7.2.2017

NATIONAL PARLIAMENT
REASONED OPINION
ON SUBSIDIARITY


Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Danish Parliament has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament’s Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.
Dear Mr Timmermans,

On 25 October 2016, the Commission presented proposals for directives on a Common Corporate Tax Base, COM (2016)0685 (CCTB) and a Common Consolidated Corporate Tax Base, COM (2016)0683 (CCCTB). The purpose of the proposals is to establish common rules for corporate taxes and to make it possible for corporations to submit one consolidated tax declaration for the corporation’s activities to the tax authority in only one EU Member State.

In a letter of 4 November 2016, the European Affairs Committee asked the Fiscal Affairs Committee for its opinion on the two proposals. At its meeting on 8 November 2016, the Fiscal Affairs Committee decided to give an opinion to the European Affairs Committee. The Fiscal Affairs Committee posed one question on the proposals’ economic consequences for Denmark to the Minister for Taxation (cf. SAU alm. del – question 116), to which the Minister for Taxation responded on 7 December 2016.

In these circumstances and in light of the fact that discussions regarding the proposals for directives are in an initial phase, the Fiscal Affairs Committee adopted a recommendation for the following reasoned opinion on 15 December, which the European Affairs Committee adopted on 16 December 2016.

Reasoned Opinion
A majority of the Committee (Danish People’s Party, the Liberal Party, the Red-Green Alliance and the Conservative Party) are of the opinion that proposals of this kind are contrary to the principle of subsidiarity. With regard to the conformity of the proposals for directives with the principle of subsidiarity in Article 5 of the Treaty on European Union, the majority is sceptical of the Commission’s reasoning that these measures are better implemented at EU level as compared to national level. The majority view is that this legislation can be introduced as effectively through national legislation, and that Denmark should hold on to the principle that tax policy lies outside of the scope of EU competence.

Besides, there is considerable uncertainty about the financial consequences for Denmark of the proposed directives. The majority therefore does not consider the Commission’s justification for the proposed directives being consistent with the principles of subsidiarity and proportionality meets the requirement of Article 5 of the Treaty on European Union, and that the justification should include information making it possible to assess the financial impact of the proposal.

Minority opinion to the reasoned opinion

A minority of the Committee (the Social Democratic Party and the Alternative) believe that the proposals are in line with the principles of subsidiarity and proportionality.

Minority opinions on the political substance of the proposals

A minority of the Committee (the Social Democratic Party and the Alternative) are positive in principle towards measures that can curb tax avoidance and the dilution of the individual countries’ tax bases as well as ensure fair corporate taxation and a level playing field for companies within the EU. The determination of taxes and duties should remain a national matter and the EU should be careful about seeking to harmonise how tax legislation is organised in the Member States. This particularly applies to measures that are beyond what is necessary to fight tax avoidance and tax evasion effectively.

The minority is however aware of the draft distribution key in the CCCTB proposal, which will favour countries with large domestic markets, while smaller export economies - like Denmark - can expect a loss in revenue in respect of income from corporate taxation. The majority therefore attaches crucial importance to efforts in negotiations seeking to reach a fairer distribution key as well as a lower limit on the effective corporate tax in the EU’s Member States.

Another minority of the Committee (Danish People’s Party and the Red-Green Alliance) are of the opinion that it is difficult at present to settle on a final position on the CCTB proposal for a directive because, inter alia, the scope of the proposal including the revenue impact is not sufficiently clarified.

Furthermore, the Red-Green Alliance states that it wishes to fight tax evasion but wants a model for cooperation that does not undermine national tax bases or create unduly rigid and inflexible rules. To that end, the Red-Green Alliance wants to maintain the starting point that tax policy falls under the competence of the individual Member States.
The Red-Green Alliance is however opposed to the proposed introduction of a deduction for returns on equity (the so-called ACE-deduction) and a super-deduction of over 100% for private corporations’ research.

A third minority of the Committee (the Liberal Party and the Conservative Party) generally supports measures that are aimed at creating a maximum amount of transparency regarding the tax payments of large corporations, ensuring fair and equal competition between corporations and preventing tax avoidance, tax evasion and aggressive tax planning. With this in mind, the Liberal Party and the Conservative Party are positive towards the overall purpose of the two directives.

Nevertheless, the Liberal Party and the Conservative Party are sceptical about a common consolidated corporate tax base. There are many indications that Denmark, which has a very broad tax base, will have its tax base eroded considerably since the directive foresees a much narrower tax base than the current Danish one.

A common consolidated corporate tax base may prove to have far-reaching economic consequences for small export-oriented countries such as Denmark that could risk business flight and job losses. This is particularly true for companies operating in manufacturing, research and development because, following the introduction of the directives, they will place an increasing amount of their high-cost activities in countries where their revenue is generated.

The Confederation of Danish Enterprise has previously estimated that the Danish treasury faces a loss of over DKK 10 billion if the common consolidated corporate tax base (CCCTB) is introduced globally. The latest estimate from the Confederation of Danish Enterprise is that the Danish treasury stands to lose between DKK 5-10 billion if the Danish corporate tax base becomes 35% lower as proposed by the Commission.

Finally, the Liberal Party and the Conservative Party are of the opinion that the introduction of a common corporate tax base is just the first step towards further surrender of powers to the EU in an area that is otherwise a national competence. Even though the proposal for a directive relates only to the calculation of the corporate tax base and the Member States still maintain the right to set a corporate tax rate, it is inevitable that this will also become a competitive parameter that will result in corporations shopping between Member States and moving jobs and activities around for tax purposes.

As such, the Liberal Party and the Conservative Party are positive towards the purpose of the proposed directives but want a model that does not undermine the Member States’ tax bases. At the same time, the Liberal Party and the Conservative Party want a model that to a greater extent than the current proposed directives provides for a more equitable distribution of revenues between Member States with due regard to countries with a high proportion of knowledge-based companies.

Yours sincerely,

Erik Christensen  
Chair, European Affairs Committee