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SGD

Dear President,

I would like to thank you for the opinion of the Poslanecká Sněmovna on the Commission proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB) {COM(2011) 121 final} , in which you raise concerns in relation to the compliance of the proposal with the principles of subsidiarity and proportionality.

In responding to the Opinion, I will begin with some general remarks on the political context of this proposal and its compliance with the principles of subsidiarity and proportionality, before returning to the specific points raised in the Opinion in greater detail.

National corporate tax systems operate within a context of globalisation, international tax competition and companies which increasingly look beyond borders for market opportunities. However, the co-existence of 27 highly disparate sets of tax rules in the single market means that companies are faced with significant tax obstacles which may discourage and impede their cross-border activities. This divergence in national tax rules reduces the transparency of tax systems and creates obstacles in the internal market which give rise to significant distortions and compliance costs for businesses.

The situation is particularly acute for small and medium sized enterprises (SMEs), which often lack the resources to overcome these inefficiencies and therefore face strong disincentives to expand across borders. Without further action, there is a real risk that this situation will persist, creating unnecessary compliance costs in the single market.

In this context, the CCCTB proposal offers Member States the opportunity to consider corporate taxation from a more sustainable and transparent perspective, whilst allowing businesses to enjoy easier access to the single market. The Commission is convinced that only concerted action at the level of the European Union can address the challenges of corporate taxation in a single market in a systematic manner and thereby secure benefits for businesses and national public finances.

The Commission has taken great care to ensure that this proposal respects fully the principles of subsidiarity and proportionality. The reasoning is set out in the

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explanatory memorandum and recitals to the Directive [COM(2011) 121 final], as well as in the accompanying impact assessment report (IAR) [SEC(2011) 315 final].

In the view of the Commission, the objectives which the proposed Directive seeks to achieve could not be attained by Member States acting alone. Given that the aim of the legislation is to tackle fiscal impediments to efficient cross-border operations resulting mainly from the fragmentation created by 27 disparate tax systems, further uncoordinated action by Member States would not address the fundamental problems and would risk perpetuating or exacerbating them.

The proposal sets out an option for companies of choosing a single set of rules for computing, consolidating and sharing the tax bases of associated enterprises across the Union. Considering the scale and effects of the proposed action, its objectives, to attenuate the distortions resulting from the current interaction of 27 national tax regimes and create more favourable conditions for cross-border investment in the single market, would be better achieved at Union level.

The rules set out in the proposal, such as relief for cross-border losses, tax-free internal group restructurings and the elimination of complex intra-group transfer pricing, address issues that are intrinsically cross-border in nature and could only be resolved within a context of common regulation. National initiatives are unlikely to be as effective at tackling these issues and may create further distortions in the market, notably double taxation or non-taxation. Common rules are also a prerequisite for creating a 'one-stop shop' for companies or groups of companies operating across the EU.

According to the IAR, the CCCTB is indeed expected to create more favourable conditions for cross-border investment in the internal market. It is estimated that it would allow substantial tax-related savings connected with the costs of establishing abroad through a medium sized subsidiary. A representative large parent would save around 62% of the estimated costs incurred in the current situation. The savings would reach 67% in the case of a medium-sized parent. Further, companies would be likely to derive considerable benefits from the reduction in compliance time and costs. Current costs are to be reduced by 7%, which is equivalent to up to EUR 0.7 billion across the EU. The possibility to offset losses across national borders within the same group could also lead to annual savings of EUR 1.3 billion for companies in the EU.

I would like to emphasise that the proposal is proportionate to what is necessary to achieve the objectives of the Treaties.

It does not affect the Member States' sovereignty over the setting of their own corporate tax rates. The CCCTB proposal deals with harmonising the corporate tax base, which is a prerequisite for curbing the identified tax obstacles and rectifying the elements that distort the concept of a single market; it does not entail harmonisation of tax rates.

The CCCTB proposal is also designed as an optional system. It does not oblige companies that do not intend to operate across borders to implement the common rules and bear the associated costs. Naturally, national tax authorities will have to meet certain one-off financial and administrative costs for the purpose of switching to the new system. It is also true that administrations may choose to maintain their

domestic corporate tax rules alongside the CCCTB, which would add to the current cost of running their tax systems. However, in both cases, it is expected that the mid-term positive impact of the CCCTB will outweigh the additional costs.

It is clear that these benefits could not be realised through an approach based on tax coordination alone. While the Commission has consistently promoted the coordination of national tax practices, experience has shown that this approach is slow and the results have hitherto been modest. Moreover, tax coordination typically addresses only specific, targeted issues and is not sufficient to address the wide variety of problems faced by companies in the single market.

The Commission is therefore convinced that the proposed CCCTB Directive represents the most proportionate response to the serious problems identified and is fully in line with the principle of subsidiarity.

Turning to the other specific points raised in the Opinion, the Poslanecká Sněmovna refers to the framework position of the Czech government namely that the proposed Directive should only introduce a 'very limited' number of new administrative procedures and instead rely on existing legal instruments. In that context, it is also mentioned that the power of review should be reserved to the Member State according to the law of which an operation was performed.

It is important to underscore that the Directive lays down a set of common rules for administering the CCCTB, which create the minimum degree of uniformity required for running a functional tax system. It is not the intention of the Union to intervene in, or replace, national administrative rules without good reason. The plurality of existing instruments, without a greater degree of uniformity, does not provide a sufficiently solid background for the CCCTB, as procedural coordination is a sine qua non to implementing a set of common substantive provisions.

The framework position also invites 'a more detailed elaboration' of the relationship between the principal tax authority and the competent authorities in the Member States of the other group members, 'especially in relation to the establishment of a tax base and its transfer to individual countries'.

In my understanding, this refers to the computation of the consolidated tax base and its subsequent allocation to the eligible group members. It should be noted that the proposed legislative text contains substantive provisions on consolidation and the sharing mechanism, which a group will have to apply in the process of self-assessing its tax liability. Furthermore, if there are disagreements between tax authorities about the way that the consolidated tax base is shared, the proposed Directive provides for the possibility of referring the case for a solution to the courts of the principal tax authority (Article 123).

The Opinion also suggests that the diversity in national accounting systems would call for different ways of adjusting the group members' financial accounts for taxation according to the common rules.

The Commission has clarified that the proposed CCCTB exclusively deals with tax rules and does not touch upon accounting since, given the national differences, such

an attempt would create a new project in parallel to the tax scheme. The Commission is convinced that the existence of a common corporate fiscal framework should considerably facilitate groups in adjusting their accounting results for taxation because the process of 'building' the so-called 'bridge' will always follow the same rules; that is, the common rules on the tax base, as set out in the Directive.

As far as potential shortfalls in tax revenues are concerned, it is true that some Member States may appear to be losing revenue according to the Commission's IAR. Yet, this does not necessarily compromise the beneficial effects of the CCCTB for the internal market as a whole, which is also one of the key tests of the subsidiarity principle. The CCCTB is thus meant to create more growth by way of encouraging business investment through expansion across borders. The IAR clarifies that all the potential long-term gains might not be fully captured by the modelling exercise.

These considerations should be kept in mind when evaluating the results of the IAR for individual Member States as well. Specifically, cross-border loss relief reduces the tax base but also generates savings for companies. These savings, alongside the reduction in tax-related compliance costs (which results from other features of the system), might encourage cross-border expansion not only of existing multinational groups but also of purely domestic companies.

In response to the concern that the CCCTB could generate indirect pressure on national tax rates, let me underline that Member States' budgetary choices are likely to depend on a variety of factors. For instance, the number of companies to opt for the CCCTB may be one of the elements to consider in this regard. The impact on the revenues of Member States will ultimately depend on national policy choices with regard to possible adaptations of the mix of different tax instruments or applied tax rates.

Finally, concerning the question of whether, under the CCCTB, tax competition would 'make no sense from an economic point of view' because, due to the sharing of the consolidated tax base, Member States would be reluctant to give tax incentives (e.g. by reducing their corporate tax rate). In other words, since Member States would be sharing the consolidated base, they would no longer be eager to attract foreign investment because they would have to share the taxable income.

I should clarify that the allocation of tax shares amongst the eligible Member States is performed through a formula of three equally-weighted factors (i.e. assets, labour and sales by destination), which represent a fair point of reference for taxing income. It follows that the greater part of the taxable revenues from foreign investment would be taxed in the Member State where the assets and labour are located.

I would like to thank you again for the Opinion of the Poslanecká Sněmovna and I hope that these explanations serve to clarify the points raised in the Opinion. I look forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President*