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Committee on the Internal Market and Consumer Protection

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DRAFT OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Economic and Monetary Affairs

on the proposal for a Council directive on a Common Consolidated Corporate
Tax Base (CCCTB)
(COM(2011)0121 – C7-0092/2011 – 2011/0058(CNS))

Rapporteur: Olle Schmidt

PA_Legam

SHORT JUSTIFICATION

The Rapporteur supports the proposal from the EU Commission to introduce an EU-wide voluntary common consolidated corporate tax base, CCCTB, in the EU.

EU countries have different tax bases which in practise function as trade barriers to growth and employment.

The CCCTB proposal would lead to significant changes in corporate taxation in Europe with the potential to create improvements for companies operating across borders by reducing the administrative costs and reduce red tape. Thereby achieving a more efficient single market, an increased competitiveness of EU companies and improving the EU market's global attractiveness in comparison to other big markets such as the US and China.

The Rapporteur's main concerns are:

The CCCTB must be **optional** for companies. An obligatory system will lead to higher costs for especially SMEs and therefore not create more growth and competitiveness in the European market. There is also a value in having competing systems and institutional competition. It is not recommended to make the system mandatory before practical experience and the effects of the system are known.

1. The level of tax rate should remain a decision for national parliaments. The objective is to enhance the system of taxation of companies, not to harmonise tax rates.
2. Cross border obstacles should be removed. Therefore the system must allow for **consolidation of profit and losses from the outset**, in order to facilitate more cross border business activity.
3. The CCCTB must allow for simplification in that only one statement need be submitted for the entire group, "**one-stop shop**". Reducing the administrative burden and red tape is essential for the CCCTB system. This will reduce compliance costs, but also give incentives for reaching a common tax treatment.
4. The system should be so **attractive** that companies choose to participate in the CCCTB - creating real advantages.

The rapporteur suggests the following changes:

Changes to the formula - take out the sales factor: The formula for apportioning the consolidated tax base should be based on only two factors: labour and assets.

Sales by destination impose a significant shift from the current principle of attributing the ultimate taxing rights to the source state. The source principle has a strong conceptual position among the EU Member States and has been the guiding principle in the OECD work on international taxation for a long time.

Also, small and medium sized Member States with a small home market will severely lose tax revenues with this formula.

Furthermore, a sales factor based on destination would be rather easy to manipulate. An independent sales agent (located in a non-CCCTB State) could be contracted as an intermediary to do the sales on behalf of the group to the relevant market, and thereby move the destination of the sales from the 'intended' state to the state of choice. Such tax planning opportunities would undermine the legitimacy of the factor and most likely trigger complex anti-avoidance rules.

CCCTB Forum: Introduction of a CCCTB Forum between Member States for out of court dispute settlement (changes in recital 26 and article 123).

Quicker review: The Commission should conduct a review already after three years to evaluate the effects of the CCCTB, article 133.

Evaluation on the effects of CCCTB in the review of the Directive: after three years the Commission shall consider the pros and cons of introducing a mandatory system, in order to create one CCCTB in the EU.

The Commission shall also analyse the effects of the Directive on Member States tax bases at national, regional and local levels including the socio-economic effects on relocation of economic activity and jobs within the EU.

Extension of the CCCTB to other entities than corporations, such as partnerships, should be considered: In some Member States many enterprises take the form of partnerships. The Commission should analyse if partnerships can be treated as if they were corporate companies.

The percentage of completion element in long-term contracts: Article 24 should be deleted since companies should not be obliged to perform this calculation for just tax purposes. It is not common in the Member States accounting regimes and increases the complexity of the system.

Raising the attractiveness of the CCCB: the provisions in the CCCTB must be more beneficial for the companies than the current national systems.

The rules for depreciation must be generous for companies. In Article 39 the level should be raised from 25 to 35 percent of the depreciation rate of the company's asset pool.

The requirement in Article 59 to record intra-group transactions seems questionable since it would entail an extra administrative burden and costs for companies.

Clarified provisions on audits: in Article 122. A situation where any competent authority can initiate an audit of the whole group or part of the group irrespective of tax jurisdiction would lead to unacceptable administrative consequences.

Stricter abuse rule: A change is necessary in Article 80, that artificial transactions with the main purpose of avoiding taxation are ignored for calculating the tax base.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Tax competition puts pressure on governments to keep spending under control. However, the introduction of a Union-wide voluntary Common Consolidated Corporate Tax Base (CCCTB) should not interfere with tax competition, since the system does not include harmonisation of tax rates.

Or. en

Amendment 2

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Improving the internal market is the key factor for encouraging growth and job creation. The introduction of a CCCTB should improve growth and lead to more jobs in the Union by reducing the administrative costs and red tape for companies, particularly for small businesses operating in several Member States.

Or. en

Amendment 3
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) The formula for apportioning the consolidated tax base should comprise **three** equally weighted factors (labour, assets **and sales**). The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The use of these factors gives appropriate weight to the interests of the Member State of origin. **Finally, sales should be taken into account in order to ensure fair participation of the Member State of destination.** Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

Amendment

(21) The formula for apportioning the consolidated tax base should comprise **two** equally weighted factors (labour **and** assets). The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The use of these factors gives appropriate weight to the interests of the Member State of origin. Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

Or. en

Amendment 4
Proposal for a directive
Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The Commission should initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum (JTPF), to which companies and Member States can address issues and disputes relating to the CCCTB. That forum should be able to give guidance to companies and Member States and should qualify as a court or

tribunal in accordance with the second paragraph of Article 267 TFEU.

Or. en

Amendment 5
Proposal for a directive
Recital 27

Text proposed by the Commission

(27) The Commission should review the application of *the* Directive after a period of **five** years and that Member States should support the Commission by providing appropriate input to this exercise,

Amendment

(27) The Commission should review the application of *this* Directive after a period of **three** years *of its entry into force* and that Member States should support the Commission by providing appropriate input to this exercise,

Or. en

Amendment 6
Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business.

Amendment

Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business. ***Recurring costs relating to environmental protection and reducing carbon emissions shall also be regarded as deductible expenses.***

Or. en

Amendment 7
Proposal for a directive
Article 24

Text proposed by the Commission

Amendment

Article 24

deleted

Long-term contracts

1. A long-term contract is one which complies with the following conditions:

(a) it is concluded for the purpose of manufacturing, installation or construction or the performance of services;

(b) its term exceeds, or is expected to exceed, 12 months.

2. Notwithstanding Article 18, revenues relating to a long-term contract shall be recognised, for tax purposes, at the amount corresponding to the part of the contract completed in the respective tax year. The percentage of completion shall be determined either by reference to the ratio of costs of that year to the overall estimated costs or by reference to an expert evaluation of the stage of completion at the end of the tax year.

3. Costs relating to long-term contracts shall be taken account of in the tax year in which they are incurred.

Or. en

Amendment 8
Proposal for a directive
Article 39 – paragraph 1

Text proposed by the Commission

Amendment

1. Fixed assets other than those referred to in Articles 36 and 40 shall be depreciated together in one asset pool at an annual rate of **25 %** of the depreciation base.

1. Fixed assets other than those referred to in Articles 36 and 40 shall be depreciated together in one asset pool at an annual rate of **35 %** of the depreciation base.

Amendment 9
Proposal for a directive
Article 59 – paragraphs 3 and 4

Text proposed by the Commission

Amendment

3. Groups shall apply a consistent and adequately documented method for recording intra-group transactions. Groups may change the method only for valid commercial reasons, at the beginning of a tax year.

deleted

4. The method for recording intra-group transactions shall enable all intra-group transfers and sales to be identified at the lower of cost and value for tax purposes.

Or. en

Amendment 10
Proposal for a directive
Article 80 – paragraph 1

Text proposed by the Commission

Amendment

Artificial transactions carried out for the **sole** purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

Artificial transactions carried out for the **main** purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

Or. en

Amendment 11
Proposal for a directive
Article 86 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The consolidated tax base shall be shared between the group members in each

1. The consolidated tax base shall be shared between the group members in each

tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of *sales*, labour and assets:

tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of labour and assets:

Or. en

Amendment 12
Proposal for a directive
Article 86 – paragraph 1 – formula

Text proposed by the Commission

$$\text{Share A} = \left(\frac{1}{3} \frac{\text{Sales}^A}{\text{Sales}^{\text{Group}}} + \frac{1}{3} \left(\frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}^{\text{Group}}} + \frac{1}{2} \frac{\text{No of employees}^A}{\text{No of employees}^{\text{Group}}} \right) + \frac{1}{3} \frac{\text{Assets}^A}{\text{Assets}^{\text{Group}}} \right) * \text{Con'd Tax Base}$$

Amendment

$$\text{Share A} = \left(\frac{1}{2} \left(\frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}^{\text{Group}}} + \frac{1}{2} \frac{\text{No of employees}^A}{\text{No of employees}^{\text{Group}}} \right) + \frac{1}{2} \frac{\text{Assets}^A}{\text{Assets}^{\text{Group}}} \right) * \text{Con'd Tax Base}$$

Or. en

Amendment 13
Proposal for a directive
Article 95

Text proposed by the Commission

Amendment

Article 95

deleted

Composition of the sales factor

1. The sales factor shall consist of the total sales of a group member (including a permanent establishment which is deemed to exist by virtue of the second subparagraph of Article 70(2) as its numerator and the total sales of the group as its denominator.

2. Sales shall mean the proceeds of all sales of goods and supplies of services after discounts and returns, excluding value added tax, other taxes and duties. Exempt revenues, interest, dividends, royalties and proceeds from the disposal of fixed assets shall not be included in the sales factor, unless they are revenues earned in the ordinary course of trade or business. Intra-group sales of goods and supplies of services shall not be included.

3. Sales shall be valued according to Article 22.

Or. en

**Amendment 14
Proposal for a directive
Article 96**

Text proposed by the Commission

Amendment

Article 96

deleted

Sales by destination

1. Sales of goods shall be included in the sales factor of the group member located in the Member State where dispatch or transport of the goods to the person acquiring them ends. If this place is not identifiable, the sales of goods shall be attributed to the group member located in the Member State of the last identifiable location of the goods.

2. Supplies of services shall be included in the sales factor of the group member located in the Member State where the services are physically carried out.

3. Where exempt revenues, interest, dividends and royalties and the proceeds from the disposal of assets are included in the sales factor, they shall be attributed to the beneficiary.

4. If there is no group member in the Member State where goods are delivered or services are carried out, or if goods are delivered or services are carried out in a third country, the sales shall be included in the sales factor of all group members in proportion to their labour and asset factors.

5. If there is more than one group member in the Member State where goods are delivered or services are carried out, the sales shall be included in the sales factor of all group members located in that Member State in proportion to their labour and asset factors.

Or. en

Amendment 15
Proposal for a directive
Article 97

Text proposed by the Commission

The Commission may adopt acts laying down detailed rules on the calculation of the labour, asset **and sales** factors, the allocation of employees and payroll, assets **and sales** to the respective factor and the valuation of assets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Amendment

The Commission may adopt acts laying down detailed rules on the calculation of the labour **and** asset factors, the allocation of employees and payroll **and** assets to the respective factor and the valuation of assets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Or. en

Amendment 16
Proposal for a directive
Article 105 – paragraph 1

Text proposed by the Commission

1. When the notice to opt has been accepted, a single taxpayer or a group, as

Amendment

1. When the notice to opt has been accepted, a single taxpayer or a group, as

the case may be, shall apply the system provided for by this Directive for **five** tax years. Following the expiry of that initial term, the single taxpayer or the group shall continue to apply the system for successive terms of three tax years unless it gives notice of termination. A notice of termination may be given by a taxpayer to its competent authority or, in the case of a group, by the principal taxpayer to the principal tax authority in the three months preceding the end of the initial term or of a subsequent term.

the case may be, shall apply the system provided for by this Directive for **three** tax years. Following the expiry of that initial term, the single taxpayer or the group shall continue to apply the system for successive terms of three tax years unless it gives notice of termination. A notice of termination may be given by a taxpayer to its competent authority or, in the case of a group, by the principal taxpayer to the principal tax authority in the three months preceding the end of the initial term or of a subsequent term.

Or. en

Amendment 17
Proposal for a directive
Article 122 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The principal tax authority may initiate and coordinate audits of group members. An audit may also be initiated on the request of a competent authority.

Amendment

The principal tax authority may initiate and coordinate audits of group members. An audit may also be initiated on the request of a competent authority ***in the Member State where the group member is resident.***

Or. en

Amendment 18
Proposal for a directive
Article 123 a (new)

Text proposed by the Commission

Amendment

Article 123a

CCCTB forum - a dispute settlement body
The Commission shall initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum (JTPF), to which companies and Member States can address issues and disputes relating to the

CCCTB. That forum shall provide guidance and shall qualify as a court or tribunal, in accordance with the second paragraph of Article 267 TFEU..

Or. en

Amendment 19
Proposal for a directive
Article 133 – paragraph 1

Text proposed by the Commission

The Commission shall, *five* years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States.

Amendment

The Commission shall, *three* years after the entry into force of this Directive, review its application and report to *the European Parliament and to* the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States. *The report shall include an analysis of the effects of this Directive on Member States tax bases at national, regional and local level. The Commission shall also analyse the socio-economic effects that the CCCTB has on relocation of economic activity and jobs within the Union. The Commission shall also evaluate the possibility to tax partnerships as if they were corporate companies, and not as non-transparent entities. The report shall also include an analysis of the advantages and disadvantages of making the system mandatory. The report shall be accompanied, if necessary, by appropriate legislative proposals.*

Or. en