

Mr. Algirdas Gediminas ŠEMETA
Commissioner for taxation and the customs Union
Rue de la Loi 200
B – 1049 Bruxelles

Christiansborg
DK-1240 København K
Tlf. +45 33 37 55 00
Fax +45 33 32 85 36
www.ft.dk
ft@ft.dk

Opinion as regards the Commission's proposal for a Common Consolidated Corporate Tax Base - COM (2011) 121

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Dear Mr. Algirdas Gediminas ŠEMETA

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Contact

Liza Christensen
Secretary to the Taxation
Committee

Dir. tel. +45 33 37 55 21

The Taxation Committee and the European Affairs Committee of the Danish Parliament have examined the Commission's proposal for a Common Consolidated Corporate Tax Base (CCCTB) with regard to its compliance with the subsidiarity principle in Article 5 of the Treaty on the European Union.

On the basis of that examination a majority in the Taxation Committee and in the European Affairs Committee, composed of the Liberal Party, The Social Democrats, The Conservatives, The Socialist People's Party and the Social Liberals, have adopted the following opinion:

Opinion as regards the Commission's proposal for a Common Consolidated Corporate Tax Base

1. The Commission has presented a proposal for a Common Consolidated Corporate Tax Base, COM (2011) 121 final. The national parliaments of the Member States shall examine the proposal's compliance with the subsidiarity principle and may submit a reasoned opinion within 8 weeks from the presentation of the proposal, if they find there is a problem.
2. In the course of the technical scrutiny of the above proposal at the Taxation Committee's meeting of 27 April 2011, representatives from the Danish Ministry of Taxation informed the Committee that the Member States were about to enter into negotiations on the details of the proposal. On that basis the Taxation Committee decided to submit an opinion to the European Affairs Committee on the proposals' compliance with the subsidiarity principle.
3. The subsidiarity principle is laid down in Article 5 of the Treaty on the European Union, which provides:

" Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

4. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."
5. Article 5 is complemented by the Protocol on the application of the principles of subsidiarity and proportionality. The protocol provides, amongst others, that any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact.
6. It is necessary to determine the consequences of the Commission's proposal in the negotiations on the details of the proposal. In particular, it is necessary to establish whether there will be a minimum corporate tax rate (a corporate tax restraint), how to act if the principal tax authority (the Member State in which the parent company of a group is resident) does not provide an efficient tax assessment, and whether the proposal deprives the Member States of the possibility of (temporarily) changing their depreciation bases and rates as part of their conjunctural policy.
7. It is necessary to examine more closely whether the tax authorities of all Member States have the sufficient competences and skills to act as principal tax authorities.
8. There is no sufficiently clear analysis to serve as a basis for a reasonable assessment of the consequences as regards the tax revenue of the proposal, although it is obvious that the proposal will amongst others lead to a greater displacement of the tax revenues between the Member States.

Consequently, the Majority in the two Committees (the Liberal Party, The Social Democrats, The Conservatives, The Socialist People's Party and the Social Liberals) are not at this stage capable of giving a final assessment as to whether the proposal complies with the subsidiarity principle. It is therefore

recommended to continue clarifying the many unanswered questions raised by the proposal.

Minority opinions

A minority of the Committees composed of the Danish People's Party notice that a number of Member States – including the UK and Holland – have found the Commission's proposal for a Common Consolidated Corporate Tax Base to be in breach of the subsidiarity principle. The Danish People's Party also finds that the proposal is in breach of the subsidiarity principle.

Another minority of the Committees composed of the Red-Green Alliance states that it is opposed to a Common Consolidated Corporate Tax Base for the following reasons:

- the European Union is not to decide on the tax legislations of the Member States
- the proposal will lead to a considerable loss of tax revenues, which will undermine the basis for welfare
- the proposed rules will lead to tax reliefs for companies which have already had their tax bases cut by half in few years.

The Red-Green Alliance would agree on bilateral agreements with other countries making a joint effort against tax evasion, but this should not be done through an EU Directive, which undermines the tax base and facilitates the companies' transfer of their income to the countries with the lowest tax rate. The argument that the countries are free to determine their own tax rates is without substance, if the European Union is to establish the principles for the determination of the basis for taxation and facilitates the transfer of income.

Best regards

Niels Helveg Petersen,
Chair of the Taxation Committee

Anne-Marie Meldgaard
Chair of the European Affairs Committee