unfairness which in may not be of the same scale or effect in all Member States. That greater flexibility,

which can be exercised at Member State level, is needed is demonstrated by the fact that a safeguard mechanism is necessary to allow deviation from the apportionment formula in the Common Consolidated Tax Base. However this degree of flexibility is too limited. Member States need the flexibility to act across the whole area covered by these proposals;

- The Common Consolidated Corporate Tax Base is mostly limited in its effects to the EU, whereas the tax avoidance problems that these proposals are seeking to address are global or at least extend beyond the EU. Member States remain in a better position to address these problems, including on the global scale, through their effective co-ordination within the OECD Base Erosion and Profit Shifting initiative; and
- The advantage of the proposals to corporates is focussed on a reduction of compliance costs rather than an increase in the opportunity to trade. The reduction in compliance costs is balanced by increased administrative costs for Member States and in any event does not outweigh the disadvantages outlined above.

Formal Minutes

Wednesday 7 December 2016

Members present:

Sir William Cash, in the Chair

Alan Brown	Mr Andrew Turner
Steve Double	David Warburton
Kate Green	Mike Wood
Michael Tomlinson	

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.6 read and agreed to.

Paragraph 1.7 read, amended and agreed to.

Paragraphs 1.8 to 1.24 read and agreed to.

Resolved, That the Report be the Twenty-third Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 14 December at 1.45pm.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Alan Brown MP](#) (*Scottish National Party, Kilmarnock and Loudoun*)

[Geraint Davies MP](#) (*Labour/Cooperative, Swansea West*)

[Steve Double MP](#) (*Conservative, St Austell and Newquay*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Kate Green MP](#) (*Labour, Stretford and Urmston*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Craig Mackinlay MP](#) (*Conservative, South Thanet*)

[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)

[Dr Paul Monaghan MP](#) (*Scottish National Party, Caithness, Sutherland and Easter Ross*)

[Graham Stringer MP](#) (*Labour, Blackley and Broughton*)

[Michael Tomlinson MP](#) (*Conservative, Mid Dorset and North Poole*)

[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)

[David Warburton MP](#) (*Conservative, Somerset and Frome*)

[Mike Wood MP](#) (*Conservative, Dudley South*)

The following members were also members of the Committee during the parliament:

Peter Grant MP (*Scottish National Party, Glenrothes*), Nia Griffith MP (*Labour, Llanelli*), Rt Hon Damian Green MP (*Conservative, Ashford*), Kelvin Hopkins MP (*Labour, Luton North*), Calum Kerr MP (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*), Alec Shelbrooke MP (*Conservative, Elmet and Rothwell*), Kelly Tolhurst MP (*Conservative, Rochester and Strood*), Heather Wheeler MP (*Conservative, South Derbyshire*)



HOUSE OF COMMONS

Jean-Claude Juncker
President of the European Commission
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

By email: SG-NATIONAL-PARLIAMENTS@ec.europa.eu

10 January 2017

Dear President,

POLITICAL DIALOGUE: EUROPEAN UNION DOCUMENTS NO. 13730/16 AND ADDENDA 1, 2 AND 3, A PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CORPORATE TAX BASE AND 13731/16 AND ADDENDA 1, 2 AND 3, A PROPOSAL FOR A COUNCIL DIRECTIVE ON A COMMON CONSOLIDATED CORPORATE TAX BASE (CCCTB)

On 9 January 2017, the House of Commons of the United Kingdom Parliament resolved as follows:

That this House takes note of European Union Document No. 13730/16 and Addenda 1 to 3, a Proposal for a Council Directive on a Common Corporate Tax Base; further takes note of European Union Document No. 13731/16 and Addenda 1 to 3, a Proposal for a Council Directive on a Common Consolidated Corporate Tax Base; considers that the proposals do not comply with the principle of subsidiarity for the reasons set out in the Twenty-third Report of the European Scrutiny Committee (HC 71-xxi); regrets that because of the inflexibility of the deadline for providing a Reasoned Opinion over the Christmas period it has not proved possible in the time available for the House to serve a Reasoned Opinion in accordance with Article 6 of Protocol No. 2 annexed to the EU Treaties on the application of the principles of subsidiarity and proportionality; and instructs the Clerk of the House to forward this motion and the Reasoned Opinion recommended by the European Scrutiny Committee to the European Commission by way of political dialogue.

By way of political dialogue I therefore enclose the draft reasoned opinion, and the relevant European Scrutiny Committee Report.

Yours sincerely,
David Natzler
David Natzler
Clerk of the House

David Natzler, Clerk of the House of Commons
London SW1A 0AA T: 020 7219 1310
