Fair and simpler taxation supporting the recovery strategy – Ways to lower compliance costs and improve EU corporate income taxation

European added value assessment

STUDY

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European added value assessment

European Parliament legislative-initiative reports drawn up on the basis of Article 225 of the Treaty on the Functioning of the European Union are automatically accompanied by a European added value assessment (EAVA). Such assessments are aimed at evaluating the potential impacts, and identifying the advantages, of proposals made in legislative-initiative reports.

This EAVA accompanies a resolution based on a legislative-initiative report prepared by the European Parliament's subcommittee on Tax Matters (FISC), presenting recommendations to the European Commission on avenues to follow to support the Next Generation EU recovery and lower compliance costs and improve EU corporate income taxation.

The main purpose of the EAVA is to identify possible gaps in European Union (EU) legislation. The various policy options to address this gap are then analysed and their potential costs and benefits assessed.

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Executive summary

Background

As a general principle, corporate income tax (CIT) is a tax charged on businesses' net profits, and covers taxes levied on potential capital gains. When it comes to the taxation of cross-border income, domestic tax rules address two situations: the taxation of outbound investments of resident companies, and the taxation of inbound investments of non-resident companies. The concepts of residence and location of where income is generated are therefore essential for a fair and efficient CIT system. In recent years, the process of globalisation and the acceleration of integration of businesses at international level has naturally led to more strategic planning and organisation by multinational enterprises (MNEs). A number of high-profile sophisticated tax schemes, such as cases relating to the 'Panama Papers' and the 'Lux Leaks' revelations, have attracted a lot of attention. Furthermore, the rapid reorganisation of global value chains also has direct implications for tax revenues. Again, a number of specific cases relating to the digital economy, have been highlighted as examples of non-addressed CIT loopholes and policy gaps in the regulation and administration of corporate taxation at international and EU levels.

The European Parliament has been issuing warnings about these shortcomings for many years. The European Commission and the OECD, after the 2008 financial crisis, recognised the need to proceed with overall modernisation of CIT. In 2013, following a call from the G20, the OECD started its work on base erosion and profit shifting (BEPS). In the EU, an action plan to fight tax fraud and tax evasion and a package on tax transparency were followed in 2016 by a re-launch of the common consolidated corporate tax base (CCCTB) project.

In June 2021, following up on an ambitious proposal under the leadership of the new US administration, the finance ministers of the G7[1] agreed to work towards a global minimum rate of at least 15 %, and on fair taxation of corporate income in the locations where it is generated. Building on this new momentum, the European Commission published a communication on business taxation for the 21st century,[2] which included the BEFIT proposal (business in Europe: framework for income taxation) to replace the pending proposal for a CCTB, which will be withdrawn. The idea behind BEFIT is to move towards a common tax rulebook, providing for fairer allocation of taxing rights between Member States and cutting red tape and compliance costs, while supporting EU jobs and investment in the single market. The Commission will now launch a broader reflection on the future of taxation in the EU, which will culminate in a tax symposium on the 'EU tax mix on the road to 2050' in 2022.

Why should the EU act?

CIT is an important source of revenue for Member States' budgets. In 2020, CIT is estimated to have raised approximately €360 billion, which corresponds to 2.5 % of EU gross domestic product (GDP) or 7 % of total Member State tax revenues. The current challenging economic situation, where a large amount of debt has been accumulated to address the negative impact of the pandemic, is leading to renewed interest in addressing potential CIT revenue losses. Further action would thus be welcome as the budgetary losses from BEPS are still estimated at approximately €33 billion per year on average for the EU. More broadly, the CIT gap for the EU as whole, including cross-border CIT evasion and frauds, was estimated at around €154 billion in 2020, more than the entire annual EU budget.

[1] Carbis Bay G7 summit communiqué, Our Shared Agenda for Global Action to Build Back Better.

[2] Commission communication on business taxation for the 21st century, COM(2021) 251 final, May 2021.

Moreover, the current fragmented system where businesses have to comply with rules at Member State level encourages aggressive tax optimisation by some businesses and promotes a narrow minded perspective in some Member States. This can lead to **unhealthy tax competition**, while the current EU CIT framework remains relatively vulnerable to **abuse, evasion and fraud**. There is now an international consensus that the fundamental concepts of tax residence and source on which the CIT system has been based for the last century are outdated, as business practices now regularly involve carrying out activities in a state without maintaining a physical presence. At EU level, building upon this positive momentum, there is therefore a need for renewed focus on ensuring simplified, transparent and common rules for determining the corporate tax base.

Finally, in practice, CIT laws and related accounting rules have become a web of complex and sometimes cryptic arrangements that are difficult to comprehend, in particular for businesses that do not benefit from the expertise of international tax experts. As a result, businesses doing cross-border trade and investments face **high compliance costs,** while the effectiveness of the tax administration in Member States varies widely and there is still room for further development of digitalisation and transparency.

Description of key findings

The study attempts to identify the possible gaps and challenges in EU legislation and evaluate the European added value (EAV) of the various policy options to address these challenges. A thorough comparative economic analysis is made of the EAV of a series of scenarios, based upon the policy options identified. The results confirm that **complexity remains by far the greatest factor behind both the CIT gap and the high level of compliance costs for businesses**. The lack of administrative effectiveness and efficient enforcement are also of particular relevance for businesses as they have a relatively large impact on compliance costs. The same is true when it comes to increasing transparency, with a noticeable reduction in compliance costs in the scenarios where more transparency in ensured. As expected, the move towards digitalisation of the tax administration also appears as an option to reduce both the CIT gap and compliance costs in all scenarios, but probably to a lesser extent than what is sometimes assumed.

More specifically, the **baseline scenario, which includes the OECD/G20 agreement**, shows a substantial decrease in the CIT gap – approximately €20 billion in absolute terms – from around €154 billion in 2019 to €134 billion in 2025. Under this scenario, compliance costs for business decrease by around €3 billion, from €49 billion in 2019 to €46 billion in 2025. These results highlight the potentially positive impact that the OECD/G20 agreement would have, as without it the reduction in the CIT gap and the compliance costs would be more limited.

The impact of the other scenarios compared to the baseline showed **EAV of around €30 billion for a scenario of a G7/OECD agreement plus a limited BEFIT and reinforced and extended cooperation**. This breaks down into a reduction of around €23 billion in the CIT gap and a reduction of €7 billion in compliance costs for businesses. There was slightly higher **EAV of around €45 billion for a scenario of a G7/OECD agreement plus an ambitious BEFIT and reinforced cooperation**. This breaks down into a higher reduction in the CIT gap of approximately €35 billion and a reduction of almost €10 billion in compliance costs for businesses. Finally, greater **EAV of €76 billion would be generated by the most ambitious scenario of an EU treasury, qualified majority voting (QMV) and CIT administered at EU level**. This breaks down into a greater reduction of around €60 billion in the CIT gap and a greater reduction in the compliance costs for businesses of €16 billion. The most ambitious scenario of an EU treasury and CIT administered at EU level is however still rather unlikely to gather sufficient support at the current juncture as it would require substantial Treaty changes. It can be concluded that the two other alternatives are more likely to be implemented in the coming period.

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List of abbreviations and acronyms

AI	Artificial intelligence
AGI	Allowance for growth and investment
ATAD	Anti-Tax Avoidance Directive
ATP	Aggressive tax planning
BEFIT	Business in Europe: framework for income taxation
BEPS	Base erosion and profit shifting
CCCTB	Common consolidated corporate tax base
CCTB	Common corporate tax base
CFC	Controlled foreign company
CIT	Corporate income tax
CMU	Capital market union
DAC	Directive on Administrative Cooperation
DBCFT	Destination-based cash flow tax
EESC	European Economic and Social Committee
ETAS	European tax allocation system
ETUC	European Trade Union Confederation
GAAR	General anti abuse rule
GloBE	Global anti-base-erosion rules
HST	Home state taxation
IFRS	International Financial Reporting Standards
MNEs	Multinational enterprises
OSS	One stop shop
QMV	Qualified majority voting
SMEs	Small and medium-sized enterprises
STTR	Subject to tax rule

1. Introduction

As a general principle, corporate income tax (CIT) is a tax charged on businesses' net profits and covers taxes levied on potential capital gains. For the taxation of cross-border income, domestic tax rules generally address two situations: the taxation of outbound investments of resident companies, and the taxation of inbound investments of non-resident companies. The concepts of residence and location of where the income is generated are therefore key, but at present while some criteria are used there is no harmonised common definition.

Moreover, the process of globalisation and the acceleration of business integration at international level has naturally led to a more strategic organisation of multinational enterprises (MNEs). The reorganisation of global value chains also has direct implications for tax revenues in the EU. Moreover, a number of high profile sophisticated tax schemes, such as cases relating to the 'Panama Papers' and the 'Lux Leaks' revelations have attracted a lot of attention. Recently, a number of specific cases relating to the digital economy have also been highlighted examples of non-addressed CIT loopholes and policy gaps in the regulation and administration of corporate taxation at international and EU level.

Numerous publications[3] have studied these issues in detail, looking at the type of schemes, at the channels of transmission to the economy and at the potential economic impact of such tactics. Currently, the most relevant challenges concern debt-shifting across countries, the manipulation of transfer prices, the strategic location of the physical activities of companies, the strategic location of some assets, notably intangible assets, the use of mismatches, loopholes and non-cooperation between tax regimes, the inversion of corporate structures between parents and affiliates, the deferral in repatriation of profit generated in low-tax jurisdictions or the use of treaties networks. As emphasised in the literature, this has led to significant **base erosion profit shifting (BEPS)** costs for some jurisdictions.

In addition, the lack of harmonisation and effective cooperation at international and EU level also sometimes contributes to harmful tax competition and complex taxation for cross border activities or double taxation, thus discouraging some investments, in particular for smaller businesses. As a result of the complexity generated by the existing regulatory framework at individual Member States level, **tax compliance costs remain high**. Lack of transparency and complexity are also contributing to distortions within the single market, as some businesses benefit from arrangements with tax authorities in some Member States while others are excluded. From an economic point of view, the relative lack of cooperation in this area, the limited impact of past initiatives and the actions of some vested interests are all proving to be very costly for EU governments, citizens and business alike. The OECD has estimated[4] that BEPS represents around 4 to 10 % of global corporate income tax revenues, or €70-200 billion every year. For the EU, this amounted to between €19 billion and €38 billion in 2020. Recent estimates in the literature[5] seem to confirm this evaluation and give a figure of around €35 billion per year for the EU, representing 7.7 % of total EU CIT revenues. More broadly, a 2015 EPRS study[6] estimated that if other tax regime issues are included, such as special

3 See M.T. Alvarez-Martinez, S. Barrios, D. d'Andria, M. Gesualdo, G. Nicodeme and J. Pycroft, 'How large is the corporate tax base erosion and profit shifting? A general equilibrium approach', *Economic Systems Research,* 2021, and the OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019-July 2020, The Organisation for Economic Co-operation and Development (OECD), July 2020.

4 OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019-July 2020, OECD, July 2020.

5 M.T. Alvarez-Martinez, S. Barrios, D. d'Andria, M. Gesualdo, G. Nicodeme and J. Pycroft, 'How large is the corporate tax base erosion and profit shifting? A general equilibrium approach', *Economic Systems Research,* 2021.

6 R. Dover, B. Ferrett, D. Gravino, E. Jones and S. Merler, Bringing transparency, coordination and convergence to corporate tax policies in the European Union, EPRS, European Parliament, September 2015.

tax arrangements, inefficiencies in collection and other practices, revenue losses for the EU resulting from the CIT gap could amount to around €140 to €170 billion per year.

This contributed to calls for an end to complacency and for effective reforms in this area. In 2013, following a call from the G20, the OECD started its work on BEPS. In the EU,[7] an action plan to fight tax fraud and tax evasion and a package on tax transparency[8] led to a re-launch[9] of the CCCTB project in a two-step approach, with Commission proposals on a common corporate tax base (CCTB) and a common consolidated corporate tax base (CCCTB). In June 2021 following up on an ambitious proposal by the new US administration, the finance ministers at the G7 agreed to work towards a global minimum rate of at least 15 %, and on fair taxation of corporate income in the locations where it is generated. Negotiations are ongoing and much is still left to be decided among the international partners.

Building on this new momentum, the European Commission published a communication on business taxation for the 21st century, which includes the BEFIT proposal (business in Europe: framework for income taxation), moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States. BEFIT is also designed to cut red tape and reduce compliance costs, while supporting EU jobs and investment in the single market. BEFIT will replace the pending proposal for a CCTB, which will be withdrawn. The Commission will launch a broader reflection on the future of taxation in the EU, which will culminate in a tax symposium on the 'EU tax mix on the road to 2050' in 2022.

Shedding further light on these issues and building on the study in the annex, the purpose of this paper is to look at ways to bring more simplicity, lower costs and improve CIT for EU businesses. The paper begins by assessing the potential costs of complex tax rules across Member States and the related compliance costs for businesses. The second section begins with an overview of progress made at international level and the main policy challenges. A list of various potential ways is then provided to address these challenges. Finally, the last section provides a thorough comparative economic analysis of the EAV of the policy options identified.

[7] In this report, EU refers to EU27 i.e. data are compiled without the corresponding values for the UK.

[8] Communication from the Commission on an action plan to strengthen the fight against tax fraud and tax evasion, COM(2012)722, December 2012 and Proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, COM(2017) 335 final, June 2016.

[9] Proposal for a Council directive on a common consolidated corporate tax base (CCCTB), COM(2016) 683, October 2016.

2. Understanding, analysing and breaking down the CIT gap and related compliance costs

A 2015 comprehensive study by EPRS looked in detail at the issues surrounding the estimation of total CIT losses and BEPS. When other tax regime issues, such as special tax arrangements, inefficiencies in collection and other practices are included, the study estimated that total CIT revenue losses for the EU[10] could amount to between €140 billion and €170 billion per year on average. Building upon these results and using the same methodology and data, this section provides an update of these estimates and their evolution in the recent period, also offering a calculation of the related CIT compliance costs for EU businesses.

2.1. Calculation of the total CIT gap

As highlighted in a comprehensive study by the European Commission on the CIT gap,[11] 'the corporate income tax gap is the gap between corporate tax revenues as they "should be" collected and as they "are" collected'. The gap is therefore a broad estimate of potential CIT revenue losses. It encompasses deliberate optimisation by some taxpayers and deliberate actions such as tax fraud, tax evasion and tax avoidance. It also includes the direct and indirect effects of unclear legislation, complexity, and non-deliberate omissions. The gap finally incorporates the impact of insolvencies and of various types of business failures that have potential consequences for tax collection. Building on this general definition, a variety of methodologies, each with advantages and disadvantages, has been developed. There is however still no consistent single common methodology for this calculation at EU level and the models used differ widely from one Member State to another.

A 2015 EPRS study looked more specifically at these issues. It explained a number of conceptual considerations when computing total CIT revenue losses. It also recalled that some headline-grabbing and widely cited CIT gaps were engineered precisely for communication purposes and are not always therefore built on robust methodological ground. For instance, many estimates include tax relief (for investment, R&D and staff training) under 'lost revenue', which is questionable as this kind of tax relief is designed to generate investment, R&D and therefore to boost economic growth and employment. If properly designed and coordinated with partners it should therefore increase CIT receipts. On the other hand, a whole range of economic studies, econometric analysis and academic taxonomies have also been aimed at relativising and downplaying the extent of CIT revenue losses. The theoretical distinction between aggressive tax planning, tax avoidance and tax evasion[12] itself could be challenged, as it implicitly assumes that the regulation is rather static while, in practice, it could naturally evolve relatively rapidly, thus transferring what was previously considered tax avoidance to the tax evasion category and vice versa. Calculations based upon taxonomies are therefore most meaningful in the very short term. Similarly, considering that isolated Member State actions in this area could solve the issue appears as rather simplistic as the challenge is mostly transnational by nature. As recently highlighted by the G7 initiative, it is primarily through a reinforced multilateral cooperative framework and leadership at aggregate level that the

[10] Results recalculated without the amount for the UK.

[11] The concept of tax gaps, Corporate Income Tax Gap Estimation Methodologies. Taxation papers working paper No 73, Fiscalis Tax Gap Project Group, European Commission, 2018.

[12] Tax fraud and tax evasion, are illegal attempts to escape payment of taxes in part or in total by hiding or understating a source of income, overstating expenses or making false claims for tax relief. Tax avoidance refers to 'the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow'. It generally includes the use of debt shifting, strategic transfer pricing and strategic location of intangibles, structured only or mainly for taxation reasons.

issue could be addressed. The EU, as an example of a successful multilateral institution, therefore has a responsibility and a central role to play in this respect.

Leaving aside these considerations, it is a fact that the calculation of CIT revenue losses is a difficult undertaking as, by definition, it involves the estimation of unobserved variables, such as the compliance rate and variables whose measurement could vary from one jurisdiction to another, such as the tax base. Moreover, and probably more importantly, as digitalisation and the share of immaterial content is becoming increasingly prominent in the values of product exchanged, the calculation of CIT by tax authorities is also becoming increasingly complex. Finally, the concepts of residence and the location where income is generated are key, but at present while some criteria such as the place of incorporation or the place of effective management are used there is again no harmonised common definition. Since the agreement at the G7, there is, however, a consensus that the fundamental concepts of tax residence and source on which the CIT system has been based for the last century are outdated as business practices now regularly involve carrying out activities in a state without maintaining a physical presence.

There is therefore a new momentum for the calculation of updated CIT gap estimates. The aim in this section, building upon the same methodology as the previous EPRS study in 2015, is to provide such an estimate. The theoretical underpinning of the methodology can be found in an initial study by the IMF.[13] From an analytical point of view, for year *t*, the value of theoretical CIT revenues in each Member State *i* can be broken down as a product of the legal CIT base and of the legal CIT rate. The CIT gap is then obtained as the difference between this theoretical CIT revenue and the amount of CIT revenue effectively collected.

$$\textit{Theoretical CIT revenue}_{i,t} = \textit{legal CIT rate}_{i,t} * \textit{legal CIT base}_{i,t} \qquad (1)$$

$$\textit{CIT gap}_{i,t} = \textit{theoretical CIT revenue}_{i,t} - \textit{CIT revenue effectively collected}_{i,t} \qquad (2)$$

and

$$\textit{Compliance ratio}_{i,t} = \textit{CIT revenues effectively collected}_{i,t} / (\textit{legal CIT rate}_{i,t} * \textit{legal CIT base}_{i,t}) \qquad (3)$$

The reduction of the CIT gap can then be analysed as the need to reduce the difference between the theoretical legal CIT base and the effective CIT base and as the need to reduce the difference between the theoretical legal CIT rate and the effective CIT rate. Alternatively, the amount of CIT revenues effectively collected is a product of the theoretical CIT revenue and the compliance ratio)[14] (as a percentage). Equation (3) thus express that the further the compliance ratio lies below 100 %, the less efficient is the CIT system in raising revenue in relation to the benchmark. This may reflect special tax incentives and efficiency, but it also reflects profit shifting.

As in the 2015 study by EPRS, for all Member States and for the period considered (1995 to 2019), CIT revenues effectively collected are given by Eurostat, while CIT statutory rates are given by TAXUD (see annex). The CIT legal base[15] could be estimated using data from the annual macro-economic database of the European Commission's Directorate General for Economic and Financial Affairs (AMECO database). However, as explained in detail in the 2015 EPRS study, three measures of the operating surplus are currently available (i.e. the measure for the theoretical tax base – surplus being the sum of money that governments seek corporation tax for), namely: (i) gross operating surplus (GOS); (ii) net operating surplus (NOS) not adjusted for imputed compensation for self-employed workers (who are treated for tax purposes as being external contractors and, therefore, not subject

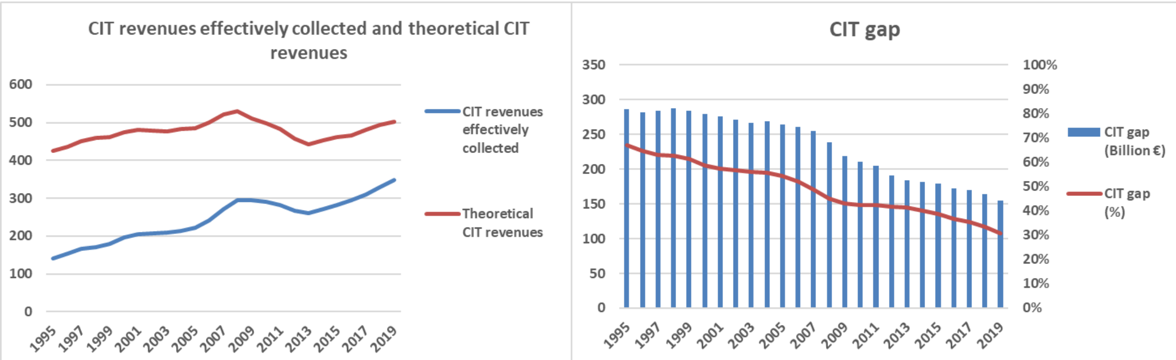
13 Spillovers in international corporate taxation, IMF Policy Paper, International Monetary Fund (IMF), 2014.

14 Equivalent to the efficiency ratio computed in the 2015 EPRS study.

15 As in the 2015 EPRS study, a calculation is made of the value of net operating surplus adjusted for imputed compensation for self-employed workers.

to payroll taxes, pensions and so on); and (iii) NOS adjusted for imputed compensation for self-employed workers. GOS appears as a too broad concept for the purpose of this study as it does not allow for the subtraction of asset depreciation, interest payments or other provisions. The 2015 study looked at the two remaining indicators and emphasised the greater appropriateness of using NOS adjusted for imputed compensation for self-employed workers. That being said, other studies might use different measures for the CIT base, which could explain much of the variation observed in the results. In addition, a recent study[16] computed more precise estimates of the CIT tax base than the macroeconomic aggregates. Using the CORTAX model,[17] this study analysed in great detail the corporate tax base depending on firm type[18] based upon disaggregated data. Using these results and on the basis of past trends, a revised and more accurate CIT base was obtained for all Member States (see annex), to which the 2015 EPRS paper methodology was applied.

Figure 1 – Evolution of CIT revenue (a) and the CIT gap (b)



Source: Author's own estimates based upon data from DG TAXUD, AMECO and Eurostat.

On the basis of these inputs, theoretical CIT revenues and the compliance ratio are computed accordingly. Figure 1 presents the evolution[19] of CIT revenues effectively collected, of theoretical CIT revenues and of the CIT gap in absolute and percentage terms. Figure 1a shows that the financial and sovereign debt crisis that started in 2008 had a substantial impact, reducing the amount of theoretical CIT revenues. It also contributed to better collection of CIT revenues with a significant shift in the trend compared with the 1995-2007 period. As a result, as Figure 1b shows, this has led to a substantial reduction in the CIT gap, from around €300 billion on average per year for the pre-crisis period 1995 to 2007 to less than €200 billion for the 2012-2019 period. The results also present the positive reduction of the CIT gap as a percentage of CIT theoretical revenue, from a value of almost 70 % in 1995 to 32 % in 2019. This might relate to the substantial legislative agenda put in place in this area at EU and international levels since 2011. This must also be analysed in the light of the result of all the actions and reinforced administrative cooperation at joint EU and Member State level undertaken to tackle tax fraud and tax evasion within the EU in the recent period, notably through the frameworks of the Anti-Tax Avoidance Directive (ATAD) and the Directive on

16 M.T. Alvarez-Martinez, S. Barrios, D. d'Andria, M. Gesualdo, G. Nicodeme and J. Pycroft, 'How large is the corporate tax base erosion and profit shifting? A general equilibrium approach', *Economic Systems Research*, 2021.

17 The CORTAX model is based on the OECDTAX model developed by Sorensen (2001) and it was originally developed by the Central Planbureau (CPB) in the Netherlands. CORTAX is a CGE model with a strong focus on corporate taxation prepared for the Member States of the European Union plus the UK, the US, Japan and a tax haven as third countries. CORTAX simulates the effects of corporate tax changes, taking into account the interactions between all agents in the economy and giving special attention to firms that have been disentangled into domestic firms, multinational headquarters and subsidiaries. The general structure of CORTAX is described in Bettendorf and van der Horst (2006).

18 For the definition of the tax base in the CORTAX model, see S. Barrios, D. D'Andria and M. Gesualdo, Reducing tax compliance costs through corporate tax base harmonisation in the European Union, JRC Working Papers on Taxation and Structural Reforms No 2/2019.

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19 In this study, five-year averages are used consistently for all components and aggregates to reduce cyclical variations.

Administrative Cooperation (DAC) frameworks. At Member State level (see annex), it is interesting to note that large countries tend to exhibit a large CIT gap. According to our results, Spain, France, Malta and Germany exhibit the largest CIT gaps above the EU average, with values of 38 %, 35 %, 32 % and 31 % respectively. The lowest CIT gaps are registered in Ireland, Cyprus, Croatia, Bulgaria and the Netherlands, with values of around 24 %.

2.2. Reducing the CIT gap through tackling BEPS

As explained above, while the total CIT gap appears substantial, this may be caused by numerous factors that are not directly related to deliberate actions by some businesses to defraud, or evade or avoid their tax duty. In order to focus more precisely on the most harmful practices, the OECD decided to reduce the scope of the analysis and to concentrate primarily on BEPS resulting from multinational enterprises exploiting policy gaps between countries' tax systems.[20] From an international perspective, the reasoning is also that developing countries' higher reliance on CIT means they suffer disproportionately from BEPS. An OECD/G20 inclusive framework on BEPS, which regroups 139 countries and jurisdictions, was therefore created to provide practical solutions for losses of revenues due to BEPS. This resulted in 2015 in a proposal[21] for 15 actions to tackle tax avoidance, improve the coherence of international tax rules, ensure a more transparent tax environment and address the tax challenges arising from the digitalisation of the economy. At EU level, the ATAD package presented by the European Commission in 2016[22] reflects the 2015 adoption of the BEPS final reports. It includes three pillars: i) ensuring effective taxation in the EU, ii) increasing tax transparency and iii) securing a level playing field.

Following an ambitious proposal by the US administration, discussions are currently taking place at global level on the most effective way to tackle BEPS. An agreement was recently found on a 'two-pillar' solution.[23] Pillar one focuses on the base for the amount of taxes to be collected. In particular, revenue will be sourced to the jurisdictions where goods or services are used or consumed. To facilitate the application of this principle, detailed source rules for specific categories of transactions have still to be developed however. In general terms, pillar one focuses on MNEs with global turnover above €20 billion and profitability above 10 %. Some exemptions have already been introduced: extractives and financial services are excluded, limiting the scope of the agreement. For in-scope MNEs, between 20% and 30 % of residual profit defined as profit in excess of 10 % of revenue will be allocated to market jurisdictions using a revenue-based allocation key. The relevant measure of profit or loss of the in-scope MNEs will be determined by reference to financial accounting income. Again the possibility for adjustments is already mentioned, which might be a source of concern for some. Compliance is supposed to be streamlined, without further detailed explanations as to how this could be achieved. Pillar two consists of global anti-base erosion (GloBE) rules and a treaty-based rule (the subject-to-tax rule (STTR)) that allows source jurisdictions to impose limited source taxation on certain related-party payments subject to tax below a minimum rate. The GloBE rules will apply to MNEs that meet the €750 million threshold and the minimum tax rate will be at least 15 %. Again a certain number of exemptions are already envisaged and further discussions might greatly complicate the effective implementation of the measures planned.

[20] Addressing base erosion and profit shifting, OECD, 2013.

[21] BEPS 2015 Final Reports, OECD.

[22] Commission recommendation on the implementation of measures against tax treaty abuse, C(2016) 271, January 2016. Deeper and fairer internal market with a strengthened industrial base/taxation, Legislative Train, European Parliament.

[23] Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, OECD, July 2021.

Regarding the quantification of the extent of BEPS, as with calculation of the CIT gap, a wide variety of statistical techniques and models have been used.[24] The purpose of this study is not to review and analyse all these methodologies but rather to arrive at a range of estimates. Looking at the most relevant estimates generally discussed in the literature (see Table 1) an initial range of between €14 billion and €83 billion might be expected.

Table 1 – BEPS estimations in the literature

Study	Year	Results	Corresponding estimation of BEPS for the EU in 2019
IMF	2014	Losses of 5 % of current CIT revenue in the OECD	€15 billion
OECD	2015	4-10 % of global corporate income tax revenues	€14 to €35 billion
EPRS	2015	€50 to €70 billion per year	€50 billion
Crivelli et al.	2016	Revenue losses of 0.2 % of GDP	€50 billion
Barrios et al.	2016	Increase of GDP of +0.1983 % to +0.401 % with CCTB reform	€31 to €62 billion
Candau and Le Cacheux	2017	CIT loss for the EU of about €15 billion per year	€15 billion
Bolwijn et al.	2018	Revenue losses estimated at about €85 billion annually for developing countries and €170 billion globally	Around €25 billion
Alvarez-Martinez et al.	2021	Total revenue losses of 7.73 % of total CIT revenue	€36 billion
Torslov, Wier and Zucman	2021	40 % of multinational profits are shifted to tax havens globally	Around €80 billion

Source: EPRS.

The previous section explained how the CIT gap is calculated by applying the same methodology as used in the 2015 EPRS study. Going further, the EPRS study also developed a second step to better disentangle the part of total CIT gap arising from BEPS. This involves calculating an average level of compliance for the sample of all Member States. On that basis, a new estimate of CIT revenue without profit shifting (RWS) is calculated as follows:

$$\text{CIT RWS}_{,t} = \text{legal CIT rate}_{i,t} * \text{legal CIT base}_{i,t} * \text{average compliance ratio}_{t} \qquad (4)$$

The difference between CIT RWS and CIT revenues effectively collected is then interpreted as the loss/gain from BEPS.

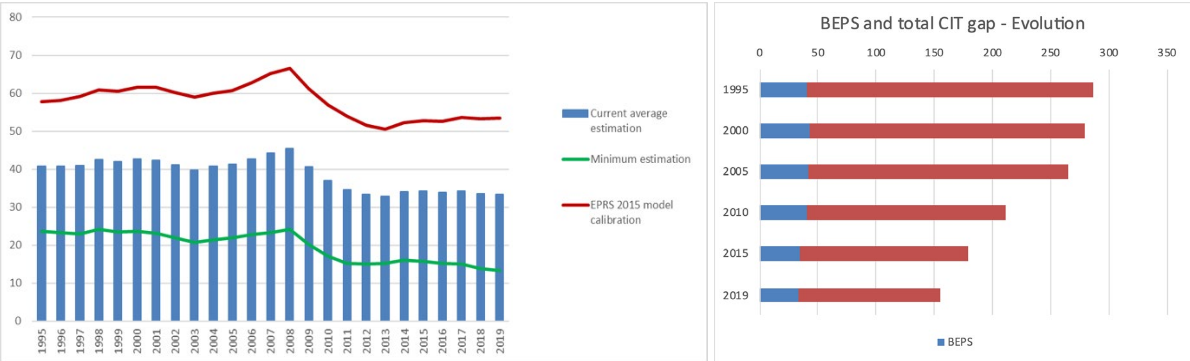
$$\text{CIT Loss/gain from BEPS}_{,t} = \text{CIT RWS}_{i,t} - \text{CIT revenues effectively collected}_{i,t} \qquad (5)$$

The results for the EU are shown in Figure 2. The average estimation corresponds to the average of the calibration according to the EPRS 2015 model but with the updated tax base from CORTAX. The maximum estimation corresponds to a calculation identical to that used in 2015, while the minimum

[24] For a recent and comprehensive review see Maria T. Alvarez-Martinez, Salvador Barrios, Diego d'Andria, Maria Gesualdo, Gaetan Nicodeme and Jonathan Pycroft (2021), op. cit.

estimation simply assumes a symmetric negative deviation around the average. A range of estimates is obtained for losses due to BEPS in the EU of between €13 billion and €53 billion for the year 2019, with an average value of approximately €33 billion. These values are completely in line with the average of other results available in the literature as highlighted in Table 1. From a dynamic perspective, our results also show that the losses from BEPS were constantly above €41 billion per year on average from 1995 to 2010. Since then, and probably owing to international and European actions in this area, losses have been reduced to less than €34 billion on average. This is a small step in the right direction, and, as requested by the European Parliament on numerous occasions, more should be done in this area. The ongoing process under G7/OECD patronage and the BEFIT proposal could be instrumental in that respect. The OECD in its impact assessment report of October 2020[25] evaluated that, assuming a 20 % residual profit allocation key in pillar one and a 15 % minimum tax rate for pillar two, global tax revenue gains could increase by between 1.8 % and 3.2 %, representing between €40 billion and €68 billion additional CIT resources at international level for the countries affected.

Figure 2 a and b – Evolution of estimated EU CIT losses due to BEPS (€ billion)



Source: EPRS.

Compared with the reduction observed for the total CIT gap (see Figure 2 b), it is also clear that the reduction in BEPS has been more subdued. This could probably be explained by the difficulties of reaching international agreement on cross-border taxation issues when some of the factors explaining the total CIT gap are under countries' direct responsibility. The decline in BEPS still contributed to the overall reduction of the total CIT gap, and further actions announced in the area will undoubtedly continue to keep things moving in the right direction. Finally, looking at Member State level (see annex), four countries (Spain, France, Malta and Germany) are currently facing CIT losses due to BEPS that represent more than 10 % of total CIT revenues collected. Only four Member States, Ireland, Cyprus, Croatia and Bulgaria currently benefit from BEPS, albeit by small amounts of 2.2 %, 0.6 %, 0.2 % and 0.2 % respectively of total CIT revenues collected. These results are again in line with recent estimates provided at country level in the literature.[26]

25 Tax challenges arising from digitalisation, economic impact assessment, OECD, October 2020.

26 Looking at the correlation with the results by Alvarez-Martinez 2021, op cit; Barrios et al. 2019 and Torslov et al 2020.

2.3. Addressing the question of the burden of compliance for business

From a business perspective, the current EU tax system, and in particular CIT, is constantly reported in European Commission business surveys as one of the main administrative challenges, both in terms of its complexity and in terms of the burden of compliance that it imposes.[27] In particular, data collection costs, preparation costs and the review and submission costs of tax declarations are constantly flagged as the highest burden for businesses. The result is that any excessive red tape associated with compliance costs has a negative impact on businesses' productivity and, in turn, results in lower profits. These costs are also considered as a hindrance to cross-border investments. This is particularly relevant for SMEs who often do not have internal international expertise to deal with all the detailed tax requirements. In some Member States, an excessively costly, complex and heavy multi-layered administrative system is also in place, creating unnecessary burdens for domestic and non-domestic businesses.

Businesses therefore support the multilateral negotiation under the OECD/G20 framework and the overarching conceptual approach distinguishing between actions under pillars one and two.[28] Businesses also support international tax rules addressing harmful tax practices, eliminating double taxation and keeping red tape to a minimum. In particular, businesses stress the need to address the sometimes protectionist tax barriers and unilateral tax arrangements that distort competition and trade. They recall the potential negative effects on growth and investments of unilaterally increasing the effective corporate tax rate and they emphasise instead the need to ensure a less complex and more transparent international tax framework. They are also strongly in favour of giving greater consideration to the impact of any reform in this area on the administrative burden and related costs. Finally, they ask for effort to avoid constantly evolving regulation, as this increases uncertainty and compliance costs while opening the door to potential loopholes in the overall framework.

Looking at the magnitude of CIT-related compliance costs for businesses, it is clear that the cost of collecting CIT is relatively high, representing on average 44 % of the total cost linked to tax collection. The problem is particularly acute for SMEs,[29] thus potentially putting them at a constant disadvantage. In particular, SMEs responding to the Commission survey mentioned the complexity of the tax systems, including many rules and exceptions, as the key driver of the increased tax compliance burden. Respondents specifically suggested linking the CIT tax base more closely to accounting profit.

To reply to these concerns, the European Commission initially argued that a CCTB for SMEs could facilitate easier access by such enterprises to all the necessary CIT information and guidelines they need for cross-border activities in the EU. The Commission also explained that access to reliable information could be centralised and made available to businesses via a one-stop shop (OSS). Finally, for SMEs the introduction of an easy to calculate common tax base applicable to SMEs in the EU could reduce the complexity created by different tax legislations, reduce the need them to outsource their tax compliance work and encourage cross-border activity. Furthermore, in July 2020, the European Commission adopted a new tax package to reinforce the fight against tax abuse, to help tax administrations keep pace with a constantly evolving economy and ease administrative burdens. Finally, as part of the BEFIT proposal, the Commission will present by 2023 a new

27 Study on tax compliance costs for SMEs, KPMG for the European Commission, November 2018.

28 OECD reports on the Pillar 1 and Pillar 2 blueprints – Business Europe's reply to the public consultation, Business Europe, December 2020.

29 The Commission estimated CIT compliance cost of less than 2 % on average for large businesses, while the average cost for SMEs goes above 30 %. Study on tax compliance costs for SMEs, KPMG for the European Commission, 2018.

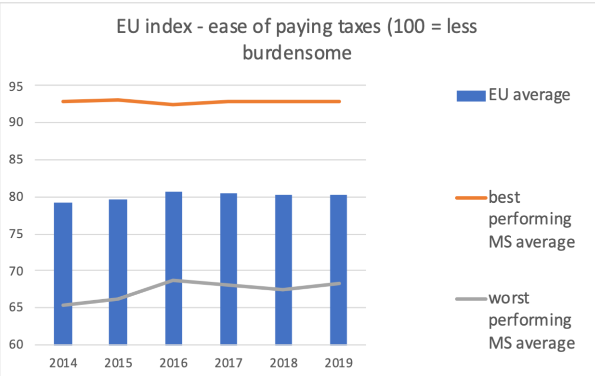
framework for business taxation in the EU, with the aim of reducing administrative burdens, removing tax obstacles and creating a more business-friendly environment in the single market.

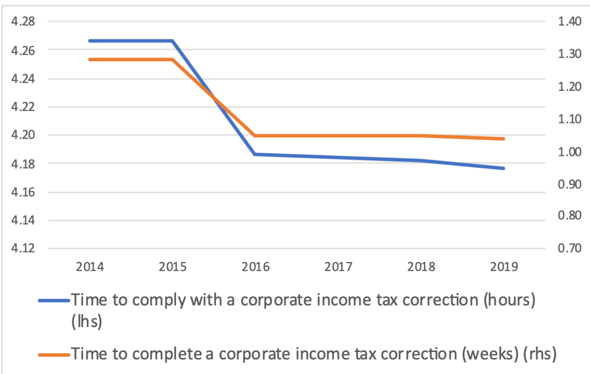
The Joint Research Centre (JRC)[30] conducted a comprehensive and detailed evaluation of the economic impact of various proposals to reduce the compliance costs linked to corporate tax base harmonisation. The results suggest that the changes in tax compliance costs led by the harmonisation of corporate tax bases would have a significant and positive economic impact and that SMEs would also benefit from the reduction in tax compliance costs for potential cross-border operations. The results indicate that further corporate tax base harmonisation in the EU, assuming a reduction of average compliance costs from 12 % to 4 % of total CIT revenues, could increase GDP by 0.05 percentage points, equivalent to around €8 billion per year.

More broadly, regarding the quantification of the compliance burden faced by businesses, a valuable source of information on the burden of taxation is the World Bank Doing Business database.[31] Among other indicators, it has an index on the burden of paying taxes, which records the taxes and mandatory contributions that a medium-sized company must pay or withhold in a given year, as well as the administrative burden of paying taxes and contributions. It also provides two sub indicators on time taken to comply with a CIT correction (hours), and on time to complete a CIT correction (weeks). The data cover all the Member States and the current 2020 version of the database gives comparable data for the 2014-2018 period. Using these data and prolonging past trends for 2019, an estimation is given for the corresponding updated value of the index for the EU[32] as a whole (see Figure 3).

The results indicate that in 2019 it still takes more than four hours for an average EU business to comply with a CIT correction and more than one week to complete a CIT correction. Croatia, Slovenia and Malta are the three Member States with the highest required numbers of hours to comply with a CIT correction (respectively around 36, 29 and 24 hours). Malta, Poland and Croatia record the highest number of weeks to complete a CIT correction (respectively around 46, 20 and 18 weeks). The overall EU index on paying taxes shows some very small signs of improvement over the period under consideration, while the gap between the best EU performers and the worst EU performers remains relatively large. This points to the need for an ambitious agenda in this area at EU level and therefore justifies the constant renewed focus, recommendations and calls for action by Parliament on this subject.

Figure 3 a and b – Burden of paying taxes, estimate for the EU





Source: Author's calculations based upon World Bank index – paying taxes.

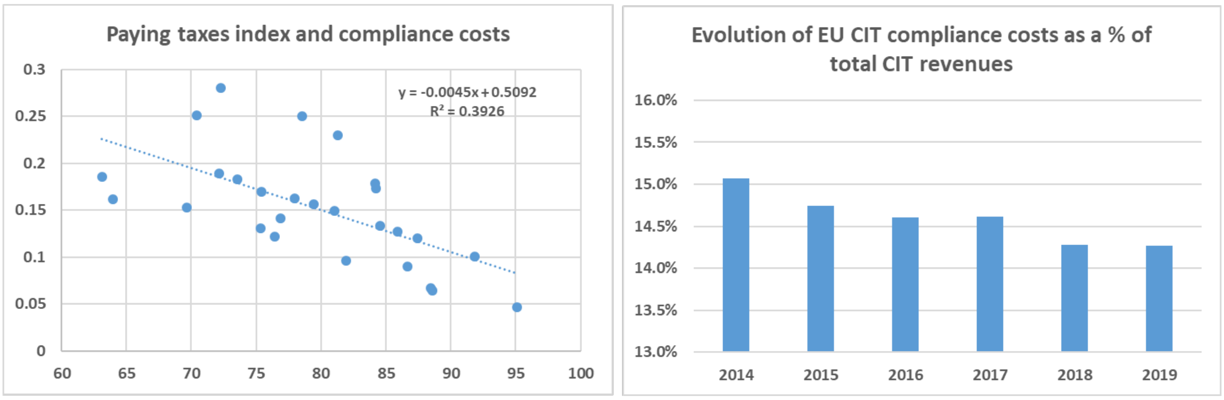
30 See S. Barrios, D. d'Andria and M. Gesualdo, Reducing tax compliance costs through corporate tax base harmonisation in the European Union, JRC Working Papers on Taxation and Structural Reforms No 2/2019.

31 Doing Business database – Paying taxes, World Bank, 2020.

32 This uses a weighted average with GDP for 2018 as a constant weight.

Another source of information is the comprehensive 2018 European Commission study on tax compliance.[33] This survey provides a very detailed assessment of the state of play regarding the cost of tax compliance in the EU. The database covers 19 Member States from 2010 to 2014. It contains complete data on the number of businesses and on the average compliance cost for four classes of business (micro, small, medium and large). This allows the calculation of average compliance costs for each Member State. As the data are rather outdated and as not all Member States are covered (those missing are Bulgaria, Croatia, Cyprus, Denmark, Hungary, Latvia, Lithuania, Malta and Portugal), there is however a need to estimate more meaningful information. For that purpose, the relationship is examined between the World Bank index on the ease of paying taxes and compliance costs data from the European Commission for the year 2014. As shown by Figure 4 a, the linear adjustment is quite strong and the statistical estimation confirms the significance of all the coefficients (see annex). Using this bridge relationship, it is then possible to calculate an estimate for the cost of compliance for all Member States (see annex) for the 2014-2019 period.

Figure 4 a and b – CIT compliance costs as a percentage of total CIT revenues



Source: EPRS.

The results for the EU are presented in Figure 4 b. We see that the compliance costs have declined slightly from 15.1 % of total CIT revenues in 2014 to around 14.4 % of total CIT revenues in 2019. This is in line with recent estimates by the JRC that calculated a level of CIT compliance for the EU of 12 %. Looking at individual Member States, in 2019 businesses still faced CIT compliance costs above 20 % in four of them, namely Poland (31.8 %), Czechia (25.4 %), Greece (23.6 %) and Slovakia (23.4 %).

[33] See European Commission, 2018, op cit.

3. Progress, policy challenges and further potential policy options to reduce the CIT gap and lower compliance costs

This chapter looks at the current status of EU legislation designed to improve the EU CIT regulatory framework. Given the importance on the international dimension in this file, the OECD/G20 and US proposals are also analysed and the main remaining challenges identified. A series of potential policy options to address these challenges in this area is then provided.

3.1. Evolution and state of play regarding the EU legislation

In 1992, the idea of a corporate income tax at EU level was discussed in the seminal **Ruding Tax Report**.[34] The idea of tax coordination among Member States was indeed already in the spotlight as economic openness and mobility of capital were increasing at a faster pace. The European Commission therefore started to investigate, focusing in particular on how different national taxes impact the functioning of the internal market, whether or not action at EU level was necessary to alleviate market distortions, and, if so, what kind of measures the EU should adopt. One of the main issues with the corporate tax system related to its intrinsic design, as the fact that businesses should pay their taxes where they generate profits was being challenged by a reality where multinationals, with numerous subsidiaries in different countries, actively engage in cross-border activities on a frequent basis. In order to provide an updated scheme that keeps pace with this reality, the European Commission presented a proposal for a home state taxation pilot scheme in 2005 to allow cross-border companies to compute their profits in one single system, that of the parent company.[35]

Following up on this initiative, a series of proposals were made. The European Commission launched an initial proposal for a **CCCTB directive** on 16 March 2011. This proposal contained specific provisions to increase CIT compliance as well as an attempt to reduce over taxation and double taxation. In 2012, the European Parliament adopted a legislative resolution with some amendments aimed at increasing cooperation among tax authorities and providing special tools for SMEs.[36] The European Parliament also highlighted that a mandatory system would bring more clarity, simplicity, lower compliance costs and higher added value.[37] Given the crucial importance of cooperation at international level on this file, the **OECD presented an action plan on BEPS** with 15 actions aimed at reducing gaps and friction that might arise in a globalised world owing to different national tax rules. These actions aim to tax the digital economy effectively, mitigate the effects of aggressive tax planning (especially of hybrid mismatch arrangements), revise controlled foreign company (CFC) rules, implement interest deductions and other fiscal incentives to reduce base erosion, and enhance transparency or transfer pricing.[38]

The **anti-tax-avoidance package presented** by the EU Commission in 2016, reflected the BEPS recommendations.[39] This package, designed to lay down the rules for fairer, simpler and more

[34] O. Ruding, Conclusions and recommendations of the Committee of Independent Experts on Company Taxation, (commonly called the Ruding Report, 1992. It is worth mentioning that before this report the Commission discussed how to prevent double taxation, tax discrimination or how to advance in the development of the future single market in the 1962 Neumark report and the 1970 van den Tempel report.

[35] Communication from the Commission on tackling the corporation tax obstacles of small and medium-sized enterprises in the internal market – Outline of a possible home state taxation pilot scheme, COM (2005) 702 final, 2005.

[36] Resolution of 19 April 2012 on the proposal for a Council directive on a common consolidated corporate tax base (CCCTB), European Parliament.

[37] See Amendment 14, 20 and 37 to the Resolution from the European Parliament (2012).

[38] Action plan on base erosion and profit shifting, OECD, 2013.

[39] Anti tax avoidance package, European Commission website. For a review on the four pillars see:

effective taxation in the EU, was based on four pillars: first, **an anti-tax-avoidance directive (ATAD I)**, envisaging rules to counteract tax abuse, and prevent double taxation and profit shifting, among others. Second, a recommendation on tax treaties that sets out proposals to reinforce tax treaties against tax abuse. Third, the revised **DAC4**, introducing the country-by-country reporting work on multinationals. And, lastly, a communication on an external strategy for effective taxation to enhance cooperation between the EU and third countries on tax governance, which sets out a common and unified approach with third countries concerning tax issues.

Building upon renewed momentum and following calls for effective action, the Commission presented a new **proposal in 2016 for a common corporate income tax directive**.[40] The re-launched CCCTB was to be implemented in two steps: first, a common corporate tax base,[41] and, second, consolidation.[42] The first step entailed rules to determine the taxable common base. The second step would consist of a single EU system for computing tax liabilities and filing tax returns through a one-stop shop, rather than 27 different national ones. It was designed to minimise compliance costs and allow organisations to offset profits in one country against losses in others. Rules against debt-bias and a reduction for research and development (R&D) activities were envisaged in this second proposal in order to promote stable financing. The proposal was based on a set of rules to calculate taxable profits in a single EU system, allowing firms to file a single tax return even if they operate across different countries.[43] This system would be mandatory for large groups[44] and optional for small and medium-sized enterprises.[45] In 2017, the ATAD I was amended to extend the rules against hybrid mismatches to third countries, bringing about **ATAD II**. In 2019, the **OECD presented the BEPS 2.0 proposal** based on two pillars: revised nexus and profit allocation rules and a global anti-base erosion proposal to address the challenges posed by the digital economy.[46]

Building upon BEPS 2.0, a new **tax package for fair and simple taxation was published by the Commission in July 2020**. This package seeks to ensure cooperation between tax authorities and between EU countries and third states, as well as to reinforce the fight against tax fraud. Three separate initiatives were adopted, namely an action plan for fair and simple taxation supporting recovery, a communication on good tax governance in the EU and beyond, and a proposal for better administrative cooperation. The **action plan for fair and simple taxation supporting the recovery** contains 25 initiatives to be implemented between 2021 and 2024 with a view to making taxation simpler and fairer and more adapted to current challenges, such as digital consumption.

- ATAD I: Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.
- Recommendation on tax treaties: Commission recommendation on the implementation of measures against tax treaty abuse, C(2016) 271 final, January 2016.
- ACD: Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, COM(2016) 25 final, 2016/0010(CNS), European Commission, January 2016.
- Communication on an external strategy for effective taxation: Communication from the Commission on an external strategy for effective taxation, COM(2016) 024 final, January 2016.

[40] This follows the publication in 2015 of an action plan on corporate taxation aimed at relaunching the CCCTB, ensuring fair taxation, transparency and coordination between Member States, and enhancing the business environment within the internal market.

[41] Proposal for a Council directive on a common corporate tax base, COM(2016) 685 final 2016/0337 (CNS), European Commission, October 2016.

[42] Proposal for a Council Directive on a common consolidated corporate tax base (CCCTB), COM(2016) 683 final 2016/0336 (CNS), European Commission, October 2016.

[43] The proposal contains an apportionment formula to calculate the share of the profit in each Member State. See recital 10 and article 28 of the proposal for a Council directive on a common consolidated corporate tax base (CCCTB), COM(2016) 683 final 2016/0336 (CNS), European Commission, October 2016.

[44] Threshold: €750 million of consolidated revenue.

[45] Common consolidated corporate tax base (CCCTB), European Commission website.

[46] OECD/G20 inclusive framework on BEPS, Programme of work to develop a consensus solution to the tax challenges arising from the digitalisation of the economy, OECD, 2019.

'Realigning taxing rights with value creation and setting a minimum level of effective taxation of business profits' are two of the main initiatives set out in the action plan concerning corporate income tax along with increased transparency and the exchange of tax data. Similarly, an EU cooperative compliance framework would be necessary in order to enhance cooperation between different tax authorities throughout the Union.[47] The **communication on tax good governance in the EU and beyond** sets out recommendations to strengthen transparency and promote fair taxation. To tackle harmful tax competition, the communication sets out improvements to the list of non-cooperative jurisdictions, reform of the code of conduct, expanding its scope, and recognition of the role of taxation in ensuring the implementation of Agenda 2030.[48] The **revision of the DAC (DAC7)** is aimed at enhancing the way digital platforms exchange tax-related information. It should strengthen the transparency of the current tax framework.[49]

Finally, an **ambitious proposal in 2021** by US president Biden and Secretary of the Treasury Yellen, of potentially historic importance, has been agreed under the **G7/OECD framework** and is currently under discussion at international level. The new framework is still based on two pillars and it seeks to ensure a tax system fit for the challenges of the 21st century, namely digitalisation and rapidly evolving and interconnected economies. MNEs will be legally bound to pay taxes where they make profits, providing for a fairer tax system. Pillar one will provide a common methodology for the distribution of taxing rights across countries, while pillar two will put a floor on the CIT rate with a view to reducing harmful competition.[50] During pillar one discussions, carve-outs were proposed for extractives and regulated financial services. Only MNEs with a global turnover of at least €20 billion and 10 % of profitability come within the scope of the proposal. Another key element of this pillar is the profit threshold that a MNE has to earn in a jurisdiction to take it into account when redistributing excess profits. As a general rule, it was set at one million, with €250 000 as an exception in smaller jurisdictions whose GDP is lower than €40 billion.[51] Pillar two is based on two different rules, GloBE and the treaty-based rule. The threshold for being subject to GLoBE rules has been set at €750 million. To date 130 jurisdictions[52] have joined the statement. They have agreed on an ambitious timeline for implementation, with agreement on pillar two to be reached by October 2021 and the rest of the proposal by 2023.[53] A landmark deal setting a 15 % CIT rate floor on overseas profits was agreed at G7 level in London and at G20 level in Venice one month later.[54]

Following up on this initiative, the EU Commission published a new communication on business taxation for the 21st century and announced its plan to deliver its '**BEFIT**' proposal – **business in Europe: framework for income taxation** – in 2023. The main objective is to reform the tax system to reflect global discussions and challenges. According to this proposal, which will replace the CCCTB proposal, EU MNE profits would be consolidated according to a common and single tax rulebook. A directive will be proposed for the implementation of pillar one while the transposition of pillar two will modify existing provisions in the ATAD Directive and might provide momentum to

47 Communication from the Commission on an action plan for fair and simple taxation supporting the recovery strategy, COM(2020) 312 final, July 2020.

48 Communication from the Commission on tax good governance in the EU and beyond, COM (2020) 313 final, July 2020.

49 Proposal for a Council Directive amending Directive 2011/16 on administrative cooperation in the field of taxation, COM(2020) 314 final, European Commission, July 2020.

50 Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, OECD, July 2021.

51 In jurisdictions with a GDP lower than €40 billion, the threshold amounts to €250 000.

52 Members of the OECD/G20 inclusive framework on BEPS joining the statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy as of 9 July 2021, OECD, July 2021.

53 130 countries and jurisdictions join bold new framework for international tax reform, OECD website.

54 Euronews (2021), G20 greenlights global corporate tax rate of at least 15 % to stop 'race to the bottom'. See also Euronews (2021), EU hails G7 tax agreement but internal divisions could thwart consensus.

bring forward the proposal pending for recasting the Interest and Royalties Directive (IRD).[55] Most recently, a public country-by-country reporting scheme was discussed to ensure transparency of big multinationals (turnover threshold of €750 million), even those that are not based in the EU. Council recently approved a requirement on disclosure of the income they pay and other related tax issues, for instance in its recommendation on the domestic treatment of losses.[56] A directive on fighting tax avoidance through shell companies is to be implemented in the next two years (which will constitute **ATAD III**).[57] All these measures build on the tax action plan for fair and simple taxation supporting the recovery, explained above.

3.2. Policy challenges

As described above, the CIT system has undergone profound modernisation in recent years. It is, however, still subject to a series of potential regulatory gaps and barriers that undermine its effectiveness and efficiency. The study in annex to this EAVA provides a complete and detailed overview of the limitations of the current EU legislative framework. Based upon this work and on the wealth of studies in the literature in this area, this study identifies the main challenges that the EU still faces in arriving at a fair and simpler CIT with lower compliance costs. These challenges are naturally not to be seen as completely independent from one another and therefore need to be addressed as part of a comprehensive and ambitious agenda to deliver mutually reinforcing results.

3.2.1. Fragmented organisation of the EU CIT tax system

Businesses with cross-border activities have to deal with a series of obstacles arising from the different tax regimes within the EU. First, they have to deal with different tax laws throughout the EU and, in most cases, these are in the national language and with a lack of detailed or up-to-date information and guidance provided by the public authorities. Moreover, there are other tax rules at international and bilateral level to take into account. The result is potentially double taxation or double non-taxation on profits, mergers and acquisitions. Second, tax audits, litigation concerning tax issues, tax accounting and tax record keeping are costly and, again, follow different rules from country to country. Third, the rules on procedures and deadlines for tax returns differ across countries. Fourth, as it is not possible to offset losses against profit, large companies rationally tend to base their headquarters in low tax countries.

As a result, countries have an incentive to reduce tax rates, sometimes unilaterally and without proper coordination, or in general to take on deregulation initiatives, in an attempt to attract foreign investors.[58] On the one hand, if done responsibly, this competition has some advantages as it can be a disincentive to cartels, an efficient way to attract investment and innovation and motivation for governments to plan expenditures and tax revenues efficiently. In other words, tax competition can result in a more efficient allocation of resources. On the other hand, in a context of rapid globalisation and increasing integration of markets globally, wild tax competition can lead to a sub-optimal equilibrium if the allocation is driven by artificial improvements in the relative competitive position of some businesses or sectors. This is the case when some jurisdictions seek to attract investment through beggar-thy-neighbour policies, which in practice means increasing the jurisdiction's tax base at the expense of other countries.[59] Furthermore, tax competition is inextricably intertwined with economic development and the business environment; hence all

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55 Communication from the Commission on business taxation for the 21st century, COM(2021) 251 final, May 2021.

56 Council approves greater corporate transparency for big multinationals, Council press release, 3 March 2021.

57 Inception impact assessment: Fighting the use of shell entities and arrangements for tax purposes, European Commission, May 2021.

58 Annex to this study. For an in-depth economic analysis see also European Tax Survey, European Commission, 2004.

59 Harmful tax practices within the EU: definition, identification and recommendations, Directorate-General for Internal Policies, European Parliament, May 2021.

governments have some degree of vested interest in taxing different sectors. Although some tax might have a local component, within a monetary union and a single market, a minimum level of regulation and harmonisation is imperative to ensure stability and fairness.

3.2.2. Complexity of tax regulation

Since the financial crisis, governments have studied the impact of contemporary harmful tax competition in great detail.[60] Higher transfer pricing in countries with high tax, debt shifting with the parent company or strategic allocation of assets, especially intangible ones, are three examples of schemes that companies develop to benefit from differences in taxation across jurisdictions. These are especially relevant in the EU where 27 different tax frameworks apply and where, as a result, tax planning has become a component of financial plans to ensure tax efficiency. Excessive and sometimes artificial complexity in tax systems inevitably leads to an increase in tax avoidance and, conversely, for businesses that comply with tax law, compliance costs are significantly higher. This is problem particularly acute for SMEs that can therefore be put off cross-border operations. The economy as a whole also suffers from these challenges, as investment in R&D or job creation can be reduced. The lack of transparent business environment also makes countries less attractive to investors and leaves the door open to new waves of aggressive tax planning (ATP) strategies. ATP also entails broader negative consequences, namely an inefficient allocation of resources (compared with the theoretical no-tax framework), which could lead to some social discontent as tax planning does not seem accessible to citizens or to all businesses, in particular the smaller ones.[61]

These 'fiscal externalities' can also have a direct macroeconomic impact on other countries, affecting real and financial economic flows, the tax base, the tax rate, tax incentives and nominal prices. Transfer pricing abuses have been shown to be common practice, leading to BEPS. In particular, businesses in advanced economies tend to use transfer pricing to benefit from complex and fragmented taxation of intangibles. The decision on the location of intangible assets is therefore a cause and an effect of the changes in CIT rates as, for instance, there is a significant negative correlation between the rate and the number of patents filed by a company or the importance of intangible assets that it has on the balance sheet. Profit shifting schemes are also more usual in jurisdictions with high levels of investment in R&D and intangible assets. Finally, tax rates have an impact on decisions on intra-company debt shifting, which is more common between high-tax located subsidiaries and low-tax located ones. The same is true for business investment and relocation of headquarters. The tax rate on repatriated dividends also acts as a cause and consequence of movement of capital across countries. Lastly, hybrid mismatch arrangement regulations in the US are reported to have led to a loss of US$7 billion to the US Treasury between 1997 and 2002.[62]

3.2.3. Lack of administration effectiveness

Tax authorities have so far proven only relatively successful when tackling the challenges of taxing MNEs or new forms of business such as those emerging from the digital economy. In particular, some tax authorities are facing a recurrent general problem of effectiveness. This can be explained by obsolete organisation or, as just mentioned, by national tax bodies that have to deal with

60 Tax evasion is when the taxpayer deliberately avoids paying taxes and tax avoidance is when attempts are made to minimise tax liability using legal schemes. Transfer pricing, debt shifting and strategic allocation of assets are also examples of tax avoidance, but the difference in this case lies in the wilful misconduct of the tax liable business. Treaty shopping or risk transfer are also examples of this conduct. In the economic literature, there is significant and growing evidence that optimisation opportunities do have significant effects on corporate behaviour, with spillover effects on other countries.

61 Barrios S., D'Andria D. and Gesualdo M., Reducing tax compliance costs through corporate tax base harmonisation in the European Union, JRC Working Papers on Taxation and Structural Reforms No 2/2019.

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62 Spillovers in International Corporate Taxation, IMF Policy Paper, International Monetary Fund (IMF), May 2014.

sometimes unnecessarily complex tax systems. Some progress has been made in the EU in this area recently, especially after 2013 when DAC1 entered into force, but there is still room for improvement, especially regarding cross-border administrative cooperation. An evaluation of the DAC conducted by the Commission showed that there are challenges to overcome in the coming years, namely the lack of standardised tax data, the need to enhance tax monitoring schemes and the lack of quality exchange of information between tax authorities. Importantly, it was pointed out that there is not enough evidence to assess whether or not the directive has proven successful in fighting tax fraud, tax evasion and tax avoidance.[63]

Furthermore, tax authorities have to grapple with constantly evolving tax rules, designed to keep pace with a rapidly evolving economic environment,[64] with a view to ensuring a level playing field for all businesses. For instance, when it comes to taxing digital firms, issues can arise concerning the treatment of data and the tax base subject to taxation.[65] The result of sometimes outdated calculation methodologies and regulations may be that highly profitable digital firms pay lower effective taxes than traditional ones. This has helped to cast doubt on the fairness of the tax system.[66] Another noteworthy challenge for tax authorities is how to capture value brought by new businesses based on intangibles and digital models. Moreover, businesses with digital and intangible assets are prone to ATP, as these immaterial factors of production can be easily moved across countries.[67] For Member States' tax authorities, it is therefore challenging to tax these businesses, to prevent them from taking part in tax optimisation schemes or to prosecute activities that fall beyond the sometimes narrow scope of national tax rules. Finally, national tax authorities are in charge of determining whether there is a legal tax infraction or just an aggressive misconduct. As in most cases it is challenging and cumbersome to draw the line between them, tax authorities together with legislative bodies sometimes lack the capacity to prevent and prosecute tax misconduct and to be effective in their action.

3.2.4. Lack of digitalisation, integrated systems or artificial intelligence to analyse and exchange information

Some tax authorities are still lagging behind in the digitalisation of their tax systems and their tax administration, still relying on an extensive workforce and using non-digital systems in a low productivity environment. The positive impact of a digital administration is now more noticeable than ever since the pandemic, a period during which those authorities that had already implemented digital measures have proven far more resilient. This relative lack of digitalisation in some Member States also constitutes a cause and a consequence of the lack of comparable and reliable data at EU level, which is one of the main limitations when it comes to analysing the effects of tax avoidance.[68]

The rapid adoption of digitalisation by citizens and businesses intensifies the need for tax administration reform. A set of tools is to be implemented in the context of the Commission's 2030 digital compass,[69] but more could be done to ensure that no Member State is left behind, for

63 Staff working document, Commission evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final, September 2019.

64 Package for fair and simple taxation, European Commission website.

65 Addressing the tax challenges of the digital economy, Chapter 7: Broader tax challenges raised by the digital economy, OECD, 2014.

66 Commission staff working document, Impact assessment accompanying the proposal for a Council directive on a common corporate tax base and a common consolidated tax base (CCCTB), SWD(2016) 341 final, October 2016.

67 Commission staff working document: Corporate income taxation in the European Union, Accompanying the Commission communication 'A fair and efficient corporate tax system in the European Union: Five key areas for action', SWD(2015) 121 final, June 2015.

68 See annex to this study.

69 Europe's digital decade: Digital targets for 2030, European Commission website.

instance by expanding technical and budgetary assistance. Furthermore, the deployment and wider use of artificial intelligence (AI) constitutes a new challenge for tax authorities, as new skills and new working methods have to be developed. The use of these more advanced tools could, however, significantly enhance the flow and treatment of CIT data throughout national tax authorities. AI could also reinforce the fight against tax evasion, helping in the investigation of financial crimes. CIT data collection and analysis could be further boosted at EU level especially if such tools are developed with progress on big data collection and network analysis. To implement this, further investment in this field would also be necessary. Again, technical assistance and budgetary support organised at EU level appear indispensable as the capacity of Member States varies greatly in that respect. Finally, it is worth noting that while digitalisation could be a key tool in improving CIT collection, it could also create some challenges. The legal framework to address the issues that AI might entail regarding privacy is of particular concern as taxpayers' rights might sometimes be put at risk in the context of a loosely regulated digital administration.

3.2.5. Lack of transparency

With the globalisation of value chains and the rapid spread of digital technologies, the business models of most MNEs have changed structurally in the recent years. This has led to more intricacies and complexities and, as a result, to a feeling of reduced transparency. Meanwhile, some high profile cases have drawn a lot of attention to the potential for tax fraud and tax evasion that might arise from the lack of transparency in some jurisdictions. In particular, the so called LuxLeaks, Panama Papers and Paradise Papers among other cases, have shown that there is an urgent need to enhance transparency in the exchange of information. Furthermore, Member States and jurisdictions around the world are often reluctant to exchange information on tax issues as this could be a sensitive field and as some tax information falls under the right to privacy of the individual or the organisation. The DAC lays out key aspects on the exchange of information. However, there is room for improvement as shown by the several above-mentioned recent revisions. In particular, as Member States are legally bound to send data 'only for those categories for which information is already available', there is still a general lack of information concerning categories of income and assets.[70]

An OECD report on transparency and exchange of information concerning tax issues[71] confirmed that the proliferation of rules on bank secrecy, ownership and identity information and accounting records are hampering international efforts to improve tax transparency. Furthermore, as rules on tax secrecy sometimes vary greatly from one country to another, it is difficult to ensure cross-border cooperation. In the same vein, ownership and identity of information and availability of accounting records, crucial when it comes to determining the tax liable person and activities, are sometimes difficult to gather. This, coupled with the above-mentioned difficulties encountered by national tax administrations, reduces the effectiveness of fight against tax evasion and harmful tax practices. Encouragingly, since 2009 the OECD has been leading efforts to ensure that even in these sensitive areas, minimum standards in the exchange of information are followed.[72] At EU level, the DAC, the Fiscalis 2020 programme and various legislative measures[73] have also set out a revised framework to enhance tax transparency and communication among national tax authorities. The newly adopted DAC7 for instance, seeks to enhance the automatic exchange of information, especially concerning digital platforms.

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70 In this regard, the future amendment of DAC (DAC 8) would seek to take into account profits earned via crypto-assets.

71 Transparency and exchange of information for tax purposes – Multilateral co-operation changing the world, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, 2019.

72 Transparency and exchange of information for tax purposes – Multilateral co-operation changing the world, 2019.

73 Such as the Anti-Tax Avoidance Directive or the Commission recommendation on implementation of measures against tax treaty abuse.

3.3. Policy options and opportunities to move forward

The policy options discussed are taken from the study in the annex to this report and from a comprehensive review of the recent literature. The list does not pretend to be exhaustive but it covers the main policy options aimed at addressing the policy challenges identified above. An assessment of the potential qualitative impact of each option is given in Table 2.

3.3.1. Strengthen administrative cooperation and reinforce EU technical support

Cooperation among national authorities and with the EU is a cornerstone of any successful action against tax fraud. A lot of progress has been made through the directives on administrative cooperation (DAC1 to DAC6). Cooperation could still be further strengthened and promoted, in particular as the digital economy is now taking a centre stage. The latest revision of the **Directive on Administrative Cooperation (DAC7)** tries to address some of these challenges. Its main purpose is to enhance cooperation among Member States on the exchange of information of tax duties in the digital economy.[74] The joint investigation team could also be reinforced while best practices and reinforcement of tax administration capacities could be conducted. Best practices, in particular on simplification of multi-layered administrative burdens and on the adoption of digital tools could benefit from further support and assistance. The recent proposal for a regulation on a **technical support instrument**[75] might be instrumental in that respect.

3.3.2. Enhance the exchange of information – Fiscalis

Against the backdrop of the growing digital economy, enhancing the exchange of information among tax administrations could help to improve tax compliance along with tax transparency. To this end, some bodies and tools have been put in place at EU level to encourage the exchange of tax information. The cooperation programme Fiscalis 2020[76] allows tax administrations to exchange data on taxation and to find solutions to address double taxation or double non-taxation issues. It helps to reinforce the skills of taxation administrators by means of workshops, seminars and working visits. The exchange of information also supported by the DAC in the field of direct taxation. The last amendment of it was useful in terms of combatting ATP. As the effectiveness of this directive has nevertheless been questioned,[77] measures to especially enhance spontaneous and automatic exchange of information by businesses are to be implemented. Enhancing cooperation between tax authorities is of the utmost importance in the near future, as was highlighted in the package for fair and simple taxation. Again, digital tools and AI might help in this regard.

3.3.3. Single harmonised tax return, common digital platform and one-stop shop

A single and harmonised CIT return could be envisaged to support BEFIT in the EU. A standardised approach to the content and format of the tax return could be used to simplify preparation of the return. This would help to simplify CIT reporting and reduce the need to outsource tax compliance work, in particular for SMEs doing cross border business. As a next step, a single consolidated tax return and a single digital platform complemented by a one-stop shop to facilitate access to

[74] Inception impact assessment on a proposal for a Council directive amending Directive 2011/16/EU as regards measures to strengthen the exchange of information framework in the field of taxation, European Commission, February 2020.

[75] Proposal for a regulation of the European Parliament and of the Council establishing a technical support instrument, COM(2020) 409, European Commission, May 2020.

[76] The 'Fiscalis 2020' programme, European Commission website.

[77] Staff working document, Commission evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final, September 2019.

information for businesses engaged in BEFIT could be envisaged. This approach would address some of the ambiguity regarding the exchange of some non-comparable or incompatible data and ensure identical treatment across Member States. This potential platform would make the most of the tools already in place and such an approach, combined with the mandatory use of electronic declarations coupled with a strategy based on AI could significantly increase the likelihood of success of the digital platform.

3.3.4. A lower threshold for mandatory inclusion in the BEFIT proposal

The proposal on a directive for a CCCTB was to apply only to businesses belonging to a group with total consolidated revenue above the threshold of €750 000 000. Various actors, including the European Parliament, non-governmental organisations and academics have suggested reducing the threshold in an attempt to extend the benefits of the proposals to businesses of all sizes. The European Parliament notably suggested lowering the threshold to zero,[78] while the European Trade Union Confederation (ETUC) suggested aligning the threshold with the one set out in the Accounting Directive,[79] which is set at €40 million. The idea behind this proposal is to have a 'consistent accounting base' in line with equality of treatment in taxation among businesses and to avoid accounting arbitrage.[80] The BEFIT proposal builds on agreements reached at G20/OECD level in which only MNEs with a global turnover of at least €20 billion and 10 % profitability are to be included within the scope of the proposal. The EU-level solution could be more ambitious.

3.3.5. Harmonisation of accounting rules

A proposal under BEFIT could complement the rules already established in the Accounting Directive and in the International Financial Reporting Standards (IFRS), as further harmonisation of the accounting rules would be essential to reduce compliance costs. The Accounting Directive, which aimed at providing for 'comparable and clear company financial statements across the EU', is limited to limited liability companies in the EU. It provides for comparability, transparency and coherent accounting rules on them. In particular, rules on presentation and content of the statements, financial reports, audits, publications or the responsibility of the governing body within the company are laid down in the directive in order to harmonise national requirements. However, although it establishes a simplified regime for SMEs and especially for micro-companies, the harmonisation of accounting rules remained limited. EU limited liability companies must also comply with the IFRS.[81] As noted in the study in the annex, a connection should be made between the IFRS rules and the Accounting Directive, as a proposal under BEFIT containing rules on the tax base but not the accounting guidance for it[82] could increase the cost of compliance.

Another point raised by the study in the annex concerning this policy option is the suitability of the apportionment formula. In particular, the European Economic and Social Committee (EESC) asked the Commission to move towards consensus and revise the apportionment formula to adapt it to the economic reality.[83] This formula could lead to an increase in the tax burden, as a considerable proportion of taxable income would be apportioned to high-tax countries which could open the

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78 See Amendments 6 and 23 on Resolution of 15 March 2018 on the proposal for a Council directive on a common corporate tax base, European Parliament.

79 Directive 2013/34 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

80 ETUC position on the common consolidated tax base (CCCTB), European Trade Union Confederation (ETUC), December 2016.

81 Financial reporting: EU rules on financial information disclosed by companies, European Commission website.

82 Hence the reconciliation between the BEFIT and the accounting rules would be different among Member States.

83 Opinion of the European Economic and Social Committee on the proposal for a Council directive on a common consolidated corporate tax base (CCCTB) and on the proposal for a Council directive on a common corporate tax base, December 2017.

door to tax planning and tax competition among them. Therefore, only scarcely profitable jurisdictions would benefit from this scheme. Furthermore, lower investment in production factors is expected in high-tax countries.[84] Allowing large enterprises to harmonise the accounting rules according to the IFRS and then adjusting the tax base under the BEFIT scheme could be a first step towards implementing this policy option.[85]

3.3.6. Revision of the super-reduction for R&D and the allowance for growth and investment (AGI)

Partial exemption and notional deductions are usually used to incentivise R&D activities. Such measures have not always proved to be the most successful at achieving their goal of stimulating structural R&D and at stimulating innovation.[86] A proposal that aligns deductions for R&D with the global standards could be put in place. The European Parliament also maintains that a tax credit for R&D would be preferable to a super-deduction.[87]

Similarly, the current AGI leaves great room for improvement, and an allowance for corporate equity could be put in place instead. The AGI was envisaged in the Commission proposal to avoid the risk of high indebtedness of businesses as interest on loans would be deductible from the base. Nevertheless, to avoid this risk, an interest deduction limitation might 'constitute an appropriate and sufficient tool for that purpose' as established in the Parliament resolution.[88] Furthermore, as mentioned before, the AGI clause introduced a cyclical element to the tax.

3.3.7. Full inclusion of intangible assets in the BEFIT proposal

Taxing intangible assets poses a policy challenge for tax authorities owing to the fact that it is difficult both to assess the added value that they bring and to specify the jurisdiction where they are produced and should be taxed. The current BEFIT proposal explicitly excludes intangible and financial assets owing to 'their mobile nature and the risks of circumventing the system'. The current proposal establishes a 'safeguard clause' if the apportionment formula does not take fairly into account the reality of the business activity.[89] However, as intangible assets are one of the most important drivers of growth in today's economy, it is essential to reflect on a proper way to include them in the proposal. This would also require more coherence in the current digital framework at EU level.[90]

3.3.8. Inclusion of anti-tax avoidance measures

Anti-tax avoidance measures in a new BEFIT proposal should be in line with the global discussions and the provisions laid out in the ATAD package. The latter contains specific provisions concerning CFC, the switchover rule, exit taxation, interest limitation and general anti-abuse rule. The CCCTB proposal did not contain anti-abuse provisions concerning for instance wilful misconduct when

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84 R. Cline, T. Neubig, A. Phillips, C. Sanger and A. Walsh, Study on the economic and budgetary impact of the introduction of a common consolidated corporate tax base in the European Union, Ernst & Young, 2010.

85 Annex to this study.

86 Harmful tax practices within the EU: definition, identification and recommendations, Directorate-General for Internal Policies, European Parliament, May 2021.

87 Resolution of 15 March 2018 on the proposal for a Council directive on a common corporate tax base, European Parliament.

88 Resolution of the European Parliament (2018).

89 See in the explanatory memorandum to the proposal for a Council directive on a common consolidated corporate tax base (CCCTB), COM(2016) 683 final 2016/0336 (CNS), Section 5: Other elements. See also recital 10 and article 29 of the proposal.

90 Opinion of the European Economic and Social Committee on the proposal for a Council directive on a common consolidated corporate tax base (CCCTB) and on the proposal for a Council directive on a common corporate tax base, December 2017.

calculating the apportionment formula or paper profit shifting through labour or capital factors manipulation. A tailored anti-abuse rule for these problems that may arise in direct taxation and a revision of the switchover and CFC rules may be included as another policy option, as pointed out in the study in the annex.

Enhancing anti-tax avoidance measures also naturally goes hand in hand with an increase in tax transparency and better exchange of information (see related policy options). Concerning the link with transparency in tax issues, three different levels of actions could be proposed: first, a harmonised framework for tax ruling procedures at EU level. Some countries, such as Belgium and Luxemburg, have already changed their rules to improve tax ruling procedures, although there is no single approach at EU level for this. The second is to exchange tax ruling information publicly. The third would be a single central platform at EU level concerning tax issues. In this regard, tools such as artificial intelligence and search engines might help to develop a powerful tax platform.[91]

3.3.9. Further harmonisation of special and preferential schemes for SMEs

In order to address the remaining distortions in the current EU CIT system and to reduce the costs imposed on SMEs a series of proposal for a comprehensive simplification of CIT have been proposed over the year (see study in the annex for a comprehensive overview) as different regimes have been implemented in some Member States. First, exemptions, partial exemptions or temporary exemptions have been put in place concerning some general tax duties. Businesses that employ fewer than a certain number of workers or whose sales are below a certain threshold might benefit from the exemptions. Second, if exemption is not legally possible, simplification of the tax compliance procedure could be another option. This simplification might entail relaxation from compliance with the legal requirement of keeping and filing statutory annual accounts and financial statements. Some countries have already established the obligation for SMEs to file these statements online rather than keeping them on paper. Third, a one-stop shop would alleviate the burden of some administrative procedures, especially when starting a business. Fourth, public websites, handbooks, helpdesks or workshops could help SME administrations deal with tax issues. Lastly, better evaluation of the impacts of tax legislation on SMEs might help to identify the issues they face when implementing it. Other options that could be put in place to stand SMEs in good stead to comply with tax expenses could also include a reduction in taxable income or in the tax rate, tax credits, an extension of deductible expenses, and more favourable treatment of annual losses or greater depreciation concerning certain investments.

Further harmonisation and simplification could therefore be envisaged at EU level, for instance by adopting a limited EU tax regime, as fragmentation helps to increase CIT tax compliance costs for SMEs. A first option could be 'home state taxation' (HST) for SMEs. This policy option is nothing new, as the Commission proposed it as a 'possibility worth exploring' in 2005 for reducing the compliance costs of SMEs operating cross-border.[92] In practice the proposal would entail a set of rules for SMEs when reporting, following the rules of one branch of the company, generally the parent company of the group or the lead company. Therefore, if a company wished to start up a subsidiary or a permanent establishment in another EU country, the tax rules that would guide it would be those of the leading company. To implement this policy option, a voluntary agreement between those Member States that agree on it might be put in place, abandoning the requirement of unanimity. As each and every country participating would continue taxing the internal share of the profits of the business through its own CIT, the idea of a voluntary agreement could be easily

[91] Harmful tax practices within the EU: definition, identification and recommendations, Directorate-General for Internal Policies, European Parliament, May 2021.

[92] Communication from the Commission on tackling the corporation tax obstacles of small and medium-sized enterprises in the internal market – Outline of a possible home state taxation pilot scheme, COM/2005/0702 final, December 2015.

accepted among them. As HST cannot be understood as a single EU CIT approach, however, the majority of the policy challenges mentioned above would remain.

Another noteworthy proposal to reduce the burden costs for SMEs is the European tax allocation system (ETAS). This proposal is in line with the former one as it builds on the current national tax rules. The ETAS is based on two steps: first, national tax rates in the country of domicile determine the taxable income and corporate tax liability and, after, the business income earned in other countries, in accordance with other national laws, is added to the base. The result is the EU tax base. If certain affiliated companies are eligible to be part of this proposal, the ETAS holding can decide whether or not aggregate them into the group.[93] As described above, this proposal would allow businesses to offset cross-border loss. This mechanism was envisaged for businesses of all sizes, not just for SMEs, thus its suitability to enhance the position of the latter in tax schemes may be questionable.

A last proposal could be an optional BEFIT for SMEs across the EU. This proposal is based on the assumption that every organisation would have the choice to choose whether or not to remain in the group taxation or opt for the harmonised proposal. The optionality would entail the following benefits for organisations: it would help SMEs deal with the main drawbacks of the current system and the proposal, as they could choose, according to their circumstances, which system suited them better. In this regard, it could be argued that this proposal is a stepping stone towards full consolidation. Furthermore, the optionality would reduce the risk of avoiding the mandatory threshold as many businesses do make use of financial engineering so as not to fall within the scope of the mandatory proposal. On the other hand, there are also risks that might arise if this proposal is implemented. It could distort the level-playing field, as national tax rules would continue to apply in some situations. Furthermore, the EU will maintain this proposal with a view to avoiding discrimination between businesses or the implementation of new barriers to the cross-border expansion of SMEs. To minimise the impact of these disadvantages, an optional proposal for all companies, regardless of the size, might help.

3.3.10. Reinforcement of the code of conduct

The code of conduct for business taxation was adopted in 1997. Although it is not a legally binding instrument, it signals a political willingness to fight against harmful tax practices. Member States have adopted it to roll back those measures that might result in harmful tax competition (which is known as 'rollback') and prevent them from reinstituting (which is known as 'standstill'). Legislative, regulatory and administrative measures that determine the domicile of a business are covered by the code. To bring more transparency to the code, the European Commission regularly publishes the work of the Code of Conduct Group and the Council publishes the minutes of its meetings, which constituted an important step given the fact that Member States tend to be reluctant to exchange this sensitive information.[94]

A proposal under BEFIT could expand the mandate of the Code of Conduct Group, in particular to make it more transparent and accountable, along with its expansion to cover not only the monitoring of harmful tax practices but also enforcement mechanisms. This policy option was discussed within the tax package on fair and simple taxation supporting the recovery strategy in the communication on tax good governance in the EU and beyond. Actions to improve the

[93] C. Dahle and M. Bäumer, Cross-border group-taxation and loss-offset in the EU: An analysis for CCCTB (common consolidated corporate tax base) and ETAS (European tax allocation system), arqus Discussion Papers in Quantitative Tax Research No 66, *arqus - Arbeitskreis Quantitative Steuerlehre,* 2009.

[94] Harmful tax competition, European Commission website and Code of Conduct Group (business taxation), European Council website.

transparency of the EU list of non-cooperative jurisdictions were also proposed by the European Parliament.[95] The reinforcement of the code of conduct could act as a soft-law option.

3.3.11. Further harmonising tax rates at EU level

The harmonisation of tax rates is in line with the BEPS 2.0 proposal. It has gained momentum as the G7/G20 agreement envisages a floor on CIT across the globe under the pillar two proposal. To understand this issue, it is worth distinguishing between the two concepts behind the idea of the tax rate. These are the statutory corporate tax rate, or effective average tax rate, and the effective corporate tax rate. The first is the legal tax base applicable to taxable income while the second shows the effective tax burden to the company. To calculate the latter, tax-deferred provisions are taken into account. Different studies[96] have shown that businesses base their location decisions mainly on the effective average tax rate, while the allocation of capital investments depends mainly on the effective marginal tax rate. Financial policy, the repatriation of incomes and transfer pricing might also be affected by the statutory tax rate. Policy makers should build on these results to develop a harmonised tax rate beneficial for all the stakeholders involved. In this context, harmonisation of the statutory tax rates would result in a reduction of tax planning. The perfect mix, in line with the protracted international debate, would be to put forward the BEFIT proposal coupled with further harmonisation of tax rates at EU level.

3.3.12. Shift to qualified majority voting in the Council on taxation issues

The European Commission presented a communication proposing a shift to qualified majority voting (QMV) in the area of taxation based on the assumption that the scale of the interconnected economy and digital challenges are beyond borders.[97] The following options envisaged in the Treaties were discussed in the communication: first, the enhanced cooperation procedure if at least nine Member States agree on advancing towards a proposed initiative, as was the case for the financial transaction tax (FTT), although it came to a standstill when it was discussed in Council, and, second, qualified majority, which is established in the Treaties to either 'counter fraud and any other illegal activities affecting the financial interests of the Union'[98] or ensure competition in the internal market – through elimination of market distortions – after consulting the Member States concerned.[99] If after consultation with the Member States, the EU is not able to address concerns over market distortion, a proposal for a directive shall be submitted following the ordinary legislative procedure.[100]

The 2019-2024 political guidelines for the European Commission[101] announced the following EU priorities, inextricably intertwined with tax issues: the European Green Deal, an economy that works for people and promoting the European way of life. These priorities cannot be pursued unless further harmonisation concerning taxes is implemented. Moreover, the Covid-19 pandemic has only exacerbated these needs, as recovery plans will require 'modern, efficient and well-structured public structures' and a stronger Union to counteract harmful and distortive tax competition. For all these

95 Resolution of 21 January 2021 on reforming the EU list of tax havens, European Parliament.

96 See study in annex.

97 Communication from the Commission ' Towards a more efficient and democratic decision making in EU tax policy', COM(2019) 8 final, January 2019.

98 See Article 325 of the Treaty on the Functioning of the European Union (TFEU).

99 See Articles 116 and 294 TFEU.

100 Communication from the Commission 'Towards a more efficient and democratic decision making in EU tax policy', COM(2019) 8 final, January 2019.

101 The von der Leyen Commission's six priorities, EPRS, September 2021.

reasons, a move to QMV in Council could be paramount for a Union fit for the future. It could be an interesting complement to a reinforcement of the code of conduct.[102]

3.3.13. Change the EU taxation framework to improve enforcement – move towards an EU treasury

Even with a fairly comprehensive EU regulatory framework in the field of administrative cooperation and with directives and regulations offering national administrations and EU institutions various possibilities for the exchange of information, the risk of fraud is still high. This could be explained by the complexity created by the current fragmented system and by varying degrees of administrative effectiveness and transparency in the Member States. The setting up of centralised procedures at international level for verification and assessment in relation to CIT and for harmonising assessment and penalty regimes represent a serious and ambitious move towards addressing the roots of the current CIT gap. The European Parliament[103] has proposed the creation of such an EU treasury that could equip the Union with greater capacity to apply the existing economic governance framework and facilitate development of the euro area. In response, the Commission proposed in 2017[104] that such a treasury could be entrusted with (i) the economic and fiscal surveillance of the euro area and of its Member States, as well as (ii) the coordination of issuing a possible European safe asset, and (iii) the management of the macro-economic stabilisation function. The treasury could be placed under the responsibility of an EU finance minister. As all Member States are collecting CIT through this type of centralised approach, it appears highly surprising that such an option is still not extensively discussed and integrated in impact assessments at EU level.

[102] Harmful tax practices within the EU: definition, identification and recommendations, Directorate-General for Internal Policies, European Parliament, May 2021.

[103] Resolution of 16 February 2017 on budgetary capacity for the euro area, European Parliament.

[104] Reflection paper on the deepening of the economic and monetary union, European Commission, May 2017.

Table 2 – Impact of policy options on the main channels of transmission

Policy options	Reduction of complexity	Administration effectiveness	Digitalisation	Transparency	Efficiency of enforcement
Strengthen administrative cooperation and reinforce EU technical support	0	++	+	+	0
Enhance the exchange of information – Fiscalis	+	++	+	++	++
Single harmonised tax return, common digital platform and OSS	++	++	++	++	++
Threshold for mandatory inclusion in BEFIT proposal could be lowered	+	+	0	++	+
Harmonisation of accounting rules	++	+	0	++	+
Revision of the super-reduction for R&D and the allowance for growth and investment (AGI)	0	0	0	+	0
Fully include intangible assets in the BEFIT proposal	++	+	0	++	+
Inclusion of anti -tax avoidance measures	0	++	0	++	0
Further harmonisation of special and preferential schemes for SMEs	++	+	0	+	0
Reinforcement of the code of conduct	+	+	0	++	0
Further harmonising tax rates at EU level	++	+	0	++	+
Shift to qualified majority voting in the Council on taxation issues	+	0	0	+	+
Change the EU taxation framework to improve enforcement – move towards an EU treasury	++	++	0	+	++

Source: EPRS.

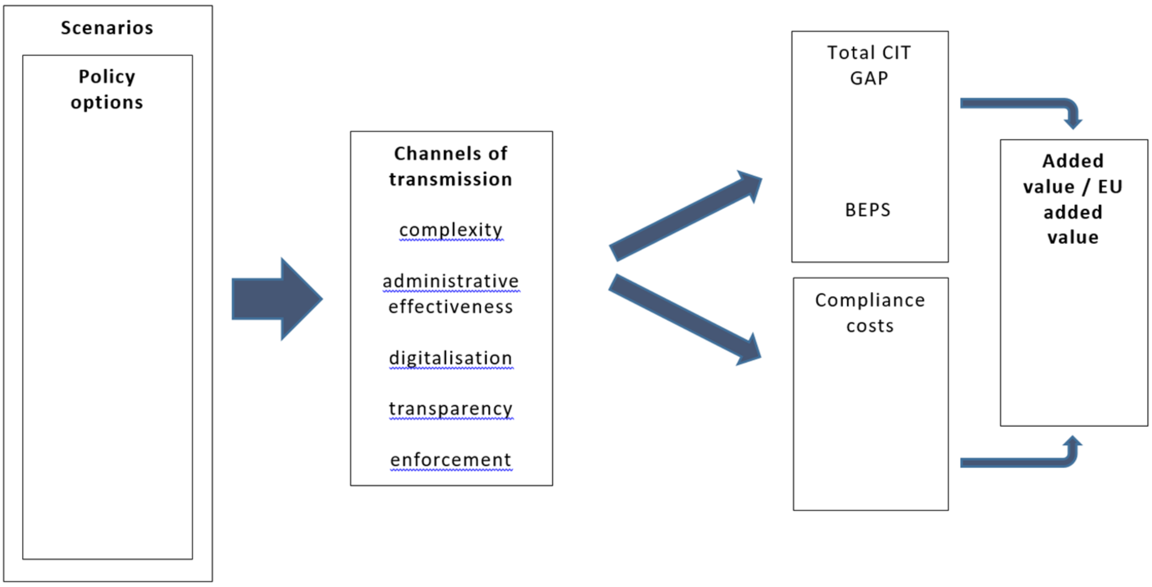
4. Comparative analysis of the EAV of various policy options

This section begins with a description of the conceptual framework and an estimation of the relationships of the model followed by a presentation of the various scenarios and assumptions underpinning the evaluation of the policy options described above. This is followed by a discussion of the results of the quantification of the EAV. Finally, the scope is broadened by conducting a qualitative assessment for different stakeholders.

4.1. Conceptual model and analytical model

From an economic point of view (see Figure 5), the added value of fair and simpler CIT taxation could be analysed as a net potential impact stemming from a reduction of the CIT gap, including tackling BEPS and as net potential impact on compliance costs for businesses. To evaluate these impacts consideration must first to given to the effect of each policy option on the main channels of transmission (summarised in Table 2 above). Then the econometric relationships between improvements in each channel of transmission and the CIT gap have to be estimated. Similarly, the econometric relationships between improvements in each channel of transmission and compliance costs have also to be estimated. Once the various coefficients and relationship are known, a number of scenarios can be defined and the added value corresponding to each scenario calculated. A final comparison between the added value for each scenario allows an estimate to be made of the EAV and the results to be analysed.

Figure 5 – Conceptual framework



Source: EPRS.

In line with the results in the literature on the main channels of transmission of policy action in this field, the EPRS model distinguishes between five channels of transmission, namely complexity of tax systems, administrative effectiveness, extent of digitalisation in the tax administration, level of transparency in the economy and efficiency of enforcement. For each channel of transmission explanatory variables serve as proxies. Based upon this conceptual framework, a statistical estimation is made of the two relationships between the channels of transmission and the CIT gap and between the channels of transmission and the sum of compliance costs.

A cross-sectional approach is used, with data for the 2015-2019 period. The overarching model could be written as follows:

$$CIT\ gap = \propto_1 * complexity + \propto_2 * admin\ effectivenes + \propto_3 * digitalisation + \propto_4 * transparency + \propto_5 * enforcement + \mu \quad (3)$$

$$Compliance\ costs = \beta_1 * complexity + \beta_2 * admin\ effectiveness + \beta_3 * digitalisation + \beta_4 * transparency + \beta_5 * enforcement + \mu \quad (4)$$

Given the number of variables available and used in the literature and given the potential combinations of model specifications, the proxy variables selected are clearly related to the channels and have already shown significant impact. The final reduced dataset consists of five key explanatory variables. A summary of the descriptive statistics of the variables is provided in Table 3 (dependant variables) and Table 4 (explanatory variables). The expected signs of the relationship with the dependant variables is given into brackets next to the names of the explanatory variables. As some of the listed variables correlate significantly with others, the potential collinearity and endogeneity problem is borne in mind and this is partly tackled by the selection of variables for each specification. All relationships are estimated for the whole period available for the dependant and explanatory variables using linear regression methodology.

Table 3 – Descriptive statistics: dependant variables

Dependant variables	-	Unit	Original source	Mean	Standard deviation	Min.	Max.
CIT gap	-	% of total CIT theoretical revenues	EPRS	30.7%	3.5%	22.3 %	38.1%
CIT compliance costs	-	% of total CIT revenues	DG Grow	14.4%	5.9%	4.7%	31.8%

Source: EPRS.

In the first equation, the dependant variable is the CIT gap. The first explanatory variable acting as proxy for complexity is a variable on the burden of government regulation. The reasoning here is relatively straightforward, as all things being equal, Member States that display a high level of administrative burden can also be expected to show a larger CIT gap. The second variable, acting as a proxy for the lack of administrative effectiveness is an index on difficulty paying taxes. Member States that are not effective at collecting and reimbursing CIT could also be expected to record a higher level of CIT gap. The third variable relates to the transparency of government policymaking and consists of an index that measures lack of transparency and the extent of organised crime. The rationale here is that jurisdictions with more efficient judicial systems and more transparent administrations, where exchange of information is automatic and reliable, should, all things being equal, display lower CIT gap levels. The fourth variable concerns the extent of adoption of digitalisation in the public administration. It is represented by the level of capital expenditure on information and communication technology in each Member State's tax administration. The reasoning is that Member States where digitalisation is more advanced should present a smaller CIT gap. The last explanatory variable concerns the efficiency of enforcement, proxied by the number of full time equivalent staff in the tax administration per unit of GDP. All things being equal, Member States with more productive tax administrations are expected to require fewer staff to collect CIT revenues and thus should exhibit lower levels of full time equivalent staff in the tax administration per unit of GDP.

The reasoning for the second equation is similar. A higher level of burden of government regulation, more difficulty in paying taxes, and a less efficient tax administration should, all things being equal, contribute to increase the compliance costs for businesses. A more transparent administration and a higher level of expenditure on information and communication technology in the public sector should, all things being equal, help to reduce compliance costs.

Table 4 – Descriptive statistics: explanatory variables

Channel of transmission	Explanatory variables (proxy)	Unit	Original source	Mean	Standard deviation	Min.	Max.
Complexity	Burden of government regulation **(+)**	Index (0 = not burdensome; 100 = extremely burdensome)	WEF	61.1	12.7	35.1	85.8
Lack of administrative effectiveness	Difficulty paying taxes **(+)**	index	World Bank	17.9	6.7	5.3	39.7
Digitalisation	Tax administration capital expenditure on ICT **(-)**	Values – % of GDP	OECD	0.0049 %	0.0052 %	0.0001 %	0.0241 %
Transparency	Transparency of government policymaking and low level of organised crime **(-)**	Index (0 = difficult for businesses to obtain information and relatively high level of organised crime, 100 = easy and low level)	WEF	32.1	11.2	7.3	57.2
Lack of efficiency in enforcement	Number of full time equivalent employees in the tax administration **(+)**	Value – per unit of GDP (adjusted for the size of the economy)	OECD	51.4	34	14	168.2

Source: EPRS.

The results of the econometric estimation for the model with the CIT gap as a dependant variable (equation (3)) are shown in Table 5 while the detailed statistical results are given in the annex. All the models show a significant relationship between the variables under consideration with a relatively high degree of explained variability.[105] As seen in Table 5, all the variables also have the right signs. The variables linked to complexity, lack of administrative effectiveness and transparency are statistically significant to a high degree in all the specifications tested. Digitalisation also appears significant in two specifications while the proxy on enforcement did not exhibit a significant level of relationship in the specifications tested.

According to EPRS estimates (see specification 5 in Table 5), in order to decrease the CIT gap by one percentage point (all things being equal), the index for burden of government regulation needs to decrease by almost two units, which for the EU on average means a move from an index of 61.1 to 59.1. Administration effectiveness would need to decrease by two units from currently on average

[105] See values for F test and R squared.

17.9 % to 15.9 %. Tax administration capital expenditure on ICT should be boosted, from currently on average 0.0049 % of GDP to 0.0082 % of GDP, which for the EU would represent an increase of more than €0.5 billion in information and communication technology (ICT) capital expenditure for Member States' tax administrations. The transparency index would need to increase by two units, which for the EU on average means a move from an index of currently 32.1 to 34.1. Finally, the efficiency of enforcement would need to be significantly boosted, from the current level of 51.4 to around 25, which would correspond to a doubling of the efficiency of enforcement on average.

Table 5 – Econometric estimations (dependant variable is the CIT gap as a %)

	(1)	(2)	(3)	(4)	(5)
Complexity (+)	0.004 ***	0.005 ***	0.005***	0.006***	0.006***
Lack of administrative effectiveness (+)	0.003*	0.002	0.006**	0.005**	0.005**
Digitalisation (-)	-	-244.2	-	-256.9*	-303.5*
Transparency (-)	-	-	-0.004**	-0.004**	-0.005**
Lack of efficiency in enforcement (+)	-	-	-		0.0004
R squared	0.89	0.89	0.90	0.90	0.90

Source: EPRS *** p<0.01, ** p<0.05, * p<0.2.

The results of the econometric estimations for the CIT compliance cost as a dependant variable (equation (4)) are shown in Table 6, while the detailed statistical results are given in the annex. Again, all the models show a significant relationship between the variables under consideration with a relatively high degree of explained variability.[106] As seen in Table 6, all the variables have the right signs. The variables linked to complexity and lack of administration effectiveness are statistically significant to a relatively high degree in all the specifications tested. Digitalisation and lack of transparency[107] also appear significant in most partial specifications, albeit at low significance degrees. The variable on the efficiency of enforcement also exhibits a high significant level of relationship in the last specification tested.

According to EPRS estimates (see specification 5), in order to decrease compliance costs by one percentage point (all things being equal), the index for the burden of government regulation would need to decrease by 5.1 units, which for the EU on average means a move from an index of currently 61 to around 56. The index for difficulty paying taxes would also need to decrease by more than 4.3 units, from a current average of 17.9 to around 13.6. The transparency index would need to be reduced by 8.4 units. Tax administration spending on ICT would also again need to be boosted, from a current average of 0.0049 % of GDP to almost 0.01 % of GDP, which for the EU would represent an increase of around €0.8 billion in ICT capital expenditure for Member States' tax administrations. Finally, the efficiency of the tax administration would need to be substantially boosted, from a current average value of 51.4 to 36 which is just 2 units above the minimum value for this indicator.

[106] See values for F test and R squared.

[107] Regarding the variable on transparency, a first proxy, namely the index on transparency from the World Economic Forum database does not appear to be significant in specification 4. It was replaced with the broader index on the transparency of government policymaking and low level of organised crime already used for estimating the equation related to the CIT gap. The variable displays the right sign and a significant relationship (see specification 5).

Table 6 – Econometric estimations (dependant variable is CIT compliance costs in %)

	(1)	(2)	(3)	(4)	(5)
Complexity (+)	0.002***	0.002***	0.002***	0.002***	0.002***
Lack of administrative effectiveness (+)	0.002***	0.002**	0,002**	0.001*	0.002**
Digitalisation (-)	-	-123.7*	-116.4*	-182.9**	-203.2**
Transparency (-)	-	-	-0.0002*	0.000005	-0.001*
Lack of efficiency in enforcement (+)	-	-	-	0.0005	0.0007***
R squared	0.91	0.91	0.92	0.92	0.93

Source: EPRS *** p<0.01, ** p<0.05, * p<0.2.

4.2. Description of scenarios and results of the simulations

Fragmented and multi-layered tax systems generate geographical spillover effects as more favourable tax incentives in one area can divert capital flows from other areas and thereby dampen their growth prospects and erode their tax base. This can have some positive effects if such tax competition is well regulated, but it can also lead to abuses, as recently highlighted by a number of high profile cases of tax evasion and tax fraud. In addition, some MNEs may artificially shift profits from a high-tax jurisdiction to a lower-tax one by using accounting schemes, hence exacerbating the problem of base erosion. In a world of wild tax competition, all countries may end up being worse off. To avoid such an adverse outcome, international cooperation is indispensable. From that perspective the recent agreement under the OECD/G20 BEPS inclusive framework is a crucial step as it should help to protect tax bases and ensure predictability for businesses.

The effective implementation of this agreement at EU level will be complemented by additional measures under the BEFIT proposal which will aim at moving towards a common tax rulebook and provide for fairer allocation of taxing rights between Member States. BEFIT will also look at ways of cutting red tape, reducing compliance costs, and supporting EU jobs and investment in the single market. In addition, coordination should also focus on promoting transparency by for instance publishing data on tax expenditure arising from tax incentives and country-by country reporting on transfer prices used to value intra-firm transactions. The previous sections discussed a series of policy options that could be included in the BEFIT proposal. Here, an attempt is made to quantify more precisely what would be the potential economic impact attached to various scenarios based on these policy options. Always based upon the same conceptual framework (see Figure 5), a distinction is made between a baseline and three alternative scenarios. The assumption is full implementation over a five-year period (2020 to 2025).

The **baseline scenario (G7/OECD agreement + basic BEFIT)** considers a situation where the G7/OECD agreement is implemented effectively at international and EU level. It is therefore assumed that the agreement made under G7/OECD patronage, which will be implemented under the BEFIT proposal, will be instrumental in reducing BEPS – estimated at around €33 billion for the EU in 2019. The OECD in its comprehensive impact assessment report of October 2020[108] evaluated that, assuming a 20 % residual profit allocation key in pillar one and a 15 % minimum tax rate for

[108] Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, OECD, July 2021.

pillar two, CIT tax revenue could increase by up to 3.2 %, representing €11 billion in additional CIT resources at EU level.[109] The result of improvements linked to pillar one would be approximately €2 billion, pillar two could generate €9 billion. This estimate was used as input for the model and deduced from the BEPS and CIT gap estimates in the baseline and alternative scenarios. This is naturally a partial evaluation of the impact of the agreement, as progress in other areas at EU level will certainly be driven by the discussion that took place under G7/OECD patronage. The impact on compliance costs for EU businesses is less evident as it will most probably occur directly through improvements in the values for the channels of transmission already identified (complexity, administration effectiveness, transparency, digitalisation, enforcement). Moreover, the OECD in its impact assessment does not provide estimates of the potential impact on compliance costs. No separate direct impact on compliance costs is therefore shown here.

Table 7 – Main assumptions: size of individual shocks for each scenario

Channel of transmission (proxy variable)	Baseline – G7/OECD agreement + basic BEFIT	G7/OECD agreement + limited BEFIT and reinforced and extended cooperation	G7/OECD agreement + ambitious BEFIT and reinforced cooperation	Ambitious scenario – EU treasury and administered CIT at EU level
Complexity	Adjusted trend	-0.25 standard deviation	-0.50 standard deviation	-0.50 * distance to the frontier
Lack of administrative effectiveness	Adjusted trend	-0.50 standard deviation	-0.25 standard deviation	-0.25 * distance to the frontier
Digitalisation	Adjusted trend	+0.50 standard deviation	+0.25 standard deviation	-0.25 * distance to the frontier
Transparency	Adjusted trend	+0.25 standard deviation	+0.50 standard deviation	+0.25 * distance to the frontier
Lack of efficiency in enforcement	Adjusted trend	-0.25 standard deviation	-0.50 standard deviation	- 0.50 * distance to the frontier

Source: EPRS.

Looking beyond implementation of the G7/OECD agreement, the baseline scenario used here does not envisage any other major progress in regulation of CIT in the EU over the period. This corresponds to a **basic BEFIT proposal**, aimed mainly at transferring the results of the G7/OECD agreement into the EU framework. Cooperation would therefore continue to be relatively limited and additional policy options to significantly reduce the CIT gap and to reduce compliance costs for businesses would not be introduced or would be further delayed. This would therefore also correspond to relatively low standards for harmonisation and convergence at EU level. As a result, under such a situation, it is assumed that past trends observed for Member States in all channels of transmission will continue to evolve at a slow trend pace (see Figure 6 below). In this scenario, in addition to the positive impact of G7/OECD agreement, due to the measures already implemented in each area in the recent period, the burden of government regulation and the difficulty of paying taxes indexes continue to decrease slightly from a level of respectively 60 and 17.3 in 2020 to around 58.7 and 16.8 in 2025. Some slow progress has been registered on increasing transparency and on reducing inefficiency in the tax administration. Digitalisation continues to be adopted at a moderate pace in the administration, with capital spending growing from 0.0050 % of GDP in 2020 to 0.0055 % in 2025.

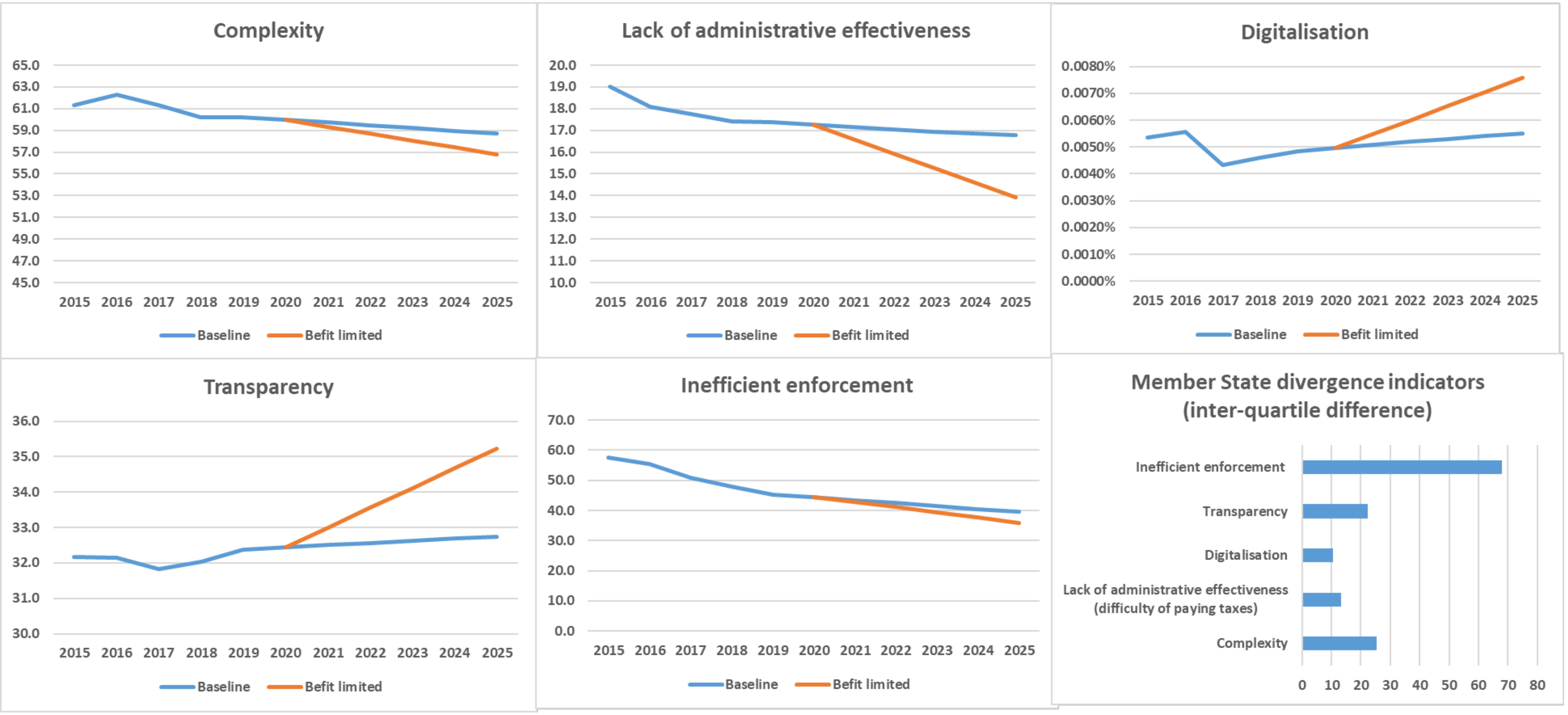
[109] The numbers are in line with other estimations in the literature, for instance by Devereux, 2020.

The first alternative scenario **(G7/OECD agreement + limited BEFIT and reinforced and extended cooperation)** considers a situation of tangible progress where Member States move forward with implementing policy options in a coordinated fashion, and with the BEFIT proposals, while moderate in scope, rapidly coming into place. This scenario would therefore see reinforced cooperation among Member States, revision of the DAC and greater exchange of best practices between tax authorities across the EU. In particular, BEFIT would be assumed to integrated policy options that introduce inclusion of intangible assets, enhanced anti-tax avoidance measures, a preferential regime for SMEs and reform and reinforcement of the code of conduct. Stronger emphasis is also put on making the exchange of information more automatic, on options that improve Member States' administrative effectiveness and on the digitalisation of the tax system in Member States. Policy options aimed at further strengthening the instruments of enhanced cooperation and control with the tax authorities (Fiscalis and advance agreements with companies that operate internationally) and policy options aimed at developing services for the generation, transmission, receipt and storage of electronic invoices (such as common digital platform and OSS, accelerated deployment of artificial intelligence tools) would be favoured. In this scenario the priority is however optional participation in schemes that would be ambitious and that would go beyond the requirements of the OECD/G20 agreement. Similarly some latitude would be left to Member States on the best way to arrive at improvement in their tax systems. Complexity is therefore reduced but not to the maximum extent, transparency is improved at a slower pace and this scenario does not assume a significant convergence between Member States' institutional systems.

To simulate the impact of progress in each area, an increase in the value for each indicator by a percentage of the standard deviation measured in 2020 is assumed (see assumptions for individual shocks in Table 7).[110] The individual shocks are chosen so that the impact on each variable at the end of the implementation period of five years stays within reasonable margins of change for this length of time and considering the distance to the frontier given by the best performers in each area. Moreover, the comparative size of each individual shock between scenarios is mostly derived by building upon the various scenarios of the impact assessments by the European Commission. The results are presented in Figure 6 above. In this scenario, thanks to new measures implemented by Member States to enhance cooperation, to improve exchange of information and to exchange best practice, improvements are observed in all variables. For the EU on average, the burden of government regulation decreases from 60 to around 56.8 in 2025, the difficulty of paying taxes index decreases from 17.3 to 13.9. Digitalisation in the administration is adopted at a faster pace, with capital spending growing from 0.0050 % of GDP in 2020 to 0.0076% in 2025, while the transparency index improves slightly (from 32.4 to 35.2) and the inefficiency of the tax administration reduces (decreasing from 44.5 to 36).

[110] The individual shocks are chosen so that the impact on each variable at the end of the five-year implementation period stays within the margins of possible changes for this length of time and considering the distance to the frontier given by the best performers in each area.

Figure 6 – Baseline and extended cooperation scenario (exchange of information + OSS)



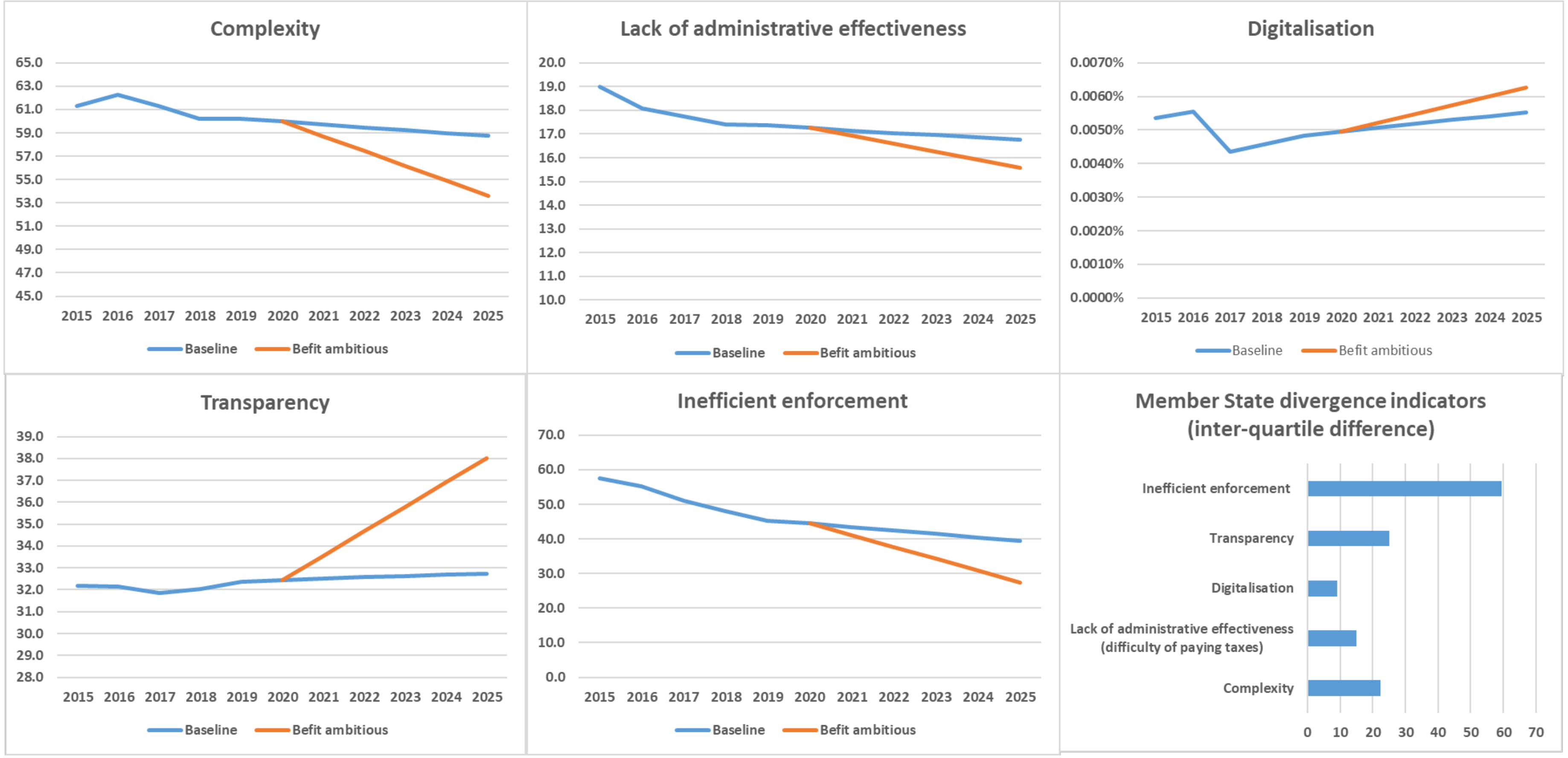
Source: EPRS.

The second alternative scenario, (**G7/OECD agreement + ambitious BEFIT and reinforced cooperation)** considers a situation of tangible progress where Member States move forward with implementing policy options in a coordinated fashion and with ambitious BEFIT proposals coming rapidly and effectively into place. This scenario would therefore see ambitious revision of the DAC, ambitious policy options that introduce mandatory harmonisation of accounting rules, harmonised inclusion of intangible assets, and generalised enhanced anti-tax avoidance measures, a preferential regime for SMEs and reformed mandatory code of conduct. A stronger emphasis would also be placed on reducing complexity and fragmentation, notably by ensuring comprehensive consolidation of the calculation of the tax base and a minimum rate of taxation, in line with the G7/OECD agreement, but possibly with a lower threshold and mandatory participation at EU level. A stronger emphasis is also put on increasing transparency possibly through automatic exchange of information and centralisation of tax databases. Finally, effective reform of the tax administration in the Member States in encouraged and supported. Policy options aimed at further strengthening Fiscalis and policy options aimed at developing services for the generation, transmission, receipt and storage of electronic invoices (such as single harmonised tax returns, common digital platforms and OSS, and accelerated deployment of artificial intelligence tools) would also be favoured. In this scenario, the administration of the tax system would be expected to be less costly and less burdensome. Complexity would be reduced significantly by addressing the inefficiencies of the currently fragmented CIT system and by providing a level playing field for businesses.

Increased prevention of fraud and abuse could also be expected, as the potential for the manipulation of transfer prices, the strategic location of physical activities of companies, the strategic location of some assets, notably intangible assets, the use of mismatches, loopholes and non-cooperation between tax regimes, the inversion of corporate structures between parents and affiliates, the deferral in repatriation of profit generated in low-tax jurisdictions or the use of treaty networks would be targeted. As a result, some major single market distortion would be avoided and CIT system robustness and resistance to fraud would be boosted. In the EPRS model, this is reflected in the size of the individual shocks for this scenario (see Table 7) where, compared to the previous alternative scenario (G7/OECD agreement + limited BEFIT and reinforced and extended cooperation), the values for the shocks on the channels of transmission related to reducing complexity, increasing transparency and enforcing the rule of law have been raised incrementally. However, similarly to the previous scenario, some latitude is left to Member States on the best way to arrive at improvement in their respective tax systems. As a result, this scenario does not incorporate a significant convergence between Member States' institutional systems.

The results are presented in Figure 7 below. In this scenario, thanks to the implementation of ambitious proposal under the BEFIT regime, improvements are again observed in all variables. For the EU on average, the burden of government regulation decreases from 60 to around 53.6 in 2025, the difficulty of paying taxes index decreases from 17.3 to 15.6. Digitalisation in the administration is adopted at a faster pace, with spending growing from 0.0020 % of GDP in 2020 to 0.063 % in 2025 while the transparency index improves significantly (from 32.4 to 38) and the inefficiency of the tax administration reduces (decrease from 44.5 to 27.5).

Figure 7 – Baseline and extended cooperation scenario (G7/OECD agreement + ambitious BEFIT and reinforced cooperation)

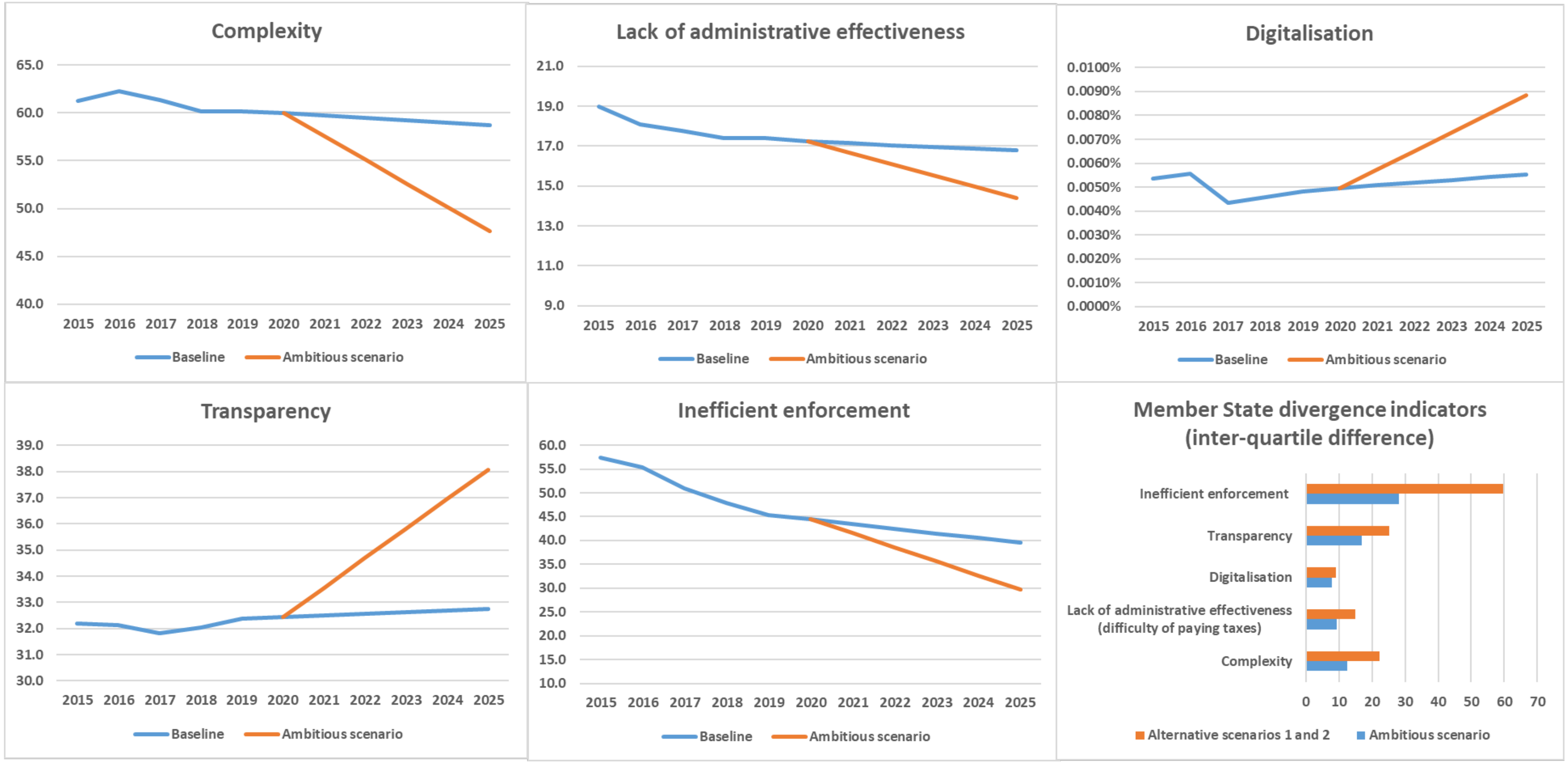


Source: EPRS.

Finally, the third alternative scenario (**ambitious scenario EU treasury and CIT administered at EU level)** builds on the fact that for countries participating in a single monetary union and a single market, the evidence at Member State level points a united approach providing for simplicity, a higher level of enforcement, transparency and reduced administrative burden. A recent proposal to move towards QMV in the area of taxation could represent an improvement. Furthermore, all Member States, including the most institutionally decentralised, have a single treasury dealing with the collection of CIT. The lack of ambition in this area is probably the main source of inefficiency at the current stage and a more visionary move could constitute a decisive improvement in terms of tackling the CIT gap and reducing compliance costs for businesses. This is all the more true given that in the public consultation by the European Commission on the CCTB proposal, businesses alleged that they were not persuaded that the proposal for a common CCTB without consolidation would bring sufficient benefits to the business environment to offset the reduction in competitiveness and increase in administration costs. A more centralised approach, while rather extremely unlikely at this stage, is therefore worth exploring and mentioning. In addition to the benefits to all channels of transmission leading to a reduced CIT gap and reduced compliance costs, the resulting improved collection of tax revenues would increase responsibility, sustainability and resilience in Member States and confidence between them. Contrary to the previous scenarios, such a visionary approach would also improve effective convergence between Member States, ensure more fairness and legal certainty, and reduce risks associated with cross-border business and investment.

In order to simulate the potential impact of this scenario, a distance to frontier methodology is used, which calculates the impact of a reduction for each Member State (see Table 7) of the distance between this Member State and the best performer in each area. A smaller shock is assumed for digitalisation, as it could be expected that this scenario will not significantly improve digitalisation in the EU compared to the previous ones. In all the other channels of transmission however, this scenario provides results that could be interpreted as the frontier to be achieved in the five-year period considered. Once the values are calculated for all Member States, the EU average based on these new values is then obtained. The results are presented in Figure 8. In this scenario, improvements are again observed in all variables. For the EU on average, the burden of government regulation decreases from 60 to 47.6 in 2025, the difficulty of paying taxes index decreases from 17.3 to 14.4. Digitalisation in the administration is adopted at a fast pace, with spending growing from 0.0050 % of GDP in 2020 to 0.0088 % in 2025 while the transparency index improves significantly (from 32.4 to 38.1) and the inefficiency in enforcement is significantly reduced (from a value of 44.5 to 29.7). Furthermore, an important result here is also that a corresponding level of convergence is achieved or, put differently, divergences between Member States are reduced (see Figure 8). For all channels of transmission, a centralised approach would ensure that the Member States that perform least well benefit from more effective administration and from more transparent and more fraud-resistant tax frameworks. This is particularly relevant for the variable on the efficiency of enforcement as Member States currently left behind on their own would benefit from the direct support and involvement of a central tax administration.

Figure 8 – Baseline and ambitious scenario (EU treasury and CIT administered at EU level)

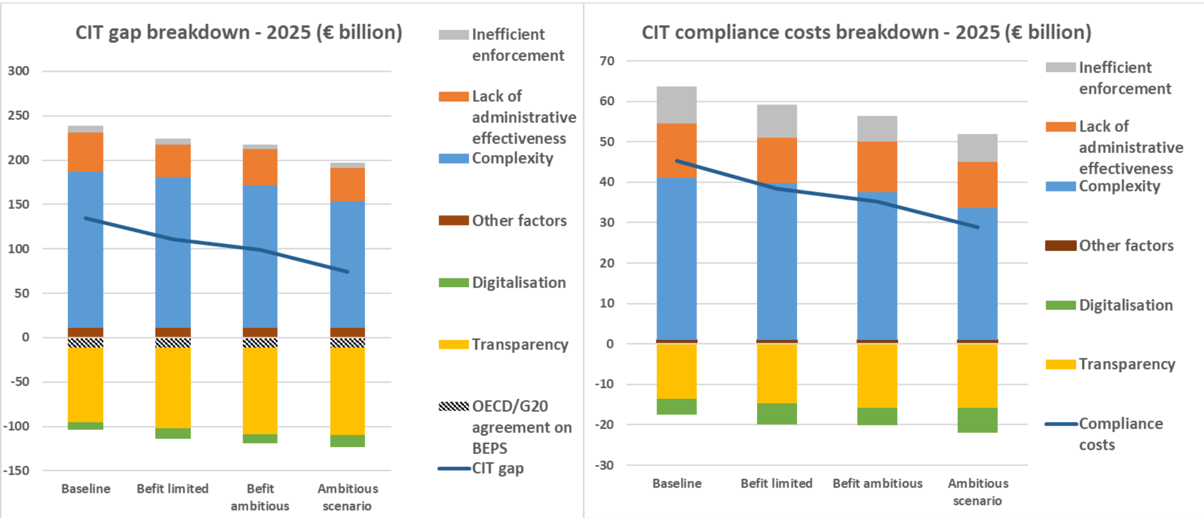


Source: EPRS.

4.3. European added value assessment

Using the results described in the previous section on the changes in each channel of transmission, it is then possible to calculate the economic impact on the CIT gap and on compliance costs for businesses. This is achieved on the basis of equation (3) and equation (4), using the coefficients estimated in Table 5 (specification 5) and Table 6 (specification 5).[111] The results for the break-down of the CIT gap and the compliance costs are given in Figure 10. It is observed that **complexity remains by far the greatest factor in both the CIT gap and the high level of compliance costs for businesses in all scenarios.** As acknowledged by the European Commission, this is of great concern for SMEs, which do not always have easy and affordable access to support, in particular when it comes to doing cross border trade. Lack of administrative effectiveness and efficient enforcement is also of particular relevance for business as it has a relatively large impact on compliance costs. The same is true for increasing transparency, with a noticeable reduction in compliance costs in the scenarios where more transparency in ensured. As expected, the move towards digitalisation of the tax administration also appears as a means to reduce both the CIT gap and compliance costs in all scenarios, but probably to a lesser extent than what is sometimes assumed.

Figure 9 – Breakdown of the CIT gap and compliance costs (end of the implementation period up to 2025)



Source: EPRS.

Based upon these final results, it is possible to calculate the change in absolute terms (in € billion) in the CIT gap and in the amount of compliance costs for all scenarios in 2025 compared with the value for the baseline scenario in 2025. Regarding first the **baseline scenario itself, which includes the OECD/G20 agreement,** a substantial decrease in the CIT gap is seen, of around €20 billion in absolute terms from approximately €154 billion in 2019 to €134 billion in 2025. Under this scenario, the compliance costs for business decrease by around €3 billion, from €49 billion in 2019 to €46 billion in 2025. These results highlight the potentially positive impact that the **OECD/G20 agreement might have,** as without it the reduction in the CIT gap and the compliance costs would be more limited.

Regarding the impact of the other scenarios compared to the baseline, an **EAV of around €30 billion is seen for a scenario of G7/OECD agreement + limited BEFIT and reinforced and**

[111] In line with mainstream practices, we select the specification with the highest number of significant variables and with the highest R square.

extended cooperation. This breaks down into a reduction in the CIT gap of around €23 billion and a reduction of €7 billion in compliance costs for businesses. A slightly higher **EAV of around €45 billion can be seen for a scenario of G7/OECD agreement + ambitious BEFIT and reinforced cooperation**. This breaks down into a greater reduction of around €35 billion for the CIT gap and a reduction of almost €10 billion in compliance costs for businesses. Finally, a higher **EAV of €76 billion can be seen for the most ambitious scenario of an EU treasury, qualified majority voting (QMV) and CIT administered at EU level**. This breaks down into a greater reduction of around €60 billion in the CIT gap and into a higher reduction of €16 billion in compliance costs for businesses.

Table 8 – European added value assessment: summary table

	Baseline – G7/OECD agreement + basic BEFIT	G7/OECD agreement + limited BEFIT and reinforced and extended cooperation	G7/OECD agreement + ambitious BEFIT and reinforced cooperation	Ambitious scenario – EU treasury and administered CIT at EU level
CIT gap (€ billion in 2025)	134	111	99	74
Reduction in CIT gap compared to the baseline (A)	-	23	35	60
Compliance costs (€ billion in 2025)	46	39	36	30
Reduction in compliance costs compared to the baseline (B)	-	7	10	16
EAV (A+B)	-	30	45	76
Likelihood	Unlikely	Likely	Likely	Unlikely
Driver or possible game changer	Increasingly protectionist and narrow minded outlook	International momentum, high CIT gap in times of challenged public finances	International momentum, high CIT gap in times of challenged public finances	Realisation of the relative complexity, cost and lack of effectiveness of other options / Treaty change, renewed EU ambition

Source: EPRS.

As already explained, the most ambitious scenario of an EU treasury and CIT administered at EU level is still rather unlikely to gather sufficient support at the current juncture. It would also require substantial Treaty changes if it were to be pursued. It would nevertheless represent a continuation of the past ambitious visionary achievements of previous generations of EU leaders, who contributed to the construction of the single market and to launching the European monetary union. Taking a more practical and realistic view, it can be concluded that the two other alternatives are more likely to be implemented in the coming period. In particular, it can be concluded that an ambitious agenda under BEFIT could bring a significantly higher reduction in the CIT gap and lower level of compliance costs. This EPRS evaluation also emphasises the potential for a scenario of a more limited BEFIT with extended and reinforced cooperation through reinforced exchange of information and with the OECD/G20 agreement still used to its full extent, in particular if as assumed in this work it is accompanied by a strong, accelerated and effective move towards digitalisation of the tax administration in all Member States. This scenario however offers a smaller reduction in the CIT gap and of compliance costs, and the extent to which all Member States are likely to coordinate a concerted move as assumed by some has still to be demonstrated at this stage.

Finally, beyond the economic results,[112] consideration should also be given to the broader qualitative impact that no progress in this area would mean. From a general **business perspective**, ATP, tax avoidance and tax evasion generate direct costs, as explained, but also a whole range of indirect costs that are not necessarily reflected properly in the present econometric evaluation. More broadly, the complexity of the system and the persistence of some requirements such as for instance the inability to offset losses against profits earned in another EU country, still create a costly and time-consuming unquantified administrative burden for businesses.

As strongly emphasised in the European Commission assessment, this is more likely to affect **SMEs** and to limit the investment potential of the most successful among them, slowing their growth and market development at international level. This creates the condition for sometimes unbalanced competition within the single market and could have a direct impact on trade and foreign investment. It also favours the survival of uncompetitive businesses and thus has negative effects on productivity. Furthermore, undetected fraud resulting from a lack of digitalisation, lack of transparency and less effective administration and inefficient enforcement, also creates diverging competitive conditions between business that are compliant and those who intentionally play the system. Finally, it generates extra compliance costs, and those burdens fall on all businesses while being particularly costly for those with less developed administrative capacities, such as SMEs.

From a **national tax administration perspective**, some argue that efforts to reduce the CIT gap and fight CIT tax fraud are likely to generate additional administrative costs resulting from the need for additional audits, and administrative and/or judicial proceedings. Again, all these requirements entail different rules and intricacies at Member State level, which increase costs. As shown by our analysis, new obligations imposed to fight tax fraud and reduce the CIT gap do not necessarily increase compliance costs if they are accompanied by progress in digitalisation and reduced complexity while ensuring that the tax administration is effective and that enforcement of the rule of law is efficient and robust. Similarly, an increase in transparency and a simplification of the rules for SMES would be necessary. The costs might also be considerable if a fragmented approach is followed at Member State level, while greater ambition and a more united approach would substantially reduce compliance costs. An EU treasury would be particularly significant. A more united approach would also help to fight organised crime more effectively areas with weak administration.

From a **consumer and individual taxpayer perspective**, despite encouraging recent efforts, ATP, tax avoidance and tax evasion still represent a substantial direct cost for public finances in each Member State through lost tax revenue. This also represents a cost for consumers and taxpayers as revenues need to be generated through increases in other taxes or else services that could have been provided had the problems in direct taxation been addressed, are not delivered.

[112] The calculation of any macroeconomic impact of the additional revenues for public finances generated by each option is highly dependent on the way these resources will be recycled. To be of any relevance such an exercise would require a comprehensive assessment with advanced models. Such a study goes beyond the purpose of this study. As a rule of thumb, and assuming a multiplier of 0.55 – a general assumption of many models on public finances – a macroeconomic GDP impact of EU action in this area of between 0.1 % and 0.3 % of GDP could be expected.

Finally, at **international level,** should a final agreement on the Two Pillar Statements enter into force, cooperation under the auspices of the OECD/G20 will definitely be enhanced and multilateralism reinforced. This would bring the need for more international cooperation and for reform of the current global regulation system back to the top of the agenda, with potentially beneficial results for all. This could open the door for enhanced multilateralism and further advances in economic integration and convergence in other areas at global level.

5. Conclusion

Given the importance of CIT in the EU tax framework, and after the revelation of a series of high profile cases of fraud in recent times, reform of the international CIT system appears highly relevant. The current challenging economic situation, where a large amount of debt has been accumulated at Member State level to address the negative impact of the pandemic, will also renew interest in addressing potential CIT revenue losses. The economic consequences linked to the challenges of effective administration of the current EU CIT regime are well documented, in particular regarding its complexity, fragmentation and high level of compliance costs. Further action would thus be welcome as budgetary losses owing to BEPS in the EU are estimated at approximately €33 billion a year on average. More broadly, the CIT gap, including BEPS, was estimated at around €154 billion in the EU in 2020, which is more than the entire current annual EU budget.

The European Commission has long since recognised the need to proceed with overall modernisation of the CIT system. The reform envisaged in the CCTB proposal of 2016 and in the proposal on ATAD I and II, the successive revision of the DAC framework or more recently the tax package for fair and simple taxation were all aimed, sometimes partially, at addressing shortcomings in the EU CIT system. The recent agreement reached under the auspices of the OECD/G7 offers much hope that further ambitious action will be taken in the coming period. Building on this new momentum, the European Commission published a communication on business taxation for the 21st century, which includes the BEFIT proposal, moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States.

This study analysed these proposals, with a view to identifying possible gaps and challenges in EU legislation and evaluating the EAV of potential policy options to address these challenges. A thorough comparative economic analysis of the EAV of a series of scenarios based upon the policy options identified was also carried out. Regarding first the **baseline scenario, which included the OECD/G20 agreement,** a substantial decrease in the CIT gap was found, of around €20 billion in absolute terms, from around €154 billion in 2019 to €134 billion in 2025. Under this scenario, the compliance costs for business decreased by around €3 billion, from €49 billion in 2019 to €46 billion in 2025. These results highlight the potential positive impact that the **OECD/G20 agreement might have,** as without it the reduction in the CIT gap and the compliance costs would be more limited.

Regarding the impact of the other scenarios compared with the baseline, **EAV of around €30 billion is seen for a scenario of G7/OECD agreement + limited BEFIT and reinforced and extended cooperation**. This breaks down into a reduction of around €23 billion in the CIT gap and a reduction of €7 billion in compliance costs for businesses. A slightly higher **EAV of around €45 billion is seen for a scenario of G7/OECD agreement + ambitious BEFIT and reinforced cooperation**. This breaks down into a greater reduction of around €35 billion in the CIT gap and almost €10 billion in compliance costs for businesses. Finally, greater **EAV of €76 billion is seen for the most ambitious scenario of an EU treasury, qualified majority voting (QMV) and CIT administered at EU level**. This breaks down into a higher reduction of around €60 billion in the CIT gap and a greater reduction of €16 billion in compliance costs for businesses. The most ambitious scenario of an EU treasury and CIT administered at EU level is however still rather unlikely to gather sufficient support at the current juncture as it would require substantial Treaty changes to be pursued. Taking a more realistic view, it can be concluded that the two other less ambitious alternative scenarios are more likely to be implemented in the near future.

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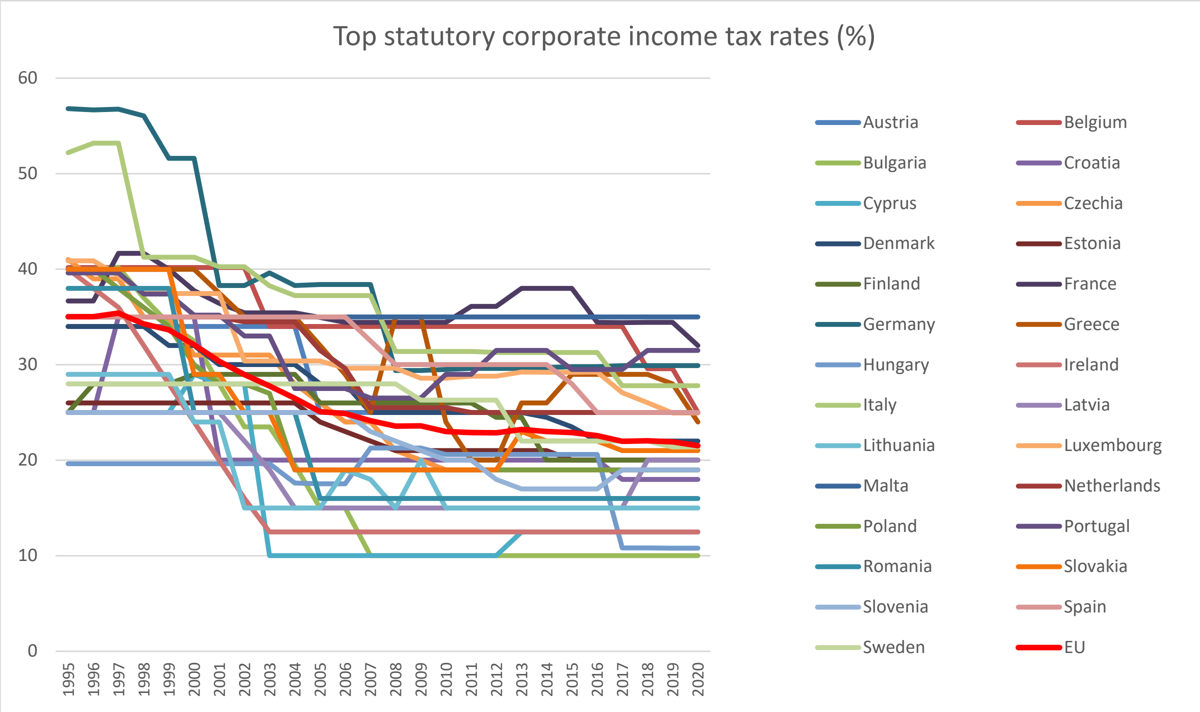
ANNEX 1

Top statutory CIT rates



Source: DG TAXUD.

CIT base (€ billion)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Austria	22.6	23.1	23.8	24.6	25.3	27.0	28.9	30.6	32.2	34.4	36.8	39.8	43.5	46.7	47.2	47.4	47.5	46.2	45.0	45.7	46.6	47.3	48.7	51.0	52.8
Belgium	34.6	33.5	33.5	34.1	34.0	35.0	35.9	36.2	36.5	38.9	41.3	44.8	49.6	52.1	50.8	50.7	49.8	47.0	46.3	49.1	51.9	56.1	61.7	67.7	72.5
Bulgaria	10.0	9.2	8.5	8.1	7.5	6.8	6.5	6.7	6.8	7.4	8.0	9.0	10.3	12.1	13.5	14.3	15.5	15.8	15.2	14.6	14.5	13.9	13.4	13.5	14.4
Croatia	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.4	5.6	5.9	6.5	7.1	7.6
Cyprus	4.6	4.6	4.7	5.0	5.3	5.7	6.3	6.9	7.1	7.3	7.4	7.4	7.7	8.3	8.6	9.1	9.6	9.8	9.7	9.8	9.9	10.2	10.7	11.4	12.2
Czechia	14.0	14.7	14.9	15.7	16.1	17.2	18.5	20.3	21.4	23.0	25.4	28.2	31.6	36.1	39.0	40.9	41.7	41.1	39.2	39.1	39.9	40.7	42.7	45.0	47.3
Denmark	26.5	26.8	27.1	26.5	26.5	27.8	28.6	29.2	30.0	31.4	31.7	33.0	33.6	34.1	32.6	32.7	32.5	34.1	36.2	40.1	42.4	44.9	47.6	49.8	52.3
Estonia	1.0	1.0	1.0	1.0	1.0	1.2	1.4	1.7	1.9	2.1	2.5	2.8	3.3	3.5	3.4	3.4	3.5	3.5	3.7	4.2	4.3	4.4	4.4	4.5	4.6
Finland	16.2	16.0	17.0	18.5	19.6	21.9	24.8	27.0	28.4	30.0	30.8	31.4	33.3	34.9	33.4	33.1	32.5	29.7	27.5	28.1	28.4	29.0	32.1	34.9	37.5
France	189.6	190.2	195.7	204.9	211.1	225.0	241.6	254.7	263.1	273.8	279.5	285.1	297.1	307.6	301.6	299.5	293.4	277.1	260.0	258.5	259.3	260.2	263.3	268.0	274.8
Germany	270.6	272.9	279.3	285.8	287.7	289.7	295.5	298.8	298.5	306.5	319.8	338.2	361.4	381.0	374.4	376.5	374.2	360.7	352.8	370.2	377.3	382.9	397.4	407.2	407.0
Greece	16.7	17.7	18.6	18.8	19.1	19.8	20.6	20.9	21.9	23.6	24.5	25.9	27.9	29.1	28.9	28.6	26.5	23.6	21.2	19.2	18.2	18.0	18.4	18.4	18.8
Hungary	4.6	4.7	5.2	5.6	5.8	6.3	7.2	8.5	9.6	10.9	12.6	14.0	15.0	16.2	16.5	16.7	16.9	16.5	16.3	17.1	18.2	19.2	21.0	22.8	24.7
Ireland	11.6	12.1	14.1	15.4	16.9	20.3	24.2	28.1	32.0	35.2	37.7	39.8	41.2	40.8	39.6	39.0	39.0	38.7	40.4	44.4	53.0	59.7	68.2	78.7	90.1
Italy	125.2	134.3	137.3	139.4	141.8	150.6	158.7	166.3	173.2	179.8	182.4	181.4	182.8	183.4	176.5	169.5	164.6	152.7	143.5	141.9	141.7	145.0	155.1	163.5	170.2
Latvia	0.4	0.5	0.6	0.7	0.8	1.4	2.0	2.5	3.0	3.5	3.5	3.5	3.5	3.5	3.2	3.0	3.1	3.1	3.2	3.4	3.5	3.3	3.2	3.0	2.9
Lithuania	0.6	0.7	0.8	0.8	0.9	1.1	1.3	1.5	1.8	2.1	2.4	2.7	3.1	3.5	3.7	4.0	4.3	4.7	4.9	5.4	5.6	5.7	5.7	5.8	5.9
Luxembourg	4.3	4.5	4.5	4.5	4.8	5.1	5.3	5.6	5.9	6.0	6.2	6.9	7.9	8.6	8.9	9.5	9.9	10.0	10.4	11.4	12.2	12.9	13.7	14.3	15.0
Malta	0.5	0.5	0.5	0.6	0.6	0.7	0.7	0.8	0.8	0.8	0.8	0.9	0.9	1.0	1.1	1.1	1.2	1.2	1.3	1.4	1.6	1.8	2.1	2.3	2.5
Netherlands	57.1	58.9	63.0	66.9	69.4	75.3	81.8	86.2	88.8	92.5	97.0	103.2	111.6	120.4	121.9	123.3	121.4	116.4	111.1	111.8	113.1	114.2	118.7	124.6	131.2
Poland	11.0	11.2	11.7	12.6	13.3	15.3	17.2	19.2	20.9	24.0	27.7	32.7	38.7	46.0	51.5	56.8	62.1	66.3	69.4	73.2	76.8	78.1	79.9	82.0	85.0
Portugal	10.9	10.9	11.2	11.7	12.2	12.8	13.6	14.2	14.8	15.4	15.9	16.8	18.3	19.5	20.3	21.5	22.2	22.2	22.8	23.6	24.5	25.9	27.2	28.0	28.8
Romania	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.0	7.8	10.9	14.3	17.5	19.5	21.5	21.1	21.4	21.9	24.6	26.5	28.9	30.7	34.3
Slovakia	2.3	2.3	2.3	2.3	2.4	2.5	2.9	3.3	3.9	4.8	5.9	7.3	9.3	11.8	13.1	14.7	15.9	16.6	16.7	17.5	18.0	18.2	18.1	18.1	18.0
Slovenia	2.1	2.1	2.1	2.2	2.4	2.4	2.5	2.8	3.1	3.2	3.7	4.3	5.1	5.9	6.1	6.0	5.7	4.6	3.6	3.4	3.5	3.6	4.3	5.1	5.6
Spain	74.7	78.3	80.4	82.6	85.2	91.1	98.8	108.2	118.9	129.6	140.7	151.2	163.1	173.2	180.7	183.2	184.1	180.5	176.0	172.2	173.2	176.1	182.5	190.7	200.0
Sweden	62.1	60.8	60.6	60.2	60.2	60.5	59.1	58.0	58.5	60.4	61.6	67.2	72.8	74.9	71.6	73.4	74.9	73.9	74.8	80.3	83.0	82.8	85.2	86.2	87.0
EU	986.1	1003.9	1030.9	1061.0	1082.1	1135.0	1196.4	1250.4	1295.3	1359.5	1418.0	1490.5	1588.8	1673.6	1671.0	1682.7	1678.6	1622.7	1577.9	1613.0	1651.0	1686.7	1760.5	1834.4	1903.0

Source: Authors' calculation based upon Cortax and Ameco data

CIT revenues effectively collected (€ billion)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Austria	2.9	3.4	3.6	3.8	3.8	4.2	4.8	5.0	5.2	5.5	5.7	5.6	5.9	6.4	6.3	6.3	6.4	6.3	6.3	6.7	7.1	7.6	8.1	8.8	9.5
Belgium	5.1	5.4	5.7	6.2	6.5	7.1	7.5	7.9	8.0	8.2	8.6	9.2	10.0	10.7	10.5	10.4	10.3	10.2	10.4	11.3	12.1	12.9	14.2	15.7	16.8
Bulgaria	0.5	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.6	0.7	0.8	0.9	0.9	0.8	0.7	0.7	0.8	0.9	1.0	1.0	1.1
Croatia	0.2	0.2	0.3	0.3	0.4	0.4	0.4	0.4	0.5	0.5	0.6	0.7	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	1.0	1.1
Cyprus	0.3	0.3	0.3	0.3	0.4	0.5	0.5	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	1.1	1.1	1.1	1.2
Czechia	1.9	1.8	1.8	1.8	1.9	1.9	2.2	2.5	2.8	3.2	3.7	4.2	4.8	5.3	5.5	5.6	5.6	5.4	5.1	5.1	5.3	5.5	5.8	6.2	6.7
Denmark	3.2	3.5	3.6	3.9	3.9	4.4	4.7	4.9	5.1	5.5	5.8	6.5	6.9	7.0	6.7	6.4	5.8	5.6	5.8	6.5	6.9	7.5	8.0	8.2	8.6
Estonia	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.6	0.6	0.7
Finland	2.3	2.6	3.0	3.5	3.8	4.9	5.5	6.0	6.0	6.0	5.5	5.4	5.6	5.9	5.6	5.4	5.3	4.8	4.4	4.5	4.5	4.5	4.8	5.1	5.5
France	21.8	23.8	25.6	27.0	29.0	32.8	36.8	39.0	39.7	40.4	41.0	42.9	46.6	51.6	50.3	51.0	50.8	50.2	50.1	54.6	56.9	57.5	59.7	60.7	63.0
Germany	35.6	39.0	40.8	42.5	44.6	48.9	47.0	44.5	42.4	40.9	40.0	46.5	53.7	59.0	58.5	57.9	57.2	56.8	57.0	61.6	65.3	69.0	72.9	78.7	83.6
Greece	2.3	2.4	2.5	2.8	3.1	3.7	4.2	4.7	5.0	5.2	5.4	5.5	5.5	5.6	5.7	5.5	5.3	4.6	4.0	3.5	3.1	3.1	3.4	3.8	4.0
Hungary	0.7	0.7	0.8	0.8	0.9	1.0	1.1	1.3	1.4	1.5	1.7	1.9	2.2	2.5	2.6	2.4	2.3	1.9	1.6	1.5	1.7	2.1	2.4	2.6	2.6
Ireland	1.4	1.6	1.8	2.0	2.3	2.8	3.3	3.8	4.3	4.7	4.6	4.5	4.4	4.4	4.3	4.2	4.1	4.1	4.0	4.1	4.7	5.4	6.3	7.5	8.7
Italy	28.9	33.1	36.5	34.1	33.5	33.2	33.0	30.8	31.2	31.0	32.2	33.8	37.4	41.2	42.7	43.3	41.7	39.1	37.6	37.2	36.5	36.6	36.2	34.7	34.7
Latvia	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.3	0.4	0.4	0.4	0.4	0.4	0.3	0.3	0.4	0.4	0.4	0.4	0.4
Lithuania	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.3	0.4	0.5	0.6	0.6	0.5	0.5	0.4	0.4	0.4	0.5	0.6	0.6	0.7
Luxembourg	1.0	1.1	1.1	1.2	1.2	1.3	1.4	1.6	1.7	1.7	1.8	1.8	1.8	1.8	1.9	2.0	2.1	2.2	2.2	2.2	2.2	2.3	2.4	2.7	3.0
Malta	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.4	0.4	0.5	0.5	0.6	0.6
Netherlands	10.5	11.9	13.1	13.9	14.5	16.1	17.1	17.4	17.0	16.8	17.0	17.2	18.1	19.4	18.8	18.0	16.8	15.4	13.9	14.7	15.6	17.5	19.6	22.2	24.8
Poland	3.3	3.5	3.8	3.9	3.9	4.2	4.3	4.3	4.1	4.0	4.2	4.9	5.9	7.5	8.4	8.7	9.0	9.0	8.3	8.4	8.7	8.9	9.2	10.2	11.5
Portugal	2.1	2.3	2.6	2.8	3.1	3.6	4.0	4.3	4.3	4.3	4.2	4.3	4.6	4.6	4.6	4.6	4.6	4.6	5.1	5.1	5.2	5.3	5.6	5.9	6.2
Romania	1.1	1.0	1.1	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.8	2.2	2.5	2.9	3.0	2.8	2.8	3.1	3.2	3.5	3.7	4.0
Slovakia	0.9	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.6	0.7	0.8	0.9	1.1	1.4	1.5	1.6	1.7	1.7	1.8	1.9	2.2	2.4	2.7	2.8	2.9
Slovenia	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.3	0.3	0.4	0.5	0.6	0.8	0.9	0.9	0.9	0.8	0.7	0.6	0.5	0.5	0.5	0.6	0.7	0.8
Spain	8.5	9.2	10.9	12.0	12.9	15.3	17.3	18.9	20.5	22.8	26.6	31.6	38.0	40.2	40.2	36.5	31.8	26.0	23.7	23.0	24.4	26.2	27.4	30.2	31.7
Sweden	5.0	5.3	5.6	5.7	6.0	7.0	7.3	7.1	7.1	7.3	7.5	8.5	9.9	10.6	10.5	10.7	10.8	10.3	10.8	11.4	11.8	12.0	12.7	13.2	14.0
EU	139.9	153.9	166.4	171.4	178.5	196.2	205.5	208.1	210.1	214.0	221.3	241.4	270.6	295.1	295.2	291.4	281.9	267.2	259.8	271.0	282.5	294.7	310.7	329.0	348.2

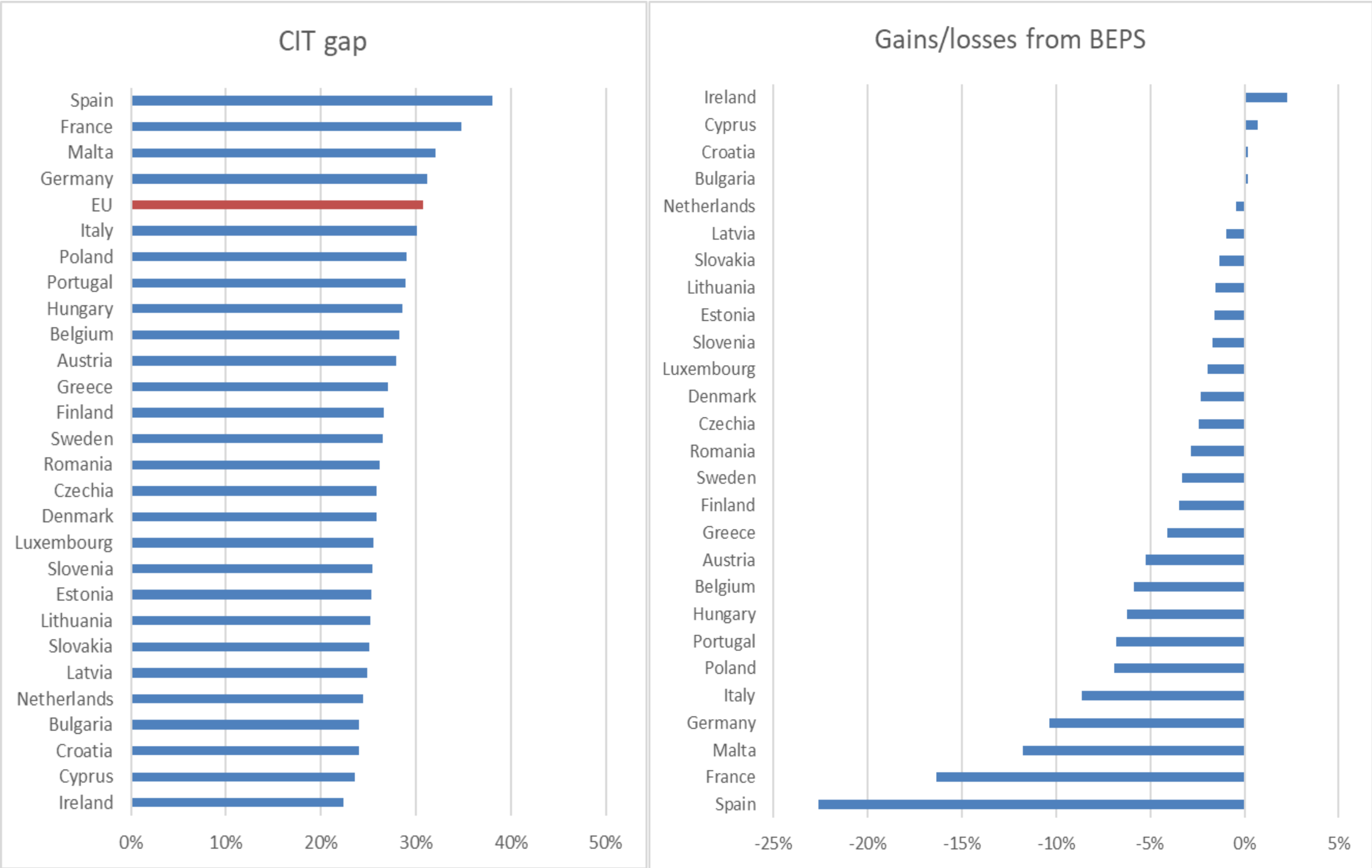
Source: Authors' calculation based upon Eurostat data

Theoretical CIT revenues (€ billion)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Austria	7.7	7.9	8.1	8.4	8.6	9.2	9.8	10.4	10.9	11.7	11.8	12.1	12.4	12.5	11.8	11.9	11.9	11.6	11.2	11.4	11.6	11.8	12.2	12.8	13.2
Belgium	13.9	13.4	13.5	13.7	13.7	14.1	14.4	14.6	14.2	14.7	15.1	15.8	16.9	17.7	17.3	17.2	16.9	16.0	15.7	16.7	17.6	19.1	21.0	22.4	23.4
Bulgaria	4.0	3.7	3.4	3.2	2.9	2.5	2.2	2.1	1.9	1.9	1.8	1.7	1.7	1.7	1.6	1.6	1.5	1.6	1.5	1.5	1.4	1.4	1.3	1.4	1.4
Croatia	1.3	1.3	1.5	1.6	1.6	1.7	1.7	1.5	1.4	1.2	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.3	1.4	1.4
Cyprus	1.2	1.2	1.2	1.2	1.3	1.5	1.7	1.8	1.7	1.5	1.3	1.0	0.8	0.8	0.9	0.9	1.0	1.0	1.0	1.1	1.1	1.2	1.3	1.4	1.5
Czechia	5.7	5.9	5.9	6.0	6.1	6.2	6.3	6.6	6.8	7.0	7.5	7.9	8.4	8.9	9.0	8.8	8.6	8.0	7.5	7.4	7.6	7.7	8.1	8.6	9.0
Denmark	9.0	9.1	9.2	9.0	8.9	9.2	9.3	9.2	9.2	9.5	9.4	9.6	9.5	9.3	8.5	8.4	8.1	8.5	9.0	10.0	10.4	10.8	11.1	11.3	11.7
Estonia	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.5	0.6	0.6	0.7	0.8	0.8	0.8	0.7	0.7	0.7	0.8	0.9	0.9	0.9	0.9	0.9	0.9
Finland	4.0	4.2	4.6	5.0	5.4	6.2	7.1	7.7	8.2	8.7	8.8	8.7	9.1	9.3	8.7	8.6	8.4	7.6	7.0	6.8	6.5	6.3	6.7	7.0	7.5
France	69.5	69.7	75.0	80.3	83.0	89.0	95.4	97.4	97.4	98.8	99.3	100.2	103.8	106.8	104.1	103.1	102.0	97.3	93.1	94.4	96.6	96.0	96.3	96.1	96.6
Germany	153.7	154.8	158.5	161.6	159.9	158.0	150.3	141.0	131.0	126.4	123.4	130.6	139.6	139.4	130.3	124.3	117.0	106.4	104.2	109.6	111.9	113.7	118.3	121.4	121.5
Greece	6.7	7.1	7.4	7.5	7.6	7.9	8.1	8.0	8.2	8.6	8.6	8.6	8.7	9.1	9.0	8.5	7.4	6.3	5.3	4.4	4.4	4.7	5.1	5.2	5.4
Hungary	0.9	0.9	1.0	1.1	1.1	1.2	1.4	1.7	1.9	2.1	2.4	2.6	2.8	3.1	3.3	3.4	3.6	3.4	3.4	3.5	3.8	4.0	3.9	3.8	3.6
Ireland	4.6	4.7	5.3	5.6	5.9	6.4	6.8	6.8	6.4	6.0	5.5	5.2	5.1	5.1	4.9	4.9	4.9	4.8	5.1	5.6	6.6	7.5	8.5	9.8	11.3
Italy	65.3	70.8	72.6	69.6	68.4	69.3	68.9	67.9	69.7	70.9	70.5	69.0	68.5	66.2	61.6	57.2	53.6	47.9	45.0	44.5	44.4	45.4	47.4	48.9	49.7
Latvia	0.1	0.1	0.2	0.2	0.2	0.4	0.5	0.6	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Lithuania	0.2	0.2	0.2	0.2	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.6	0.6	0.7	0.7	0.7	0.8	0.8	0.8	0.8	0.9	0.9	0.9
Luxembourg	1.8	1.8	1.8	1.8	1.9	2.0	2.0	2.0	2.0	2.0	2.0	2.1	2.4	2.6	2.6	2.8	2.9	2.9	3.0	3.3	3.5	3.8	4.0	4.0	4.1
Malta	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.5	0.6	0.6	0.7	0.8	0.9
Netherlands	20.0	20.6	22.0	23.4	24.3	26.3	28.6	30.1	30.9	32.1	33.0	34.0	34.7	35.3	33.5	32.5	30.8	29.4	28.0	28.1	28.3	28.5	29.7	31.1	32.8
Poland	4.4	4.5	4.6	4.9	5.0	5.4	5.7	6.0	6.2	6.3	6.7	7.3	8.0	8.7	9.8	10.8	11.8	12.6	13.2	13.9	14.6	14.8	15.2	15.6	16.1
Portugal	4.3	4.3	4.5	4.6	4.7	4.8	5.0	5.1	5.1	5.1	5.0	5.0	5.2	5.3	5.5	5.9	6.1	6.3	6.7	7.2	7.5	7.9	8.2	8.5	8.7
Romania	2.7	2.7	2.7	2.7	2.7	2.5	2.3	2.1	2.0	1.8	1.6	1.7	2.1	2.5	2.8	3.1	3.4	3.4	3.4	3.5	3.9	4.2	4.6	4.9	5.5
Slovakia	0.9	0.9	0.9	0.9	1.0	1.0	1.0	1.1	1.1	1.2	1.4	1.6	1.9	2.2	2.5	2.8	3.0	3.2	3.3	3.6	3.8	3.9	4.0	3.9	3.9
Slovenia	0.5	0.5	0.5	0.5	0.6	0.6	0.6	0.7	0.8	0.8	0.9	1.1	1.3	1.4	1.4	1.3	1.2	0.9	0.7	0.6	0.6	0.6	0.7	0.9	1.0
Spain	26.1	27.4	28.1	28.9	29.8	31.9	34.6	37.9	41.6	45.4	49.3	52.9	56.3	58.0	58.7	57.7	56.2	54.2	52.8	51.7	51.3	50.4	50.4	50.7	51.2
Sweden	17.4	17.0	17.0	16.9	16.8	16.9	16.5	16.2	16.4	16.9	17.2	18.8	20.4	21.0	19.8	20.1	20.2	19.7	19.0	19.7	19.7	18.9	18.7	19.0	19.0
EU	426	435	450	459	462	475	481	480	477	483	485	501	523	530	511	499	484	457	443	452	461	467	481	493	503

Source: Authors' calculations.

CIT gap and gains/losses due to BEPS as a % of total CIT revenues – 2019



Source: EPRS.

Estimation of the statistical relationship between CIT compliance costs and the World Bank paying taxes index

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.639897367
R Square	0.40946864
Adjusted R Sqı	0.384863167
Standard Erro	0.045816858
Observations	26

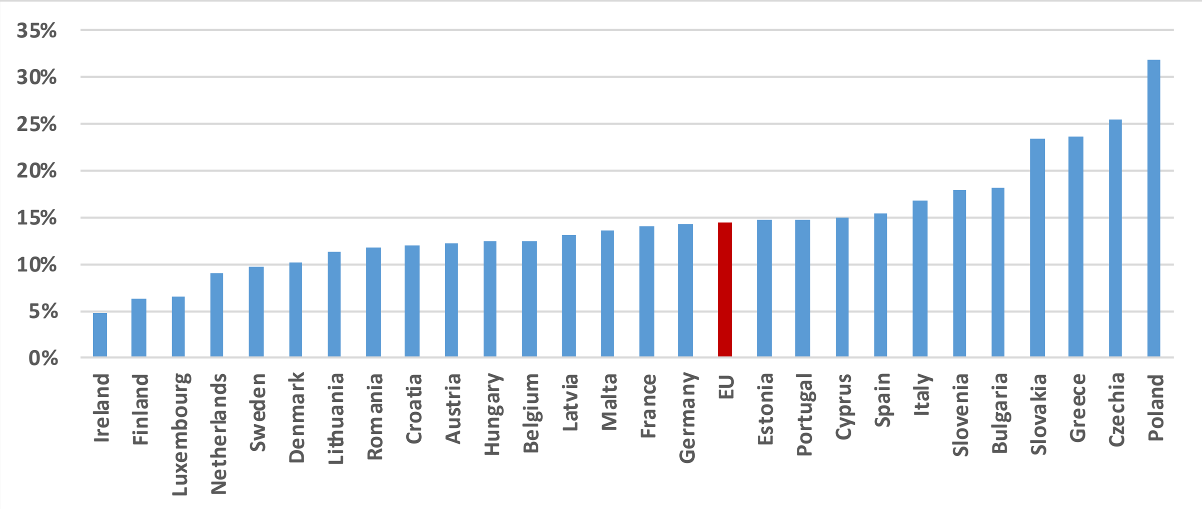
ANOVA

	df	SS	MS	F	Significance F
Regression	1	0.034933293	0.034933293	16.6413641	0.000431056
Residual	24	0.050380427	0.002099184		
Total	25	0.08531372			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0.517505584	0.089677449	5.770743811	6.00282E-06	0.332420426	0.702590741	0.332420426	0.702590741
76.43651	-0.00457227	0.001120824	-4.07938281	0.000431056	-0.00688554	-0.002259	-0.00688554	-0.002259

Source: EPRS.

CIT compliance costs as a percentage of CIT revenues (%)



Source: EPRS.

Statistical results of the estimation of the relationship in the evaluation model

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.945714774
R Square	0.894376435
Adjusted R Square	0.886063475
Standard Error	0.105171754
Observations	135

ANOVA

	df	SS	MS	F	Significance F
Regression	2	12.45688339	6.228441697	563.0943495	2.36951E-65
Residual	133	1.471126014	0.011061098		
Total	135	13.92800941			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.004101229	0.000498457	8.227854727	1.53516E-13	0.003115301	0.005087157	0.003115301	0.005087157
Difficult paying taxes	0.002602863	0.001625253	1.601512341	0.111636026	-0.000611825	0.00581755	-0.000611825	0.00581755

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.946334719
R Square	0.895549401
Adjusted R Square	0.886391058
Standard Error	0.104981561
Observations	135

ANOVA

	df	SS	MS	F	Significance F
Regression	3	12.47322048	4.15774016	377.2517719	3.05145E-64
Residual	132	1.454788929	0.011021128		
Total	135	13.92800941			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.004615255	0.00065254	7.072755719	7.9899E-11	0.003324467	0.005906044	0.003324467	0.005906044
Difficult paying taxes	0.001521873	0.00184938	0.82290957	0.412043576	-0.002136384	0.00518013	-0.002136384	0.00518013
ICT	-244.1507733	200.5320748	-1.217514821	0.225580447	-640.8230382	152.5214917	-640.8230382	152.5214917

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.949551163
R Square	0.90164741
Adjusted R Square	0.892581462
Standard Error	0.101870974
Observations	135

ANOVA

	df	SS	MS	F	Significance F
Regression	3	12.55815362	4.186051205	403.3700205	5.93517E-66
Residual	132	1.369855792	0.010377695		
Total	135	13.92800941			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.005292285	0.000615208	8.602429566	1.99496E-14	0.004075342	0.006509227	0.004075342	0.006509227
Difficult paying taxes	0.005974408	0.001908695	3.130101013	0.00215164	0.002198821	0.009749995	0.002198821	0.009749995
Transparency	-0.00411742	0.001318059	-3.123851785	0.002194606	-0.00672467	-0.00151017	-0.00672467	-0.00151017

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.950234603
R Square	0.902945801
Adjusted R Square	0.893089598
Standard Error	0.101581833
Observations	135

ANOVA

	df	SS	MS	F	Significance F
Regression	4	12.57623761	3.144059401	304.6903189	5.45464E-65
Residual	131	1.351771803	0.010318869		
Total	135	13.92800941			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.005843703	0.000741509	7.88082431	1.10562E-12	0.004376821	0.007310585	0.004376821	0.007310585
Difficult paying taxes	0.004866538	0.002079138	2.340651371	0.020760262	0.000753506	0.008979569	0.000753506	0.008979569
ICT	-256.9284794	194.0801698	-1.323826538	0.187866105	-640.865351	127.0083923	-640.865351	127.0083923
Transparency	-0.004153682	0.001314603	-3.159647771	0.001961925	-0.006754281	-0.001553084	-0.006754281	-0.001553084

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.950690066
R Square	0.903811601
Adjusted R Square	0.89315965
Standard Error	0.10151593
Observations	135

ANOVA

	df	SS	MS	F	Significance F
Regression	5	12.58829648	2.517659297	244.3028671	5.68442E-64
Residual	130	1.339712924	0.010305484		
Total	135	13.92800941			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.005963395	0.000749243	7.959222559	7.48139E-13	0.004481107	0.007445684	0.004481107	0.007445684
Difficult paying taxes	0.005250851	0.002107944	2.49098175	0.013998934	0.001080535	0.009421167	0.001080535	0.009421167
ICT	-303.4548722	198.6660643	-1.527462041	0.129075606	-696.4919211	89.58217676	-696.4919211	89.58217676
Transparency	-0.005132759	0.001595352	-3.217320457	0.001633407	-0.008288972	-0.001976545	-0.008288972	-0.001976545
Inefficiency tax admin	0.000378351	0.000349764	1.081730953	0.281374607	-0.000313616	0.001070317	-0.000313616	0.001070317

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.957978647
R Square	0.917723087
Adjusted R Square	0.909585667
Standard Error	0.045554989
Observations	135

ANOVA

	df	SS	MS	F	Significance F
Regression	2	3.07862786	1.53931393	741.7461766	1.6209E-72
Residual	133	0.276009178	0.002075257		
Total	135	3.354637039			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95.0%
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.001649657	0.000215906	7.64063505	3.80266E-12	0.001222604	0.00207671	0.001222604	0.00207671
Difficult paying taxe	0.002592085	0.000703976	3.68206436	0.00033529	0.001199648	0.003984522	0.001199648	0.003984522

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.958631216
R Square	0.918973808
Adjusted R Square	0.910170381
Standard Error	0.045378331
Observations	135

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	3	3.082823574	1.027607858	499.0342826	1.82486E-71
Residual	132	0.271813465	0.002059193		
Total	135	3.354637039			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.001910153	0.000282061	6.772135135	3.79041E-10	0.001352209	0.002468097	0.001352209	0.002468097
Difficult paying taxe	0.002044265	0.000799396	2.557263758	0.011680515	0.000462982	0.003625549	0.000462982	0.003625549
ICT	-123.7296392	86.68008663	-1.427428652	0.155817783	-295.1914182	47.73213977	-295.1914182	47.73213977

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.95920059
R Square	0.920065771
Adjusted R Square	0.910601629
Standard Error	0.045243221
Observations	135

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	4	3.086486714	0.771621679	376.9618403	1.83122E-70
Residual	131	0.268150325	0.002046949		
Total	135	3.354637039			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.002136372	0.000328149	6.510379132	1.46155E-09	0.001487216	0.002785528	0.001487216	0.002785528
Difficult paying taxe	0.001950943	0.000800063	2.438488352	0.016088722	0.000368229	0.003533658	0.000368229	0.003533658
ICT	-116.3843294	86.59625808	-1.343987974	0.181275315	-287.6923845	54.92372568	-287.6923845	54.92372568
Transparency	-0.000210847	0.000157614	-1.337744676	0.183297434	-0.000522644	0.000100951	-0.000522644	0.000100951

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.96366865
R Square	0.928657266
Adjusted R Square	0.918769798
Standard Error	0.042906784
Observations	135

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	5	3.115308062	0.623061612	338.4379558	2.49014E-72
Residual	130	0.239328977	0.001840992		
Total	135	3.354637039			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.00167413	0.000332408	5.036368992	1.55081E-06	0.0010165	0.00233176	0.0010165	0.00233176
Difficult paying taxe	0.001498929	0.000767298	1.953515574	0.052906231	-1.90787E-05	0.003016937	-1.90787E-05	0.003016937
ICT	-182.9010195	83.82729149	-2.18187915	0.030916245	-348.7432904	-17.05874856	-348.7432904	-17.05874856
Transparency	5.37388E-06	0.00015915	0.03376605	0.973115499	-0.000309486	0.000320234	-0.000309486	0.000320234
Inefficiency tax adm	0.000512856	0.000129618	3.956682298	0.000124325	0.000256423	0.00076929	0.000256423	0.00076929

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.964557184
R Square	0.930370562
Adjusted R Square	0.92053581
Standard Error	0.04238845
Observations	135

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	5	3.121055546	0.624211109	347.4052809	5.20128E-73
Residual	130	0.233581493	0.001796781		
Total	135	3.354637039			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 95.0%*	*Upper 95.0%*
Intercept	0	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Burden gov	0.001966448	0.00031285	6.285590586	4.56036E-09	0.001347511	0.002585384	0.001347511	0.002585384
Difficult paying taxe:	0.002299396	0.000880182	2.612409782	0.010049205	0.000558061	0.004040731	0.000558061	0.004040731
ICT	-203.253371	82.95394221	-2.450195441	0.01560791	-367.3678249	-39.13891721	-367.3678249	-39.13891721
Transparency	-0.001191627	0.000666147	-1.788836385	0.075969931	-0.002509519	0.000126264	-0.002509519	0.000126264
Inefficiency tax adm	0.000659571	0.000146046	4.516199324	1.39638E-05	0.000370637	0.000948505	0.000370637	0.000948505

Source: EPRS.

Annex

Assessment of European Added Value related to ways to bring more simplicity, lower costs and reduce disputes for EU firms

Research paper

The study examines the nature and scale of the problem **of costs arising for different tax rules across Member States** for EU SMEs, and how a significant reduction of cost and compliance risks associated with differing rules could be achieved. Since different EU proposals for a CCCTB have been rejected, the study presents potential improvements to the **2016 CCCTB** proposal and potential alternatives in order to obtain a common EU system for calculating corporate profits, that Member States could be willing to adopt. Facing the future, the question is whether there are elements of the CCCTB that could be **implemented via separate initiatives**, with special emphasis on the future structure of corporate income tax and **taxation on the digital economy**.

The study's overall conclusion is that there are many tax obstacles that businesses, operating cross-border have to face, in order to comply with different tax systems, which affect SMEs more drastically, in comparison with LEs. While there has been **a gradual increase in international cooperation** to obtain a consensus on future global corporate income tax and to tackle profit shifting, tax avoidance and harmful tax competition, a **multilateral approach is essential** to the global discussion on taxation of the digital economy and future corporate income tax rules. The aim is to **ensure a level playing field** for all companies and contribute to **fair and effective taxation**, regardless of the size of the business.

EPRS | European Parliamentary Research Service

AUTHOR

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Executive summary

The **potential coordination of corporate income tax (CIT) in the European Union (EU)** has been discussed for decades. The interaction between the Organisation for the Economic Co-operation and Development (OECD) and the EU with regard to tax policies, reinforces the premise that '**something should be done**', with the aim of obtaining fair taxation and effectively address 'profit shifting, tax avoidance and tax evasion', not only in the EU but globally. **International cooperation and a multilateral approach** to this subject is essential in order to ensure a level playing field, regardless of the size or the location of the companies.

At present, many businesses are frustrated both by '**the administrative costs of complying with up to 27 different tax regimes within the EU'** and the lack of ability to consolidate profit and losses made in different Member States. This study scrutinises examples of costs arising for EU companies operating cross-border (with special reference to small and medium-sized enterprises (SMEs), and how it could be possible to achieve a **significant reduction of cost** and compliance risks associated with different tax regulations required for cross-border operations. It also highlights the unfair contribution of groups using mechanisms (such as harmful tax competition, aggressive tax planning, tax avoidance and tax evasion). In order to reduce the compliance costs for SMEs, preferential or special regimes have been incorporated by Member States.

In 2016 the Commission presented a **proposal for a common corporate income tax** (with and without consolidation) which was rejected by the Council. This proposal has advantages and disadvantages, and the study presents some aspects of that proposal which could be re-examined. The study reveals that the 'common consolidated corporate tax base (CCCTB)' is considered more resistant to profit shifting and reduces compliance costs in cross border operations. In the event of a lack of consensus, **potential alternatives** are presented in order to obtain an EU common regimen for calculating corporate profits that Member States could assume.

The study presents some **future possible alternatives which could be implemented via separate initiatives** in the event that the CCCTB proposal fails. **International cooperation and a multilateral approach of how future taxation of the digital economy** is to be structured is essential and several proposals have been analysed. The **OECD** proposes 'to adapt the international tax system to new business models' and to introduce a global minimum taxation for large multinationals (MNE) groups. Recently, the **Biden administration** has presented a tax plan along the same lines as the ongoing discussions within the OECD Inclusive Framework (BEPS 2.0.). In May 2021, the **EU Commission**, published a very relevant 'Communication on Business Taxation for the 21st Century', in which the EU Commission has put forward a range of very relevant proposals and initiatives to roll out its ambitious tax agenda in the years to come. It is crucial to coordinate actions in order to reach a global agreement on the taxation of the digital economy. In the absence of a consensus-based solution, there is a proliferation of '**unilateral measures'** (*i.e.* many countries, among them several Member States, have incorporate their own digital service tax) that could jeopardize **the multilateral approach of how to structure a future corporate income tax in a digitalized economy**.

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LIST OF ABREVIATIONS

AGI	Allowance for Growth and Investment
ATAD	Anti-Tax Avoidance Directive
ATP	Aggressive Tax Planning
BEFIT	Business in Europe Framework for Income Taxation
BEPS	Base Erosion and Profit Shifting
CCTB	Common Corporate Tax Base
CCCTB	Common Consolidated Corporate Tax Base
CC(C)TB	Includes both proposals, CCTB and CCCTB
CIT	Corporate Income Tax
CFC	Controlled Foreign Companies
COCG	Code of Conduct Working Group
DAC	Directive on Administrative Cooperation
DST	Digital Service Tax
EPRS	European Parliament Research Service
GILTI	Global Intangible Low Taxed Income
GloBE	Global Anti-Base Erosion Proposal
GDP	Gross Domestic Product
HST	Home State Taxation
IFRS	International Financial Reporting Standards
OECD	Organisation for Economic Co-operation and Development
LEs	Large Enterprises
MATP	Made in America Tax Plan
MNEs	Multinational Enterprises
R&D	Research and Development
SME	Small and Medium Enterprises
TETCC	Total Enterprise Tax Compliance Costs
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty of European Union
UN	United Nations

LATIN EXPRESSIONS

i.e.	In other words
e.g.	For example
inter alia	Among others
supra note	Refers to a footnote mentioned earlier
et al	Refers to a source with multiple authors
ibid	Refers to the source cited in the preceding footnote

1. Background

Fiscal policy is an element of the sovereignty of Member States, that depends on tax collection and involves both the financing of public expenditure and the redistribution of income. The fear of losing tax sovereignty on the part of Member States, could be considered a handicap to the fiscal coordination policy undertaken by the EU institutions.[1]

Within the framework of the Treaty on the Functioning of the European Union (TFEU, 2012)[2] all tax decisions to be taken at the EU level are subject to unanimity. In other words, '*all Member States must agree on any measure adopted in the field of taxation*'.[3] On 15 January 2019, the European Commission (EU Commission) presented a Communication[4] which proposed 'a step-by-step transition towards qualified majority voting (QMV)'[5] under the ordinary legislative procedure for EU tax policy. In the last step, the EU Commission proposed to incorporate the QMV to 'initiatives in the taxation area, which are necessary for the single market and for fair and competitive taxation in Europe'. Tax Directives, such as the proposed CCCTB, could be also adopted through the enhanced cooperation procedure.[6]

The idea of a common European corporate income tax system has been discussed for decades, *e.g.* **Ruding Tax Report** (1992).[7] In 2005, the EU Commission presented a proposal for a 'Home State Taxation (HST)'.[8] The simple concept behind this proposal is that 'the profit of a group of companies, active in more than one Member State, should be computed according to the rules of one company tax system only' (*i.e.*, the system of the parent company of the group).

The **European Commission** (the EU Commission) launched, the proposal for a CCCTB Directive on 16 march 2011.[9] The proposal was optional for all companies and groups of companies. In summary, the proposal's specific objectives were: 'to reduce tax-related compliance costs for companies; eliminate double taxation; eliminate over-taxation on cross-border economic activity or include cross-border loss relief'. The proposal was accompanied by an Impact Assessment.

In 2012, the **EU Parliament** adopted a Legislative Resolution to the 2011 CCCTB proposal. This Resolution contained important amendments with regard the optionality aspect of the proposal. The Parliament agreed that these should initially be optional, but eventually wished to switch to a mandatory system with a temporary carve-out for SMEs.

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1 Lampreave Márquez, P.; *La Competencia Fiscal Desleal en los Estados Miembros de la Unión Europea*, Aranzadi, Cizur Menor, 2010.

2 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union**,** *OJ C 326, 2012.*

3 Lampreave Márquez, P.; 'Harmonization in the European Market'; Communication, Annual workshop: *VI Summer School in Public Economics*. Georgia State University, Atlanta, July 2010.

4 European Commission Communication, COM(2019) 8 final, Towards a more Efficient and Democratic Decision Making in EU Tax Policy, 2019.

5 Qualified majority voting, means that an EU law is adopted once a certain threshold of votes in the Council is reached. Voting is weighted on the basis of a Member State's population, but corrected in favour of less-populated countries.

6 Enhanced cooperation procedure, requires the vote of at least 1/3 Member States. This allows these Member States to move at different speeds and towards different goals than those outside the enhanced cooperation areas.

7 Ruding, O.; Conclusions and Recommendations of the Committee of Independent Experts on Company Taxation, (commonly called the Ruding Report, 1992.

8 European Commission Communication, COM (2005) 702 final, Tackling the Corporation Tax Obstacles of Small Medium Size Enterprises in the Internal Market-Outline of a Possible Home State Taxation Pilot Scheme, 2005.

9 Proposal for a Council Directive(EU), COM(2011) 121 final, on a Common Consolidated Corporate Tax Base, 2011.

The **OECD/G20,** presented an Action Plan (2013-2015) with 15 actions against Base Erosion and Profit Shifting (BEPS).[10] These actions were designed to be implemented in domestic law and practice, as well as through changes in the provisions of relevant treaties.

The EU has implemented BEPS actions in accordance with EU Law and the needs of the internal market, the objective being to develop a common standard, going further than the implementation of the BEPS recommendations. The 'anti-tax-avoidance package' presented by the EU Commission on 28 January 2016, reflects the 2015 adoption of the BEPS. This package consists of the following;

- **'An *Anti-Tax-Avoidance Directive* (ATAD I)**[11] **which proposes a set of legally binding anti-avoidance measures, which all Member States should implement to shut off major areas of aggressive tax planning.**
- **A Recommendation on Tax Treaties, which advises Member States how to reinforce their tax treaties against abuse by aggressive tax planners, in an EU-law compliant manner.**
- **A revision of the Administrative Cooperation Directive, which will introduce country-by-country reporting between tax authorities on key tax-related information on multinationals.**[12]
- **A Communication on an External Strategy for Effective Taxation, which sets out a coordinated EU approach against external risks of tax avoidance and promote international tax good governance'.**[13]

On 17 June 2015, the **EU Commission** adopted the 'Action Plan for Fair and Efficient Corporate Taxation in the EU'.[14] The Plan was set to reform the corporate tax framework in the EU, 'in order to tackle tax abuse, to ensure sustainable revenues and to support a better business environment in the Single Market'.

On 25 October 2016, the EU Commission made the corporate reform package proposal public. As a part of its Corporate tax reform, the EU Commission presented a new proposal for a CCCTB.[15] The re-launched of the **CCCTB in 2016** was split into two separate proposals, one including full consolidation (CCCTB), and one without (common corporate tax base, CCTB). The proposal itself established that the CC(C)TB system will be mandatory for large groups (with an annual consolidated turnover exceeding EUR 750 Million) but will remain optional for those not captured by the mandatory scope.[16] Once Member States agree on the CCTB option, they will move ahead on

[10] Organisation for Economic Co-operation and Development, Base Erosion and Profit Shifting Project, OECD Publishing, 2015.

[11] Council Directive (EU) 2016/1164, Laying down Rules Against Tax Avoidance Practices that Directly affect the Functioning of the Internal Market, *OJ L 193,* 2016.

[12] Council Directive (EU), 2011/16, on Administrative Cooperation in the Field of Taxation and repealing Directive 77/799/EEC, OJ L 6, 2011. This Directive (named as DAC), has been amended several times.

[13] Lampreave Márquez, P.; 'The European Commission's role in changing the international tax planning in the EU', Communication*, Amsterdam University*, 2016.

[14] European Commission Communication, COM(2015) 302 final, A fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action, 2015.

[15] Proposal for a Council Directive (EU), COM(2016) 685 final, on a Common Corporate Tax Base, 2016.

[16] The companies could opt for an initial five-year period. This option is automatically renewed for successive five-year periods unless the taxpayer opts out.

the consolidation element of the proposal. The Impact Assessment[17] covers both, 'the CCTB proposal and the CCCTB proposal'.

As stated in the factsheet, the proposal is designed to ensure tax fairness in the EU, because all groups operating cross-border in the internal market will pay taxes where their profits are made. Once the taxable profit of the group has been calculated, it will be shared out amongst Member States, where the company is active. The corporate reform package of 2016, also proposed an improved system to resolve double taxation disputes in the EU[18] and a proposal to extend the rules against hybrid mismatches to non-EU countries, finally adopted in ATAD II[19] is of particular interest in this context.

Following concern and criticism that the BEPS final actions 'do not go far enough in addressing the issues of profit shifting, [20] the **OECD** responded in 2018 with a report title 'Tax challenges arising from digitalization'.[21] In 2019, the OECD presented an ambitious forward looking initiative, the BEPS 2.0. proposal,[22] which might form the basis for a consensus solution to the tax challenges arising from digitalisation. The **BEPS 2.0. proposal**, is divided in **two Pillars**: Pillar One, which 'focuses on nexus and profit allocations' and Pillar Two which 'focuses on a global minimum tax'. These proposals go significantly beyond BEPS because they seek to affect fundamental and structural change to the international tax system. The objective is to reach a political agreement by 2021, within the Inclusive Framework (a tax policy discussion platform of the OECD uniting 139 countries). The BEPS 2.0. proposal is deeper analysed in Part 4 of the present study.

In July 2020, the **EU Commission** published a Tax Package, which consists of a mixture of legislative proposals and non-legislative roadmaps. The main elements of the package contained a 'legislative proposal introducing changes to the tax administrative cooperation Directive (DAC 7)'; 'a non-legislative communication on tax good governance in the EU and beyond' and 'a non-legislative action plan on fair and simple taxation'. The EU Commission launched a new Tax Action Plan in 2020. This Plan is not legally binding and is a set of 25 initiatives that the EU Commission would like to implement between 2020 and 2024, in order to make 'taxation fairer, simpler and more adapted to modern technologies'.

In April 2021, the **Biden administration** released an outline of its proposed changes to United States (US) corporate tax policies ('Made in America Tax Plan-MATP') and announced that the US is working, with the OECD/G20 and the BEPS Inclusive Framework to reach an agreement on the taxation of the digital economy. The MATP proposal is further analysed in the fourth part of the study.

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17 European Commission Staff Working Document, SWD(2016) 341 final, Impact Assessment Accompanying the document Proposals for a Council Directive on a Common Corporate Tax Base and a Common Consolidated Corporate Tax Base (CCCTB), 2016.

18 The Council Directive (EU), 2017/1852, on Tax Dispute Resolution Mechanisms in the European Union, *OJ L 265,* 2017.

19 Council Directive (EU), 2017/952, Amending Directive (EU) 2016/1164 as Regards Hybrid Mismatches with Third Countries, 2017.

20 Lampreave Márquez, P.;'Life after BEPS and how the IMF, European Commission, OECD and UN are shaping the Future of International Tax Policy in 2016/2017', Communication, *Mazars International Tax Conference*, 2016.

21 Organisation for Economic Co-operation and Development, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS*, Organisation for Economic Co-operation and Development/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2018.

22 Organisation for Economic Co-operation and Development, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS, OECD Publishing, 2019.

In May 2021, the EU Commission published, the Communication on Business taxation for the 21st Century.[23] The Communication sets out the Commission's short-term and long-term vision to provide a fair and sustainable European Union (EU) business tax system. Additionally, the Commission announced its plan to propose in 2023 a new framework for business taxation in the EU, the '**Business in Europe: Framework for Income Taxation (BEFIT)**', which will provide a single corporate tax rulebook for the EU, based on a common tax base and formulary apportionment of profits to Member States. The Communication is further analysed in the fourth part of this study.

The interaction between the OECD and the EU with regard tax policies reinforces the premise that **international cooperation and a multilateral approach are required** in order to obtain fair taxation and effectively addressed profit shifting, tax avoidance and tax evasion, not only in the EU, but also worldwide.

The objective of the present study is to give a comprehensive overview of legal policy barriers, the policy options to address them and the risks and benefits associated with these options. The study is divided several parts, which analyses different topics related to the above-mentioned objective. This study looks at the '**European Added Value of bringing transparency, coordination and convergence to corporate tax policies in the EU'**. There are **four broad research questions**:

1. What are typical examples of cost arising from different tax rules across Member States for EU SMEs, and how might a significant reduction of cost and compliance risks associated with differing rules be achieved?,
2. Given that the Council has rejected the proposal for CCTB/CCCTB, what might be the potential for improvement in this area?,
3. Would it be viable to a limited 'EU tax regime for corporate profit', thereby reducing the cost of compliance for some EU firms? and,
4. Are there elements of CCTB/CCCTB that could be implemented via separated initiatives, with special emphasis in the future taxation of the digital economy?

23 European Commission Communication, COM(2021) 251 final, Business Taxation for the 21st Century, 2021.

2. Costs Arising from Different Tax Systems in the EU

The aim of this second part, is to study the **cost arising for EU companies operating cross-border (in particular SMEs) from the different tax rules** throughout the EU and how a significant reduction of cost compliance related to CIT could be achieved. A further objective is to reveal the unfair contribution of groups which employ mechanisms such as h**armful tax competition, aggressive tax planning, tax avoidance and tax evasion** in comparison with the remainder of companies who pay their taxes. The aim of the last section of this part is to indicate several measures or preferential regimes which could be incorporated by Member States in order to reduce the compliance costs for SMEs.

2.1. Tax Obstacles and Cost Arising from Different Tax Rules in the EU

In the EU Commission working document (2006) ,[24] states that 'tax compliance costs constitute one of the most relevant elements in general regulatory compliance costs'. Empirical data suggest that the 'costs of fiscal obligations and labour-related obligations', amount to 50 or more percent of all compliance costs. A company with cross-border operations, will face higher compliance costs than a similar company operating only in its domestic market. The increasing regulatory and administrative burden can be especially onerous for SMEs as well as for small investors, thus discouraging them from making cross-border investments.

The **tax obstacles that businesses must face in cross-border operations** within the EU, are *inter alia*, the following:

- **The complexity of the tax regulations existing in the EU. In this respect the number of specific provisions, the number of exemptions and bonifications or the frequency of changes in tax legislation, are foreseen as a reason for an increase in costs. The more frequently the tax law is changed, the more time it takes to understand the new provisions.**
- **The complexity of tax returns and the documentation to be provided with the tax return. Lengthy tax returns obviously take more time to complete with an associated increase in the Total Enterprise Tax Compliance Costs (TETCC). In addition, tax returns, guidelines on compliance duties or the interpretation of tax laws are often only available in the local language of the countries. Local tax authorities are sometimes difficult to contact and do not always speak, either the language of the foreign taxpayer or English.**
- **Poor guidance from tax authorities and the difficulties associated with communicating with them. Companies operating across borders 'must deal with multiple tax jurisdictions and procedures'. The requirement of local expertise represents an extra cost. Registration for tax purposes is often the first contact that a new business has with the tax administration. Consequently it is important the 'entrepreneur should receive a full overview of the tax obligations' that must be fulfilled at the same time.**
- **Costs related to audits or tax litigations due to different tax rules are very high, despite the** DACs **and the** Directive for Dispute Resolution**. The increased number of**

[24] See the European Commission Working Document, COM(2006) 691 final, Measuring Administrative Costs and Reducing Administrative Burdens in the European Union, 2016.

requests received under the EU Arbitration Convention,[25] together with unresolved pending cases, has also evidence continued problem in the area of transfer pricing.

- **Transfer pricing cost-compliance. The high cost of complying with different transfer pricing obligations, which exist in each Member States.**
- **The inability 'to set losses incurred in one Member States against profits earned and taxed in another Member State'. The absence of loss offsets may lead MNEs to locate head offices and other central function 'in countries where they have an important business'. In this way existing system could 'favours larger Member States to the disadvantage of smaller ones'.**

A Tax Survey conducted by the EU Commission in 2004, which has been an important reference for other studies, observed that weighted total absolute compliance costs were estimated at EUR 203.000 for SMEs, which corresponded to 30.9% of taxes paid. Meanwhile, for large enterprises (LEs), weighted total absolute compliance costs were estimated at EUR 1.460.000, corresponding to 1.9% of taxes paid. Figures have changes since then, however, the conclusion presented in 2004, is similar to the conclusion submitted in recent studies, i.e., the compliance cost of dealing with multiple CIT systems weigh more on SMEs compared to LEs.

Regarding the academic literature, Eichfelder and Vaillancourt (2014)[26] provided 'an extensive survey of empirical estimates of tax compliance for different tax payers (between 1984 and 2014)'. For business taxes, the survey shows that (domestic) compliance costs are regressive. It also documents a significantly lower relative cost burden *per* turnover of LEs (which can amount below 0.01% of turnover) compared to SMEs. In the case of SMEs, costs can make up a considerable part of turnover (in a number of studies it is estimated to be more than 10%) implying a significant reduction of profitability.[27]

The Impact Assessment annexed to the CC(C)TB proposal of 2016, contain the findings of three Working Papers (coincidentally published on the same day): Taxation paper No 64 (2016),[28] Taxation Paper No 65 (2016) [29] and Taxation Paper No 66 (2016).[30] The Impact Assessment of 2016, mentioned above, considers that 'from an economic perspective, compliance costs can be regarded as an inefficiency loss and a waste of economic resources. They reduce private profits, but do not lead to a greater tax revenue'. Tax compliance costs represented 4% of total CIT revenues collected and furthermore, the assessment assumed that such costs were identical across countries. 'Compliance costs remain a major investment impediment for companies both, at the national level when complying with national rules and at the international level when deciding on cross-border investments'.

25 The EU Arbitration Convention establishes a procedure to resolve disputes where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State The Arbitration Convention applies in all EU Member States.

26 Eichfelder, S., Vaillancourt, F.; 'Tax Compliance Costs: A Review of Cost Burdens and Cost Structures', *Working Paper 178*, Arbeitskreis Quantitative Steuerlehre, 2014.

27 *Ibid*, see the table 3, at pp. 13-14.

28 European Commission Taxation Paper No 64, written by the ZEW (Center of European Economic Research), The Impact of Tax Planning on Forward Looking Effective Tax Rates, 2016.

29 European Commission Taxation Paper No 65, written by the ZEW (Center of European Economic Research), The Effects of Tax Reforms to Address the Debt-Equity Bias on the Cost of Capital and on Effective Tax Rates, 2016.

30 European Commission Taxation Paper No 66, written by the Joint Research Center, Modelling Corporate Tax Reform in the EU: New Calibration and Simulations with the CORTAX model, 2016.

An EU Commission´ study, published in 2018,[31] 'draws the attention to the manner in which differing national tax requirements can create hurdles to cross-border activities in the Internal Market, which SMEs are least equipped to handle'. This study is basically based in **a novel and unique study on tax compliance costs** carried out by KPMG, requested by the Executive Agency for SMEs (hereafter known as the EASME/KPMG Survey). The EASME/KPMG Survey, covers 20 EU countries, four enterprise sizes (micro, small, medium, and large plus super-large) and five sectors. The final dataset comprised slightly more than 3000 respondents. In the Survey, the cost calculated represented 12% of total corporate income tax revenues collected (weighted averages using Gross Domestic Product (GDP) as weights), which actually shows that cost represented nearly three times more, than the calculation of the Impact Assessment of the 2016 CCCTB proposal.

The JRC Working Paper (2019),[32] compares the EU Commission´ Impact Assessment and the EASME/KPMG Survey. The JRC is based on the assumption that both, 'pre-reform tax compliance costs (measured as share of labour costs) and post-reform variations, are identical across countries'. Such an assumption is due to 'the absence of reliable country-specific estimates of tax compliance costs'. In comparison, the EASME/KPMG Survey 'calculates country-specific average values of the tax compliance costs measured as share of total labour costs'. The JRC Paper observes that on average, the highest TETCC are related to data collection cost (between 36% and 50%), followed by the preparation cost (between 15% and 40%) and only a fraction of the average is allocated to review and submission cost.[33]

The EU Commission 'Study for Tax Compliance Cost for SMEs' (2018)[34] has shown that on average, SMEs are more likely to outsource some or all of their tax compliance obligations, than LEs. SMEs have incurred extra-costs, due to their limited resources or due to the lack of expertise when facing the volume and complexity of the tax obligations.

Further studies have been analysed with regard to the cost derived from different tax systems in the EU, *inter alia*: an empirical study of the EU Commission´ study (2005)[35] related to administrative costs imposed by the legislation of Member States; the flash Eurobarometer (updated in 2021) related to the internationalization of SMEs; the annual report of the EU Commission with regard to SMEs (2017)[36] or the Eurostat annual report on European SMEs.

As a conclusion to section 2.1., there are many tax obstacles that businesses must face when operating cross-border. Companies incur unnecessary extra costs in having to comply with 27 different tax systems. These obstacles **affect SMEs more drastically** in comparison with LEs. It has been observed that compliance costs are an inefficient loss and a waste of financial resources. How much represents the tax compliance costs of the total CIT revenues, can vary, from 4% (as noted in the Impact Assessment of 2016) to 12% (EU Commission study of 2018).

31 European Commission study, on Tax Compliance Costs for SMEs, based on the contract between the Executive Agency for SMEs (EASME) and KPMG AG Wirtschaftsprüfungsgesellschaft (KPMG Germany), 2018.

32 Joint Research Center (EU), Working Paper No 2/2019, written by Barrios, S., D'Andria, D., and Gesualdo, M., Reducing Tax Compliance Costs through Corporate Tax Base Harmonisation in the European Union, 2019.

33 *Ibid*, see at pp. 135-137.

34 European Commission study (2018), *supra* note no. 31, at p.14.

35 European Commission Communication, COM/2005/518 final, EU Common Methodology for Assessing Administrative Costs Imposed by Legislation.

36 European Commission, 2016/2017. COM (2017), Annual Report on European SMEs.

2.2. Cost of Aggressive Tax Planning, Tax Avoidance and Tax Evasion

2.2.1. Understanding Aggressive Tax Planning, Tax Avoidance and Tax Evasion

The author of the present study considers that *'one of the consequences of globalization, is the 'increased openness of economies and the interdependence of States.* ***Each national tax system is now conditioned by other tax sovereignties'.*** [37] In this context, 'tax competition between States is inevitable' in one way or another, which is why an increase in tax cooperation among States is desirable.

Fair tax competition has positive aspects, for example, '*it restrains the appetite for higher taxes, prevents tax cartels, promotes investment and economic growth and spurs productivity and innovation. Tax competition also puts pressure on States to become more efficient in terms of how they raise and spend taxes*'. [38] Therefore, fair competition is beneficial because it **reduces government waste and disciplines politicians** and it is not against EU Law.

At first glance, '*there is no particular reason for two countries to have the same levels of tax. Although differences in tax systems may have implications for other countries, these are essentially political decisions for national governments. Depending on the decisions taken, the level of tax may be high or low relative to other countries and the composition of the tax burden may vary. Consequently, whether or not a country modernizes its fiscal infrastructure (for example, by reducing rates or broadening the base to promote greater neutrality) is, principally, a matter of domestic policy and it is not against EU Law*'. [39]

However, **harmful tax competition** among Member States is not permitted by the EU. '*A Member State offering an unfair tax regime, would not be affected by the financial erosion of its own preferential tax base, as the regime would have an adverse effect only on foreign tax bases*'. [40]

In order to analyse the impact of tax avoidance in the EU, one starting point is to differentiate the concepts of '**tax evasion**', '**tax avoidance**' and '**tax planning**'. These concepts cover a wide range of measures that are intended to minimize tax burdens. The author of the present study has published several papers in order to distinguish tax planning, tax avoidance and tax evasion. [41]

Tax evasion is often identified as a '*direct violation of the tax liability, characterized, by a particular intensity of wilful misconduct*'. [42] Accordingly, the key point is the use of illegitimate means with the intent to evade the payment of tax. The key point is to distinguish 'tax planning' from 'tax avoidance'. **Tax planning** can be defined '*as arranging cross-border transactions with the knowledge of international tax principles, to realize a tax-efficient and lawful routing of business activities and income*

[37] Lampreave Márquez, P.; 'Fair Tax Competition vs. Harmful Tax Competition', *GlobeTaxGov*, University of Leiden, https://globtaxgov.weblog.leidenuniv.nl/2018/10/01/fair-tax-competition-vs-harmful-tax-competition/.

[38] Lampreave Márquez, P.; 'European Union-Fiscal Competitiveness versus Harmful Tax Competition in the European Union', 65 *Bull. Intl. Taxn. 6*, Journals IBFD, 2011.

[39] Lampreave Márquez, P.; 'Harmful Tax Competition and Fiscal State Aid: two sides of the same coin?', *European Taxation, Vol. 59, no. 5*, Journals IBFD, 2019.

[40] Lampreave Márquez, P.; 'Harmful Tax Competition Between Member States of the EU', *Taxation Law Research Programme*, Law Hong-kong University, 2012.

[41] Lampreave, Márquez, P.; 'An Assessment of the Anti-Tax Avoidance Doctrines in the United States and the European Union', *66 Bull. Intl. Taxn. 3*, Journals IBFD, 2012.

[42] Lampreave Márquez, P.; 'Anti-Tax Avoidance Measures in China and India: An Evaluation of Specific Court Decisions', *67 Bull. Intl. Taxn. 1*, Journals IBFD, 2013.

and capital flows'.[43] **Tax avoidance** on the other hand is '*when a tax structure falls within the letter of the law, but runs counter to its spirit. This may consequently be considered to be illegal, as such a structure's sole objective would be to reduce or eliminate the tax burden*'.[44] This is, therefore, an '*indirect violation of the law*', *i.e.* a distortion of the interpretation of the law in the taxpayer's interest.

According to the IMF (2018), the precise **channels of tax avoidance** can vary, depending on the specific features of national tax systems and treaty networks. Examples of tax avoidance, are, *inter alia*: '*Transfer mispricing (stretching, violating or exploiting weaknesses in the arm's length principle); strategic location of management of intellectual property to low-tax countries to reduce taxes on associated income; debt shifting through intracompany loans (excessive borrowing in high-tax countries and lending to low-tax countries); treaty shopping (exploiting treaty networks to route income so as to avoid tax); risk transfer (conducting operations in high tax jurisdictions on a contractual basis to limit profits attributable there); avoiding PE status and locating asset sales in low-tax jurisdictions (to avoid taxes on the capital gains)*'. [45]

Since the **financial crisis of 2008**, many governments in the EU have increased taxes, notably on consumption, in order to consolidate public budgets. This has raised a 'question about multinationals and their fair contribution to government budgets'. As a consequence of this, 'corporate tax avoidance and aggressive tax planning' have received a great deal of attention from policymakers and academia. A large body of evidences, suggest that '*global corporations exploit cross-border differences in corporate income tax rules, taking benefits of existing inconsistencies and loopholes within the international tax network, through multiple schemes such as transfer pricing, debt shifting and the strategic allocation of intangible assets across tax jurisdictions*'.[46]

In 2012, the EU Commission presented an Action Plan with over 30 measures designed to **combat evasion**.[47] Many of these focused specifically on enhancing tax transparency and information exchange. On 18 March 2015, the EU Commission presented a 'tax transparency package as part of its agenda to tackle corporate tax avoidance and harmful tax competition in the EU'.[48] At the beginning of 2016, the EU Commission published a Taxation Paper on '*Structures of Aggressive Tax Planning (ATP) and Indicators*'.[49] The main purpose of which was 'to identify the critical ATP indicators which facilitate or allow the functioning of known ATP structures and to review the corporate income tax systems of the Member States on the basis of these indicators'. The study identified weaknesses of the national tax systems in the EU and set out the ground for additional analysis and new policy initiatives.

In March 2019, the EU Parliament published a relevant Report on financial crimes, tax evasion and tax avoidance.[50] Among other suggestions, the Report calls for a regular assessment of the EU Commission on ATP indicators, in order to ensure a level playing field in the internal market, as well

[43] Lampreave Márquez, P.; (2011), *supra* note no. 38.

[44] *Ibid*.

[45] International Monetary Fund, Working Paper 18/168, International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots, IMF Publising, 2018.

[46] Hemmelgarn, N.; Nicodeme, G.; Taxation Paper No 7666, The 2008 Financial Crisis and Taxation Policy, Centre for Economic Policy Research, 2010.

[47] European Commission Communication, COM(2012) 722 final, An Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion, 2012.

[48] European Commission Communication, COM(2015) 0136 final, Tax Transparency to Fight Tax Evasion and Avoidance, 2015.

[49] European Commission, Taxation Paper No 61, written by Ramboll Management Consulting, *et al*, on Structures of Aggressive Tax Planning and Indicators, 2015.

[50] European Parliament Resolution, No 2018/2121, on Financial Crimes, Tax Evasion and Tax Avoidance, 2019.

as a greater stability of public revenue in the long term. The EU Parliament 'invites the Commission to ensure clear follow-up to end ATP practices, if appropriate in the form of formal recommendations'.

The EU Commission publishes, its '**Tax Reforms Report of Member States tax Policies'**. Annually.[51] The aim of the aforementioned, is to scrutinise reform trends and provide in-depth analysis of challenges and recommendations in key areas of Member States´ tax policy. In this framework, the EU Commission intends to work with Member States, along with the EU Statistical Office (Eurostat), 'to explore ways of compiling more comparable and reliable data on the scale and economic impact of tax evasion and avoidance'.

In recent years, Member States have demonstrated a growing commitment **to improve tax compliance** in order to fight against tax evasion, but also to make **tax procedures** simpler and **tax administrations** more efficient.[52] Member States have used a variety of policies to **fight tax evasion,** including, *inter alia*: 'more controls; measures to promote voluntary compliance, but also tougher sanctions; tighter rules for conducting certain activities or types of transactions; more cooperation with other law enforcement activities and an increased exchange of information. Moreover, Member States have incorporated various measures to improve tax administration, by expanding electronic services, making greater use of information and communication technologies by tax authorities, by simplifying tax compliance procedures or by increasing the efficiency of tax administrations'.[53]

Further actions are needed at EU level to tackle tax evasion and to help tax administrations to keep pace with a constantly evolving economy. 'The digital economy and the development of new business models create new **challenges for tax administrations'**. Moreover, '*tax authorities have 'limited resources' at national level, to exploit the 'massive volume of data they collect through the implementation of measures*'[54] taken during recent years.

To this end, the FISCALIS 2020 cooperation program enables national tax administrations to create and exchange information, with a view to encourage greater transparency between Member States on their national tax gap data and the methodologies for calculating them.

Automatic exchange of information and joint actions have become common in the EU between Member States. Directive 2011/16, on Administrative Cooperation and the following amendments, ensure that the EU has a solid legislative framework for the automatic exchange of information between tax authorities on different topics. Of these amendments, the DAC 6[55] approved in 2018, related to the exchange of tax information on potentially aggressive tax planning schemes, could be a relevant instrument for tackling ATP.

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[51] European Commission, European Economy No 6/2014, Tax reforms in EU Member States. Tax Policy Challenges for Economic Growth and Fiscal Sustainability, *European Economy series*, 2014.

[52] Lampreave, Márquez, P.; 'Tackle harmful tax competition, a compromise of the States with international organizations', Communication, *Tax Justice Annual Conference*, Peru, 2018.

[53] European Commission Taxation Paper No 49, written by Garnier, G., *et al*, A Wind of Change?. Reforms of Tax Systems since the Launch of Europe 2020, 2014.

[54] Lampreave, Márquez, P.; 'The European Commissions Role in Changing the International Tax Landscape in Europe', *International Tax Congress 2016*, IIR & IBC Financial Event.

[55] Council Directive (EU) 2018/822, Amending Council Directive 2011/16/EU, as Regards Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements, *OJ L* 139, 2018.

In the 'Tax Package for Fair and Simple Taxation, Supporting the Recovery Strategy' of 2020,[56] the EU Commission points out that despite the efforts and commitments of the Member States, tax fraud and evasion **remain a threat for sound public finances**. In the Annex of the aforementioned document,[57] an overview of tax initiatives from 2020-2023 are included. As a preparatory action No. 11 incorporates the launch of an EU Tax Observatory (a non-legislative initiative). The tasks of the Observatory, is to monitor and quantify trends, in the level and scope of tax abuse and to stimulate a EU debate on international tax issues.

2.2.2. The Impact of these Mechanisms in the Internal Market

Substantial empirical literature has investigated the determinants of flows of capital and the income from capital, and specifically the impact of taxation on such flows.

A Paper by Devereux (2007),[58] analyses studies by other authors relative to the impact of taxation on the decisions taken by MNEs. In particular, Devereux's Paper focuses 'on the influence of taxes on the following: discrete location choices, capital expenditure decisions of affiliates, the overall allocation of capital across countries, differences in the rates of profit across countries, financial and organizational form decisions, especially in the use of debt and the form and size of income repatriated to the parent; and intrafirm transfer prices and trade'.

Nicodème (2009),[59] also reviews the 'theoretical and empirical literature on harmful tax practices and information exchange on the size and consequences of the existence of tax havens and harmful tax regimes'.

OECD BEPS Action 11,[60] is dedicated to establishing 'methodologies to collect and analyse data on BEPS and the actions to address it'. Action 11, estimates that the cost of **tax avoidance by MNEs** ranged from USD 100 to USD 240 billion, which is equivalent to 4-10% of global CIT revenues. This Action demonstrated that the 'lack of quality data on corporate taxation has been a major limitation to measure the fiscal and economic effects of tax avoidance'.

A relevant study commissioned by the EPRS (2015)[61] reveals that revenue **loss from profit shifting** amounts is about EUR 50-70 billion *per annum* in the EU. However, if other tax regime issues, such as 'special tax arrangements, inefficiencies in collection' and so on are included, the estimation of revenue losses for the EU due to tax avoidance from corporate taxation could amount to around EUR 160-190 billion per annum. The study indicates that' if a complete solution to the problem of BEPS 'were available and implementable across the EU, it would have an estimated positive impact of 0.2 % of the total tax revenues of the Member States'. The Annual Macroeconomic Database of the European Commission (AMECO) calculates the total tax revenues collected throughout the EU, when the study of the EU Parliament was published, tax revenues as a whole were EUR 5.74 trillion in 2011. This means that if a comprehensive solution were available, this would be added another EUR 11.5 billion in revenue. This study also mentions that the impact of the OECD BEPS Action Plan

[56] European Commission Communication, COM (2020) 312 final, Tax Action Plan For Fair and Simple Taxation Supporting the Recovery Strategy, 2020.

[57] Annex of the European Commission Communication (2020), *Ibid*.

[58] Devereux, M., Working Papers 0702, The Impact of Taxation on the Location of Capital, Firms and Profit: A Survey of Empirical Evidence, *Oxford University Centre for Business Taxation,* 2017.

[59] Nicodème, G.; 'On Recent Developments in Fighting Harmful Tax Practices', *National Tax Journal*, 62, 2009.

[60] Organisation for Economic Co-operation and Development, Measuring and Monitoring BEPS: Action 11, Final Report, OECD Publishing, 2015.

[61] European Parliament study, written by Dover, R., Ferrett, B., Jones, E. and Merler, S.; Bringing Transparency, Coordination and Convergence to Corporate Tax Policies in the European Union. Assessment of the Magnitude of Aggressive Corporate Tax Planning, EPRS, European Parliament, 2015.

is between 4 % and 10 % of corporation tax receipts globally and the impact on the EU might be in the range of EUR 13.4 billion to EUR 33.5 billion. The following table summarizes the above:

A EU Commission study (2009),[62] conclude that the abolition of profit shifting opportunities **is not a zero-sum game** in CORTAX.[63] In particular, the authors of the study consider that 'aggregate welfare in the EU declines by 0.03% of GDP. The reason is that profit shifting allows MNEs to reduce the overall tax burden on corporate capital. In this way, profit shifting encourages investment, raises GDP and improves welfare. Abolishing profit shifting, not only affects the distribution of tax revenues among States, but also raises the tax burden on MNEs and increases aggregate corporate tax revenue'.

Eichfelder and Vaillancourt (2014),[64] summarise the 'tax compliance cost literature of the last three decades and conclude that tax planning costs seem to be relatively unimportant for SMEs'. The Paper, mention that the data provided by Slemrod and Venkatesh (2002)[65] show 'that the share of tax planning costs, in total compliance costs, increases in relation to firm size measured by the value of assets from 4%, for companies with assets smaller than USD 5 million, to 15% for companies with an asset size of more USD 1 billion'.

The Taxation Paper No. 64 (2016),[66] demonstrated that the use of **cross border tax planning** in the EU could considerably reduce, both the mean effective average tax rate (EATR) as well as the minimum and maximum EATRs in the EU. As can be observed in the table below, the average reduction is substantial.

Table 1: Impact of Tax Planning on Effective Average Tax Rates

%	Mean	Min	Max	Average EU-28 Percentage Reduction
Effective average tax rate domestic case	21,1	9,0	38,3	n/a
Effective average tax rate after cross border tax planning				
Intellectual property box (patent box)	-1,6	-3,7	1,8	-108,3%
Hybrid financing	13,7	4,3	26,6	-36,3%
Financing via offshore treaty	15,9	6,4	28,6	-25,0%

Source: EU Commission Taxation Paper No 64

[62] European Commission study, written by CPB Netherlands for Economic Policy Analysis and the Oxford University Centre for Business Taxation, The Economic Effects of EU-Reforms in Corporate Income Tax Systems, 2009. The study assesses the macroeconomic effects of both a common corporate tax base (CCTB) and a common consolidated corporate tax base (CCCTB) using a general equilibrium model for the EU27.

[63] The general equilibrium model used to estimate the impact of proposed reforms.

[64] Eichfelder, S., Vaillancourt, F., Working Paper No 178, 'Tax Compliance Costs: A Review of Cost Burdens and Cost Structures', *Arbeitskreis Quantitative Steuerlehre*, 2014.

[65] Slemrod, J. B., Venkatesh, V.; Working Paper No 914, 'The Income Tax Compliance Cost of Large and Mid-Size Businesses'. *Ross School of Business, 2002.*

[66] European Commission Taxation Paper, (2016), *supra* note *no*. 28.

Alvarez-Martínez, M.T, together with other authors,[67] published a Paper in 2018 in which they estimate that 'the impact of the BEPS Project on corporate tax losses for the EU, amounts to EUR 36 billion annually or 7.7% of total corporate tax revenues'. The results suggest that by 'increasing the cost of capital and eliminating profit shifting, there would be a reduction on investment and GDP, however, there would raise corporate tax revenues, thanks to enhanced domestic production, this in turn could reduce other taxes'.

Riedel (2018)[68] provided a brief review of the academic literature that assesses the quantitative importance of tax avoidance behaviour of MNEs, by means of income shifting from high-tax to low-tax affiliates. In terms of profit shifting channels, 'there are evidences of strategic mispricing of intra-firm trade, of the location of valuable intellectual property at low-tax affiliates and of debt-shifting activities'. The quantitative estimates vary across approaches and studies. The author, moreover stresses that a degree of care is warranted when interpreting profit shifting estimates, as they often rely on non-trivial assumptions.

There are many different estimations 'on the scale of tax avoidance' generally, and in relation to certain companies in particular which, come from 'tax administrations, NGOs, academics and the media'.[69] Though it would appear there are no conclusive figures quantifying the scale of corporate tax avoidance, the general consensus is that this instance seems to be substantial. One of the highest estimates refers to '*an amount of EUR 860 billion a year for tax evasion and EUR 150 billion a year for tax avoidance*'.[70]

On the impact of **treaty shopping**, there are also many publications on the subject. Van't Riet and Lejour (2018)[71] for instance, analysed the effect of this mechanism on the tax burdens of MNEs when they repatriate profits. They found 'that treaty shopping leads to an average potential reduction of the tax burden on repatriated dividends of about 6% points'. BEPS Action 6 addresses treaty shopping through 'treaty provisions whose adoption forms part of a minimum standard that members of the BEPS Inclusive Framework have agreed to implement'. It also includes specific rules and recommendations to address other forms of treaty abuse.

The conclusion to section 2.2., is that harmful tax competition, aggressive tax planning, tax avoidance and tax evasion aim to **minimize or to eliminate tax burdens.** This, implies an unfair contribution from groups using these mechanisms. The estimated impact of revenue loss to a Member State (and the total revenues collected in the EU) can vary depending on profits shifting, tax avoidance or tax evasion, however the negative impact is unquestionable. A comprehensive solution to tackle these mechanisms would have a highly positive impact on tax collection. Meanwhile, **the mentioned mechanisms remain a threat for sound public finances**.

[67] Alvarez-Martínez, M.T.; Barrios S.; D'Andria D.; Gesualdo M.; Nicodème G.; Pycroft, J., *CESifo Working Paper No 6870*, 'How Large is the Corporate Tax Base Erosion and Profit Shifting? A General Equilibrium Approach' , *CESifo Series 6870, 2018.*

[68] Riedel, N.; 'Quantifying International Tax Avoidance: A Review of the Academic Literature', *Review of Economics,* 69 (2), 2018.

[69] https://eur-lex.europa.eu/.

[70] https://financialtransparency.org/reports/tax-research-uk-closing-the-eu-tax-gap/.

[71] Van't Riet M.; Lejour, A.; 'Optimal Tax Routing: Network Analysis of FDI Diversion', *International Tax and Public Finance*, 25 (5), 2018.

2.3. Contribution to the Reduction of Cost Compliance for SMEs

The debate regarding cost compliance for SMEs is not recent. There are a wide range of Studies and Surveys that confirm the finding of **disproportionately high tax compliance burdens faced by SMEs**[72] **in comparison with LEs**.[73] Some of these are mentioned in the present study.
In 2008,[74] the EU Commission Communication on [Think Small First -Small Business Act' for Europe (SBA)](#) (2008 reviewed in 2011),[75] presented several categories, as feasible for reducing the tax burdens on SMEs, *inter alia*:[76]

- **Size-related exemptions. 'Exemptions from regulatory duties are probably the most widely used direct method to reduce the tax burden for SMEs'. If it is not possible a fully exemption method, SMEs could be subject to a partial exemption on their obligations, *e.g.*, companies under certain number of workers or with a surface below certain meters. In the event, that fully or partially exemptions are not possible, a temporal exemption from rules could be considered, with the idea of give them more time, than LEs, to adjust to new legislation or new obligations.**
- **Simplified obligations. When it is not possible to exempt obligations, the simplification of the obligations often makes tax compliance easier for SMEs. For example, the relaxation of the requirement to keep financial accounting books for tax purposes. The initiative implemented by several countries to facilitate official tax forms that can be filled on-line, rather than on paper is also beneficial.**
- **A 'one-stop shop' (virtually or with physical presence) could reduce SMEs costs when setting up a company in a quick and simple way. In many countries, 'setting up a new business still requires several administrative procedures', often with several public administration (*e.g.*, VAT**[77] **registration, corporate income tax office, applying license or registration for new activities) involved. The idea of the one-stop shop therefore is to go beyond the initial establishment and should be a place to help SMEs during all their existence.**
- **Tailor-made information and training. One of the consequences of a lack of specialization by SMEs, mean that 'they are less effective in dealing with regulation than LEs'. Information activities, such as websites, handbooks or helpdesks are very useful.**
- **Transfer pricing cost-compliance. The high cost of complying with different transfer pricing obligations, which exist in each Member States.**

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[72] SMEs are categorized according to the number of Staff headcount, their turnover or balance sheet total. Medium-sized enterprises (employ <250 staff headcount, annual turnover of ≤ EUR 50 million / balance sheet total of ≤ EUR 43 millions). Small enterprises (< 50 staff headcount, annual turnover of ≤ EUR 10 millions / balance sheet total of ≤ EUR 10 millions). Microenterprises (<10 staff headcount, annual turnover ≤ EUR 2 millions / balance sheet total of ≤ EUR 2 millions). https://ec.europa.eu/growth/smes/sme-definition_en.

[73] LEs are understood to mean those with > 250 staff headcount, annual turnover of > EUR 50 million / balance sheet total of > EUR 43 million.

[74] European Commission Communication, COM(2008)394 final, Think Small First - A Small Business Act for Europe, 2008.

[75] European Commission Communication, COM(2011)78 final, Review of the Small Business Act for Europe, 2011.

[76] The complete list of proposed models is available at: http://europa.eu.int/comm/enterprise/entrepreneurship/support_measures/index.htm.

[77] There is a VAT Mini One Stop Shop (MOSS) in force since years, but a number of important amendments have been made to the Value-Added Tax (VAT) Directive to simplify VAT obligations as regards eCommerce activities. These new VAT eCommerce rules will enter into force from 1 July 2021. These amendments include an extension of the VAT Mini One Stop Shop (MOSS) to a One Stop Shop (OSS) and the introduction of a new Import One Stop Shop (IOSS).

- **Early evaluation of regulatory impact on small businesses. The Impact Assessment of 2016 provide a complete picture of the 'intentional/unintentional effects of a regulation'. Also estimates the cost of implementing regulation and analyse potential alternatives.**

The OECD´ Survey on the Taxation of SMES (2015),[78] demonstrates that some countries use different simplification measures to reduce tax compliance significantly. Many countries allow less frequently remits (*e.g.* annually), and advance instalments of income tax in comparison with LEs (obliged to report on a quarterly basis or even more frequent basis). However, the OECD observes that 'micro or small businesses, with very low turnover, may regard the tax compliance burden of a simpler tax system, as too costly'. These companies might prefer a simplified method of tax calculation based on a **presumptive tax**, which involves the use of indirect means to ascertain the tax liability, something that differs from the usual rules based on the taxpayer's accounts. Another option, is to calculate their income on a **cash flow basis**. Cash flow taxes differ from presumptive taxes, as the first still use income, as the tax base.

Several preferential regimes or simplified schemes for SMEs are granted by Member States, in order to mitigate the size disadvantages. In general, these regimes include: reduced tax rates applied to the income earned or to the returns on capital to the owners; better tax deductions (in comparison with the rest of the companies); more tax credits and Research and Development (R&D) incentives; relaxed treatment of losses or early accelerated depreciations for certain forms of investment.

The main findings of a relevant empirical study by the EU Commission using Tax Analyzer model (2015),[79] concluded that only a few of the Member States being analysed incorporated a reduction in tax liability (*e.g.* tax credits, temporary exemptions from tax) into their legislation. The majority overall incorporated reductions in tax base (depreciation, allowances and deductions). Tax rate incentives 'are the most common SME incentive in place and are especially important for small and micro corporations'. However, SME tax incentives are not as frequently implemented as R&D tax incentives. R&D tax incentives 'are more advantageous for SMEs, but LEs can circumvent high tax burdens with the help of optimized location and financing strategies'. Many tax incentives do not apply to medium and/or small corporations, but exclusively to micro corporations only. The reason being that 'certain prerequisites and thresholds' (such as those relating to the size of profits) are only satisfied by very small corporations (*i.e.*, micro corporations).

In contrast, to the aforementioned need to incorporate special regimes for SMEs, Crawford and Freedman (2011)[80] consider that, there is no reason to give SMEs more favourable tax treatment, since the only correct alternative, is the simplification of the tax system for all taxpayers irrespective of their size. Otherwise, 'discrimination against micro and small businesses easily turns into **discrimination against LEs**' -either because eligibility thresholds are set 'too high or because the relief provided is too beneficial'-. This notion was also corroborated by Keen, M. (2013),[81] who considers that preferential treatment for SMEs, naturally partitions taxpayers and violates the

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78 See the Tax preferences for SMEs recognized in the 38 countries participating in the OECD. Organisation for Economic Co-operation and Development Tax Policy Studies No 23, Taxation of SMEs in OECD and G20 Countries, OECD Publishing, 2015, at pp. 77- 86.

79 European Commission study, written by Valdani Vicari & Associati SRL (VVA) and the ZEW (Centre for European Economic Research) SME taxation in Europe – An Empirical study of Applied Corporate Income Taxation for SMEs Compared to Large Enterprises: Final Report, EU Publications, 2015.

80 Crawford C., Freedman, J., 'Dimension of Tax Design, The Mirrlees Review', *Oxford University Press*, 2011.

81 Keen, M. (2013), 'Taxation and Development – again', in *Fuest, C./Zodrow, G. R. (eds.), Critical Issues in Taxation and Development*, Cambridge: MIT Press, 2013.

neutrality of the tax system. In particular, a ZEW Paper of 2017,[82] argues that 'regimes may be overly generous if they strongly deviate from standard procedures'. If income is determined presumptively, for example, or if special regimes replace several taxes, 'the determination and collection of taxes, is not only simplified but actual tax payments are significantly altered'.

Conclusion to section, 2.3.: SMEs can be said to suffer a disproportionally high tax compliance costs. Member States has incorporated several measures or preferential regimes which contribute to the reduction of cost compliance for SMEs. In general these regimes/measures are considered in a positive light by the EU Institutions and the academic literature in order to maintain the same level playing field for all companies, but it cannot be concluded there is total consensus on this topic. In order to comply with the principle of non-discrimination, there might be a presumption that SMEs and LEs are comparable. The author of the present study considers that special regimes granted to SMEs should not be considered as a discrimination against LEs. However, the potential discrimination could be justified by the high costs imposed to SMEs.

[82] Bergner, S., Bräutigam, R., Evers, M., and Spengel, C.; 'The Use of SME Tax Incentives in the European Union', ZEW (*Centre for European Economic Research) Publications*, 2017.

3. Potential Improvement on the EU Corporate Taxation

The aim of the third part of the study, is to analyse if any sort of approximation on a common calculation of the taxable base would improve stability in cross border operations and consequently reduce several risks, including tax base erosion for Member States. It is analysed the advantages and disadvantages of the CCTB/CCCTB proposal and mention potential improvements. This part, also covers potential alternatives in order to obtain an EU common regimen for the calculation of the corporate income taxation.

3.1. Advantages/Disadvantages and Potential Improvements in the CCCTB Proposal

It has been evidenced in the second part of this study that companies, operating cross-border, suffer unnecessary extra costs in having to comply with 27 different tax systems. The consequences of co-existing different tax systems in the EU have been broadly analysed. Yet the following consequences might also be analysed, *inter alia*:[83] an ineluctable tax rate competition among Member States; a high cost of complying with transfer pricing formalities using the arm's length approach; the impossibility of cross-border loss offsets leading to over-taxation for companies engaged in cross-border activities; companies would still need to deal with as many tax administrations as the number of Member States in which they are liable to tax; a tax competition for specific tax incentive schemes offered by Member States in favour of R&D or debt investments. The best strategy to offset these consequences is the adoption of a multilateral agreement. However, the introduction of a comprehensive set of rules to facilitate cross-border trade and investments would nevertheless be a difficult task due to the requirement of unanimity for legislative proposals in direct taxation.

Following the abandonment of the CCCTB proposal (2011), the EU Parliament[84] presented several recommendations to the EU Commission and in 2016, the EU Commission re-launched a revised proposal for a CCCTB.[85] This new initiative, was split into two separate proposals, one that do not include consolidation (CCTB) and another with full consolidation (CCCTB). The proposal was accompanied by an Impact Assessment.[86] The Council has also rejected the EU Commission proposal of 2016, alleging, among other reasons, that the approval of this option would affect the tax sovereignty of Member States.

The possibility of implementing a CCTB without consolidation has been suggested by several Member States, who argue that the distribution of the consolidated tax base to EU group companies or EU branches according to the formula presented by in the CCCTB proposal would be complex and the outcome unpredictable. Moreover, as was mentioned, the lack of harmonization of tax rates could lead to a manipulation of the formula and the major part of the tax base would be apportioned to countries with a low corporate tax rate.

Numerous descriptive and comparative studies/papers illustrate the advantages and disadvantages of the CCTB/CCCTB, some of which are mentioned hereunder.

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83 More information about the consequences of co-exiting different tax systems in the EU, can be found in the PWC Tax Policy Bulletin, and in the KPMG Guide to CCCTB.

84 European Parliament Resolution, No 2015/2010, Recommendations to the Commission on Bringing Transparency, Coordination and Convergence to Corporate Tax Policies in the Union, 2015. See also, European Parliament Resolution, No 2005/2120, on Taxation of Undertakings in the European Union: A Common Consolidated Corporate Tax Base, 2005.

85 Proposal for a CCCTB (2016), *supra* note no. 15.

86 Impact Assessment (2016), *supra* note no. 17.

An empirical study conducted by EY (2011)[87] analysed the impact of the introduction of a CCCTB in the EU. The study suggests that a CCCTB would create significant 'winners and loser', throughout Member States with respect to corporate tax revenues, assuming no there were no change in corporate income tax rates. In concrete terms E&Y consider that 'although some savings would occur in the area of transfer pricing, businesses reported that those savings could in fact be eroded by the additional costs associated with managing the impact of the introduction of formulary apportionment'. According to the EY study, the majority of businesses found that their corporate income tax burden would increase under a CCCTB. This was primarily due to the fact 'that the apportionment mechanism means that a greater proportion of income would be apportioned to, and taxed in, Member States with higher corporate tax rates'.[88]

Curzon Price V.; (2011),[89] considers that the apportionment mechanism incorporated in the CCTT and CCCTB would increase extra costs, because tax payable under the CCCTB would have to be shared out among the different tax jurisdictions according to some kind of key unrelated to profit. According to the author '*a country where firms habitually experience poor profits would come out a clear winner, and vice versa for countries where firms tend to generate above-average returns. Scaled up to country level, this scheme could set up a curious incentive system: countries would no longer have to be concerned with corporate profits as such, since they could free ride on other countries' business-friendly regulatory environments*'.

According to Business Europe (2017),[90] the introduction of a CCTB does not resolve the problem **of the administrative burden**. LEs suffer an increase of 4% in time costs on their tax returns. In addition, the lack of clear rules leads to various interpretations of rules by the different Member States, which create additional complexities and burdens. This study stresses that a CCTT might put Member States, in a too rigid system in the future that would not allow future trends in taxation to be addressed. This could damage EU competitiveness in the long term and could lead to additional local taxes which may cause even more complexity within the EU. Business Europe also states that allocation key does not reflect current business models or economic reality, particularly, in relation to its treatment of intangibles and financial assets. The abovementioned factors would potentially create even more tax disputes between EU-countries and third countries and could cause more instances of double taxation.

Valenduc (2019),[91] mentioned in his study that the incorporation of an allowance for growing and investment (AGI) to address the **debt/equity issue** may raise concerns. By adding a reduction of equity capital to taxable income, a cyclical element to corporate taxation is introduced. During a recession, equity capital may be reduced and it does not give rise to an increase in the ability to pay taxes. As result, debt relief for equity, should not be ground for further reduction of deductibility of interest. In line with the aforementioned, the European Trade Union Confederation (ETUC) in 2016, argued[92] that the 'AGI mechanism as well as the super-deduction for R&D, may provide opportunities for tax abuse'.

87 EY, 'Common Consolidated Corporate Tax Base, A study on the impact of the Common Consolidated Corporate Tax Base proposals on European Business Taxpayers', EY Publications, 2011.

88 Proposal for a CCCTB (2016), *supra* note no. 15.

89 Curzon Prize, V.; 'The CCCTB: An instance of the EU's Icarus Complex?', *Centre Pour la Concurrence Fiscal*, 2011.

90 Business Europe, Position Paper, Common Corporate Tax Base (CCTB) and Common Consolidated Corporate Tax Base (CCCTB), 2017.

91 Valenduc, C., Working Paper No 06, 'Corporate Income Tax in the EU, the Common Consolidated Corporate Tax Base (CCCTB) and Beyond: Is it the Right Way to Go?', *ETUI Research Paper*, 2019.

92 ETUC position on the Common Consolidated Corporate Tax Base, 2016.

The empirical analysis[93] conducted by Nerudová and Solilová (2019),[94] concludes that the impact of the CCCTB implementation in the EU would be:

- **In the group of LEs would result in a '4.2% decrease in the total tax base (EUR 798 billion)' down from the current situation.**
- **For LEs, that do not meet the EUR 750 million consolidated turnover threshold, the impact was quantified as a '7.5-11.9% increase in the total tax base in the EU', depending on the number of entities voluntarily entering the system.**
- **For SMEs, the impact was quantified as an '8.9-12.8%[95] increase in the total tax base throughout the EU', depending on the number of entities voluntarily entering the system.**

In the study, it is stated the vast majority of businesses (80%) have come out in support of the CCCTB. Specifically, the conclusion with respect of the SMEs is that 25,258 SMEs (6.5%) would probably opt for the CCCTB system.

In the Taxation Paper No. 75 of 2019,[96] the CCTB impact is calculated on the basis of the European Tax Analyzer model. The Paper concludes that the CCTB cannot alleviate the current EU-wide differences of effective company tax burdens. A major finding of the study reveals that '*the effective tax burdens in all countries considered tend to increase slightly since the tax bases tend to become broader. This offers the possibility to member states to reduce the nominal tax rate leaving the overall effective tax burden unchanged. A tax policy of tax cut cum base broadening would not only tend to increase the attractiveness of the member states as a location for companies. At the same time, this would reduce dispersions of effective tax burdens across industries*'.

With regard to potential improvement of the 2016 CCTB/CCCTB proposal, the author of the present study has consulted several publications. Some of them are reflected hereunder:

- **Threshold for mandatory CCCTB should be lower**

The Committee on Economic and Monetary Affairs (ECON), of the EU Parliament, presented in 2017, several recommendations with respect to potential improvements in the CCCTB proposal. The EU Parliament[97] adopted its position in 2018, on the basis of the ECON recommendations. With regard mandatory application threshold of the CCCTB, the EU Parliament suggested lowering it, from EUR 750 million **to zero** over a maximum period of seven years.

The ETUC (2016)[98] also holds that the threshold of EUR 750 million is too high and should be set at a maximum of **EUR 40 million**, in line with the EU Accounting Directive (2013/34/EU). The reason argued is that there must be a consistent accounting base, as otherwise double or non-taxation of

93 The empirical analysis is based on the company information available in the Amadeus database (update no. 2552 from December 2015), which is provided by Bureau van Dijk).

94 Nerudová, D., Solilová, V.; 'The Impact of the Introduction of a CCCTB in the EU' in Fair and Sustainable Taxation in the EU, Vol. 54, No. 3, Intereconomics, 2019.

95 The lower limit represents the scenario in which only entities encountering a lower tax burden would enter the system; the upper limit depicts the scenario in which other features of CCCTB would also be attractive and all the entities within the group would enter the system.

96 European Commission Paper, No 75, written by the ZEW (Centre for European Economic Research). Final Report, 2019, at p. 96

97 European Parliament Legislative Resolution, (COM(2016)0685–C8-0472/2016–2016/0337(CNS)), on The Proposal for a Council Directive on a Common Corporate Tax Base, *OJ C* 162, 2018.

98 ETUC position (2016), *supra* note no. 92.

transactions may arise. As a result both the CCTB and CCCTB could allow for the possibility of tax avoidance through accounting arbitrage.

There are several Institutions, members of the academia, business association or NGOs, that also recommend the decreasing of the threshold of EUR 750 million of consolidation turnover, because there are a great number of business *(e.g.* LEs below the mentioned threshold) that could continue with the current situation and all the consequences implicit in it would remain.

- **Harmonization of accounting rules formally linked with a common corporate taxable base**

Despite its name, the CCCTB is not in fact based on what an accountant would call consolidation, it is based instead on what might properly be called aggregation after tax adjustments. The Accounting Directive (2013/34/EU)[99] allows for a simplified reporting regime for SMEs and a very light regime for micro-companies. But the harmonization of the accounting rules cannot exclusively alleviate the current EU-wide differences in overall effective tax burdens. Additional measures, such as the creation of a CC(C)TB, are necessary.

Stetter T., *et al*,[100] in a Paper published in 2005, established the advantage of **international financial reporting standards (IFRS)**[101] as a starting point for tax accounting. However, the author considered that the adoption of IFRS, has to be restricted to standards that are convenient for tax purposes. In particular, this means that 'tax accounting still has to follow the **realisation principle**', as a general principle. An interesting approach is the one provided by De Wilde (2015), who considers that '*the best option is to abandon the separate accounting system and to adopt a worldwide unitary approach. (…) A unitary approach should be favored over separate accounting, essentially because the former is founded on economic reality, and because the latter has simply proved to be highly distortive. Tax consolidation could apply if the ultimate parent has corporate interests that give it a decisive influence over the structure and management of the underlying business activities of the subsidiaries, providing the parent company holds these corporate interests as a capital asset*'. [102]

Business Europe of 2017[103] observes that despite the constant reference to IFRS, there is no formal link between the CCTB and IFRS. The rules for the common tax base would, therefore, define the tax base itself, but 'not the methodology for adjusting the accounts' to arrive at the tax base. Requiring a consolidation for tax purposes that takes into account the local Generally Accepted Accounting Principles (GAAP) annual accounts of entities in the Member State may not be practical and should not be adopted as the required approach. One approach could be to allow MNEs to start with an EU accounting consolidation under IFRS and then make adjustments to come to the tax results.

[99] Council Directive (EU), 2013/34, on The Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, *OJ L 182*, 2013.

[100] Jacobs, O.; Spengel C.; Stetter T., Wendt C.; ZEW (Centre for European Economic Research), EU Company Taxation in Case of a Common Tax Base. A Computer- Based Calculation and Comparison Using the Enhanced Model of the European Tax Analyzer, 2005.

Discussion Paper No. 05-37 EU Company Taxation in Case of a Common Tax Base A Computer-based Calculation and Comparison Using the Enhanced Model of the European Tax Analyzer Otto H. Jacobs, Christoph Spengel, Thorsten Stetter and Carsten Wend.

[101] IFRS provide a common accounting language used by more than 100 countries. They make company accounts understandable and comparable across international boundaries.

[102] De Wilde, M.F.; 'Sharing the Pie: Taxing Multinationals in a Global Market' *43 Intertax vol 6*, No. 7, Kluwer Law International, 2015, at p 438 and at p. 446.

[103] Business European, (2017), *supra* note no. 90.

Deletion of the CCTB step

In general, a great majority of authors argue that the two-step approach will unavoidably allow for new loopholes. The author of the present study agrees with this consideration. Therefore, it may be assumed that the urgent and the rapid implementation of the consolidated aspect of the package (*e.g.* CCCTB) is necessary. See for instance, Valenduc, (2019),[104] who stated that the EU Commission wants to include 'a cross-border loss offset provision, which will make consolidation effective for losses, but not for profits', therefore the study questions the reasoning of the two steps approach, *i.e.* first a CCTB and then a CCCTB.

The EU Parliament (2018)[105] suggests the deletion of cross-border loss relief, given that the EU Parliament proposes that the CCTB enters into force simultaneously with the CCCTB. In addition, taxpayers should be allowed to carry losses forward only during a period of five years.

The Super-reduction for R&D and the AGI, should be revised or deleted

In his 2017 study, De Wilde,[106] recommends '*getting rid of both the super-deduction for R&D and AGI initiatives and to replace the latter by a properly modelled allowance for corporate equity*'. The reason for the first recommendation is that the proposed incentive regime for R&D is very likely 'to become redundant under a sales-only apportionment system' as, in that event, the tax base would not be assigned to the investment location, but instead to the location of the recipient of the goods and services. The reason for the second recommendation, is that the AGI is likely 'to do little to stimulate growth and investment'. This author observes that an AGI also does 'relatively little to address the debt-equity bias in corporate taxation'. The AGI would operate, in the same way as a rule allowing for the deduction of part of the interest paid by a taxpayer on a debt instrument. In the current CCCTB proposal, the net effect of the AGI would not provide a real solution to the financing discrimination problem in company taxation.

D'Andria *et al.,* (2017)[107] consider that the super deduction for R&D should be aligned with leading global benchmarks. The authors observe that 'by using a consensus estimate of the elasticity of R&D expenditures to the cost of capital', they derive the tax incentive that should allow the EU to reach the Lisbon target of 3% on GDP. The R&D Super-Deduction excludes state aid regulation; therefore Member States would remain free to compete using direct subsidies and even tax credits.

The EU Parliament (2018)[108] suggests 'the deletion of the super-deduction for R&D costs and the introduction of a provision', according to which, for R&D costs of less than EUR 20 million, 'taxpayers will receive a tax credit of 10 % of the costs incurred'. Moreover, the EU Parliament suggests the deletion of the AGI and the limitation of the possibility 'to deduct interest paid out on loans from the taxpayer's base', in order to neutralise the current *bias* against equity financing.

Anti -Tax Avoidance measures should be re-examined

De Wilde´s study of 2017[109] considers that CCCTB's anti-abuse provisions, including, for instance, the general anti-abuse rule, seem merely to refer to excessive behaviours concerning the tax base

[104] Valenduc, C.; (2019), *supra* note no. 91.

[105] European Parliament Legislative Resolution (2018), *supra* note no. 97.

[106] De Wilde, M.F.; The CCCTB Relaunch: A Critical Assessment and Some Suggestions for Modification, 2017.

[107] JRC Working Papers on Taxation and Structural Reforms No 3/2017. 'Towards a European R&D Incentive? An assessment of R&D Provisions under a Common Corporate Tax Base', written by D'Andria, D.; Pontikakis, D. and Skonieczna, A.

[108] European Parliament Legislative Resolution (2018), *supra* note no. 97.

[109] De Wilde, M.F.; (2017), *supra* note no. 106.

calculation, while the abuse of apportionment rules seems to fall outside the confines of the CCCTB's anti-abuse rules.

Business Europe (2017)[110] considers, that the anti- tax avoidance rules included in the CCCTB proposal should be revisited, as the reason for incorporating the Switch-Over Rule are not clear while this was explicitly excluded from the ATAD. The interest limitation rule has also become substantially sharper and the controlled foreign companies' rules (CFC rules) lack of a substance carve-out.

The EU Parliament (2018)[111] recommended, that the measures relating to 'anti-tax avoidance' such as 'exit taxation rule or hybrid mismatches' should be deleted. However, the Parliament also insisted that the existing anti-tax avoidance rules laid down in the ATAD should be 'systematically taken into account in the application of the CCCTB proposal'. In addition, it calls for strengthening the 'switch-over and CFC rules'.

As a conclusion to section 3.1., the author of the present study considers there is room for improvements to the CC(C)TB proposal, therefore, discussion should continue in order to reach a consensus among Member States. The CCTB, without consolidation, would not obtain the objectives set out in the proposal. However, as the CCCTB proposal has been rejected, it could be improved.

3.2. Reduction of Cost Through the Application of the CCCTB Proposal

While SMEs comprise the backbone of the EU economy,[112] the compliance costs of dealing with different corporate tax systems weight more on SMEs than on LEs. The EU Commission is of the opinion that **the CCCTB system would positively affects SMEs willing to expand their business in another Member State**.

The PwC's Survey (2008)[113] quantified one-off costs expected to arise once the CCTB/CCCTB is implemented. The conclusion of the Survey, *inter alia*, are: **companies, which could opt for the CCCTB, must carry forward a cost-benefit analysis, on the implementation of the proposal and this would take resources**. Focusing on recurring costs (*i.e.*, ignoring one-off switching costs), the respondents of the Survey predicted, on average, an 'increase of 4% in overall time spent on rate tax compliance activities' if the CCTB is approved. However, with the adoption of the CCCTB system, 'the survey participants predicted, on average, an 8% reduction in overall time spent on corporate income tax compliance activities, mainly due to savings in transfer pricing documentation'. Time costs for setting up a new subsidiary in a Member State are estimated to 'decrease by 10-11% for the CCTB and 62-67% for the CCCTB'. Other costs that should be considered in the calculation are, *inter alia*, 'training staff, calculations to set up an asset pool for tax depreciation under the common regime, development of new processes and systems, consulting/advisory fees, software license fees, and outsourcing compliance cost obligations'.

110 Business Europe (2017), *supra* note no. 90.

111 European Parliament Legislative Resolution (2018), *supra* note no. 97.

112 99% of entities in the Internal Market are SMEs and that they employ 66% of the workforce in the European Union. It also provides detailed figures about their importance to the Internal Market.

113 PWC, Report on the Impact on Corporate Income Tax Compliance Costs Impact of Corporate Income Tax Reforms at the EU level on European Business Taxpayers, 2008.

Table 2: Costs once the CCTB/CCCTB is Implemented

Recurring Costs	CCTB	CCCTB
Record keeping	2%	1%
Dealing with the tax authorities	1%	2%
Preparation of tax computations	1%	-5%
Learning and education	0%	0%
Tax returns & payments	0%	-1%
Securing clearances and rulings	0%	-1%
Mutual agreement procedures	-1%	-1%
Transfer Pricing Documentation	-1%	-4%
Total	**4%**	**-8%**

Source: PWC´ survey 2008

The 2016 Impact Assessment[114] concludes that the time costs for setting up a new subsidiary in another Member State were estimated to decrease. LEs spends over EUR 140.000 (0.23% of their turnover) in tax related expenditure to open a new subsidiary in another Member State. The CCCTB will 'reduce these costs by EUR 87.000 or 62%'. The savings for SMEs are even more significant, as costs are expected to 'drop from EUR 128.000 (0.55% of turnover) to EUR 42.000 or a decrease of 67%'. If even just 5% of SMEs were to decide for this, overall savings would be of the order of EUR 1 billion.

In addition, by allowing businesses to offset losses in one Member State, against profits elsewhere in the EU for tax purposes (*i.e.* consolidation), the proposal could result in an extra savings of EUR 1.3 billion for companies throughout the EU.

Table 3: Time Costs for Setting up a New Subsidiary in a Member State

% costs spend of their turnover	Currently	CCCTB
SMEs	0.55%	-67%
LEs	0.23%	-62%

Source: EU Commission Impact Assessment 2016

Barrios, S., *et al,* (2020),[115] investigate the possible macroeconomic impact of the incorporation of the CC(C)TB, using a general equilibrium framework. In contrast to the Impact Assessment of the 2016, this survey allowed the calculation of country-specific tax compliance costs and therefore produced a more differentiated analyses across countries. The survey found 'that countries with lower compliance costs benefit more from the reforms. Their findings imply that countries which currently have large compliance costs might want to invest in improving their tax systems in order to reap greater benefits from the C(C)CTB reform. Another way to frame these results is to consider declining compliance costs not only as the outcome of the proposals, but also as **a complementary policy action to improve the benefits expected'**.

[114] Impact Assessment (2016), *supra* note no. 17.

[115] Barrios, S., d'Andria, D., and Gesualdo, M.; 'Reducing tax compliance costs through corporate tax base harmonization in the European Union', *Journal of International Accounting Auditing and Taxation,* 2020.

Section 3.2. cannot be finished without mentioning that the incorporation of the CCCTB will entail some new **costs for Member States' tax administrations**. The 2016 Impact Assessment, considers that 'the move to any of the alternative policy options from the current situation will entail some new costs for Member States' tax administrations. These costs, *inter alia*, will include: 'the need for coordination with other administrations (for example, in the application of double taxation relief methods) and one-off costs such as the need for personnel training, upgrading of IT systems, etc. Some of the alternative systems may save some of the current costs, which tax administrations incur, such as the costs of resolving intra-EU transfer-pricing disputes or the general costs of monitoring transfer-price setting by companies. These costs would be saved only by the adoption of a CCCTB, but would remain in place under the CCTB, since it would still operate under separate accounting. In case of optional policy alternatives, the costs associated with simultaneously maintaining two different systems should be estimated'. **These costs would be saved in the compulsory versions of the CCCTB**, where this alternative tax scheme would replace all current national corporate tax systems.

The conclusion to section 3.2., is that the introduction of a CCTB would have **advantages** (*i.e.* reduction of the administration costs; would be easier to handle because the sharing mechanism would not need to be applied or tax administration coordination would be lower) as well as **disadvantages** (*i.e.* the non-application of the automatic cross-border loss compensation would continue to affect intra-group transactions). With regard the potential improvements in the CC(C)TB proposal, a **link between IFRS and CC(C)TB** could be recommended. However, the adoption of IFRS, has to be restricted to standards that are convenient for tax purposes. The threshold of EUR 750 million of consolidation turnover, established in the proposal, following previous EU Directives, (*e.g.*, DAC4) or action 13 of BEPS, could be reduced in accordance with the Accounting Directive (*e.g.* **EUR 40 million),** in order to obtain the same level playing field for all companies (*e.g.* LEs under a fixed threshold that could continue with their current situation and not exceed the abovementioned figure in order to escape application of the CCCTB). However, as it is analysed in section 4, given the discussion at OECD level and the EU´ BEFIT, there are little chances of seeing the CC(C)CT proposal relaunched at this stage.

3.3. The CCCTB and Profit Shifting

Several studies and papers have analysed the impact of the CCCTB for discouraging profit shifting.

An interesting empirical study, elaborated by Keser *et al.*, (2016),[116] questions whether the CCCTB proposal would mitigates profits shifting. The results of the study show that 'in both separate accounting (current situation) and formula apportionment (CCCTB), the allocation of production factors would depend on the tax rate-differential'. According to the authors, 'higher tax rates, lead to lower amounts of investment', in particular, if the formula apportioned is used. Moreover, profit shifting to companies not resident in the EU, are significantly higher under formula apportionment than under separate accounting.

As has been mentioned, De Wilde (2017)[117] points out that the CCCTB would represent a significant step towards mitigating many of the current issues in international taxation, as this would remove some of the key tools currently employed by MNEs, engaging in artificial profit-shifting. However, the CC(C)TB proposal would seem to allow scope for some serious artificial shifting of tax bases, as for instance, it could provide significant opportunities to shift paper profits through factor

[116] Keser, C., Kimpel, G., Oestreicher, A.; Would a CCCTB Mitigate Profit Shifting?', *Cirano Series of Research*, Vol. 6, 2016.

[117] De Wilde M.F.; (2017), *supra* note no. 106.

manipulation. This might be considered quite problematic since, if such shifting were to occur, the CCCTB lacks of sufficient tools to counter such practices.

Other authors agree with De Wilde´ considerations. For instance, Kiesewetter, *et al.* (2014),[118] comment that 'the aspired system of a CCCTB, is considered more resistant to profit shifting and assumed to reduce compliance costs'. However, there are also doubts about the extent, to which such a system will eradicate the tax-planning activities of MNEs.

As a conclusion to this section 3.3., the CCCTB, is considered more resistant to profit shifting than the CCTB or the current situation, and also assumed to reduce compliance costs. However, there are also doubts about the extent to which such a system will eradicate all intra-EU profit-shifting strategies and if it would introduce various new ones, as for instance, the formula apportionment could invite new forms of tax planning.

3.4. Would it be Viable to Create some even Limited 'EU Tax Regime for Corporate Profit'?

3.4.1. The Home State Taxation for SMEs

This proposal was based on an idea developed by Gammie (1998)[119] of a Home State Taxation in the EU. The simple concept behind this proposal is that '**the profit of a group of companies, active in more than one Member State, should be computed** according to the rules of a company tax system only', *i.e.,* the **system of the parent company of the group**. This could be achieved thorough a voluntary agreement between participating Member States (with similar systems to calculate the CIT) to accept each other´s rules for company taxable profits of domestic groups of companies. Each participating Member State would continue however 'to tax at **its own CIT rate** and its share of the profits of the group´s business activities in that State'.

The revised version of the study (2001) incorporated an example. '*A Dutch company would use the Dutch tax system to calculate the profits of all its branches and subsidiaries established in participating Member States, as if all activities were conducted in The Netherlands. The group profits calculated under Dutch rules would be shared between and taxed in those participating Member States in which the company, its permanent establishments and subsidiaries actively conduct their operations. They would pay tax at each Member State's corporate income tax rate on the profits allocated to the enterprise's operations in that State*'. [120]

In 2005, EU Commission Communication (2005)[121] proposed a possible Home State Taxation Pilot Scheme, but only for SMEs. The EU Commission, adopted the HST initiative in 2005, in order to provide a remedy for the disproportionate burden placed upon SMEs that operate (or wish to operate) in more than one Member State. It was viewed as 'a quickly attainable and politically favourable remedy, that did not involve the agreement costs necessary for a fundamental reform of existing tax rules'.

118 Kiesewetter, D., Steigenberger, T., Stier, M.; Discussion Paper no. 175, 'Can Formula Apportionment Really Prevent Multinational Enterprises from Profit Shifting? The Role of Asset Valuation, Intragroup Debt, and Leases', *Arbeitskreis Quantitative Steuerlehre*, 2014.

119 The proposal was based on the idea developed by Malcolm Gammie as 1998 Unilever Professor of International Business Law at Leiden University in The Netherlands. A revised version of the original study reflects comments received on papers circulated in 1999-2001 and further work on the proposal by Sven-Olof, L., Malcolm, G.; : 'The Taxation of the European Company', *European Taxation* nº 8, IBFD Publications, 1999, at p. 286.

120 Sven-Olof, L., and Malcolm, G.; (2001): 'Home State Taxation', *IBFD Publications*, at p. 5.

121 European Commission Communication (2005), *supra* note no. 8, at p. 3.

Several Studies have analysed the differences between the CCCTB and HST proposals, such as Benshalom (2008) [122] who considers that unlike the CCCTB, the HST initiative is not purely a source-based corporate tax reform, rather it involves an amalgam of source and residency tax-considerations.

The HST proposal (with amendments for the original version) could be an *ad hoc* system for SMEs. Member States could agree to limit HST to SMEs. The extend to which SMEs can elect into HST would depend upon the number of Member States that chose to participate in the system. SMEs already established in several Member States would need not adopt HST immediately and they would be free to assess whether the benefits of HST outweighed whatever administrative or compliance cost its adoption involved. The experience could stimulate new SMEs to adopt the HST. These new SMEs would need to adopt the HST compliance regime when it expands abroad but it does not have to become familiar with the articular tax rules of these States. There should be little scope for tax competition through special tax measures or ring fencing within the HST system, however a revised version could incorporate clear measures to avoid unfair competition. In order to prevent profit shifting, any potential manipulation of the system, by changing the company's Home State, would need to be restricted.

The author of the present study recognizes that the possibility to incorporate the HST system it is not the 'ideal solution' and it would need more amendments. The **potential advantages** of this regime are, *inter alia*: a non-requirement of voting unanimity; national tax systems would not need to be identical (only similar) and no favouritism for any particular Member State or group of States. unanimity in vote is not required; national tax systems would not need to be identical (only similar); the system should not favour any particular Member State or group of States. The regime 'would be of particular value to small and medium-sized enterprises seeking to expand their activities outside their Home State as they would be able to continue to apply the same tax systems they have been used to in their existing activities'. **The main disadvantages** might come from the following, *inter alia*: That the regime will not be considered as a common EU approach on the calculation of the CIT base, which means that many of the existing tax obstacles will remain; 'Rules would be required to determine which Member State would be the company's Home State, and manipulation of the system by changing the company's Home State would need to be restricted'.

3.4.2. The European Tax Allocation System

The European Tax Allocation System (ETA System) was designed by Hernler in 2004.[123] The ETA system is ''a proposal to harmonize the EU international corporate taxation based on current tax systems across the EU and specifically points to HST proposal. **If a group of affiliated companies satisfy certain conditions, the parent company**[124] **'can opt to include its subsidiaries in the ETA group'**. The fundamental prerequisites are that the parent company and subsidiaries, have 'to be domiciled in and managed from an EU Member State'. The income from businesses, which are separately determined in each country in accordance with national tax law, are added to the system.

This EU tax base 'represents the total tax base of the group for the considered tax assessment period, and multiplying this amount with the respective tax rate of the state of domicile leads to the multinational corporation's EU base tax.' The corporate tax subsidiaries have 'to pay to the respective Member State have to be imputed against the EU Tax Base'. Any s'hortfall in taxes' must be paid to the parent company's country of domicile. Any 'excess tax paid' forms what is known as

[122] Benshalom, I.; Research Paper No 08-21, 'A Comprehensive Solution for a Targeted Problem: A Critique of the European Union's Home State Taxation Initiative', *European Taxation*, Vol. 48, Northwestern Public Law, 2008.

[123] Hernler, J. 'European Tax Allocation System (ETAS): A Proposal for a Consolidated European Tax System'. *European Taxation,* Vol. 44, Journals IBFD, 2004.

[124] The parent company must hold; directly or indirectly; at least 50% of equity or voting rights in the subsidiary.

an EU tax credit carry-forward, which is credited towards the corporation's tax burden in subsequent years.

A quantitative Tax Research Paper carried out by Dahle and Bäumer (2009) [125] amended the original version of Hernler (2004). The Paper also compared the advantages and disadvantages of the ETA system with the CCCTB proposal. The authors consider that with the ETA proposal, tax competition could distort the results through the tax rate, as well as the tax base. In addition, the ETA proposal could create distortions, due to the credit mechanism preventing double taxation, as these are different.

The author of the present study considers that, after the analysis of both aforementioned Papers, several questions remain unclear, as the proposal has been made based on numerous assumptions and was mainly focused on MNEs rather than in SMEs. Therefore, despite the results of the ETA proposal being both highly theoretical and questionable, the ETA could also contribute to an illuminative anticipation of the tax effects, in the current discussion, for a common taxable base within the EU. Equal to the HST system, the current national tax systems would remain, but the ETA system may be employed as a lab experiment to observe potential problems that could hinder the improvement of a common corporate tax base in the EU.

3.4.3. Not Mandatory CC(C)TB across the EU

The author of the present study has examined different positions with regard the optionality of the CC(C)TB, and in common with all proposals, there are advantages and disadvantages.

According to Schön (2008),[126] an advantage of the optional position may be that company groups would have the possibility to choose, whether they remain in the classic group taxation law or opt for the CC(C)TB. Such a solution would be perceived by companies as a clear improvement in the European fiscal framework. In favour of optionality, Business Europe (2017),[127] considers that since given that cross-border loss offset is not sufficiently comprehensive to replace full consolidation, the CCTB should, at least be optional for all firms until full consolidation is adopted. Therefore, this approach could be a stepping stone towards a full CCCTB. De Broe (2017),[128] is also in favour of optionality of the CC(C)TB, as he considers that by making the new rules mandatory for all groups with consolidated worldwide revenues greater than EUR750 million, European businesses ‘would then have an incentive not to exceed that threshold’.

We can find literature that argues against an optionality CC(C)TB, such as that by Oestreicher and Koch (2008),[129] who consider that, ‘as a result of making CC(C)TB mandatory in the EU, the extension of intra-group loss-offset possibilities and the use of formula apportionment would enhance the **attractiveness of the EU**, as an investment location’. Furthermore, the Paper reveals that a mandatory CC(C)TB w[redacted]d reduce the variation in average tax rates in the Member S[redacted]es, from 29.96 % to 29.73% (0.77 %), for domestic groups and from 30.28 % to 29.64 % (2.15 %), for multinational groups.

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[125] Dahle, C., Bäumer, M.; ‘Cross-Border Group-Taxation and Loss-Offset in the EU - An Analysis for CCCTB and Etas’, *Arqus Quantitative Tax Research Discussion*, Paper No 66, 2009.

[126] Schön, W.; ‘Group Taxation and the CCCTB’, *Tax Notes International*, Vol. 48, No 11, Tax Analysits, 2008.

[127] Business Europe (2017), *supra note* no. 90.

[128] Impact Assessment (2016), *supra* note no. 17.

[129] Oestreicher, A., Koch, R.; Corporate Average Tax Rates Under the CCCTB and Possible Methods for International Loss-Offset, 2008.

The EY (2010) empirical study[130] concluded that a mandatory CC(C)TB scenario would **increase EU CIT collections** by EUR 591million annually, or roughly 0.2% of current total CIT collections. For affected companies, the change would mean a 0.7% increase. On the other hand, an optional CC(C)TB scenario would reduce overall EU corporation tax revenue by EUR 1.8 billion or 0,6% of total EU CIT collections and would reduce CIT by 2,2% for companies affected by the scenario. In the event that the CC(C)TB were optional, in accordance with EY, only groups with losses offsetable or which have taxable income apportioned away from higher tax rate countries to lower tax rate countries, would exercise this option. Moreover, the optionality would oblige groups to evaluate whether they **should operate within the CC(C)TB on a regular basis or operate outside of it**.

In the 2016 Impact Assessment, the optionality of CC(C)TB is not considered. The reason provided is that '*given the magnitude of tax savings that are currently achievable for those companies that use tax avoidance strategies most aggressively, it is unlikely that potential CC(C)TB benefits such as reduced compliance costs, enhanced R&D benefits or cross border loss offset suffice to make these firms opt into the CC(C)TB. Consequently, a fully optional approach would not effectively fight tax avoidance and is thus not suited to enhancing the fairness of the tax system*'.[131]

The author of the present study considers, optionality an advantage in that the tax sovereignty of Member States would not be limited significantly and therefore, it may be more feasible for it to be adopted than a mandatory CC(C)TB. Company groups would have the possibility to choose, whether they remain in the classic group taxation law or opt for the CC(C)TB A disadvantage is that the system would not create a level-playing field in the internal market, since national tax rules will continue to apply in many situations. Furthermore, those companies that use tax avoidance strategies most aggressively will opt out of applying the CC(C)TB. Therefore, if one of the main objectives of the CC(C)TB is to reinforce the level-playing field and to tackle tax avoidance, it is difficult to see how convenient an optional CC(C)TB for all companies would in fact be. It is relevant to underline that if the CC(C)TB is reached, companies would lose their ability to benefit from tax incentives, such as patent, innovation boxes or any other tax incentive, recognised in their domestic legislation but not in the CC(C)TB proposal.

3.4.4. Simplified CCTB for Micro and SMEs

The proposal for a simplified CCTB applicable to micro-enterprises and SMEs, could facilitate a single system for SMEs and at the same time help compute the taxable base in all Member States. There are several publications on this regard, however the main has come from one of the recommendations of the EU Commission study of 2018[132] on tax compliance costs for SMEs. This proposal suggests that instead of defining SME thresholds solely based on one criterion (turnover), **a combination of criteria such as number of employees, turnover and total balance sheet** to define SMEs could be used. The definitions could be aligned with those formulated in article 3 of the Accounting Directive.[133] This regime could simplify financial reporting obligations and a specific tax regime for SMEs. As a result, SMEs would be able to make an aligned assessment of the applicability of the tax obligations for all Member States.

[130] EY, Study on the Economic and Budgetary Impact of the Introduction of a Common Consolidated Corporate Tax Base in the European Union, 2010.

[131] Impact Assessment (2016), *supra* note no. 17, at p. 26.

[132] European Commission study (2018), Section 7.4 of the study: 'EU Level Recommendations for SMEs', at pp. 137-141, *supra* note no. 31.

[133] Accounting Directive, (2013) *supra* note no. 99.

This proposal is divided in three steps. The first is the Mini CCTB for SMEs, and could be gradually extended to single harmonized tax returns and to a unified Tax Return Platform, as the final step. The three steps can be summarized as follows:

- **1.- Mini CCTB**

According to the EU Commission study of 2018, the advantage of this special regime is that '*it might not generate major adverse budgetary consequences on behalf of the Member States considering the limited tax bases of micro- and small-sized enterprises. Member States would, in particular, not have to accept constraints on their power to manage their corporate tax system for medium-sized enterprises and LEs thereby preserving their autonomy to foster a competitive corporate tax system that promotes investment, employment and growth*'.[134]

- **2.- Single Harmonized Tax Return and Single Consolidation Tax Return**

After creating a CCTB for SMEs, a second step would be a standardised approach to the content and format of tax returns, which could also be made available both in English and the national languages of Member States. The EU Commission´ study of 2018, considers that a unique consolidated tax return, would not only simplify the applicable CIT regulations for micro and SMEs, but also their tax reporting processes, thereby reducing the need to outsource their tax compliance obligation.

- **3.- Unified Tax Return Platform**

The EU Commission´s study of 2018, suggests that in a case where the first two steps are introduced, a further step could be to introduce a unified tax return platform for all enterprises applying the CCTB regime. This platform, would have multiple advantages for taxpayers, according to the Commission, *i.e.* it could provide enterprises with an easy access to both practical and detailed CIT information (both in English and in the languages of the Member States). Moreover, all CIT returns could be filed on the platform, in the local language, so that both taxpayers and tax authorities would, in time, be able to have enhanced visibility of the tax position of an enterprise.

As a conclusion to this proposal, a simplified CCTB for micro and SMEs, would reduce the complexity created by different tax legislations encountered by those enterprises wishing to expand their activities cross-border. This proposal could reduce the need for local tax advisors and the outsourcing of CIT compliance work. It could, therefore, be reasonable to expect that this would lead to a reduction in CIT compliance costs when SMEs carry out cross-border business.

A harmonized tax return would have a positive impact on costs assumed by SMEs when operating cross-border and also would contribute to simplify and facilitate the preparation of their tax return. The proposal of a common platform could reduce many tax obstacles that SMEs suffer when conducting cross-border operations (*i.e.* understanding each Member State regulation with regard the presentation of tax returns). As a general conclusion this proposal, could be of interest since it presents an *ad hoc* common tax calculation of CIT only available for SMEs, in order to facilitate potential cross-border activities. The simplification and reduction of cost and time compliance would have a positive economic impact on SMEs operating cross-border.

3.4.5 Harmonization of Tax Rates

In terms of tax policy, tax coordination is usually considered from two complementary points of view: 'tax rates and tax base'. These different perspectives are essential in the debate on whether Member States which belong to the same economic area, should coordinate their policies. The EU Commission has been trying to fix a floor on CIT rate for decades and the response of the

[134] European Commission study (2018), *supra* note no. 31, at pp.138-139.

Member States has been that tax rates are beyond the competence of the EU Commission, in accordance with the principle of subsidiarity.

It is relevant to consider that when tax rates are analysed, the form of the tax rates (*e.g.*, statutory tax rate, effective tax rate or effective marginal tax rate) must be distinguished , as this may lead to different conclusions. The **statutory corporate tax rate** is the rate imposed by law on taxable income, which falls within a given tax bracket. **Effective corporate tax rates** indicate the real financial tax burden as opposed to the relationship between tax liability and profits. Typically a calculation of effective tax rates takes into consideration the effect of tax deferral.

In order to illustrate the above-mentioned , the second edition of the database of the OECD published in 2020,[135] contains detailed data for statutory corporate tax rates and effective tax rate of several jurisdictions. The methodology for calculating the effective tax rate is described in detail in an OECD Taxation Working Paper of 2018[136] builded on the theoretical model developed by Devereux and Griffith in 1999.

In a well-known study by Devereux *et al* (2001),[137] the types of tax rates and their implication on tax competition among States are analysed. They consider 'two models of competitive process, based on alternative assumptions about the mobility of capital and firms'. These two models generate 'different predictions about the form of the relevant tax rate'. The first model, indicates that it is the 'statutory tax rate, or effective average tax rate (EATR)', which affects the location decision of firms, and hence is competed for by governments. The second model, indicates that the location of capital depends on the 'rate of allowances, or the effective marginal tax rate (EMTR)'. Overall, the results suggested that '**governments compete more over the EATR and the statutory tax rate rather than the EMTR**'. Devereux (2007)[138] pointed out that effective EATR tend to play a 'significant role in discrete location choices, and hence in the overall allocation of capital'; but EMTR are much less significant. Differences in statutory tax rates appear to play a significant role in the location of taxable income. 'There is evidence that such differences affect financial policy, the repatriation of income and transfer prices'.

In accordance with De Wilde´s study of 2014,[139] it seems that 'corporate rates have declined over the past decades because of more intense competition between States, for attracting multinationals' mobile production factors to their territories'. According to Bettendorf L. *et al* (2010),[140] if statutory tax rates were harmonized, tax planning would be minimized and capital export neutrality could be realized within the EU. However, the EU Taxation Paper of 2016,[141] stated that in 'the impact of tax planning on forward-looking effective tax rates, differences in statutory tax rates allow a certain degree of tax competition to be maintained in the internal market as fair tax competition, based on

135 https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-database.htm.

136 Organisation for Economic Co-operation and Development Taxation Working Paper No 38, written by Hanappi, T.; Building on the Theoretical Model Developed by Devereux and Griffith (1999, 2003), *OECD Publications*, 2018.

137 Devereux M.; Lockwood B.; Redoano M., Working Series Paper No. W02/10, Do Countries Compete over Corporation Tax Rates?', *Institute for Fiscal Studies*, 2001. The study included an empirical analysis of competition in corporation taxes between 21 large industrialised countries, over the period 1982 to 1999.

138 Devereux M.; Working Papers No 702 'The Impact of Taxation on the Location of Capital, Firms and Profit: A Survey of Empirical Evidence' *Oxford University Centre for Business Taxation*, 2007.

139 De Wilde, M.F.; Tax Competition within the European Union. Is the CCCTB the Right Solution, *Erasmus Law Review*, Vol. 7, No. 1, 2014, at pp.24-38.

140 Bettendorf L., Devereux, M.P., Van der Horst, A.,, Loretz, S., de Mooij R., :'Corporate Tax Harmonization in the EU', *Economic Policy*, Vol. 25, issue 6, 2010.

141 European Commission Taxation Paper (2016), *supra* note no. 28.

rates, offers more transparency and allows Member States to consider both, their market competitivenessand budgetary needs in fixing their tax rate'.

The author of the present study considers that the CCCTB would reduce the distortions resulting from differentials in taxable entity definitions, tax base definitions and tax allocation mechanisms. However, a rate differential remains within the EU. Therefore, it could be advantageous to adopt in parallel, together with the CCCTB, a **potential harmonization of tax rates**, fixing a sole CIT rate applicable within the EU, or, at least, it might be beneficial to fix a floor in the CIT rate, thereby avoiding the tax rate competition. This option is in line with Pillar two of BEPS 2.0. proposal that will be commented in the fourth part of this study.

4. The Future of Corporate Income Tax Rules and the Digitalisation of the Economy

The aim of this part is **to present possible alternatives that could be implemented via separate initiatives** in case the CCCTB proposal fails. Moreover, it analyses different approaches to address tax challenges of the digital economy. It looks at proposals from the OECD, the EU Institutions, the US administration and the UN, in order **to find a global consensus on taxation of the digital economy**, with the objective of finding a level playing field for all businesses and a worldwide effective, fair taxation.

Maintaining the *status quo* would imply, according to the Impact Assessment of the CCCTB proposal (2016),[142] that States which have differences in the treatment of debt and equity throughout Member States 'will continue to offer tax planning opportunities'. Moreover, differences in R&D tax incentives 'will continue to prevent the emergence of a single market for research'. They will also 'promote tax competition strategies for the location of intellectual property, without increasing R&D activities'.

There is literature, *i.e.* Bettendorf L., *et al*. (2010),[143] that considers that 'the best option is to leave things as they are and to let intra-EU and international fiscal competition do its work, without the need for ten years of hard, but possibly fruitless work', on the part of many experts, academics and public services officials. The authors state that although corporate tax revenues 'might gradually decline in exchange, investment would grow, overall welfare would improve and the European economy would be better placed face future challenges'.

The author of the present study considers that this option should not be contemplated, as the current trend in the international context, is to coordinate a global calculation of the CIT, not to maintain the *status quo*. In the near future, all countries will be affective by the OECD BEPS 2.0. project and the EU will adapt the OECD´ project into the internal market and the EU Legislation.

4.1. Possible Alternatives that could be Implemented Via Separated Initiatives

4.1.1. Destination-Based Corporation Tax

The destination principle which the EU has established is, most visible in the VAT Directives. Specific suggestions have been made in the academic literature towards a 'destination-based corporation tax'. This initiative has been considered as capable of stabilizing Member States' revenues and allowing corporate taxation where profits are really generated (*i.e.* on a **destination basis rather than origin**). One of the first authors to analyse the impact of the destination-based corporate income tax was Avi-Yonah, in a Paper published in 1993 and revised in 2009.[144] Under the outlined in the Paper, **MNEs would be treated as a unitary business and would be taxed where they sell their goods or services**. In another Paper published in 2015 by Avi-Yonah,[145] recognized

[142] Impact assessment (2016), *supra* note no. 17.

[143] Bettendorf L., *et al*, (2010), *supra* note no. 140.

[144] Avi-Yonah R. S.; 'Slicing the Shadow: A Proposal for Updating U.S. International Taxation', Tax Notes 58, Tax Analysits, 1993. Revised version: Avi-Yonah, R. S.; 'Slicing the Shadow: A Proposal for Updating U.S. International Taxation.' *Tax Notes 135, No. 10*, Tax Analysits, 2012.

[145] Avi-Yonah, R. S.; 'The Case for a Destination-Based Corporate Tax', *Int'l Tax J. 41*, no. 5, IBFD Publications, 2015.

that under this destination base taxation, some necessary adjustments would be necessary. The Paper reveals that the general move towards a destination basis would not be a problem under WTO Law (even for a direct tax such the CIT). However, Schön (2016)[146] considers that this system could constitute a challenge to WTO rules which were built on the assumption that only indirect taxes are levied on a destination basis.

A study of the EU Parliament published in 2019,[147] analyses 'different options for destination-based models' (*e.g.* Sales-based Formulary Apportionment; Residual Profit Allocation; and Destination Based Cash Flow Tax)[148] and concluded that this option could create problems of **double taxation** in the absence of full global coordination. In addition, the study pointed out that the main arguments against the destination-based taxation are, *inter alia*, 'the real economic distortions that can be caused by States wanting to attract R&D activities or the increasing importance of market jurisdictions, together with customer-based intangibles such as source of profit and the difficulty of preventing tax competition with the existing tax system'. In the same vein, Dourado (2018),[149] considered that the OECD's insistence on taking 'user value creation' as a condition for expanding taxation to source jurisdictions, in fact sends the message that generalized destination-based tax, is largely unacceptable at present.

However, in **favour of destination based corporate tax**, Handler (2017)[150] points out that the virtues of levying the tax at destination instead of the origin are, *inter alia*: 'the simplicity of the incorporation of this system; the minimal distortions on location choices; the potential incentives for investments; the unbiased treatment of debt and equity and the robustness against tax-avoidance'. Devereux *et al.* (2018),[151] considers that the destination-based taxation is the only 'viable solution in the long-term', although it is generally acknowledged that it would create both losers and winners.

In a Paper published by De Wilde in 2020,[152] the author argues that instead of seeking to assign tax base to locations where functions are performed (currently applied under the international tax law) or to a combination of workforce locations and asset utilization locations (as it would be under CCCTB proposal), the best option would be to assign the tax base to the locations of the recipients of goods and services, both for nexus and allocation purposes. This would mean **adopting a combination of destination-based sales factor presence tests and a sales-only apportionment system**. The inspiration for the design of such a tax-connecting factor may be found in the distance sales rules in the EU VAT Directive. De Wilde pointed out that the final destination would be an efficient and inelastic mechanism for taxing infra-marginal multinational business returns. That, in

146 Schön, W.; 'Destination-Based Income Taxation and WTO Law'. Working Paper of the Max Planck Institute, *Tax Law and Public Finance No. 2016-3*, 2016.

147 European Parliament study, TAX3 Committee written by Eli Hadzhieva, Impact of Digitalisation on International Tax Matters, Challenges and Remedies, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, 2019.

148 According to the Commission's Impact Assessment 2018 accompanying its proposals on digital taxation, fundamental reforms, such as destination-based cash flow tax, unitary taxation and residence tax base with destination tax rates, would not only fundamentally challenge the international tax system, but they also have the potential to address the problems at their roots.

149 Dourado, A.P.; 'Digital Taxation Opens the Pandora Box: The OECD Interim Report and the European Commission Proposals', *Intertax, Vol.46*, Kluwer Law International, No.6/7, 2018.

150 Handler, H.; 'How Should Europe React to US Corporate Tax Reform Plans?', *Vienna-Europe Flash Paper* No.2/2017, Policy Crossover Centre, 2017.

151 Devereux, M.P., Vella, J.; Working Paper 17/07, 'Implications of Digitalisation for International Corporate Tax Reform', *Oxford University Centre of Business Taxation*, 2018.

152 De Wilde, M.F.; 'On the Future of Business Income Taxation in Europe', *World Tax Journal*, Vol. 12, No.1, 2020.

turn, would produce a result that, as I see it, would not only be fair but also – and primarily – economically efficient.

The conclusion to this section, is that the destination-based corporate income tax could be a good option since it has already functioned with the VAT system. The theory presented by De Wilde is of interest. Moreover, **destination-based CIT, could be consider as a bridge between 27 different tax systems (current situation) and the unaccepted CCCTB proposal of 2016**. However, as has been mentioned, international tax rules (*i.e.* BEPS 2.0. proposal) endeavour to expand taxation to source jurisdictions, therefore, the application of this proposal **could jeopardize the future common rules on taxation of the digitalized economy**.

4.1.2. Reinforcement of the Code of Conduct

In December 1997, the Council and the representatives of the governments of the Member States, adopted a non-legally binding Code of Conduct for business taxation with the objective of **countering harmful tax practices** within the EU. '*The compromises accepted by the Member States included a standstill clause that prevented Member States from introducing new measures, plus a rollback clause that obliged the Member States to abolish existing harmful measures*'.[153]

In March 1998, **a Code of Conduct Working Group (COCG)**[154] was appointed '*to dismantle unfair practices in the EU, with the mandate of reporting regularly to the Council on the measures assessed*'. In addition, Member States also committed to promote 'the adoption of good tax governance principles by third countries and in territories to which EU treaties do not apply'. Since 1999 '*the COCG has continued to control the application of the standstill and rollback clauses*'.[155]

In 2008, the Council endorsed the idea that the development or revision of guidance notes could help build on the results of the COCG. Since then, the group have adopted a number of guidance notes which have been endorsed by the Council. The group regularly reviews their implementation by Member States.

In its conclusions of December 2015, the Council expressed a wish to improve the visibility of the work of the COCG and update the criteria for determining a tax regime as harmful. The additional tasks that the COCG[156] was asked to take on, marked a major step forward in the process of expanding its scope and included, *inter alia*:[157] '*(i) implementing Guidance on the application of the substantial activities criterion to non IP-regimes '(e.g. headquarters regimes, holding company regimes, distribution and service centre regimes, banking and insurance regimes, financing and leasing regimes, shipping regimes and fund management regimes) in line with the '**modified nexus approach**' agreed with regard to IP regimes*' (benefits should be available only when the core income-generating activities are undertaken by the qualifying taxpayer), as set out in BEPS Action 5[158] and (ii) revising

[153] See more about the differences betwen 'Harmful Tax Competition vs. Fair Competition' in Lampreave Márquez, P.; (2011), *supra* note no. 38.

[154] See more about the COCG work in Lampreave Márquez, P.; (2019), *supra* note no. 39.

[155] *Ibid.*

[156] Lampreave Márquez, P.; An analysis of the differences between OECD and EU proposal on Harmful Tax Competition, can be found in Lampreave Márquez, P.; 'criteria for determining whether a preferential tax regime is harmful (OECD & EU persective', *New taxation: Studies in honor of Jacques Malherbe*, 2017, at pp. 1109-1130

[157] *Ibid.*

[158] *Ibid.*

past EU Guidance on transfer pricing in line with Actions 8, 9 and 10 of the BEPS.[159] Many other Guidances have been agreed on different topic.[160]

In 2016, the EU Parliament recommended the **mandate** be strengthened in order to be more effective and more accountable and to improve transparency of the COCG. In concrete terms, this Institution presents a novel proposal to incorporate the COCG 'into the Community method, as a Council Working group, with the participation of the EU Commission and the EU Parliament as observers'.[161] With regard the **transparency of the COCG**, since the signing of the Code of Conduct, Member States have sought confidentiality of the work performed and closed meetings of the group. In recent years, the work of the COCG has been more transparent, and today it is possible to access reports and internal documents of the Group.[162] Also, the minutes published by the Council are also of great value towards understanding the work of the Group.

In terms of the **scope of the Code of Conduct**, there has been a common approach, from the Council, the EU Commission and the EU Parliament, to expand the scope, with the idea to cover harmful tax practice in the EU, as well as 'improving the enforcement mechanisms against those practices which facilitate aggressive tax planning'. One example of this, is the EU list of non-cooperative jurisdictions. In the Communication of the EU Commission 'Tax Good Governance in the EU and beyond (2020)',[163] it is proposed, among other issues, the 'reform of the Code of Conduct for Business Taxation, in order to ensure that it can effectively tackle a wider range of forms of harmful tax competition, identified in a more transparent manner'.

In the conclusions approved by the Council on 27 November 2020, '*on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond*', the need to continue during 2021, the discussion on the scope of the mandate of the Code of Conduct was reiterated, as soon as there are relevant developments at international level **but no later than the beginning of 2022**. In the work program of the COCG, during the Portuguese Presidency of the Council (first semester 2021) reiterates that discussion on the 'scope of the mandate of the Code of Conduct' will continue during 2021.

In its January 2021 plenary meeting,[164] the EU Parliament adopted a Resolution that asked the Council and Commission to reform the 'EU list of non-cooperative jurisdictions'. The Parliament recognized the positive impact of the existing list but at the same time expressed concerns regarding the transparency and efficiency of the current process.

[159] Organisation for Economic Co-operation and Development, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10, Final Reports, *OECD Publishing*, 2015.

[160] For instance: 2010 Guidance on inbound profits; 2013 Guidance on intermediate (financing, licensing) companies; 2016 Guidance on the conditions and rules for the issuance of tax rulings or 2017 Guidance on tax privileges related to special economic zones An updated compilation of the Guidance notes agreed by the COCG since its creation in March 1998.

[161] European Parliament study, written by Dover, R., Ferrett, B., Jones, E., Merler, S.; Bringing Transparency, Coordination and Convergence to Corporate Tax Policies in the European Union: II - Evaluation of the European Added Value of the Recommendations in the ECON Legislative Own-Initiative Draft Report, EPRS, European Parliament, 2015.

[162] European Parliament Regulation, No 1049/2001, Regarding Public Access to European Parliament, Council and Commission documents, *OJ L* 145, 2001.

[163] Communication from the Commission (2020), *supra* note no. 56.

[164] European Parliament Resolution, (2020/2863(RSP)), On Reforming The EU List of Tax Havens, 2021.

The author of the present study considers that, despite criticism on the overuse of the Code of Conduct as a shortcut to avoid the unanimity required for the adoption of hard-law instruments in the field of taxation. We cannot deny **the relevancy of the COCG in coordination of tax regimes in the EU,** as for instance, the Patent Box regimes or holding company regimes. Since it would appear difficult to achieve a consensus on the adoption of the CC(C)TB proposal, **the COCG could receive a mandate from the Council in order to coordinate a corporate tax base in the EU**. If the aforementioned is not viable, maybe the **COCG could present certain initiatives on specific elements of the CCCTB proposal, via separate soft-law alternatives**. Despite the CCCTB proposal is a secondary legislative proposal which can stand alone, there are close links to the work of the Code of Conduct Group. With regard to the **mandate of the COCG**, the EU Parliament´ proposal to incorporate the COCG as a Council Working group, with observers from the EU Parliament and the EU Commission, could be incorporated in the reform of the Code of Conduct announced for 2021. The author of the present study has been following the work of the COCG since its incorporation and has also the opportunity to attend the meetings of the COCG, and duly considers that although transparency could be improved, **full transparency** could jeopardize the aim of the COCG.

4.2. How the Digitalisation of the Economy is Transforming the International Tax Rules

4.2.1. Introduction

The aim of this part is to further analysed the impact of OECD BEPS 2.0. project, the EU position and the impact of unilateral measures adopted by Member States, the US new tax plan and the United Nations (UN) perspective on OECD BEPS 2.0..In this context, the author of the present study considers that the **integrity of the international tax system is of critical importance**. A **coherent and coordinated** implementation of **international tax rules** are essential in establishing a **consistent global tax system** which better **facilitates cross-border trade and economic growth**.

Economies have become more digitalised in recent decades. New technologies have facilitated new business models that have put traditional models under pressure. The 'taxation of enterprises that use digital technology has been high on the political agenda some years'. [165] However, the debate on the taxation of the digital economy should not be limited to the discussion on the taxation of digital companies. According to the OECD (2014):[166] '*because the digital economy is increasingly becoming the economy itself, it would be difficult, if not impossible, to* ***ring-fence the digital economy*** *from the rest of the economy for tax purposes*'.

According with the IMF (2018):[167] '*There* ***are no agreed definition of digital sector and the digital economy****, is sometimes defined narrowly as online platforms, and activities that owe their existence to such platforms, yet, in a broad sense, all activities that use digitized data are part of the digital economy: in modern economies, the entire economy' (…). 'The digitalization of the economic activity can be broadly defined as the incorporation of data and the Internet into production processes and products,*

[165] The author of the present study had the opportunity to participate in several international conferences and workshops with regard to the taxation of the digital economy. Lampreave Márquez, P.; 'Tax Challenges Arisen for the Digitalised Economy', International Conference held in Oxford University-2019-; *AI, Big Data and the Digital Economy*, Fundacion Fide, 2019.

[166] Organisation for Economic Co-operation and Development, Base Erosion and Profit Shifting Project, Addressing the Tax Challenges of the Digital Economy, Action 1, *OECD Publishing*, 2014, at p. 12.

[167] International Monetary Found, Report written Reinsdorf, M., Quirós, G., STA Group, Measuring the Digital Economy, *IMF Policy Papers*, 2018, at p. 7 and at p. 8.

new forms of household and government consumption, fixed-capital formation, cross-border flows, and finance that the digital economy'.

The author of the present study considers that '*LuxLeaks, Panama or Paradise Papers scandals, as well EU State aid investigations on major MNEs, using avoidance structures in order to reduce or eliminate their tax burden, have trigged a public debate on the need for fair and effective taxation*'.[168] In this context, there is a **global demand that the international tax rules** configurated for traditional models **need to be updated**, in order to obtain a level playing field for all businesses, whether they are traditional or digital. Digital companies have different features to traditional companies: they can grow without physical presence in a territory. Intangibles and intellectual property are of considerable relevance, and the success of such companies depends mainly on data or user participation.

For decades, the 'first and foremost principle in the international tax system is said to be the rule of physical presence'. For internationally operating companies offering goods and services digitally, a physical presence 'is no longer necessary in order to be able to acquire a significant market position in a country'. This is the reason why the characteristics of these new digital business models are 'difficult to reconcile' with the principles of the current international tax system. The underlying idea of the digital economy is, that **value creation** does not take place only where companies are **physically present**, but also where **companies collect data from customers and users**. [169]According to the OECD, 'the main tax challenges arising from the digital economy include, *inter alia*, the lack of nexus (or taxable presence in a jurisdiction); the reliance on intangibles, data and user-generated content and the income characterization or the spread of new business models, in which buyer and seller are in different jurisdictions'.

4.2.2. BEPS 2.0. Proposal

The OECD´ BEPS agenda included a proposal for addressing the tax challenges of the digital economy as its first action item.[170] A Report exploring the difficulties associated with this debate was released in 2015. Since the publication of the Report, the OECD held a public consultation in 2017 within the framework of setting up a 'Task Force on the Digital Economy (TFDE)' and in 2018 issued an interim report called 'Tax Challenges Arising from Digitalisation'.[171]

In May 2019, the OECD presented a document called 'Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy'. [172]The programme is divided in two pillars. In October 2020 the OECD/G20 Inclusive Framework on base erosion and profit shifting (BEPS 2.0. project)[173] released Blueprints for Pillar One and Pillar Two that were the subject of public consultation[174] from October 2020 to December 2020.

Pillar One, 'seeks to adapt the international tax system to new business models' through an '**unified approach**' which includes a **reallocation of taxing rights** that would be applicable to taxpayers

168 Lampreave Márquez, P.; (2019), *supra* note no. 38.

169 Lampreave Márquez, P.; (2019) *supra* note no. 165.

170 Organisation for Economic Co-operation and Development, *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, 2015.

171 Organisation for Economic Co-operation and Development (2018), *supra* note no. 21.

172 Organisation for Economic Co-operation and Development (2019), *supra* note no. 22.

173 Organisation for Economic Co-operation and Development, Tax Challenges Arising from Digitalisation. Economic Impact Assessment: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2020.

174 Organisation for Economic Co-operation and Development, Public Consultation Document Global Anti-Base Erosion Proposal ('GloBE') (Pillar Two): Tax Challenges Arising from the Digitalisation of the Economy, OECD Publishing, 2019.

within the scope[175] irrespective of whether they have an in-country marketing or distribution presence (permanent establishment or separate subsidiary) or sell via unrelated distributors. The unified approach, also includes **new jurisdictional nexus rules**, 'which would allow States hosting markets to tax a portion of the residual (non-routine-profits) of MNEs, and also profit attribution rules through specific amounts' (*i.e.*, the amounts to be allocated to a market jurisdiction, named as Amount A and on remunerating baseline marketing and distribution activities, named as Amount B). There is not yet a common agreement on these amounts. Pillar One also aims 'to significantly **improve tax certainty by introducing innovative dispute prevention and resolution mechanisms'.**

Therefore, the new rules for establishing taxation rights include 'a new concept in international taxation: that of a **remote, non-physical, taxable presence'** (*i.e.* a taxable presence without traditional physical presence) and a 'new set of standards for identifying when such a remote taxable presence exists'. In this context, the Pillar One program of work contemplates amendments to definition of a permanent establishment, in Article 5 of the OECD Model Convention, and potential ensuing changes to Article 7 of the OECD Model Convention 'taxation of business profit'. At the same time, 'the approach largely retains the current transfer pricing rules based on the arm's length principle (ALP) but complements them with **formula-based solutions** in areas where tensions in the current system are highest'.

Pillar Two, introduces the **Global Anti-Base Erosion Proposal (GloBE)**. According to the OECD, Pillar Two 'addresses remaining BEPS challenges and is designed to ensure that large internationally operating businesses pay a **minimum level of tax regardless of where they are headquartered or the jurisdictions they operate in'**. It does so, via a number of interlocking rules that seek 'to (i) ensure minimum taxation while avoiding double taxation where there is no economic profit, (ii) cope with different tax system designs by jurisdictions as well as different operating models by businesses, (iii) ensure transparency and a level playing field, and (iv) minimise administrative and compliance costs'.

GLoBE discusses **four mechanisms** envisioned to establish a global framework of minimum taxation, with the aim of mitigating risks stemming from the practices of profit-shifting to jurisdictions, where MNEs may be subject to not or very low taxation. The first mechanism is an **'income inclusion rule (IIR)'**, which operates as a 'top-up tax when the income of controlled foreign entities are taxed below an effective minimum tax rate'. The second mechanism is a **'switch-over rule',** which 'complements the IIR by removing treaty obstacles in situations where a jurisdiction uses an exemption method that could frustrate the application of a top-up tax to branch structures'. The third mechanism is an **'undertaxed payments rule'**, which serves 'as a backstop to the IIR through application to certain constituent entities, the top-up tax computation is the same as under the IIR'. The fourth mechanism is the **'subject-to-tax rule'**, which would 'help source countries protect their tax base by denying treaty benefits for deductible intra-group payments made to jurisdictions with low or no taxation'.[176] Functionally, the minimum tax would resemble the **US GILTI**[177] worldwide taxation system under which 'US persons are taxable on their worldwide income

[175] The approach covers highly digital business models but goes wider – broadly focusing on consumer-facing businesses with further work to be carried out on scope and carve-outs. Extractive industries and commodities are assumed to be out of the scope.

[176] Organisation for Economic Co-operation and Development (2019), *supra* note no. 174.

[177] Global Intangible Low Tax Income (GILTI). The tax on GILTI is intended to discourage moving intangible assets and related profits to countries with tax rates below the 21% U.S. corporate rate. The tax on GILTI generally ranges from 10.5% to 13.125%, well below the regular U.S. corporate tax rate.

in the US but reduced through a tax credit by the tax properly payable to the source jurisdiction'. In fact, the US GILTI regime is assumed to coexist with Pillar Two.

The OECD also released a lengthy Economic Impact Assessment Report In October 2020.[178] This report relies 'on a combination of firm-level and aggregate data sources, including country-by-country reporting data, and predicates its Pillar One modelling using a 20% residual profit allocation key while using a 12.5% minimum tax rate for Pillar Two'. The Impact Assessment **estimates global tax revenue gains** in percentage of the global CIT revenue, considering the final adoption of Pillar One/ Pillar Two, with and without including the US GILTI regime.

Table 4: Estimated Global Tax Revenue Gains

Estimated Global Tax Revenue Gains	In % of Global CIT revenue	In USD billion
Pillar One	0.2%-0.5%	5-12
Pillar Two	1.7%-2.8%	42-70
Total Pillar One and Pillar Two	1.9%-3.2%	47-81
US GILTI Regime	0.4%-0.8%	9-21
Total including GILTI	2.3%-4.0%	56-102

Source: Economic Impact Assessment, OECD, 2020.

With regard to compliance costs, in the Impact Assessment the OECD considers that introducing new tax provisions to implement Pillars One and Two will increase filing requirements and compliance costs for those MNEs that are within the scope of the above-mentioned proposal. The increases in compliance costs will be borne mostly by those firms that currently have the lowest compliance costs measured as a proportion of turnover. In addition to this, some **tax administrations** may experience increases in administration costs as a result of implementing the new rules. However, simplified administrative processes which would help to limit these costs. are currently under discussion for the various components of both Pillars.

According to the OECD, BEPS 2.0. project would 'increase (after-tax) investment costs for the MNEs affected. This would have a negative effect on investment and activity, but the magnitude of this effect is estimated to be relatively small: less than 0.1% of GDP in the medium to long term'. The proposals are expected to produce a **more level playing field among MNEs, and *vis-à-vis* their smaller and domestic competitors**.

For the purposes of this analysis, the consensus scenario involving the adoption of BEPS 2.0. by 'the Inclusive Framework assumes **the withdrawal of existing digital services taxes** (DSTs) as well as a commitment **to refrain** from introducing such measures in the future'. The Covid crisis is likely to 'accelerate the trend towards the digitalisation of the economy and exacerbate the tax challenges arising from digitalisation in the absence of an agreement'. The recent OECD releases indicate that the key features of Pillar One solution will be locked-in by May 2021, with the goal of a final report due by the end of 2021, that will set out the technical details of the consensus-based solution.

Both Pillars have received positive and negative feedbacks. As the space is limited, the author of the present study would like to include the comment of De Wilde with regard Pillar Two: '*Is this really the solution? Aren't there some more creative and more robust solutions to think of to address the fundamental challenges raised in international company taxation? I think there are. Several reform*

178 Organisation for Economic Co-operation and Development (2020), *supra* note no. 173.

options have been suggested in literature, such as cash flow taxes, formulary systems, and residual profit split models. I myself came-up with a tax model[179] *that divides global economic profits of business enterprises among countries on the basis of a destination-based revenue key. Less complicated perhaps, more robustly I think, business friendly, you would not need a minimum rate to address the tax competition issue, and countries would remain autonomous when it comes to what the contribution of business income taxation should be to the tax mix composition*'.[180]

As has been mentioned in the first part of the study, the US MAPT published in April 2021. The aim of the MATP is: '*In summary, create a corporate tax regime that is fit for purpose: an engine for economic growth, international cooperation, and a more equitable society*'.[181] The MATP would try to implement a series of corporate tax reforms to address profit shifting and offshoring incentives.[182] The main reforms are the following:

- **To raise the corporate income tax rate from 21% to 28%. In 2020, the average statutory tax rate in OECD countries is 23.2%.**[183]
- **To strengthen the GILTI regime. The MATP would 'eliminate the incentive to use offshore tangible assets by ending the tax exemption for the first 10 % return on foreign assets. It would also calculate the GILTI minimum tax on a per-country basis, ending the ability of MNEs to shield income in tax havens from US taxes with taxes being paid to higher tax countries'. The plan would also 'increase the GILTI minimum tax to 21 %'. In addition, the plan would disallow deductions for the offshoring of production and put in place strong guardrails against corporate inversions.**
- **To reduce incentives for foreign jurisdictions to maintain ultra-low corporate tax rates by encouraging global adoption of 'robust minimum taxes'. Under the OECD/G20 Inclusive Framework on BEPS, the US and the international community are pursuing a 'comprehensive agreement on corporate minimum taxation, providing for minimum tax rules worldwide'. Under the agreement, 'home countries of MNEs would apply a minimum tax when offshore affiliates are taxed below an agreed upon minimum tax rate'. The MATP proposes to eliminate the US BEAT (Base Erosion and Anti-Abuse Tax) and 'adopt strong minimum taxes on corporations thereby levelling the playing field between the taxation of domestic and foreign corporations'.**
- **To enact a 15 % minimum tax on book income of LEs that report high profits, but have little taxable income. LEs with a net income of USD 2 billion or more, 'would make an additional payment to the Internal Revenue Service (IRS) for the excess of up to 15 % on their book income over their regular tax liability'.**

179 De Wilde, M.F.; (2020), *supra* note no. 152.

180 De Wilde, M.F.; Is There a Leak in the OECD´s Global Minimum Tax Proposals (GloBE, Pillar Two), *Kluwer International Tax Blog*, 2021.

181 U.S. Department of the Treasure, *The Made in America Tax Plan*, 2021, at p. 17.

182 De Wilde, M.F. ;'The Made in America Tax Plan: What's in Store for Other Countries?', *Kluwer International Tax Blog*, 2021, raised the following question with regard to the US MATP: '*how can it be that the United States only raises 1% of GDP as corporate tax revenue, where the OECD average is around 3%? (…).But if this is ultimately the real problem facing the United States at the end of the day, could it not be the case that the United States is simply a little less successful vis-à-vis other countries when it comes to protecting the domestic corporate tax base? If this were to be the case, would it then not perhaps be more appropriate to first look around at how the other OECD countries manage to extract 3% of corporation tax revenue from their economies? This, instead of immediately moving towards urging the rest of the world to embrace one's own model?*'.

183 https://data.oecd.org/tax/tax-on-corporate-profits.htm#indicator-chart, at p.12.

- **To replace flawed incentives that reward excess profits from intangible assets with more generous incentives for new R&D.**
- **To address corporate avoidance and evasion. Due to resource constraints, 'the IRS today prioritizes enforcement of less-complex cases, foregoing complex investigations of large corporations—and the wealthy individuals who own them. The MATP would address corporate tax avoidance and evasion in two distinct ways. First, it would foreclose many of the opportunities the current tax regime affords large corporations to lower tax bills by tackling, for example, profit shifting incentives. Second, the President's plan would also invest in the IRS to ensure that large corporations that cross the line would be held accountable, providing an under-resourced IRS the support it needs to overhaul tax administration.**

As a conclusion to section 4.2.2., the author of the present study considers that the **BEPS 2.0. proposal would appear to be an appropriate tool to address the tax challenges of a digitalised economy.** However, there are many questions arising from the OECD proposal, for instance, the real challenge of Pillar One, is whether the **'Unified Approach**' is a viable one that could be universally implemented, including in emerging countries and if it could be accepted by the jurisdictions that stand to lose tax base or if it is needed a radical change of direction back to a principled approach that does not deviate from the ALP. With both Pillars, the same as with BEPS recommendations it could happen where they might not be **easily implemented in national legislations**, due to the way the measure might be drafted or the lack of information needed to implement. Many Members of the Inclusive Framework have asked for **more clarity and certainty**. It may also be worth pointing out that the new taxing rights would not lead to double taxation, new tax disputes; a negative impact on existing tax treaties or cause administrative complications.

In the event that the global consensus is reached its **implementation in domestic legislation, would not be immediately**, as it happened with BEPS project (currently, some of the actions launched in 2015, have not been yet fully implemented by all Members of the Inclusive Framework). **There will be no changes in the following years and the results could be analysed in 5 or 6 years from the adoption of the global consensus.**

With regard the **US MATP**, the author of the present study considers that the final impact of this ambitious reform plan would depend on what is eventually approved by the US Congress. The plan **would strengthen the multilateral approach** that could change the world of international corporate tax in the future.

4.2.3. EU Proposal for Taxing the Digital Economy

In March 2018, the EU Commission published a '[Package on Fair Taxation of the Digital Economy'.]() The package contains two legislative proposals. The first initiative aims to [reform corporate tax rules]() so that 'profits are registered and taxed, where businesses have significant interaction with users through digital channels'.[184] The second proposal responds to calls from several Member States for an' [interim tax]() which covers the main digital activities that currently escape tax altogether in the EU'.[185] The EU Commission also proposed a [recommendation]() to Member States[186] 'to amend their double tax treaties with third countries, so that the aforementioned initiatives would be applied to non-EU companies'. The objective of the recommendations is 'to address situations involving non-

[184] Proposal for a Council Directive, COM(2018) 147 final, Laying Down Rules Relating to the Corporate Taxation of a Significant Digital Presence, 2018.

[185] Proposal for a Council Directive, COM(2018) 147 final, on the Common System of a Digital Services Tax on Revenues Resulting from the Provision of Certain Digital Services, 2018.

[186] European Commission Recommendation, COM(2018) 147 final, relating to the Corporate Taxation of a Significant Digital Presence, 2018.

EU jurisdictions without violating the Member States' existing treaties'. This is a soft-law initiative; however, it would change the allocation of taxing rights internationally.

The first legislative initiative mentioned, is designed to introduce a '**taxable nexus**' for digital businesses operating within the EU with a limited or no physical presence. It also sets out the principles for '**attributing profits**' to businesses having such a '**significant digital presence**' in a country.[187] The proposed rules on profit allocation 'are mainly based on the current OECD framework applicable to permanent establishments and suggest one of the methods proposed, being the profit split, as preferred method'. Nevertheless, the first legal initiative also details a list of economically significant activities that should be taken into account to reflect the fact that value is created where users are based, at the time of consumption or where data is collected.

The second legislative initiative (*i.e.* interim EU DST) ensures that those activities which are currently not effectively taxed would begin to generate immediate revenues for Member States, until an agreement is reached at OECD level. '*A **tax rate of 3%** would apply to revenues created from activities where users play a major role in value creation and which are the hardest to capture with current tax rules, such as revenues from **selling online advertising** space; from **digital intermediary activities** which allow users to interact with other users and which can facilitate the sale of goods and services between them or created from **the sale of data** generated from user-provided information. Tax revenues would be collected by the Member States where the users are located, and will only apply to companies with total annual worldwide revenues up to EUR 750 million and EU revenues of EUR 50 million*'.[188]

Moreover, this EU DST would not be creditable against CIT in the home country of the company, as normally only profit taxes can be taken into account as foreign tax credit. In this respect the possibility to deduct the DST, as an expense, should only partially mitigate the risk of double taxation. The EU DST is applicable to both, residents and non-residents in the EU, and this could lead to double taxation for European businesses even more than foreign businesses. To be implemented, the EU's digital tax proposal, would need to gain unanimous support among EU Member States. According to the author of the present study :'*some Member States expressed their concerns with respect to the functioning of the DST. These concerns were, for example, that the DST is a revenue tax, which means that the tax must also be paid when the company makes a loss. High and low margin companies would pay the same level of tax, as the tax would be based on revenues. Some Member States fear that the **EU DST may negatively affect some key industries and trade relationships**. The proposed digital services tax has been designed with large and highly profitable companies in mind, but in practice, the tax burden would be passed on to consumers. Therefore, the tax would not meet the aim for which it was created*'. [189]

The issues that arise from taxing the digital economy[190] are clearly identified in a study of the EU Parliament published in 2016 (requested by TAXE 2 committee) and in a study published in 2019

[187] A digital platform will be deemed to have a taxable 'Digital Presence' or a virtual permanent establishment in a Member State if it fulfils one of the following criteria: (1) It exceeds a threshold of EUR 7 million in annual revenues in a Member State; (2) it has more than 100,000 users in a Member State in a taxable year or (3) over 3000 business contracts for digital services are created between the company and business users in a taxable year.

[188] To understand the calculation of the EU DST and potential difficulties, see, Lampreave Márquez, P.; 'Spain Has Approved a the Digital Servive Tax, The Controversy is served, *Kluwer International Tax Blog*, 2021, as Spanish DST is very similar to EU DST.

[189] Lampreave Márquez, P.; Spanish Government Approves Digital Services Tax Targeting Large Multinationals, MNE Tax Blog, 2020.

[190] European Parliament study, TAX2 Committee, written by Eli Hadzhieva, Tax Challenges in the Digital Economy, Policy Department for Economic, Scientific and Quality of Life Policies, 2016.

(requested by TAXE 3 committee).[191] In December 2018,[192] the Parliament proposes in a briefing, 'to lower the threshold above which companies would need to pay the EU DST from EUR 50 million to **EUR 40 million** and to increase the tax rate from 3% to **5%'**. It also proposes 'to broaden the tax base by including **content on a digital interface such as video, audio, games, or text using a digital interface**, and the processing and sale of data collected from users and generated from their activities on digital interfaces'. The tax would apply 'to services consisting of the supply of digital content by an entity through a digital interface, regardless of whether the digital content is owned by that entity, or that entity has acquired the rights to distribute it'. In principle, the tax should cover revenues generated from the supply of digital services where users and intangible assets contributed significantly to the process of value creation. The EU Parliament also requested a clear definition of the **digital permanent establishment**.

Due to the reticence of some Member States on a **EU DST**, the original proposal introduced in March 2018, was agreed to target only revenues from digital advertising (*i.e.* **EU DAT**)[193]. The proposal was presented in March 2019[194] and significantly narrowed the scope from the original proposal, however, this proposal was also rejected by Member States. As a result of the lack of consensus, in 2019 the Council[195] **opted to wait for a global solution at OECD level**, and postponed work on the hard law proposals presented in 2018. According to the **EU Parliament**,[196] '*the consequence of the absence of an agreement on how to tax the digital economy, is that countries (among them, several Member States) have move ahead with their own, separate DST proposals, equalization levies, and other policies that would change tax rules for digital companies*'.

According to the EU Parliament, '*the EU implementation of BEPS actions 'is based on the **need for an international coordinated approach** to avoid inconsistencies that could create uncertainty and administrative burdens, as well as to prevent divergence generating new mismatches in the single market*'.[197] The EU Commission has created a 'platform for tax good governance' and among other outcomes, published a reflection Paper on the future of corporation tax policy in the EU, post-implementation of Pillar One and Pillar Two.

Devereux *et al,*[198] consider that EU legislation imposes a number of constraints on the GloBE proposal. **The OECD proposal should comply with the TFEU, including fundamental freedoms and Fiscal State aid rules, but also with existing tax directives.** In order to comply with the EU Court of Justice case law on fundamental freedoms, the safest route being the inclusion of a substance-based carve-out. There is an interesting analysis by PWC on the 'OECD and EC Disparate Recommendations on Tax and the Digitalisation of the Economy'.[199]

In January 2021, the EU Commission adopted a Roadmap which aims to introduce a digital tax to address the issue of fair taxation of the digital economy. From January to April 2021 a public

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191 European Parliament study (2019), *supra* note no. 147.

192 European Parliament Briefing, written by Szczepańsk, M.; Interim Digital Services Tax on Revenues from Certain Digital Services, EPRS, European Parliament, 2018.

193 Lampreave Márquez, P.; *supra* note no. 165.

194 https://data.consilium.europa.eu/doc/document/ST-6873-2019-INIT/en/pdf.

195 https://data.consilium.europa.eu/doc/document/ST-14863-2019-INIT/en/pdf.

196 European Parliament Briefing, written by Szczepański, M.; Digital Taxation State of Play and Way Forward, EPRS, European Parliament, 2020.

197 *Ibid*.

198 Devereux, M.P.; Bares,f., Clifford,S., Freedman, J., Güçeri,I., McCarthy,M., Simmler M., Vella, J.; 'The OECD Global Anti-Base Erosion Proposal', *Oxford Centre for Business Taxation*, 2020.

199 PWC, 'OECD and EC Release Disparate Recommendations on Tax and the Digitalisation of the Economy', *Tax Policy Bulletin*, 2018.

consultation was opened on this subject. The consultation mentions three policy options: '***a corporate income tax top-up*** *on all companies with digital activities in the EU, a* ***tax on revenues*** *from certain digital activities in the EU and a* ***tax on business-to-business*** *digital transactions in the EU*'.[200]

In the Communication published on May 2021,[201] the EU Commission makes comments on the EU approach to BEPS 2.0. and outlines how the global agreement will be implemented in the EU. Although the Communication does not include details on **the EU Digital Levy**, a proposal for which is expected to be published on 14 July 2021, it reiterates the fact that it will be designed in such a way that it is independent of the forthcoming global agreement at the OECD. In the aforementioned Communication, the Commission reiterates the strong support of the EU for a global consensus-based solution by mid-2021 within the framework of the OECD. Once agreed, the global agreement will need to be implemented in the EU. The Commission will propose a **Directive for implementation of Pillar One** in the EU to ensure its consistent implementation in all EU Member States, including those that are not Members of the OECD and do not participate in the Inclusive Framework. The principal method for implementing **Pillar Two will also be an EU Directive** that reflects the OECD model rules with the necessary adjustments. The Communication notes that the implementation of a global agreement on minimum effective taxation will also have **implications for existing and pending EU Directives and initiatives** (i.e. ATAD I and II, the Interest and Royalties Directive and the EU Code-of-Conduct listing process).

In section 3 and 4 of the aforementioned Communication, it is also incorporate the **Commission's tax agenda for the next years:**

- **Action 1 (by 2022): The Commission 'will table a legislative proposal for the publication of effective tax rates (ETRs) paid by large companies', based on the methodology under discussion in Pillar Two of the OECD negotiations. The proposal aims to improve public transparency around the real ETR experienced by EU LEs.**
- **Action 2 (by Q4 2021): The Commission will table a legislative proposal (ATAD III) setting out EU rules to neutralize the misuse of shell entities for tax purposes, *i.e.,* companies with no or minimal substantial presence and real economic activity'. Such proposal would encompass actions such as requiring companies to report to the tax administration the necessary information to assess whether they have substantial presence and real economic activity, denying tax benefits linked to the existence or the use of abusive shell companies, and creating new tax information, monitoring and tax transparency requirements.**
- **Action 3 (adopted on 18 May 2021): Alongside the Communication, the Commission adopted a recommendation on the domestic treatment of losses which will particularly benefit SMEs. The Recommendation 'prompts Member States to allow loss carry back for businesses to at least the previous fiscal year'. This will benefit businesses that were profitable in the years before the pandemic, 'allowing them to offset their 2020 and 2021 losses against the taxes they paid before 2020'. Member States must limit the amount of losses carried back to EUR 3 million per loss-making fiscal year.**
- **Action 4 (by Q1 2022): The Commission will make a legislative proposal creating a Debt Equity Bias Reduction Allowance (referred to as DEBRA). The proposal will**

[200] A Fair and Competitive Digital Economy – Digital Levy. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12836-Digital-Levy

[201] EU Commission Communication (2021), *supra* note no. 23.

aim to encourage companies to finance their activities through equity rather than turning to debt. It will also incorporate anti-abuse measures to ensure it is not used for unintended purposes.

- **Action 5 (by 2023): The Commission announced its plan to propose in 2023 a new framework for business taxation in the EU, which 'will reduce administrative burdens, remove tax obstacles and create a more business-friendly environment in the Single Market'. The BEFIT will provide a 'single corporate tax rulebook for the EU, providing for fairer allocation of taxing rights between Member States'. The Commission will launch a 'broader reflection on the future of taxation in the EU', which will culminate in a Tax Symposium on the 'EU tax mix on the road to 2050' in 2022.**

The Commission maintains the same objectives in the BEFIT proposal than with the CCCTB proposal, *inter alia*, to reduce administrative burdens, to cut compliance costs for businesses, to reduce barriers to cross-border investment within the EU, and to minimize opportunities for tax avoidance.

However, the BEFIT proposal includes some adjustments from CCCTB, including revised rules for tax base calculation. Under BEFIT, the profits of MNEs groups operating in the EU would be consolidated into a single tax base and allocated to Member States using formulary apportionment with the aim of better reflect current economic realities. Countries could then tax their apportionment at their national corporate tax rate, considering the minimum rate agreed to under OECD´Pillar Two and action 1 of the EU´action plan.

At the time of the deliverer of the present study, the aforementioned Communication has received positive reactions, however, there are some critical comments. EURAD considers that: '*The Commission's communication also includes some old ideas that we are skeptical towards, including a new tax incentive related to equity financing. While the Commission has promised to incorporate anti-abuse measures there is still a risk that such measures will lead to more loopholes and corporate tax avoidance. It is also risky that the Commission now recommends that businesses should be allowed to carry back their losses to previous tax years. If governments want to support companies, they should do that transparently through subsidies – not by opening up more loopholes in our corporate tax system*'.

The author of the present study considers that it is positive that the EU has postponed its own initiatives and **will wait for a potential global consensus on the BEPS 2.0**. proposal. A large number of EU Member States are members of the OECD and have committed to implement the BEPS actions and all Member States participate in some of the international fora and instruments relevant to BEPS actions**. With the EU Communication published on May 2021,** the Commission has put forward a range of very relevant proposals and initiatives to roll out its ambitious tax agenda in the years to come. The author considers that at this moment it is crucial to **reach a global agreement on a multilateral solution on the taxation of the digital economy**. With respect to unilateral measures (i.e. national DST), the author considers these are the simplest for a county to adopt, as they do not require the agreement of other countries. However, in general, such potentially protectionist measures could not be particularly effective and likely could draw legitimate retaliation from third countries (i.e. trade tensions) which would have a negative impact on the global economy.

4.2.4. UN Amendments to the BEPS 2.0. Proposal

The UN Model Tax Convention, '*is generally more generous (relative to the OECD Model) in providing taxing rights to countries where products are sold or that are receiving investment flows*'.[202] With regard the taxation of the digital economy, the UN presented a proposal much simpler than the BEPS 2.0. proposal. Broadly speaking, the UN proposes to incorporate under Article 12B of the UN Model,

[202] Taxfundation.org.

income from automated digital services which can be taxed in the country where the customer is located, even if the company providing the service has no fixed place of business there. The article defines income from automated digital services very broadly to include **income from online advertising services, online search engines, social media platforms, online gaming, and cloud computing services**. The Committee of Experts on International Cooperation in Tax Matters of the UN was asked to vote a finalized version text of this article.[203]

CIAT (Inter-American Centre of Tax Administrations) published several comments on the UN proposal on its webpage.[204] According to CIAT, this proposal allows jurisdictions to receive a fixed amount on the gross of all payments made, without the existence of any kind of physical presence in the jurisdiction of the market to attribute the taxable event. To quote: '….. *means simplifying a lot of the assessment of the tax on the part of developing countries, because all they have to do is check if the payment for these services originates in their jurisdiction and basically going to work with withholdings made by the payer or by the intermediary or the financial institution even if subsequently the taxpayer has the possibility of presenting a definitive declaration*'.

The author of the present study observes that OECD proposal is much more sophisticated and ambitious, while the UN **recommendation is simpler, more practical and easier to administer**. However, it does not cover the **full extent of the issue**. It should be considered as emerging countries (some of them non-OECD country members) are pushing for the UN option. Moreover, the UN proposal is more in line with the DST already implemented in many countries or the EU DST. In the coming months we will have an opportunity to read about the potential global consensus on the BEPS 2.0. proposal and the EU Commission will react with new soft and hard law proposals in this respect.

203 Committee of Experts on International Cooperation in Tax Matters of UN, Report on the Twenty-First Session (virtual session, 20–29 October 2020), Tax Consequences of the Digitalized Economy – Issues of Relevance for Developing Countries, 2021.

204 https://www.ciat.org/new-un-proposal-for-the-taxation-of-automated-digital-services/?lang=en.

5. General Conclusions

The notion of a **common European corporate income tax system has been discussed for decades**. However, this debate should be addressed in a multilateral context. The first part of the study, provides an overview of the work carried out by the EU and the OECD, in relation to a common corporate income tax system. **International cooperation** and a **multilateral approach** of how to **structure the future corporate income tax is essential**. Future corporate income tax should bring effective and fair taxation, free of profit shifting, tax avoidance and tax evasion.

To the question: what are typical examples of cost arising from different tax rules across Member States for EU SMEs. This study reveals that there are many tax obstacles that businesses operating cross-border may face, in order to comply with different tax systems (*inter alia*, the complexity of tax regulation in the EU, the complexity of tax return, the poor guidance from tax authorities or the costs related to tax audits and litigations). These obstacles more drastically affect to SMEs in comparison to LEs. Moreover, for decades the LEs (with more resources than SMEs) have used different mechanisms (*inter alia*, harmful tax competition, aggressive tax planning, tax avoidance and tax evasion) in order to minimize or eliminate their tax burdens. This implies an unfair contribution by groups using these mechanisms in to comparison the rest of companies which pays their taxes.

To the question: how a significant reduction of cost and compliance risks associated with differing rules could be achieved, the study provides several examples of special or preferential regimes, incorporated by Member States, which contribute to the reduction of cost compliance for SMEs. In general these regimes/measures are considered to very positive when it comes to maintaining the same level playing field for all companies, but it cannot be concluded that there is a total consensus on this topic.

To the question: 'While the Council has rejected the proposal for CC(C)TB, what would be the potential for improvement in this area?', the study evinces, by referencing and quoting different publications, that a common corporate tax base, has the potential to play a pivotal role in facilitating business activities (specially for SMEs), in simplifying tax regulation, in reducing tax cost compliance or in eliminating profit shifting, and enjoys the support of a majority of businesses. However major improvements to the CC(C)TB proposal are required in order to make it more competitive *vis-a-vis* the world.

To the question, if whether it would be viable to a limited 'EU tax regime for corporate profit', several potential alternatives are presented, regarding common system for calculating corporate profits that Member States might be willing to adopt: 1.-A Home State Taxation optional system for SMEs; 2.-An European Tax Allocation System; 3.- A non-mandatory CCTB across the EU; 4.- A mini CCTB for SMEs or 5.- the possibility to harmonize a minimum tax rate instead of a tax base harmonization. Each alternative has its pros and cons, which are analysed in this study. Despite this, neither of these alternatives present a perfect solution, but they could illuminate anticipation of the tax effects in the current discussion for a common taxable base within the EU.

To the question: Are there elements of CCTB/CCCTB that could be implemented via separated initiatives with special emphasis in the future taxation of the digital economy?. In the study maintaining the *status quo* has not been considered as an option, as it has been mentioned that there is a need to reach a global consensus on a global corporate income tax rule. Two alternatives have been examined: (1) a **destination- based corporate income tax**, an initiative considered capable of stabilizing Member States' revenues and allowing corporate taxation where profits are really generated, and which already have the VAT system. However, it has also been noted that the application of this proposal could jeopardize the future common rules on the taxation of the digital economy. (2) **Reinforcement of the Code of Conduct group (COCG)**. The COCG could either receive a mandate from the Council to coordinate a corporate tax base in the EU. If this is not viable, the COCG could present certain initiatives on specific elements of the CCCTB proposal, via separate soft-law alternatives. The suggestion of incorporating the COCG as a Council Working group, with observed of the EU Parliament and EU Commission could be incorporated in the reform of the Code of Conduct announce for 2021.

With regard to the future taxation of the digital economy, the **OECD´ proposal (BEPS 2.0.)** to adapt the international tax system to new business models and introduce a global minimum taxation for large MNE groups has been analysed. There are many challenges arising from the OECD´ proposal, but a multilateral approach on this subject could have positive results. Recently, the **Biden administration** announced that the US is working, with the OECD/G20 and the BEPS Inclusive Framework, to reach an agreement for a global minimum corporate tax rate that could stop the corporate tax rate to the bottom. This would constitute **a step further towards a global consensus on the taxation of the digital economy**.

The **EU**, has recently published a very relevant **Communication on Business Taxation for the 21st Century**, in which the EU Commission has put forward a range of very relevant proposals and initiatives to roll out its ambitious tax agenda in the years to come. It would be interesting to further analyse the implications of the announced new tax incentive related to equity financing or the recommendation that businesses should be allowed to carry back their losses to previous tax years. It would be also interesting to follow the announced of the **BEFIT**. The EU Commission goes beyond OECD BEPS 2.0. (the same happened with the BEPS project). Despite the EU implementation of BEPS actions is based on the **need for an international coordinated approach** to avoid inconsistencies that could create uncertainty and administrative burdens, as well as to prevent divergence generating new mismatches in the single market. BEPS 2.0. need to be adapted to the EU legislation. It would be interesting to read the proposal for the **Directives for implementation of Pillar One and Two** in the EU. The author considers that at this moment it is crucial to coordinate actions in order to **reach a global agreement on the taxation of the digital economy.**

The absence of a consensus-based solution, will likely see the **proliferation of uncoordinated unilateral tax measures** (including DSTs) continue, which will likely result in an increase in damaging tax and trade disputes. That is why, the EU has launched a proposal to introduce a harmonized digital levy. The need for global co-operation and co-ordination within the OECD´ Inclusive Framework is crucial at this moment and working in parallel to ongoing discussions within the OECD´ Inclusive Framework, could jeopardize existing efforts to reach a multilateral agreement on the taxation of the digital economy.

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