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2009 - 2014

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*Committee on the Internal Market and Consumer Protection*

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**2011/0058(CNS)**

25.1.2012

# 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 1

*Text proposed by the Commission*

(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence of 27 diverse corporate tax systems. These obstacles and distortions impede the proper functioning of the internal market. They create disincentives for investment in the Union and run counter to the priorities set in the Communication adopted by the Commission on 3 March 2010 entitled Europe 2020 – A strategy for smart, sustainable and inclusive growth. **They also conflict with the requirements of a highly competitive social market economy.**

*Amendment*

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### Amendment 2

#### Proposal for a directive

##### Recital 3 a (new)

*Text proposed by the Commission*

*Amendment*

**(3a) The common consolidated corporate tax base (CCCTB) should lead to a common tax base for all eligible European companies in the Union. However, this Directive should not be considered the first step towards harmonisation of the corporate tax rates**

*of the Member States.*

**Amendment 3**  
**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.***

**Amendment 4**

**Proposal for a directive**  
**Recital 5**

*Text proposed by the Commission*

*Amendment*

(5) Since differences in rates of taxation ***do not give rise to the same obstacles***, the system (the Common Consolidated Corporate Tax Base (CCCTB)) ***need*** not affect the discretion of Member States regarding their national rate(s) of company taxation.

(5) Since differences in rates of taxation ***contribute to the competitiveness of the Union as a whole***, the system (the Common Consolidated Corporate Tax Base (CCCTB)) ***should*** not affect the discretion of Member States regarding their national rate(s) of company taxation. ***The Member States should therefore also retain the power to adopt certain incentives for businesses in the sphere of taxes.***

**Amendment 5**

**Proposal for a directive**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) The functioning of the CCCTB, according to this Directive, should result in a tax revenue-neutral impact on the Member States.***

## **Amendment 6**

### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***(6b) In so far as the use of the CCCTB would affect the tax revenue of regional or local authorities, Member States should be free to take measures to remedy this in accordance with their constitutional systems and in a manner compatible with this Directive.***

## **Amendment 7**

### **Proposal for a directive Recital 16**

*Text proposed by the Commission*

*Amendment*

(16) Eligibility for consolidation (group membership) should be determined in accordance with a two-part test based on (i) control (more than 50% of voting rights) and (ii) ownership (more than 75% of equity) or rights to profits (more than 75% of rights giving entitlement to profit). Such a test ensures a high level of economic integration between group members, as indicated by a relation of control and a high level of participation. The two thresholds should be met throughout the tax year; otherwise, the company should leave the group immediately. There should also be a ***nine-month*** minimum

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requirement for group membership.

## Amendment 8

### Proposal for a directive

#### Recital 20

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

(20) The system should include **a** general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council Directive 2011/16/EU concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and rules on controlled foreign companies.

##### *Amendment*

(20) The system should include **an effective** general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council Directive 2011/16/EU concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums and rules on controlled foreign companies. **Member States should not be prevented from introducing and coordinating additional measures among each other in order to reduce the negative effects of low-tax countries outside the Union, which do not exchange necessary tax information.**

## Amendment 9

### 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

##### *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. ***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.

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.

## **Amendment 10**

### **Proposal for a directive Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) The common rules on the calculation of the CCCTB should not give rise to disproportionate administrative costs for companies, in order to avoid damaging their competitiveness.***

## **Amendment 11**

### **Proposal for a directive Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) The Commission should initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum, 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.***

## Amendment 12

### Proposal for a directive Recital 27 a (new)

*Text proposed by the Commission*

*Amendment*

***(27a) The analysis on the basis of the review clause should also include an examination of the optional character of the CCCTB and considerations of practicality for SMEs.***

## Amendment 13

### Proposal for a directive Article 12 – paragraph 1

*Text proposed by the Commission*

*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.

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 reduction of carbon emissions shall also be regarded as deductible expenses.***

## Amendment 14

### 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.*

**Amendment 15**  
**Proposal for a directive**  
**Article 39 – paragraph 1**

*Text proposed by the Commission*

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.

*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 **35 %** of the depreciation base.

**Amendment 16**

**Proposal for a directive**  
**Article 58 – paragraph 2**

*Text proposed by the Commission*

2. Notwithstanding paragraph 1, a taxpayer shall become a member of a group on the date when the thresholds of Article 54 are reached. The thresholds must be met for at least **nine** consecutive months, failing which a taxpayer shall be treated as if it had never having become a member of the group.

*Amendment*

2. Notwithstanding paragraph 1, a taxpayer shall become a member of a group on the date when the thresholds of Article 54 are reached. The thresholds must be met for at least **twelve** consecutive months, failing which a taxpayer shall be treated as if it had never having become a member of the group.

**Amendment 17**  
**Proposal for a directive**  
**Article 80 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 18**  
**Proposal for a directive**  
**Article 86 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

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 labour and assets:

**Amendment 19**  
**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*

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

**Amendment 20**  
**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.***

**Amendment 21**  
**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.*

**Amendment 22**  
**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).

**Amendment 23**  
**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 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.

**Amendment 24**  
**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 25**  
**Proposal for a directive**  
**Article 123 a (new)**

*Text proposed by the Commission*

*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 **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.

*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.***

*Amendment*

***Article 123a***

***CCCTB forum - a dispute settlement body***

***The Commission shall initiate a new CCCTB forum, similar to the Joint Transfer Pricing Forum, to which***

*companies and Member States can address issues and disputes relating to the CCCTB and which shall provide guidance.*

## Amendment 26

### Proposal for a directive Article 130

*Text proposed by the Commission*

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

*Amendment*

The European Parliament shall be informed of the adoption of delegated acts by the Commission of any objection formulated to them, or the revocation of the delegation of powers by the Council. ***Any future assessment of this Directive shall be communicated to the European Parliament.***

## Amendment 27

### Proposal for a directive Article 133

*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, five years after the entry into force of this Directive, review its application and report to the ***European Parliament and the*** Council on the ***application*** of this Directive. The report shall include an analysis of the impact of this Directive on the ***national economies and the effects on national, regional and local public budgets, as well as the socio-economic effects on small and medium-sized enterprises.***

***Following the presentation of that report the Commission shall carry out an impact assessment and pilot projects with a view to presenting a legislative proposal in order to make the CCCTB obligatory for all eligible companies by 2020, with the***



*exclusion of micro, small and medium-sized companies as defined in Commission Recommendation 2003/361/EC of 6 May 2003<sup>1</sup>. The Commission shall also evaluate the possibility of taxing partnerships as if they were corporate companies.*

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<sup>1</sup> OJ L 124, 20.5.2003, p. 36.

## **Amendment 28**

### **Proposal for a directive Article 133 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 133a*

*Safeguard for cases of loss of tax revenue  
If the Commission's impact assessment analysis referred to in Article 133 reveals significant losses of tax revenues in several Member States, those Member States may suspend the CCCTB provided for in Chapters IX to XII and XVI of this Directive until these negative impacts cease.*

## PROCEDURE

<b>Title</b>	Common Consolidated Corporate Tax Base (CCCTB)
<b>References</b>	COM(2011)0121 – C7-0092/2011 – 2011/0058(CNS)
<b>Committee responsible</b> Date announced in plenary	ECON 7.4.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	IMCO 7.4.2011
<b>Discussed in committee</b>	5.12.2011
<b>Date adopted</b>	25.1.2012
<b>Result of final vote</b>	+: 19 –: 17 0: 0
<b>Members present for the final vote</b>	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Sergio Gaetano Cofferati, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Małgorzata Handzlik, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Phil Prendergast, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Bernadette Vergnaud, Barbara Weiler
<b>Substitute(s) present for the final vote</b>	Frank Engel, Ildikó Gáll-Pelcz, Anna Hedh, Liem Hoang Ngoc, María Irigoyen Pérez, Emma McClarkin, Olle Schmidt, Kyriacos Triantaphyllides