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From:	General Secretariat of the Council
To:	Delegations
Subject:	OPINION of the European Economic and Social Committee - Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) [COM(2016) 683 final - 2016/0336 (CNS)] - Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) [COM(2016) 685 final - 2016/0337 (CNS)]

Delegations will find attached the abovementioned opinion. Please note that other language versions should be available at :

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European Economic and Social Committee

ECO/419
Common (Consolidated) Corporate Tax Base

OPINION

European Economic and Social Committee

Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)
[COM(2016) 683 final - 2016/0336 (CNS)]

Proposal for a Council Directive on a Common Corporate Tax Base
[COM(2016) 685 final - 2016/0337 (CNS)]

Rapporteur: **Michael McLOUGHLIN**

Consultation	Council of the European Union, 21/11/2016
Legal basis	Article 115 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	07/09/2017
Adopted at plenary	20/09/2017
Plenary session No	528
Outcome of vote (for/against/abstentions)	182/2/11

1. **Conclusions and recommendations**

1.1 The EESC endorses the aims of the Commission proposals in the area of the CCCTB.

1.2 The EESC recommends the greatest efforts be made to pursue the CCCTB by consensus, allowing for the sensitive nature of the issues in terms of subsidiarity and state sovereignty.

1.3 The EESC understands the reasons behind the two-stage approach adopted by the Commission but urges the speedy introduction of stage two after the agreement of a common base, as it is only after consolidation that companies will feel the major benefits. There will be some benefits in terms of combating aggressive tax planning from stage one but the consolidation completes the task.

1.4 The EESC recognises that the Commission relaunched the CCCTB proposal both with the objective to aid the single market and to combat aggressive tax planning, attributing income where the value is created. The EESC urges Member States to pursue completion of both stages as an effective measure to combat fraud and promote growth.

1.5 As in 2011, the EESC recommends a re-examination of the apportionment formula for the CCCTB. The Commission and the Member States should reflect on whether to exclude intellectual property (IP) from the formulary apportionment. The sales by destination key may also need changes to ensure equitable implementation. The Committee is concerned that the operation of the proposed sales key will result in many of the smaller exporting Member States losing substantial amounts of taxable income to the larger consuming Member States. The EESC believes the proposal should aim for an equitable formula and to avoid systematically unbalanced effect.

1.6 The EESC urges caution on the proposals on depreciation to ensure they reflect the real experience of businesses. Depreciation allowances may be too limited for certain asset classes subject to very rapid obsolescence due to the pace of technological change.

1.7 The EESC welcomes the recognition of the tax treatment of equity financing for corporate investments, through the proposal to put debt and equity financing on an equal footing. However, companies facing economic hardship should not be exposed to a greater tax burden.

1.8 The EESC recommends that there should be an equitable balance among Member States as a result of the proposals and thus their impact should be examined in detail on a Member State by Member State basis, in terms of investment attractiveness, job retention and creation. The EESC emphasises that Member States should provide the relevant information to make this happen.

1.9 The EESC recommends that the CCCTB proposals should reduce complexity where possible given the stated aim of providing certainty and simplicity. This is particularly important for the treatment of intangible assets on company balance sheets.

1.10 The EESC urges the Commission to address the need for flexibility and ensure that states and companies are able to respond to changing global or domestic economic circumstances, while respecting EU procedures and joint cooperation.

1.11 The CCCTB would be more effective and more likely to achieve the necessary unanimity if a number of key concerns, outlined in this opinion, were addressed.

2. The Commission proposal

2.1 The re-launched Common Consolidated Corporate Tax Base (CCCTB) proposal is a single set of rules to calculate companies' taxable profits in the EU, aimed at making a strong contribution to growth, competitiveness and fairness in the single market. With the CCCTB, cross-border companies would comply with one, single EU system for computing their taxable income, rather than different national rules. Companies would file one tax return for all of their EU activities, and offset losses in one Member State against profits in another. Intra-group transactions would no longer be taxed at entity level, eliminating transfer pricing issues in the CCCTB area. The consolidated taxable profits would be shared between the Member States in which the group is active, using an apportionment formula. Each Member State would then tax its share of the profits at its own national corporate tax rate.

2.2 There are also new provisions compared to the 2011 proposal. First, the 2016 proposals call for mandatory rather than optional rules to govern consolidated groups with an annual turnover of EUR 750 million or more; second, there are rules to encourage companies to raise equity when financing investments to counter the bias towards debt financing; and third, a super deduction for research and development (R&D) is introduced. There are also proposals in the Common Base for temporary cross-border loss relief with subsequent recapture until consolidation is introduced. The second step in the proposals will move forward once there is political agreement on the proposals for the Common Base. Until this time, the second phase remains pending for consideration by the Council.

2.3 The current Commission proposal consists of two separate proposals for Council Directives. One proposal is on a "Common Corporate Tax Base" or CCTB and the other on a "Common Consolidated Corporate Tax Base" or CCCTB. The separation of the two elements in two separate proposals is a key difference between the 2016 and 2011 proposals. The Commission is proposing a staged approach with the CCTB first, to be followed later by the CCCTB.

2.4 The Commission also relaunched the CCCTB proposal to combat aggressive tax planning as well as to aid the single market, recognising it "would be unlikely to get adopted, in its entirety, without a staged approach". However the Commission emphasises that consolidation is an integral part of the proposals. The compulsory nature of the CCCTB for companies with turnover of more than EUR 750 million is part of a strategy to enhance growth prospects and combat aggressive tax planning. The Commission believes the proposals are more attractive for business generally in terms of compliance and complexity and promoting equity over debt in terms of tax relief. Cross-border offsets of losses in one Member State against profit in another are also seen by the Commission as an advantage of the proposals.

2.5 The Commission states that the current system of international corporate taxation "no longer fits the modern context". Mismatches can occur when national rules are drafted without consideration for international issues, according to the Commission. The 2016 proposals, while being compulsory for larger groups, also provide for a system of optional compliance for entities subject to corporate taxation in the EU which come under the turnover limit of EUR 750 million. The Commission views these proposals as attributing income to where the value is created.

2.6 The Commission recognises the ambitious nature of the proposals and thus the staged nature of their implementation. In effect, it states that difficult debates on the consolidation element may delay other important areas where there may be more consensus. However, the two proposals are still submitted together as part of the same initiative. The Commission further states that consolidation remains an essential element of the initiative and major tax obstacles faced by the relevant groups can only be dealt with through consolidation.

3. **The benefits of the proposal**

3.1 The proposals contain significant benefits for businesses and citizens. There will be a reduction in compliance costs and complexity for larger businesses, and those opting in, trading across the EU. This is also a key issue in furthering the completion of the single market and a level playing pitch for all. The CCCTB, if properly introduced, can play a key role in combating aggressive tax planning and restore faith amongst the citizens in the tax system. A common approach to the tax base will ensure that all EU countries are taking a similar approach and critically counting the same things and allowing the same deductions. Multinational companies can now make use of different tax bases and different tax rates across different Member States and sometimes off shore entities to pay very low effective rates. The CCCTB addresses these issues.

3.2 Aggressive tax planning results in lower tax revenues. The level of tax planning is of grave concern to EU citizens. The EU has taken many measures to tackle this issue, adopting the action plan. One of the goals of the CCCTB is to explore how to take this approach further to ensure effective corporate taxation cross the EU.

3.3 The considerable reduction in transfer pricing within the EU brought about by the CCCTB will combat the practices leading to aggressive tax planning. For example assets such as intellectual property are often utilised as it is difficult to put a value on them or they are valued by the company itself, nominally reflecting an open market value. These are often subject to internal trading within company structures.

3.4 The CCCTB can combat aggressive tax planning in determining where real economic activity takes place. Companies may employ a number of people and/or have significant assets in a Member State yet have no or very low profits in that Member State. Currently companies having an EU-wide structure may organise their business in such a way that the bulk of their EU profits ends up in a European HQ in a jurisdiction that has the lowest rates and/or the most generous deductions. This, combined with the use of transfer pricing for intangibles, may lead to extremely low rates of effective corporate tax for multinationals with very large turnovers in many jurisdictions. The proposals for CCCTB can address these issues. The formula set out in the proposals aims at where economic activity is taking place, with sales, labour force and assets being key components of this. National tax authorities also have a role to play on these issues.

3.5 When adopted, the CCCTB should address competitiveness for all companies. The proposal should take into consideration the different issues facing the SME, as well as big firms.

4. **General comments**

4.1 The EESC welcomes the proposals for a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base as a means of enhancing the single market by simplifying the tax affairs of larger companies and a means of tackling aggressive tax planning. There have been considerable changes in the broader European and global economic and political context since 2011. The previous CCCTB proposal did not make any significant progress. The Committee hopes that the new proposals that takes global developments into account will be more successful.

4.2 As debate on the CCCTB moves forward, it is important that consolidation should remain the primary objective. The proposal would also benefit from reduced complexity where possible. The EESC encourages the Commission to seek the maximum amount of consensus in furthering both aspects of the proposal.

4.3 **The CCCTB apportionment system**

4.3.1 There are a number of issues with the apportionment formula. The EESC is concerned that there has been no attempt to explain or define in a meaningful way how the general formula (one third assets, one third employment and one third sales by destination) is an appropriate representation of the economic reality of the firm for apportioning taxable profits between the Member States. The existing proposal could cause significant changes to where profits are accrued for tax purposes, which will have significant and unknown effects on companies and Member States. Tax revenue is a fundamental element in economic management, which could have a serious impact. The EESC believes the proposal should aim for an equitable formula and to avoid systematically unbalanced effect.

4.3.2 The focus on issues such as plant, machinery and staffing, while relevant, does not give the full picture of modern industry. The digital single market strategy, for example, emphasises the importance of intellectual property. Similarly, developments in relation to the capital markets union may focus on financial assets.

4.3.3 The Committee's concern arises largely from:

(1) the proposal to exclude intellectual property (IP) from the asset key. IP is an economic factor that is easy to shift for profit calculation. The EESC recognises that it is difficult to assess and thus was not part of the Commission proposal, and calls on Member States to reflect on the best way to address this important topic. This is particularly pertinent given that IP is such an important driver of economic value creation and increasingly dictates the direction in which modern economies are moving. The solution is also inconsistent with the Commission's continued emphasis on the digital single market;

(2) the proposal to include a "sales by destination" key. The Committee is concerned that the operation of the proposed sales key will result in many of the smaller exporting Member States losing substantial amounts of taxable income to the larger consuming Member States. The economic and social impact is unknown and the sales key would benefit from quantifying its impact; and if necessary, it should be reconsidered;

(3) The introduction of a full EU-wide system of calculation and consolidation of corporate tax would be a major change to the business environment in the EU and has the potential to boost the single market. It should therefore be carefully analysed and national impact assessments are called for. One significant existing set of rules for all major international companies are the international financial and accountancy standards. Any divergence from these in the business planning process would place additional burdens on businesses rather than allowing savings. As the CCCTB's apportionment formula is developed by the Commission solely for this specific purpose it is prima facie at odds with some of the international accountancy standards;

(4) Since clarity and consistency in the use of the terms is crucial especially in the field of taxation, the Committee recommends that all key elements and particularly definitions need to be addressed in the directive.

4.4 **Debt versus equity financing**

4.4.1 The Commission proposals place a lot of emphasis on the tax treatment of debt versus equity in corporate financing. As a broad element of industrial strategy the promotion of equity can be seen as valuable as it diversifies risk in a company and avoids many aspects of volatility in planning.

4.4.2 More specifically the Committee is concerned that the chosen approach may be pro cyclical in that a fall in equity in bad times, or a recourse to debt due to lack of alternatives, would give rise to an increase in taxable income, thus disimproving the situation of the company just as it is facing its most difficult times. This would have a subsequent impact on jobs and growth. There is therefore, according to the EESC, a need to reflect on the chosen approach.

5. **Specific comments**

5.1 The Commission's proposals are in its view strong on supporting business and creating an easier and more effective regime for compliance and doing business. While promoting the single market and the needs of business may be seen as one of the key aims of the EU, at the existential level the EU is established by its Member States to serve their needs. At the very least, there needs to be a systematic assessment undertaken by the Commission of the impact on each Member State of the proposed changes to tax revenues, investment and employment, drawing on international database analyses and Member State data. The EESC urges Member States to give the Commission access to all relevant data, and suggest that impact assessments be conducted for both CCCTB stages.

5.2 While the elimination of transfer pricing is key to the proposals it is clear that the concept would still exist when groups have activities both inside and outside the EU. This will inevitably entail distinct and separate arrangements for many companies. Thus attention needs to be paid to the construction of groups inside and outside the EU and mixed structures. The potential for avoidance then may move from the taxation base or current hybrid mismatches to company structures and groups.

5.3 The EESC calls for CCCTB debate to follow European procedures once it is agreed. While the policy should be somewhat flexible to changing conditions, There also needs to be organised mechanism for adjusting policy to economic circumstances.

5.4 The treatment of research and development is very welcome. A super deduction in this area will naturally significantly increase activity and contribute to competitiveness. It would be important to put the proposed measures here into context by comparing them with what Member States already provide for (which is quite varied). While the allowance for growth and investment is important it is also crucial that as a new incentive this and indeed the R&D super deduction do not become new forms of tax abuse when implemented.

5.5 The Commission needs to consider the likely conflicts that may arise between tax authorities and the main tax authority. Conflicts about taxation of subsidiaries in a group and the apportionment of profit may well arise and take up any time saved by removing transfer pricing issues.

5.6 Clarity should be provided on how Member States' audits take place in a subsidiary within a group if the revenue authorities of the Member State concerned wish to do an audit.

5.7 The provisions on depreciation periods may be inconsistent with some business practices; some flexibility should be considered here. Many companies replace their equipment (for example computers) every year or two to keep ahead of obsolescence, and this will only accelerate across a number of asset classes in the coming years due to the rapid pace of technological change.

5.8 It is still important to guide against tax avoidance through accounting codes arbitrage as such activity might still be possible before consolidation occurs.

5.9 The proposals also allow multinational companies to exclude intermediary entities, including those in tax havens, as these are outside the EU. This then needs to be dealt with by different methods such as rules on transfer pricing, controlled foreign corporations, and a general anti-avoidance principle.

Brussels, 20 September 2017

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The president of the European Economic and Social Committee