Common (Consolidated) Corporate Tax Base – what are the next steps?

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Main objectives for the taxation in the EU

Reflection document "Taxation in the European Union" of 20 March 1996 highlighted the major challenges facing the Union:

- *the need to create growth and employment*
- *to stabilise fiscal systems*
- *to fully realise the Single Market*

and after 2008 the additional objective

- *proper and fair taxation of all companies active within the EU*

Fair, Competitive & Stable Corporate Tax Systems

Re-launch of the proposals for a Common Tax Base (COM(2016) 685 final) and a Common Consolidated Corporate Tax Base (COM(2016) 683 final) in October 2016

- ***1st step - Common tax base:*** *a set of corporate tax rules for computing the tax base of companies applying the CCCTB (without consolidating individual tax results).*

- ***2nd step - Consolidation & apportionment:*** *individual tax results are added up together in a single tax base and distributed based on a formula of 3 equally-weighted factors (i.e. sales, assets and labour)*

Common (Consolidated) Corporate Tax Base

What is new?

- ***Staged approach*** *outlined in 2 steps*
- ***Mandatory scope*** *for companies with a consolidated financial group revenue of more than EUR 750 million*
- ***ATAD/ATAD 2:*** *agreed anti-tax avoidance elements & the switchover clause feature in the framework of the common tax base with the necessary adjustments*
- ***Specific new elements***
- ***Technical modifications*** *to reflect the outcome of discussions with Member States on specific topics since 2011*

Common (Consolidated) Corporate Tax Base

What can the CC(C)TB solve?

- ***Reducing compliance cost and administrative burden in the Internal Market***
  - a single EU system for companies to calculate their taxable income and
  - a "one stop shop" to file a tax return for all their EU activity.
- ***Loss Off-Set***
  - allowing companies to offset profits in one Member State against losses in another, which is particularly important for small and start-up companies.

Common (Consolidated) Corporate Tax Base

What can the CC(C)TB solve?

- ***Robust provisions against aggressive tax planning and double taxation:***
  - The CCCTB will eliminate mismatches between national systems, preferential regimes and hidden tax rulings, which tax planners can exploit
  - The CCCTB will remove the need for transfer pricing in the EU, which is on one hand a possible route for profit shifting and on the other hand often results in transfer pricing disputes and the risk of double taxation
- ***Support growth, jobs and investment in the EU***

- depending on the level and extent on which MS can agree on advantageous elements for the Common Base (i.e. R&D support and debt equity bias rules)

Common (Consolidated) Corporate Tax Base

What can the CC(C)TB not solve?

- ***The Common Base/CCCTB proposals are only binding MS:***
  Consolidation and Formula apportionment can only attribute taxing rights between MS. Tax substrate which is due to a DTC provision attributed to a Third Country (e.g. absence of a traditional PE in the EU or no withholding tax rights on outbound payments) cannot be included in the system.
- *The CCCTB cannot combine at the same time the elements of a stable and reliable tax system (providing certainty for business on investment decisions) with the full flexibility of a national, non harmonized, tax system easily adjusted or changed annually.*

Common Consolidated Corporate Tax Base

What can the CC(C)TB not solve?

- *The challenges from the need for the modernization of the CIT systems in the EU (i.e. taxation of the digital economy) are addressed in a separate proposal for a significant digital presence. The results of the discussion on the comprehensive solution within Council and at the wider international level should be reflected in the CCCTB.*

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What needs to be done to bring the CCTB project forward? What proposals are on the table?

- *Once agreed at EU or OECD level – insertion of a **digital PE** in addition to physical presences as requested by the European Parliament in the CCTB legislative resolution of 15.3.2018*
- *Requested by the EP in the CCTB legislative resolution of 15.3.2018 – inclusion **of all corporate taxpayers** in the EU (by lowering the threshold over seven years)*
- *Requested by the EP in the CCTB legislative resolution of 15.3.2018 **tax credits** for certain R&D expenses*
- *Requested by the EP in the CCTB legislative resolution of 15.3.2018 - **no deduction of payments** to recipients in a 'black list' Third Country*

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What needs to be done to bring the CCTB project forward? What proposals are on the table?

- *Requested by the EP in the CCTB legislative resolution of 15.3.2018 - **minimum tax level of 15%** for third country income to benefit from dividend exemption and for CFC purposes*
- *Requested by the EP in the CCCTB legislative resolution of 15.3.2018 – **data factor** as a fourth factor to improve the formula apportionment and attribute taxing rights to the MS in which value is generated*
- *Requested by the EP in the CCCTB legislative resolution of 15.3.2018 – creation of a **compensation fund** to allow a balancing of the impact of the introduction of the CCCTB between loser and winner MS.*
- *Clarification of effect and extent of tax policy initiatives in the EU, at the OECD and in Third Countries on the Common Base and the CCCTB proposals*

External factors influencing the Common (Consolidated) Corporate Tax Base

US tax reform from 2017

- *Strong defensive measure against aggressive tax planning:*
  BEAT and GILTI provisions protect the US tax base from tax planning outside the US (i.e. partly in some EU MS)

- *Attractive measures to attract FDI and for shifting business activities [back] into the US*
  5 year period for 100% depreciation of certain assets
  FDII lowering the tax rate for income earned abroad and taxed in the US
- *De facto implementation of a 13.125% CIT tax rate as a minimum rate in the US – international tax system*

External factors influencing the Common (Consolidated) Corporate Tax Base

Meseberg Declaration (French German CIT tax harmonization project) from June 2018

Covered in the slides of Prof. DDr. Gunter May

The challenge is for the EU to remain generally a competitive area for investment and activities. Not to have 27 divergent national approaches!

There is the need to find a balance between flexibility, competitiveness and keeping the benefits from a common approach!