Common corporate tax base

2016/0337(CNS) - 25/10/2016 - Legislative proposal

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 The proposal of 2011 will be withdrawn at the same time as the Commission adopts the new proposals.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.