



**2016/0336(CNS)**

13.7.2017

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## **DRAFT REPORT**

on the proposal for a Council directive on a Common Consolidated Corporate  
Tax Base (CCCTB)  
(COM(2016)0683 – C8-0471/2016 – 2016/0336(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Alain Lamassoure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB)**

**(COM(2016)0683 – C8-0471/2016 – 2016/0336(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2016)0683),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0471/2016),
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Danish Parliament, Dáil Éireann, Seanad Éireann, the Luxembourg Chamber of Representatives, the Maltese Parliament, the Netherlands Senate, the Netherlands House of Representatives and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rules 78c of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2017) and the opinion of the Committee of Legal Affairs,
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive**

#### **Recital 1**

*Text proposed by the Commission*

*Amendment*

(1) Companies which seek to do

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business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. Although those situations highlight shortcomings that are completely different in nature, they *both* create obstacles which impede the proper functioning of the internal market. Action to rectify these problems should therefore address both these types of market deficiencies.

business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. ***Finally, the mainstream digitalisation of many sectors of the economy coupled to the fast developing digital economy questions the consistence of the Union corporate tax models designed for brick and mortar industries, to the extent that valuation and calculation criteria may be re-invented to fit 21st century's commercial activities.*** Although those situations highlight shortcomings that are completely different in nature, they *all* create obstacles which impede the proper functioning of the internal market. Action to rectify these problems should therefore address both these types of market deficiencies *altogether*.

Or. en

## Amendment 2

### Proposal for a directive

#### Recital 2

*Text proposed by the Commission*

(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. It is therefore necessary to provide for mechanisms that discourage companies from taking advantage of

*Amendment*

(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. ***Taking into account the digital change in the business environment, it is necessary to ensure that companies which***

mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed.

***generate revenues in a Member State without having a physical establishment but digital presence in that Member State should be treated in the same way as companies having a physical establishment. Therefore, the Common Consolidated Corporate Tax Base (CCCTB) should also apply to digital activities.*** It is therefore necessary to provide for mechanisms that discourage companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed.

Or. en

### **Amendment 3**

#### **Proposal for a directive**

#### **Recital 3**

*Text proposed by the Commission*

(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)<sup>7</sup>, a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies resident in the Union and promote the

*Amendment*

(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)<sup>7</sup>, a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies resident in the Union and promote the

objective of making it a more competitive location for investment internationally. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in countering tax avoidance. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market.

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<sup>7</sup> Proposal for a Council Directive COM (2011) 121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

objective of making it a more competitive location for investment internationally *especially for small and medium-sized enterprises*. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in countering tax avoidance. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market.

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<sup>7</sup> Proposal for a Council Directive COM (2011) 121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

Or. en

#### Amendment 4

##### Proposal for a directive Recital 4

###### *Text proposed by the Commission*

(4) Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, it is necessary to ***divide the ambitious CCCTB initiative into two separate proposals. At a first stage, rules on a common corporate tax base should be agreed, before addressing, at a second stage, the issue of***

###### *Amendment*

(4) Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, it is necessary to ***ensure simultaneous entry into force of the Directive on a Common Corporate Tax Base and this Directive. Because this change of regime is a significant step in the completion of the internal market it***



*consolidation.*

*needs flexibility in order to be properly executed from its start onwards. Hence, as the internal market encompasses all Member States, the CCCTB should be introduced in all Member States. However, if the Council fails to adopt a unanimous decision on the proposal to establish a CCCTB, it is appropriate to initiate, without delay, the procedure for a Council decision authorising enhanced cooperation in the area of the CCCTB. Such enhanced cooperation should be initiated by the Member States whose currency is the euro but should be open at any time to other Member States in accordance with the Treaty on the Functioning of the European Union. In order to allow adjustment of the CCCTB regime to the constant evolving international and European tax agenda and policies, the European Parliament should produce a yearly assessment and invite, where needed, the European Council to adopt the procedure of article 48 paragraph 7 of the Treaty on European Union. Under this scheme, the European Council would authorize the Council of the European Union to vote at qualified majority on any change needed for CCCTB on the basis of a resolution of the European Parliament.*

Or. en

## Amendment 5

### Proposal for a directive

#### Recital 5

*Text proposed by the Commission*

*Amendment*

*(5) Many aggressive tax planning structures tend to feature in a cross-border context, which implies that the participating groups of companies possess a minimum of resources. On this premise, for reasons of proportionality, the rules*

*deleted*

*on a CCCTB should be mandatory only for groups of companies of a substantial size. For that purpose, a size-related threshold should be fixed on the basis of the total consolidated revenue of a group which files consolidated financial statements. In addition, in order to better serve the aim of facilitating trade and investment in the internal market, the rules on a CCCTB should also be available, as an option, to those groups that fall short of the size-related threshold.*

Or. en

## **Amendment 6**

### **Proposal for a directive Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*(5 a) All things being equal the switch to a common consolidated corporate tax base may result in loss or gain of fiscal revenues for Member States. In order to compensate losses, a temporary compensation fund is created, financed with the fiscal surplus from Member States with gain in fiscal revenue, due to the new regime. Compensation will be adjusted each year to take into account possible national or regional decisions taken prior to the entry into force of the directive. The Commission should be required to propose the removal or the change of the compensation system after a period of five years.*

Or. en

## Amendment 7

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) The formula apportionment for the consolidated tax base should comprise **three** equally weighted factors, namely labour, assets **and** sales by destination. Those equally weighted factors should reflect a balanced approach to distributing taxable profits amongst the relevant Member States and should ensure that profits are taxed where they are actually earned. Labour and assets should therefore be allocated to the Member State where the labour is performed or the assets are located, and would thereby give appropriate weight to the interests of the Member State of origin, whilst sales should be allocated to the Member State of destination of the goods or services. To account for differences in the levels of wages across the Union and thus allow for a fair distribution of the consolidated tax base, the labour factor should comprise both payroll and the number of employees (i.e. each item counting for half). The asset factor, on the other hand, should comprise all **fixed** tangible **assets, but not** intangible **and financial** assets **because of their mobile nature and the resulting risk that the rules of this Directive could be circumvented**. Where, due to exceptional circumstances, the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause should provide for an alternative method of income allocation.

#### *Amendment*

(10) The formula apportionment for the consolidated tax base should comprise **four** equally weighted factors, namely labour, assets, sales by destination **and collection and use of personal data of online platforms and services users ("DATA")**. Those equally weighted factors should reflect a balanced approach to distributing taxable profits amongst the relevant Member States and should ensure that profits are taxed where they are actually earned. Labour and assets should therefore be allocated to the Member State where the labour is performed or the assets are located, and would thereby give appropriate weight to the interests of the Member State of origin, whilst sales should be allocated to the Member State of destination of the goods or services. To account for differences in the levels of wages across the Union and thus allow for a fair distribution of the consolidated tax base, the labour factor should comprise both payroll and the number of employees (i.e. each item counting for half). The asset factor, on the other hand, should comprise all tangible **and** intangible assets. Where, due to exceptional circumstances, the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause should provide for an alternative method of income allocation.

Or. en

## Amendment 8

### Proposal for a directive

#### Recital 16

*Text proposed by the Commission*

(16) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission with respect of (i) taking into account changes to the laws of Member States concerning the company forms and corporate taxes and amend Annexes I and II accordingly; (ii) laying down additional definitions; and (iii) supplementing the rule on the limitation of interest deductibility with anti-fragmentation rules, to better address the tax avoidance risks which may emerge within a group. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

*Amendment*

(16) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission with respect of (i) taking into account changes to the laws of Member States concerning the company forms and corporate taxes and amend Annexes I and II accordingly; (ii) laying down additional definitions; and (iii) supplementing the rule on the limitation of interest deductibility with anti-fragmentation rules, to better address the tax avoidance risks which may emerge within a group. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level ***and should take into account the European Parliament's annual resolution on its own assessment of the Directive.*** The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Or. en

## Amendment 9

### Proposal for a directive

#### Recital 17

*Text proposed by the Commission*

(17) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be

*Amendment*

(17) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be

conferred on the Commission (i) to adopt annually a list of third country company forms that are similar to the company forms listed in Annex I; (ii) to lay 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; (iii) to adopt an act establishing a standard form of the notice to create a group; and (iv) to lay down rules on the electronic filing of the consolidated tax return, the form of the consolidated tax return, the form of the single taxpayer's tax return and the supporting documentation required. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>12</sup>.

conferred on the Commission (i) to adopt annually a list of third country company forms that are similar to the company forms listed in Annex I; (ii) to lay down detailed rules on the calculation of the labour, asset, **sales and DATA** factors, the allocation of employees and payroll, **the allocation of collected DATA and exploited DATA**, assets and sales to the respective factor and the valuation of assets; (iii) to adopt an act establishing a standard form of the notice to create a group; and (iv) to lay down rules on the electronic filing of the consolidated tax return, the form of the consolidated tax return, the form of the single taxpayer's tax return and the supporting documentation required. **The Commission should design those uniform tax return formats in cooperation with the tax administrations of the Member States.** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>12</sup>.

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<sup>12</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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<sup>12</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

## **Amendment 10**

### **Proposal for a directive Recital 18**

#### *Text proposed by the Commission*

(18) Since the objectives of this Directive, namely to improve the functioning of the internal market through

#### *Amendment*

(18) Since the objectives of this Directive, namely to improve the functioning of the internal market through

countering practices of international tax avoidance and to facilitate businesses in expanding across borders within the Union, cannot be sufficiently achieved by the Member States acting individually and in a disparate fashion because coordinated action is necessary to obtain these objectives, but can rather, by reason of the fact that the Directive targets inefficiencies of the internal market that originate in the interaction between disparate national tax rules which impact on the internal market and discourage cross-border activity, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives, especially considering that its mandatory scope is limited to groups beyond a certain size.

countering practices of international tax avoidance and to facilitate businesses, ***in particular small and medium-sized enterprises***, in expanding across borders within the Union, cannot be sufficiently achieved by the Member States acting individually and in a disparate fashion because coordinated action is necessary to obtain these objectives, but can rather, by reason of the fact that the Directive targets inefficiencies of the internal market that originate in the interaction between disparate national tax rules which impact on the internal market and discourage cross-border activity, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives, especially considering that its mandatory scope is limited to groups beyond a certain size.

Or. en

## Amendment 11

### Proposal for a directive

#### Recital 20

##### *Text proposed by the Commission*

(20) The Commission should be required to review the application of the Directive five years after its entry into force and report to Council on its operation. Member States should be required to communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive,

##### *Amendment*

(20) The Commission should be required to review the application of the Directive five years after its entry into force and report to Council on its operation. ***Drawing the conclusions of that review, the Commission should propose the terms and conditions to affect a part of the fiscal revenues gained from the CCCTB to the Union budget in order to proportionally reduce Member States contributions to the same budget.*** Member States should be required to communicate

to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive,

Or. en

## Amendment 12

### Proposal for a directive Article 2 – paragraph 1 – point c

*Text proposed by the Commission*

(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue ***that exceeded EUR 750 000 000 during the financial year preceding the relevant financial year;***

*Amendment*

(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue ***corresponding to the amount laid down point (c) of Article 2(1) of Council Directive ... on a Common Corporate Tax Base<sup>1a+</sup>***;

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<sup>1a</sup> ***Council Directive ... on a Common Corporate Tax Base (OJ L ..., .., p. ...).***

***+ OJ: Please insert the serial number of the document 2016/0337(CNS) into the title and complete footnote 1 with regard to the same document.***

Or. en

## Amendment 13

### Proposal for a directive Article 2 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***This Directive shall also apply to a company that is established under the laws of a third country in respect of its digital activities that are specifically directed towards consumers or business in a Member State or that principally receives its revenue from activity in a***

*Member State, where the company meets the conditions laid down in points (b) to (d) of paragraph 1. In determining whether a company with digital presence in the Union is specifically directed towards consumers or businesses in a Member State regard shall be had to whether the business establishment is conducting its business under the top level domain of the Member State or of the Union or, in relation to mobile application-based businesses, is distributing its application via the Member State specific part of a mobile application distribution centre.*

Or. en

#### **Amendment 14**

##### **Proposal for a directive**

##### **Article 3 – paragraph 1 – point 28 a (new)**

*Text proposed by the Commission*

*Amendment*

*(28a) 'DATA' means the collection and use for commercial purposes of personal data of online platforms and services users in one or more Member States.*

Or. en

#### **Amendment 15**

##### **Proposal for a directive**

##### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2 a. A company with digital presence collecting or exploiting personal data from online platforms and services users for commercial purposes is considered to be resident in the Member state where the user from whom it collects and exploits*



*personal data from is a resident.*

*The digital presence shall be determined in accordance with the conditions and criteria listed in Article 5 of Directive ... [the directive adopted on the basis of Commission proposal COM(2016)0685]. The Commission shall be empowered to adopt delegated acts in accordance with Article 75 to lay down technical standards for the following factors:*

*(a) the number of registered individual users per month that are domiciled in the non-resident jurisdiction who logged in or visited the taxpayer's digital platform;*

*(b) the number of digital contracts concluded with customers or users that are domiciled in the non-resident jurisdiction in a taxable year;*

*(c) the volume of DATA collected by a company in a taxable year in each Member State.*

Or. en

## Amendment 16

### Proposal for a directive Article 7 – paragraph 2

#### *Text proposed by the Commission*

2. Where the consolidated tax base is negative, the loss shall be carried forward and be set off against the next positive consolidated tax base. Where the consolidated tax base is positive, it shall be apportioned in accordance with Chapter VIII.

#### *Amendment*

2. Where the consolidated tax base is negative, the loss shall be carried forward and be set off against the next positive consolidated tax base ***in the limits of five tax years***. Where the consolidated tax base is positive, it shall be apportioned in accordance with Chapter VIII.

Or. en

## Amendment 17

### Proposal for a directive

#### Article 20 – title

*Text proposed by the Commission*

***Self-generated*** intangible assets

*Amendment*

Intangible assets

Or. en

## Amendment 18

### Proposal for a directive

#### Article 20 – paragraph 1

*Text proposed by the Commission*

Where a taxpayer who is the economic owner of one or more ***self-generated*** intangible assets leaves the group, an amount equal to the costs incurred in respect of those assets for research, development, marketing and advertising in the previous five years shall be added to the consolidated tax base as it stands at the end of the tax year. The amount added shall not, however, exceed the value of the assets on the departure of the taxpayer from the group. Those costs shall be attributed to the leaving taxpayer and treated in accordance with the national corporate tax law that subsequently becomes applicable to that taxpayer or, if that taxpayer joins another group, those costs shall be attributed in the tax year that the taxpayer joined that other group.

*Amendment*

Where a taxpayer who is the economic owner of one or more intangible assets leaves the group, an amount equal to the costs incurred in respect of those assets for research, development, marketing and advertising in the previous five years shall be added to the consolidated tax base as it stands at the end of the tax year. The amount added shall not, however, exceed the value of the assets on the departure of the taxpayer from the group. Those costs shall be attributed to the leaving taxpayer and treated in accordance with the national corporate tax law that subsequently becomes applicable to that taxpayer or, if that taxpayer joins another group, those costs shall be attributed in the tax year that the taxpayer joined that other group.

Or. en

## Amendment 19

### Proposal for a directive

#### Article 28 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

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:

*Amendment*

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, assets **and DATA**:

Or. en

**Amendment 20**

**Proposal for a directive  
Article 28 – 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*

Share A

$$\begin{aligned} &= \left( \frac{1}{4} \frac{\text{Sales}^A}{\text{Sales}^{\text{Group}}} + \frac{1}{4} \left( \frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}^{\text{Group}}} + \frac{1}{2} \frac{\text{No of employees}^A}{\text{No of employees}^{\text{Group}}} \right) + \frac{1}{4} \frac{\text{Assets}^A}{\text{Assets}^{\text{Group}}} \right. \\ &\quad \left. + \frac{1}{4} \left( \frac{1}{2} \frac{\text{Data collected}^A}{\text{Data collected}^{\text{Group}}} + \frac{1}{2} \frac{\text{Data exploited}^A}{\text{Data exploited}^{\text{Group}}} \right) \right) * \text{Con'd Tax Base} \end{aligned}$$

Or. en

**Amendment 21**

**Proposal for a directive  
Article 28 – paragraph 2**

*Text proposed by the Commission*

2. The consolidated tax base of a

*Amendment*

2. **Where one or more factors are not**

group shall be shared only where it is positive.

***be applicable due to the nature of an undertaking's activities, all other applicable factors should be proportionally re-weighted in the formula in order to maintain an absolute equal weight given to each applicable factor.***

The consolidated tax base of a group shall be shared only where it is positive.

Or. en

## **Amendment 22**

### **Proposal for a directive Article 28 – paragraph 5**

*Text proposed by the Commission*

5. When determining the apportioned share of a group member, equal weight shall be given to the factors of sales, labour **and** assets.

*Amendment*

5. When determining the apportioned share of a group member, equal weight shall be given to the factors of sales, labour, assets **and DATA**.

Or. en

## **Amendment 23**

### **Proposal for a directive Article 35 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 35 a***

##### ***Composition of the DATA factor***

***1. The DATA factor shall consist, as to one half, of the total volume of personal data of online platform and services users collected per Member State by a group member as its numerator and the total volume of personal data of online platforms and services users collected per Member State by the group as its denominator, and as to the other half the total volume of personal data of online***

*platforms and services users exploited per Member State by a group member as its numerator and the total volume of personal data of online platforms and services users exploited per Member State by the group as its denominator.*

*2. The volume of DATA shall be measured at the end of the tax year in each Member State.*

*3. The definition of DATA collection and exploitation shall be determined in respect of Regulation 2016/679/EU.*

Or. en

## Amendment 24

### Proposal for a directive Article 55 – paragraph 1

*Text proposed by the Commission*

The Commission *may* adopt acts laying down rules on the electronic filing of the consolidated tax return, on the form of the consolidated tax return, on the form of the single taxpayer's tax return and on the supporting documentation required. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

*Amendment*

The Commission *shall* adopt acts laying down rules on the electronic filing of the consolidated tax return, on the form of the consolidated tax return, on the form of the single taxpayer's tax return and on the supporting documentation required. ***The Commission shall design these uniform tax return formats in cooperation with the tax administrations of the Member States.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 77(2).

Or. en

## Amendment 25

### Proposal for a directive Article 71

*Text proposed by the Commission*

*Amendment*

**Article 71**

**deleted**

***Loss relief and recapture***

**1. Article 41 of Directive 2016/xx/EU on loss relief and recapture shall automatically cease to apply when this Directive comes into force.**

**2. Transferred losses which have not yet been recaptured when this Directive enters into force shall remain with the taxpayer to which they have been transferred.**

Or. en

**Amendment 26**

**Proposal for a directive**

**Article 76 – title**

*Text proposed by the Commission*

*Amendment*

***Informing*** the European Parliament

***Information and control of*** the European Parliament

Or. en

**Amendment 27**

**Proposal for a directive**

**Article 76 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, and of the revocation of that delegation of powers by the Council.

**1. The European Parliament shall produce an assessment of the CCCTB regime, once it has been adopted, by the end of every tax year. This assessment shall take into account the views of national parliaments and the outcomes of the tax policy discussions held under the procedure of the European Semester,**

*particularly during inter-parliamentary conferences. The European Parliament shall send its opinion and conclusions through a resolution to the Commission and the Council by the end of every tax year.*

2. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, and of the revocation of that delegation of powers by the Council.

Or. en

## Amendment 28

### Proposal for a directive Article 79 – 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 VIII of this Directive on the apportionment of the tax bases between the Member States.

#### *Amendment*

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 VIII of this Directive on the apportionment of the tax bases between the Member States. ***Drawing the conclusions of such a review, the Commission shall propose the terms and conditions to allocate a part of the fiscal revenues generated from the common consolidated corporate tax base to the budget of the European Union in order to proportionally reduce Member States contributions to the same budget.***

Or. en

## Amendment 29

### Proposal for a directive Article 80 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Member States shall adopt and publish, by **31st** December **2020** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

*Amendment*

Member States shall adopt and publish, by **31** December **2019** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

**Amendment 30**

**Proposal for a directive**

**Article 80 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

They shall apply those provisions from **1st** January **2021**.

*Amendment*

They shall apply those provisions from **1** January **2020**.

Or. en



## EXPLANATORY STATEMENT

### *Introduction*

In late 2016 the Commission put forward a major overhaul of the corporate taxation rules in a two-step approach, namely a proposal for the Common Corporate Tax Base (CCTB) and a proposal for the Common Consolidated Corporate Tax Base (CCCTB). At the same time, the Commission withdrew its 2011 CCCTB proposal blocked in the Council. The objective of this re-launched project is to strengthen the internal market by making it easier and cheaper for companies to operate cross-border in the EU, and also to counter practices of corporate aggressive tax planning and to increase corporate tax transparency in the EU.

While the CCTB provides for a single set of rules for calculation of the corporate tax base, the CCCTB introduces a consolidation element which would enable businesses to offset losses in one Member State against profits in another Member State.

The idea of harmonising corporate taxation systems in the EU is not new, it appears already in policy documents in early 1960s. In 1975 the Commission proposed Directive on the harmonisation of systems of company taxation and of withholding tax on dividends, which due to the lack of progress in the Council was eventually withdrawn in 1990. Instead, the Commission issued Guidelines for Company Taxation. In 2001 the Commission published a study on Company taxation in the internal market; however, it was not until 2011 that the Commission proposed the CCCTB.

The European Parliament expressed its support to the CCCTB project on numerous occasions. In 2008 it welcomed the Commission's intention to launch the CCCTB and in 2012 it adopted a report of rapporteur Ms Marianne Thyssen where it called for the CCCTB to be applied as soon as possible and to as many companies as possible. In 2015 in its resolution on tax rulings and other measures similar in nature or effect (TAXE 1) the Parliament called for establishment of a mandatory CCCTB and repeated its calls in its resolution in 2016 (TAXE 2).

### *Context*

A fair corporate taxation moved to the forefront of the international agenda against the backdrop of the global financial crisis and numerous revelations of financial scandals such as *Luxleaks* and *Panama Papers*. Fight against tax avoidance resulted in adoption of the OECD initiative on Base Erosion and Profit Shifting (BEPS). In the EU, the BEPS recommendations were implemented i.a. via the anti-tax avoidance package (ATAD 1) adopted in mid-2016 and ATAD 2 on hybrid mismatches adopted earlier this year, as well as the exchange of information of tax rulings (“DAC4”) and country-by-country-reports (“DAC5”)

The CCCTB is an essential missing brick in the construction of the genuine internal market and in fighting tax avoidance. The CCCTB brings about tax certainty, clear and stable regulatory framework and strong anti-tax avoidance rules including abolition of transfer pricing.

In the current international economic environment it is challenging for Member States to ensure that business income is taxed where the value is created. In particular large multinational companies are able to shift easily profits to Member States with lower corporate tax rates. To avoid detrimental effects on fiscal revenues of individual Member States the rapporteur considers that compensation in application of the CCCTB rules should be introduced. In addition, the rapporteur advocates for mechanisms of flexibility to fully

execute the directive, aligned on the same schedule with the CCTB Directive, and to monitor the life of the regime once in place in order to adjust to the political and economic moving scene.

Possible future international developments such as significant decrease of a corporate tax rate in the post Brexit UK or expected overhaul of the corporate taxation system in the US make it more urgent to adopt the CCCTB with a degree of flexibility incorporated in the system.

Moreover, existing corporate tax systems reflect economic realities of the last century where businesses were clearly linked to a local market. Globalisation, digitalisation of the world economy, e-commerce and new business models offer significant opportunities for businesses as well as for European citizens. However, they also represent challenges with regard to prevention of market distortion, tackling tax avoidance and tax evasion. Businesses active in the EU without a physical establishment have to be treated in the same way as businesses having a physical establishment in the EU. Modern tax systems of the 21st century must address specificities of the new globalised digital economy and this is why your rapporteur believes that the CCCTB should also encompass the concept of a digital presence and the capture of the commercial value of personal data.

CCCTB clearly offers major benefits for businesses by enabling them to follow common tax rules in all Member States and filing only one tax return for all the activities done in the EU by the principal tax authority. A single corporate taxation system in the EU would also avoid running parallel taxation systems by Member States and thus considerably decrease administrative costs.

### ***Consolidation***

The Commission in this proposal suggests that taxable profits should be shared between Member States where the company is active. The apportionment formula (which is the "Massachusetts Formula" used since the mid-20th century and was already proposed by the Commission in 2011), comprises of three equally weighted factors: sales, assets and labour. Your rapporteur proposes to add the fourth factor - personal data collection and exploitation for commercial purposes ("DATA") to ensure that CCCTB also applies to digital activities. These factors are more resilient to aggressive tax planning than transfer pricing. Apportionment formulas are being used by some federal states such as the US, Canada and Switzerland.

In addition, this system would allow Member States to keep the sovereignty right to set the tax rate and would tax the appropriate share of profits incurred by a company. The rapporteur insists that consolidation element is a condition sine qua non of the new taxation system and must be introduced at the same time as the common corporate tax rules.

Increased cooperation between national tax administrations is paramount to the success of the consolidation. The principal taxpayer authority will act as a 'one-stop-shop' for companies therefore they need to further develop their capacities building on recent experience with implementation of Council Directive 2011/16/EU as regards administrative cooperation in the field of taxation.

Your rapporteur believes that the CCCTB proposals represent an essential building block in completion of the internal market and have potential to enhance growth of European economy. A new framework would promote fairer and better integrated internal market and could contribute to achieving objectives of other flagship projects such as the Capital Markets Union, the Digital Single Market and the Investment Plan for Europe. The rapporteur believes

that the CCCTB addresses current challenges in the international taxation context and can serve as a powerful tool in the fight against aggressive tax planning.