Common consolidated corporate tax base (CCCTB)

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PURPOSE: to present a proposal for a re-launched Common Consolidated Corporate Tax Base (CCCTB) 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 so-called 'second step' of the staged approach (consolidation), i.e. after the elements of the common base have politically been agreed. Until this is achieved, 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 The proposal of 2011 will be withdrawn at the same time as the Commission adopts the new proposals.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. A key choice to be made relates to the scope of such a tax base, i.e. to whom it would apply.

Assessing 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 research and development expenses.

The anticipated economic benefits of the proposal are positive, leading to an increase in investment and employment of up to 3.4% and 0.6%, respectively. Overall, growth would increase by up to 1.2%.

CONTENT: the proposal is the 'second step' in a staged approach towards an EU-wide corporate tax system with cross-border consolidation of the tax results amongst members of the same group.

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). The threshold is in line with the approach taken in other EU initiatives to counter tax avoidance.

At the same time, the common rules will be available, as an option, to a wide scope of groups that fall short of the size threshold. This allows SMEs and micro-enterprises the opportunity to benefit from the advantages of a CCCTB without making it compulsory for this set of companies.

Definition of group: (unchanged compared to the proposal of 2011): eligibility for the consolidated tax group will 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). These thresholds must be met throughout the tax year; otherwise, the failing company will have to leave the group immediately.

Business reorganisations and taxation of losses and unrealised capital gains: the proposed framework chiefly involves the treatment of losses and unrealised capital gains on entering and leaving the group.

There are rules to deal with unrealised capital gains which have accrued to fixed assets where the assets are disposed of within a short period after their entry into, or exit from, a group. A Member State (in the case of an entry into a group) or the group (in the case of an exit from a group) are given the right to tax underlying capital gains to the extent those were created in their tax jurisdiction. Moreover, the tax treatment of capital gains engrained in self-generated intangible assets calls for a customised approach, which will involve assessing them on the basis of a suitable proxy, that is to say, research and development, and marketing and advertising costs over a specified period.

Withholding taxes (unchanged compared to the proposal of 2011): the proceeds of withholding taxes charged on interest and royalty payments made by taxpayers will be shared according to the formula of that tax year. Withholding taxes charged on dividends will not be shared.

Preventing circumvention of tax exemptions (unchanged compared to the proposal of 2011): the tax exemption in favour of disposals of shares will be disallowed if this is illegitimately extended to sales of assets other than shares.

Formula for apportionment: one of the principal elements of the proposal is the formulary apportionment, comprised of three equally weighted factors (i.e. labour, assets and sales by destination). This combination reflects a balanced approach to distributing taxable profits amongst eligible Member States.

Administrative procedures: in contrast to the proposal of 2011, the common administrative rules are limited to the consolidated group.

Groups will deal with a single tax administration in the EU ('principal tax authority' or 'one-stop-shop'.) This will be based in the Member State where the parent company of the group ('principal taxpayer') is resident for tax purposes. Audits will be initiated and coordinated by the principal tax authority.

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