Procedure file

Basic information

CNS - Consultation procedure Directive	2016/0337(CNS)	Awaiting final decision
Common corporate tax base Subject 3.45.04 Company taxation		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		24/11/2016
		S&D TANG Paul	
		Shadow rapporteur	
		FERBER Markus	
		ECR LOONES Sander	
		JEŽEK Petr	
		JOLY Eva	
		VALLI Marco	
		ENF KAPPEL Barbara	
	Committee for opinion	Rapporteur for opinion	Appointed
	IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	JURI Legal Affairs		28/11/2016
		S&D REGNER Evelyn	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3543	23/05/2017
	Economic and Financial Affairs ECOFIN	3506	06/12/2016
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	MOSCOVICI Pierre	

Key events

25/10/2016	Legislative proposal published	COM(2016)0685	Summary
24/11/2016	Committee referral announced in Parliament		
06/12/2016	Debate in Council	3506	

23/05/2017	Debate in Council	3543	
21/02/2018	Vote in committee		
01/03/2018	Committee report tabled for plenary, 1st reading/single reading	A8-0050/2018	Summary
14/03/2018	Debate in Parliament		
15/03/2018	Results of vote in Parliament		
15/03/2018	Decision by Parliament	T8-0088/2018	Summary

Technical information

Procedure reference	2016/0337(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 115
Stage reached in procedure	Awaiting final decision
Committee dossier	ECON/8/08276

Documentation gateway

Legislative proposal		COM(2016)0685	25/10/2016	EC	Summary
Document attached to the procedure		SWD(2016)0341	26/10/2016	EC	
Document attached to the procedure		SWD(2016)0342	26/10/2016	EC	
Reasoned opinion	DK_PARLIAMENT	PE597.409	11/01/2017	NP	
Reasoned opinion	NL_SENATE	PE597.410	12/01/2017	NP	
Reasoned opinion	LU_CHAMBER	PE597.420	13/01/2017	NP	
Reasoned opinion	MT_PARLIAMENT	PE597.421	23/01/2017	NP	
Reasoned opinion	NL_CHAMBER	PE597.679	06/02/2017	NP	
Reasoned opinion	IE_CHAMBER	PE597.704	08/02/2017	NP	
Reasoned opinion	IE_SENATE	PE599.679	08/02/2017	NP	
Reasoned opinion	SE_PARLIAMENT	PE599.833	23/02/2017	NP	
Committee draft report		PE608.050	13/07/2017	EP	
Committee opinion	JURI	PE602.948	19/09/2017	EP	
Amendments tabled in committee		PE609.574	29/09/2017	EP	
Amendments tabled in committee		PE610.813	29/09/2017	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0050/2018	01/03/2018	EP	Summary

Text adopted by Parliament, 1st reading/single reading		T8-0088/2018	15/03/2018	EP	Summary
Commission response to text adopted in plenary		SP(2018)242	24/05/2018	EC	

Additional information

Research document	Briefing

Common corporate tax base

PURPOSE: to present a re-launched proposal on a Common Corporate Tax Base to ensure a corporate tax system that encourages growth and fairness in the internal market.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting Parliament but without being obliged to follow the latters opinion.

BACKGROUND: currently, businesses with cross-border activity have to comply with up to 28 divergent corporate tax systems. Generally, corporate income is taxed at national level, but the economic environment has become more globalised, mobile and digital. Business models and corporate structures are more complex, making it easier to shift profits.

In March 2011, the Commission proposed a directive for a Common Consolidated Corporate Tax Base (CCCTB). The proposal, which is still pending in Council, aims to provide companies with a single set of corporate tax rules for doing business across the internal market, thereby facilitating their cross-border activity.

The discussions in Council since 2011 have shown that the CCCTB proposal is unlikely to get adopted, in its entirety, without a staged approach. The Commission, in its action plan of June 2015, advocated a step-by-step approach to the CCCTB.

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, the Commission considers it necessary to divide the ambitious CCCTB initiative into two separate proposals. It proposes, at a first stage, rules on a common corporate tax base before addressing, at a second stage, the issue of consolidation.

This proposal for a Directive focuses on the 'first step' of the staged approach. It is thus limited to the elements of the common base, i.e. the rules for calculating the corporate tax base. Consolidation will be addressed in a separate proposal for a directive (i.e. second step), due for examination at a second stage, i.e. after the elements of the common base have politically been agreed. Until then, the 2011 proposal for a CCCTB will remain pending for examination in Council. The Commission will submit the two proposals, i.e. for a common corporate tax base and a CCCTB, simultaneously and as part of a single initiative. The proposal of 2011 will be withdrawn at the same time as the Commission adopts the new proposals.

This initiative on re-launching the CCCTB features prominently in the Commissions larger project in the field of fairer taxation. It will be presented at the same time as the proposal for a directive on hybrid mismatches involving third countries (which will amend the Directive tax avoidance) and a directive on dispute settlement.

IMPACT ASSESSMENT: the main policy option that has been considered is a proposal for a common consolidated corporate tax base, but the implications of the first stage without consolidation have also been assessed. A key choice to be made relates to the scope of such a tax base, i.e. to whom it would apply.

Valuing the different options has led to a preferred option: a CCCTB mandatory for large companies, equipped with an 'Allowance for Growth and Investment' and with an allowance for R&D expenses.

With regard to the economic benefits, a common corporate tax base with cross-border loss relief and an allowance for growth and investment would lead to an increase in investment and employment of up to 3.6% and 0.5%, respectively. Overall, growth would increase by up to 1.3%.

CONTENT : this proposal is the 'first step' (common corporate tax base) in a 2-stage approach towards an EU-wide corporate tax system and lays down common corporate tax rules for computing the tax base of companies and permanent establishments in the Union.

The current initiative includes points that were not in the 2011 proposal:

Scope: in contrast to the proposal of 2011, which laid down an optional system for all, this proposal will be mandatory for groups of companies beyond a certain size (whose consolidated turnover is above EUR 750 million).

Furthermore, to reach a degree of coherence between the two steps (i.e. common corporate tax base and CCCTB), companies will be required to meet the conditions for consolidation in order to fall within the mandatory scope of the common base. These common rules will also be available, as an option, for the companies that do not comply with these conditions.

Tax base: this is designed broadly. All revenues will be taxable unless expressly exempted. Income consisting in dividends or proceeds from the disposal of shares held in a company outside the group will be exempt for participations of at least 10%, in order to prevent the double taxation of foreign direct investment. In the same vein, the profits of permanent establishments will also be exempt from tax in the state of the head office. Taxable revenues will be reduced by business expenses and certain other items.

To support innovation in the economy, this re-launched initiative introduces a super-deduction for research and development costs into the R&D regime set out in the proposal of 2011. In addition, taxpayers will be entitled, for R&D expenditure up to EUR 20 000 000, to a yearly extra super-deduction of 50%. To the extent that R&D expenditure go beyond EUR 20 000 000, taxpayers may deduct 25% of the exceeding amount.

The proposal will also grant an enhanced super-deduction for small starting companies without associated enterprises, which are particularly innovative (a category that will in particular cover start-ups).

Interest limitation rule: this new rule (not in the proposal of 2011) features in the Anti-Tax Avoidance Directive. It limits the deductibility of interest (and other financial) costs, in order to discourage practices of profit shifting towards low-tax countries.

Allowance for Growth and Investment: the proposal aims to tackle the asymmetry whereby interest paid out on loans is deductible (subject to some limits) from taxpayers' common base whilst this is not the case for profit distributions.

This is a definitive advantage in favour of financing through debt as opposed to equity. Given the risks that such a situation entails for the indebtedness of companies, the proposal includes a rule against debt bias. Taxpayers will be given an allowance for growth and investment according to which increases in their equity will be deductible from their taxable base subject to certain conditions, such as measures against potential cascading effects and anti-tax avoidance rules.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Common corporate tax base

The Committee on Economic and Monetary Affairs adopted, following Parliaments consultation, the report by Paul TANG (S&D, NL) on the proposal for a Council directive on a Common Corporate Tax Base.

The committee recommended that the European Parliament approve the Commission proposal subject to the following amendments:

The report noted that in times of globalisation and digitalisation, taxation of in particular financial and intellectual capital on a source base is becoming increasingly harder to retrace and easier to manipulate. The mainstream digitalisation of many sectors of the economy coupled with the fast developing digital economy calls into question the suitability of the Union corporate tax models.

Subject matter: Members are calling for a Directive which establishes a system of a common base for the taxation in the Union of certain companies and lays down rules for the calculation of that base, including rules on measures to prevent tax avoidance and on measures relating to the international dimension of the proposed tax system.

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 very important to ensure simultaneous entry into force of the Directive on a Common Corporate Tax Base and the Directive on a Common Consolidated Corporate Tax Base. Because such a change of regime is a significant step in the completion of the internal market, it needs flexibility in order to be properly executed from the outset.

Permanent establishment in a Member State of a taxpayer who is resident for tax purposes in the Union: the rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent and digital permanent establishments in other Member States, where the company meets specific conditions, in particular, that they belong to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR 750 million during the financial year preceding the relevant financial year. That threshold shall be lowered to zero over a maximum period of seven years.

The amended text stipulates that a taxpayer shall be considered to have a permanent establishment which includes a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes when it has a fixed place of business or a digital presence in that other Member State through which it carries on its business, wholly or partly.

If a taxpayer resident in one jurisdiction provides access to or offers a digital platform such as an electronic application, database, online marketplace, or storage room, or offers search engine or advertising services on a website or in an electronic application, that taxpayer shall be deemed to have a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes if the total amount of revenue of the taxpayer or associated enterprise due to remote transactions generated from aforementioned digital platforms in the non-resident jurisdiction exceeding EUR 5 000 000 per year in a Member State other than the jurisdiction in which the taxpayer is resident for tax purposes, under certain circumstances.

A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of permanent establishment or digital permanent establishment.

Deductible expenses: for research and development costs not exceeding EUR 20 000 000 and that relate to staff including wages, subcontractors agency workers and freelancers, the taxpayer shall receive a tax credit of 10 % of the costs incurred.

Specific exemptions: Members sought to include a new Article which stipulates that earnings retained to a reserve by cooperatives and consortia, both during the current activity of a company and after its expiration, as well as the benefits granted by cooperatives and consortia to their own members, are deductible whenever the deductibility is allowed by fiscal national law.

Member States may exclude from the scope an entity or permanent establishment:

- with accounting profits of no more than EUR 750 000, and non-trading income of no more than EUR 75 000; or
- of which the accounting profits amount to no more than 10 percent of its operating costs for the tax period.

European tax identification number: the Commission is called on to present a legislative proposal for a harmonised, common European taxpayer identification number by 31 December 2018, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Mandatory automatic exchange of information on tax matters: in order to guarantee full transparency and the proper implementation of this Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU. Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of tax administration staff focusing on cross-border tax cooperation, and on automatic exchange of information in order to ensure full implementation of this Directive.

Measures against tax treaty abuses: the amended text called on Member States to amend their bilateral tax treaties in accordance with this Directive to ensure such treaties contain all of the following: (i) a clause ensuring that both parties to the treaty undertake to laying down measures whereby tax is to be paid where economic activities are taking place and where value is created; (ii) an addendum to clarify that the objective of bilateral treaties, beyond avoiding double taxation is also to fight tax evasion and aggressive tax planning; (iii) a clause for a principal purpose test based on a general anti-avoidance rule.

Reporting: the Commission shall, 10 years after the entry into force of this Directive, review its application and report to the European Parliament and the Council on the operation of this Directive. It shall communicate its findings in a report to the European Parliament and Member States with the aim of taking those findings into account for the design and implementation of national corporate tax systems accompanied, if appropriate, by a legislative proposal to amend this Directive.

Common corporate tax base

The European Parliament adopted by 451 to 141, with 59 abstentions, following Parliaments consultation, a legislative resolution on the proposal for a Council directive on a Common Corporate Tax Base.

Parliament approved the Commission proposal subject to the following amendments:

Members noted that in times of globalisation and digitalisation, taxation of in particular financial and intellectual capital on a source base is becoming increasingly harder to retrace and easier to manipulate. The mainstream digitalisation of many sectors of the economy coupled with the fast developing digital economy calls into question the suitability of the Union corporate tax models.

Subject matter: Parliament called a Directive which establishes a system of a common base for the taxation in the Union of certain companies and lays down rules for the calculation of that base, including rules on measures to prevent tax avoidance and on measures relating to the international dimension of the proposed tax system.

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, Members stated the need to ensure simultaneous entry into force of the Directive on a Common Corporate Tax Base and the Directive on a Common Consolidated Corporate Tax Base.

Once implemented in all Member States, a CCCTB would ensure that taxes are paid where profits are generated and where companies have permanent establishment.

Digital presence in a country to determine taxable profits: the rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent and digital permanent establishments in other Member States, where the company meets specific conditions, in particular, that they belong to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR 750 million during the financial year preceding the relevant financial year. That threshold shall be lowered to zero over a maximum period of seven years.

The amended text stipulates that a taxpayer shall be considered to have a permanent establishment which includes a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes when it has a fixed place of business or a digital presence in that other Member State through which it carries on its business, wholly or partly.

If a taxpayer resident in one jurisdiction provides access to or offers a digital platform such as an electronic application, database, online marketplace, or storage room, or offers search engine or advertising services on a website or in an electronic application, that taxpayer shall be deemed to have a digital permanent establishment in a Member State other than the jurisdiction in which it is resident for tax purposes if the total amount of revenue of the taxpayer or associated enterprise due to remote transactions generated from aforementioned digital platforms in the non-resident jurisdiction exceeds EUR 5 million per year in the jurisdiction where he does not reside, and provided that the monthly number of individual users domiciled in a Member State other than the jurisdiction in which the taxpayer is resident for tax purposes have logged in or visited the taxpayer's digital platform is at least or equal to a 1000.

A taxpayer shall be required to disclose to the tax authorities all information relevant to the determination of permanent establishment or digital permanent establishment.

Deductible expenses: for research and development costs not exceeding EUR 20 million and that relate to staff including wages, subcontractors agency workers and freelancers, the taxpayer shall receive a tax credit of 10% of the costs incurred.

Exceeding borrowing costs shall be deductible in the tax year in which they are incurred for maximum of 10% of the taxpayer's earnings before interest, tax, depreciation and amortisation ('EBITDA') or for a maximum amount of EUR 1 million, whichever is higher.

Specific exemptions: Parliament introduced a new Article which stipulates that earnings retained to a reserve by cooperatives and consortia, both during the current activity of a company and after its expiration, as well as the benefits granted by cooperatives and consortia to their own members, are deductible whenever the deductibility is allowed by fiscal national law.

Losses incurred in a tax year by a resident taxpayer or a permanent establishment of a non-resident taxpayer may be carried forward and deducted in subsequent tax years, up to a maximum period of five years.

Controlled foreign companies: an entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in the Member State of its head office, shall be treated as a controlled foreign company where the profits of the entity are subject to a corporate tax rate lower than 15 %; that rate shall be revised each year in line with economic developments in world trade.

European tax identification number: the Commission is called on to present a legislative proposal for a harmonised, common European taxpayer identification number by 31 December 2018, in order to make automatic exchange of tax information more efficient and reliable within the Union.

Mandatory automatic exchange of information on tax matters: in order to guarantee full transparency and the proper implementation of this

Directive, the exchange of information on tax matters shall be automatic and mandatory, as laid down by Council Directive 2011/16/EU. Member States shall allocate adequate staff, expertise and budget resources to their national tax administrations as well as resources for the training of tax administration staff focusing on cross-border tax cooperation, and on automatic exchange of information in order to ensure full implementation of this Directive.

Measures against tax treaty abuses: the amended text called on Member States to amend their bilateral tax treaties in accordance with this Directive to ensure such treaties contain all of the following: (i) a clause ensuring that both parties to the treaty undertake to laying down measures whereby tax is to be paid where economic activities are taking place and where value is created; (ii) an addendum to clarify that the objective of bilateral treaties, beyond avoiding double taxation is also to fight tax evasion and aggressive tax planning; (iii) a clause for a principal purpose test based on a general anti-avoidance rule.

Reporting: the Commission shall, 10 years after the entry into force. It shall communicate its findings in a report to the European Parliament and Member States with the aim of taking those findings into account for the design and implementation of national corporate tax systems accompanied, if appropriate, by a legislative proposal to amend this Directive.