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First edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

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# Common consolidated corporate tax base (CCCTB)

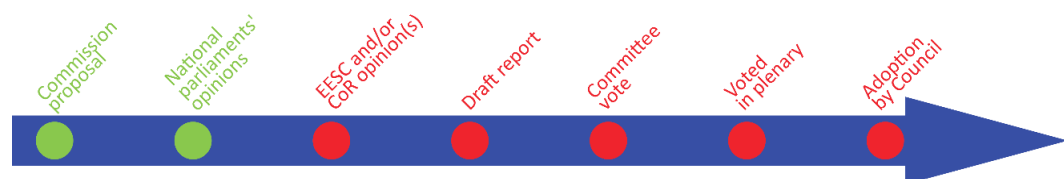
The European Commission has decided to re-launch the common consolidated corporate tax base (CCCTB) project in a two-step approach, with the publication on 25 October 2016 of two new interconnected proposals: on a common corporate tax base (CCTB), and on a common consolidated corporate tax base (CCCTB). The 2011 CCCTB proposal (COM(2011) 121) was withdrawn on the same day.

Building on the 2016 CCTB proposal, the 2016 CCCTB proposal introduces the consolidation aspect of this double initiative. Companies operating across borders in the EU would no longer have to deal with 28 different sets of national rules when calculating their taxable profits. Consolidation means that there would be a 'one-stop-shop' – the principal tax authority – where one of the companies of a group, that is, the principal taxpayer, would file a tax return. To distribute the tax base among Member States concerned, a formulary apportionment system is introduced.

#### Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)

COM(2016) 683, 25.10.2016, 2016/0336(CNS), Consultation procedure (CNS) – Parliament adopts only a non-binding opinion

Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Alain Lamassoure (EPP, France)
Shadow rapporteurs:	Hugues Bayet (S&D, Belgium) Sander Loones (ECR, Belgium) Sophia in 't Veld (ALDE, the Netherlands) Matt Carthy (GUE/NGL, Ireland) Fabio De Masi (GUE/NGL, Germany) Eva Joly (Greens/EFA, France) Marco Valli (EFDD, Italy) Barbara Kappel (ENF, Austria)
Next steps expected:	Initial discussions in committee



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## Introduction

In 2011, the European Commission published a proposal for a Council directive on a common consolidated corporate tax base (CCCTB). Following the lack of progress in the Council on the proposal, the Commission decided to re-launch the project in a two-step approach, with the publication of two new interconnected proposals:<sup>1</sup> on a common corporate tax base (CCTB), and on a common consolidated corporate tax base (CCCTB). These were published on 25 October 2016 as part of the [corporate tax reform package](#) adopted that day, and the 2011 proposal was withdrawn simultaneously. The CCCTB is to be examined in the Council once the discussion on the CCTB concludes successfully.

## Context

Taxing multinational enterprises in a global market poses the challenge of factoring in economic reality when deciding upon a tax base. The C(C)CTB proposals are made in this context, against a backdrop of other corporate tax base- and anti-tax avoidance-related measures.

### Multinational enterprises' tax base

Corporate tax systems were designed for the economic realities of the 1920s, when business was grounded in a physical or legal presence in local markets, whereas this is often not the case today.<sup>2</sup> The principle that companies should pay taxes in the country where profits are generated is not that straightforward to apply in a situation where activities are cross-border and flows of money move easily.

The term 'multinational' refers to an economic entity spanning different countries and legal systems, where different legal entities (such as subsidiaries and branches) connected to the multinational corporation operate. However, a multinational enterprise (MNE) is not considered as a single company from the point of view of tax rules; 'the various affiliates making up an MNE are instead considered as independent entities ('separate entity' approach).<sup>3</sup> In tax law, legal entities are taxed in different countries, based on their status and tax residence. This means that the income of the various affiliates is considered separately in several tax bases (treated by several tax jurisdictions), and not in its entirety (though the business may be run as a whole entity). In short, a corporate tax system based on a physical or legal presence does not recognise the actual economic link (substance requirement).<sup>4</sup>

1 Since the current proposal is intimately connected with the CCTB proposal, the parts from 'Introduction' to 'Preparation of the proposal' are very similar to the ['EU Legislation in progress' briefing on CCTB](#).

2 For a brief historical summary of international tax and transnational companies, see for instance [Towards unitary taxation of transnational corporations](#), Sol Picciotto.

3 In addition, they are considered taxpayers when they constitute a permanent establishment, which in turn does not fully match with corporate legal entities.

4 Substance (economic or tax) refers to the actual economic activities of a company, typically assessed through its personnel, its functions and the risks it undertakes, as well as the key assets.



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This issue may be tackled by a 'unitary business approach', that is, taxing MNEs according to the real economic substance of where they actually do business.<sup>5</sup> The 'allocation of profits between jurisdictions' is part of this approach and includes the CCCTB.

## OECD/G20 'Base erosion and profit shifting' project

Completed in autumn 2015, the 15 final reports on base erosion and profit shifting ([BEPS](#)) cover the common forms of BEPS observed in MNEs' corporate tax avoidance practices, use of which can result in [aggressive tax planning](#), a phenomenon engendered by harmful competition between tax jurisdictions.

The [15 actions](#) mapped by the project are designed to be implemented in domestic law and practice, as well as through changes in the provisions of relevant treaties. The project has three main pillars: creating more consistency in national tax rules that affect cross-border activities; strengthening substance requirements in existing international standards; and improving certainty and transparency. Implementation is under way, and the [follow-up](#) and future work to tackle BEPS is organised so as to provide a more inclusive framework, capable of involving more countries. As for the EU, with a view to the functioning of the single market and the objective of promoting growth and employment, efforts should be made to avoid varying interpretations of the OECD/G20 BEPS measures.

The '[anti-tax-avoidance package](#)', presented by the European Commission on 28 January 2016, reflects the 2015 adoption of the BEPS project. The [communication](#) on the anti-tax-avoidance package explains that the objective is to 'develop a common standard' that goes further than the implementation of the recommendations on BEPS.

## Existing situation

When it comes to the anti-tax-avoidance directive, Member States have discussed anti-avoidance rules extensively in the context of the Commission's [2011 CCCTB proposal](#): [specific rules](#) on interest limitations, exit taxation, switch-over rules, controlled foreign companies (CFC) rules, [hybrid mismatches](#); a definition of permanent establishment; and a general anti-abuse rule (GAAR).

EU taxation law already includes elements that address some profit-shifting situations. The 2015 amendment of the Parent-Subsidiary Directive ([2011/96/EU](#), or PSD), covering dividend payments between EU subsidiaries and EU parent companies, and the work of the [Platform for tax good governance](#) are two such examples. The 2015 [amendment](#) of the PSD allowed Member States to use unilateral measures against profit-participating loans and introduced a 'common minimum anti-abuse rule' for situations that fall under the Parent-Subsidiary Directive.

The Council adopted the [Anti-tax-avoidance Directive](#) (ATAD) on 12 July 2016. The deadline for its implementation is end-2018, with derogations set out. Within the [corporate tax reform package](#), the Commission adopted a [proposal](#) to amend the ATAD in order to extend the rules against hybrid mismatches,

<sup>5</sup> See [Unitary Taxation of Transnational Corporations – Summary of findings](#), International Centre for Tax and Development (ICTD).



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so that mismatches involving non-EU countries would also be included. A [Presidency compromise](#) on the proposal was published on 17 February 2017 and [agreed](#) by the Council on 21 February 2017.

## Comparative elements

[Unitary taxation](#) and [formulary apportionment](#) of taxing rights [have for many years been in place](#) in federal states such as Canada, Switzerland and the United States. Limited to the apportionment of corporate income among members of a certain federation, these systems do not deal with the division of income between different countries around the world, on the one hand, and the federation, on the other.

## Parliament's starting position

On 19 April 2012, the European Parliament adopted a [resolution](#) on the 2011 CCCTB proposal, supporting the Commission's proposal. The EP held that the introduction of a CCCTB should improve growth and lead to more jobs in the EU by reducing administrative costs and red tape for companies, particularly for small businesses operating in several Member States. Parliament considered it desirable that the CCCTB be applied as soon as possible, to as many companies as possible. It called for mandatory application of the directive to large companies and for evaluating, at a later stage, the possibility of extending the CCCTB's mandatory scope to SMEs too.

Parliament's [resolution](#) of 25 November 2015 on tax rulings and other measures similar in nature or effect (TAXE 1) called for the establishment of a compulsory EU-wide common consolidated corporate tax base (CCCTB), which should be introduced as soon as possible, thus providing a comprehensive response to corporate tax base issues. This call was repeated in the Parliament's [resolution](#) of 6 July 2016 (TAXE 2).

In its [resolution](#) of 16 December 2015, Parliament made recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the EU. One of these recommendations called for a common corporate tax base (CCTB) as a first-step measure, with a temporary exemption for SMEs, to be followed by 'consolidation' (CCCTB), together with a general anti-abuse rule.

Discussions on CCCTB will take place in parallel to the work on CCTB.

## Council starting position

The 2011 CCCTB proposal was blocked in the Council. In June 2013, the ECOFIN Council introduced a two-step approach to advance on elements pertaining to the corporate tax base in a first step, before discussing consolidation and apportionment in a second step, when work on the common tax base would have advanced sufficiently.

On 6 December 2016, the ECOFIN Council adopted [conclusions](#) on building a fair, competitive and stable corporate tax system for the EU. The Council welcomed discussions on the new C(C)CTB proposals, taking discussions on the 2011 proposal into account, and gave its support to the approach prioritising work on a common tax base. It called for 'swift progress on the examination of these legislative files'.



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In its [report](#) to the European Council of 12 December 2016 on tax issues, the ECOFIN Council mentioned the CCCTB proposal, which had been examined in a working party meeting. It stated that Member States are to examine consolidation once the discussion on CCTB has concluded successfully.



## Proposal

### Preparation of the proposal

The Commission's [action plan](#) of 17 June 2015 on a corporate tax system in the EU (COM(2015) 302) set out four objectives for such a system. These include measures to re-establish the link between taxation and the location of economic activity; ensuring that Member States can correctly value corporate activity in their jurisdiction; creating a more competitive and business-friendly environment; and protecting the single market and securing a strong EU approach to external corporate tax issues.

One of the five key areas for actions mentioned in the plan is the re-launch of the C(C)CTB. There are two main changes compared to the 2011 proposal: that the C(C)CTB should be mandatory and that the CCCTB should be implemented in a staged approach. The action plan highlighted the need for beneficial treatment of research and development (R&D) expenses. The Commission said it would also consider whether to address the corporate debt equity-bias as a means of strengthening the capital markets union.

The Commission's C(C)CTB [inception impact assessment](#), published in October 2015, pointed to the need for the EU to promote sustainable growth and investment within a fairer and better-integrated single market. The inception impact assessment covers the re-launch of the CCCTB, and as such is relevant to both the CCTB- and the CCCTB proposal. The assessment argued in favour of a new framework for fair and efficient taxation of corporate profits. Some of the problems highlighted were that companies have to comply with 28 different corporate tax systems; the current transfer pricing rules have not proved effective; the divergence between national rules allows aggressive tax planning; and that mismatches distort the single market. The Commission held that Member States' budgets have suffered from unfair tax competition practices to a significant degree, and that companies which engage in tax planning often put those that do not at an unfair competitive disadvantage.

From 8 October 2015 to 8 January 2016, the European Commission carried out a [public consultation on the re-launch of the C\(C\)CTB](#). According to the Commission, all stakeholder groups were generally supportive of the initiative. NGOs, private individuals and other [respondents](#), as well as some companies, especially SMEs, expressed strong support and were also in favour of making the C(C)CTB (partially) mandatory. Large enterprises were against this idea. The majority of stakeholders were in favour of creating an opt-in to the C(C)CTB. Both small and large companies supported the proposal to grant R&D activities favourable tax treatment, and to address the debt-equity bias with an allowance for equity.

On 25 October 2016, in support of the CCTB and the CCCTB proposals, the European Commission also published an [impact assessment](#) covering both. This impact assessment and the CCTB proposal build on the work done by the [CCCTB expert group, which prepared the 2011 CCCTB proposal](#), the 2011 impact assessment, and the technical work done in collaboration with the Member States following the 2011 proposal. The baseline scenario used is the absence of a C(C)CTB proposal combined with the introduction of recent anti-tax avoidance initiatives. In conclusion, after having evaluated the different options, the Commission prefers a mandatory C(C)CTB for very large companies, an allowance for growth and investment (AGI) with well-designed anti-avoidance measures, and an R&D tax incentive designed as a super allowance for R&D expenses.



## The changes the proposal would bring

The CCCTB proposal builds on the [proposal for a CCTB](#) and covers the following elements:

- > subject matter, scope and definitions (Chapter I, Articles 1-3);
- > residency and territoriality rules (Chapter II, Article 4);
- > consolidation (Chapter III, Articles 5-10);
- > entering and leaving the group (Chapter IV, Articles 11-21);
- > business reorganisations (Chapter V, Articles 22-23);
- > dealings between the group and other entities (Chapter VI, Articles 24-26);
- > transparent entities (Chapter VII, Article 27);
- > apportionment of the common consolidated corporate tax base (Chapter VIII, Articles 28-45);
- > administration and procedures (Chapter IX, Articles 46-68);
- > interaction with the CCTB directive (Chapter X, Articles 69-74); and
- > final provisions (Chapter XI, Articles 75-82).

It also includes two annexes: on the companies and on the taxes covered by the proposal in the 28 Member States.

The proposal provides for the establishment of a system for the consolidation of the tax bases (Article 1). A company that applies the rules of the directive would in general no longer be subject to national corporate tax law. Companies operating across borders in the EU would therefore no longer have to deal with 28 different sets of national rules when calculating their taxable profits. The consolidation aspect of the CCCTB serves to distribute the tax base between the Member States concerned, that is, to allocate to each Member State involved the part of the tax base that can be taxed in its territory. This would be done through the formulary apportionment system (see below).

Contrary to the 2011 CCCTB proposal, both the CCCTB and the CCTB would be mandatory for groups of companies beyond a certain size, namely those with a consolidated turnover exceeding €750 million<sup>6</sup> during the financial year and 'established under the laws of a Member State, including its permanent establishments in other Member States'. The directive would also apply to 'a company that is established under the laws of a third country in respect of its permanent establishments situated in one or more

<sup>6</sup> This is the same threshold as the one used in the [CBCR to tax authorities](#) and in the [proposal for a public CBCR](#).



Member States', under certain conditions (Article 2.1 and 2.2). Companies that remain under this threshold would have the possibility to opt into the system (Article 2.3).

Article 3 adds some new definitions, which do not figure in the CCTB proposal, such as: single taxpayer, principal taxpayer, group member, consolidated tax base, apportioned share, competent authority and principal tax authority. In Articles 5-10, rules are established on: parent company and qualifying subsidiaries; when a taxpayer should form a group; the effect of consolidation; timing; elimination of intra-group transactions; and on withholding taxes and other source taxation. Articles 11-21 concern, inter alia, fixed assets, long-term contracts, provisions, revenues and deductions when joining a group, timing for depreciation, fixed assets and losses when leaving a group, and rules on the termination of a group. A withholding tax is introduced on interest and royalties paid by a group member to a recipient outside the group (Article 26).

Articles 28-42 introduce the formulary apportionment system, which consists of three equally weighted factors (labour, assets, and sales by destination). All three factors would have equal weight. The labour factor consists of two parts, payroll and number of employees. The principal taxpayer or a competent authority may request the use of an alternative method for calculating the tax share (Article 29). Rules are also introduced on, among other things, the composition of the asset and sales factors; the calculation of the asset and sales factors for financial institutions and insurance undertakings; and on the oil and gas industry and shipping, inland waterways transport and air transport. Article 44 enumerates items that may be deducted from the apportioned share. Article 45 states that 'the tax liability of each group member shall be the outcome of the application of the national tax rate to the apportioned share'.

Articles 46-68 introduce rules on: a notice to create a group, tax year, tax returns and tax assessments; the content of the consolidated tax return; failure to file a tax return; and on amended tax assessments. Article 51 specifies that 'the principal taxpayer shall file the consolidated tax return of the group with the principal tax authority'.

The interest limitation rule, introduced by the CCTB, means that financial costs would be deductible up to the amount of financial revenues (interest and other taxable revenues). With CCCTB (Article 69), the deduction in the tax year of borrowing costs exceeding revenues would be restricted to the higher of €5 million (up from €3 million), or 30 % of earnings before interest, taxes, depreciation and amortisation ([EBITDA](#)), whichever is higher (cf. Article 13 in the CCTB proposal).

The rules on loss relief and recapture in CCTB would cease to apply when CCCTB comes into force (Article 71), but loss relief would be an automatic outcome of consolidation. Transfer pricing rules would not apply within the group. Articles 72-74 introduce changes in relation to CCTB concerning the switch-over clause, controlled foreign companies and hybrid mismatches.



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## Views

### Advisory committees

In the European Economic and Social Committee (EESC), the Section for Economic and Monetary Union and Economic and Social Cohesion is responsible for the file. The EESC has appointed [Michael McLoughlin](#) (Various interests – GR III/Ireland) as rapporteur for the opinion (see dedicated [CCCTB website](#)). Adoption of the opinion is expected in the second half of 2017.

### National parliaments

The [subsidiarity deadline](#) for national parliaments to submit comments on the proposals was 3 January 2017, and the parliaments of 19 countries scrutinised them. Seven reasoned opinions were issued, by the parliaments of [Denmark](#), [Ireland](#), [Luxembourg](#), [Malta](#), [Sweden](#) and the Netherlands (submitting two opinions, one from the [Senate](#) and one from the [House of Representatives](#)). Some parliaments criticised the absence of state-by-state impact assessments with regard to issues related to revenue and employment in the C(C)CTB.

### Stakeholders' views<sup>7</sup>

A [Business Europe](#) position paper of 22 February 2017 holds that CCCTB could potentially improve the functioning of the single market. It could also facilitate and make it less expensive for cross-border companies to expand, and thereby to promote investment and jobs. Moreover, it could eliminate intra-EU transfer pricing and diminish the risk of double taxation. However, without consolidation, businesses would not enjoy sufficient benefits to compensate for the reduction in competitiveness and the increase in administrative costs. Therefore, the CCTB should not become effective until the CCCTB has been agreed. Business Europe expresses concern about the potential economic harm to the economic climate in smaller Member States, and emphasises that many businesses would prefer an optional CCCTB for all companies. Some businesses would like the proposal to be developed further.

In a position paper of 20 February 2017, [Insurance Europe](#) questions the two-stage approach of the relaunched CCCTB project, since the possible advantages of CCCTB when it comes to reinforcing the European single market can truly be attained only through consolidation that 'recognises a company's cross-border activity within the EU'. It also calls for new VAT rules for financial services and believes that CCCTB ought to be optional, since companies that do not want to expand beyond national borders would not have to adopt the new system without reason, something that is important 'as several insurers, particularly life insurers, focus only on the domestic market'.

<sup>7</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



Advisory committees

National parliaments

Stakeholders' views

In a position paper of 14-15 December 2016, the [European Trade Union Confederation](#) (ETUC) welcomes the re-launch of the C(C)CTB proposals, but argues that the two-step approach will unavoidably allow new loopholes to appear. ETUC holds that the threshold of €750 million is too high and that it should be set at a maximum of €40 million, in line with the [accounting directives](#). It holds that there must be a consistent accounting base, as otherwise double or non-taxation of transactions may arise, and that both CCTB and CCCTB include the possibility of tax avoidance through accounting arbitrage.<sup>8</sup> Only with the CCCTB will profit-shifting through transfer mispricing be eliminated.

<sup>8</sup> In its paper, ETUC states that 'Unfortunately, the EU does not have that consistent accounting base and there is no requirement for a group to use International Financial Reporting Standards (IFRS) in all subsidiaries. The alternative Generally Accepted Accounting Principles (GAAP) available in the EU offer substantial differences in the recognition and valuation of critical revenues and expenses.'



## Legislative process

The legislative proposal ([COM\(2016\) 683](#)) was presented on 25 October 2016. It falls under the consultation procedure ([2016/0336\(CNS\)](#)). In the European Parliament, the proposal has been assigned to the Economic and Monetary Affairs Committee (ECON – rapporteur: Alain Lamassoure, EPP, France), with an opinion expected from the Legal Affairs Committee (JURI – rapporteur Evelyn Regner, S&D, Austria). The Internal Market and Consumer Protection Committee (IMCO) decided not to give an opinion. The ECON committee organised a [public hearing](#) on 3 May. The draft report is expected in the beginning of July, with a vote in committee in December. The vote in plenary is planned for January or February 2018.



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