



## EUROPEAN COMMISSION

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C(2017) 1487 final

*Dear Chair,*

*The Commission would like to thank the Folketing for its Reasoned Opinion on the proposals for Council Directives on a Common Consolidated Corporate Tax Base {COM(2016) 683 final} and a Common Corporate Tax Base {COM(2016) 685 final}.*

*The Commission would like to make some general remarks on the political context of the proposals and their compliance with the principles of subsidiarity and proportionality, before addressing the specific points of the Reasoned Opinion in detail.*

*The problems that the re-launched Common (Consolidated) Corporate Tax Base aims to tackle reach beyond a single Member State and therefore require a common approach. The Common (Consolidated) Corporate Tax Base responds to the needs for increased growth and job creation in the internal market and also for countering aggressive tax planning. In the Commission's considered view, these challenges do not have a domestic focus but arise in a cross-border framework. It is namely the interaction between different tax systems that generates opportunities for abuse or facilitates taking advantage of mismatches between national corporate tax rules.*

*Most key features of the Common (Consolidated) Corporate Tax Base system could only be dealt with through collective action. For instance, mismatches in the legal qualification of entities or payments, leading to double taxation or double non-taxation, would be eradicated in relations amongst companies applying the common corporate tax rules. Separate action by Member States would only solve these issues bilaterally in the best case scenario. By definition, cross-border loss relief would work most effectively if all Member States engaged in giving it. Furthermore, tax-free internal group restructurings, the elimination of complex intra-group transfer pricing as well as the apportionment of revenues by a formula at the level of a group have a cross-border underpinning and could only be addressed within a context of common regulation.*

*Tax avoidance practices are nowadays primarily set up in a cross-border context. In addition, the fact that the EU is an internal market with a high degree of integration generates enhanced cross-border activity, which underscores the significance of agreeing to coordinated solutions.*

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*cc. Ms Pia Kjærsgaard  
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*The envisaged measures are both suitable and necessary for achieving the desired end. They do not go further than harmonising the corporate tax base, which is a prerequisite for curbing identified obstacles that distort the internal market. Furthermore, the re-launched Common (Consolidated) Corporate Tax Base does not restrict Member States' sovereignty to set their own corporate tax rates.*

*Moreover, the mandatory scope of the re-launched Common (Consolidated) Corporate Tax Base is delineated in a way that it only targets the necessary categories of taxpayers, i.e. groups of companies above a certain size. This is because groups with high revenues tend to own sufficient resources which would allow them to engage in aggressive tax planning strategies.*

*It follows that the envisaged rules do not exceed what is necessary to achieve the objectives of the Treaty for a better functioning of the internal market.*

*The Commission also respectfully disagrees with the assertion that tax policy would lie outside the scope of EU competence. Article 115 of the Treaty on the Functioning of the European Union<sup>1</sup> provides the legal base for EU measures in the area of direct taxation. Such measures are subject to a review to ensure that they comply with the principles of subsidiarity and proportionality. It is precisely on this premise that the Commission adopted the re-launch proposals for a Common (Consolidated) Corporate Tax Base, with the aim of improving the functioning of the internal market through reducing tax-related distortions caused by mismatches, harmful preferential tax regimes, double taxation and non-taxation, selective rulings and sweetheart deals. As explained above, individual uncoordinated initiatives at the national level cannot achieve these objectives. To the contrary, they are likely to exacerbate disparities.*

*In response to the more technical comments in the Reasoned Opinion, the Commission would like to refer the Folketing to the attached Annex.*

*The Commission hopes that the clarifications provided in this letter address the issues raised by the Folketing and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Pierre Moscovici  
Member of the Commission*

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<sup>1</sup> Article 115 of the Treaty on the Functioning of the EU states that "without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.", OJ C 326, 26.10.2012, p. 95.

## ANNEX

*The Commission has carefully considered each of the issues raised by the Folkeeting in its Reasoned Opinion and is pleased to offer the following clarifications.*

### Scope for EU action

*The Commission has consistently argued for the Common (Consolidated) Corporate Tax Base as an initiative that delivers on two complementary fronts: (i) it facilitates businesses, especially those engaged in cross-border activity within the internal market; and (ii) it can create a fair and sustainable business environment where taxes are paid where income is generated. The proper functioning of the internal market is not only related to tackling aggressive tax planning. Business facilitation is also a very critical objective, which requires action beyond the borders of a single Member State.*

### Formulary apportionment

*It should be recalled that the Commission, in the choice of formula factors for the Common (Consolidated) Corporate Tax Base, based its proposal on a tried and tested methodology. In particular, these three equally weighted factors constitute the so-called 'Massachusetts formula', which the States in the USA have been using – in numerous variations – since the beginning of the twentieth century, for the purpose of charging Franchise Tax (i.e. tax on trading profits at State level). Prior to the proposal of 2011, the Commission modelled different combinations and weights of the formula factors and the results clearly demonstrated that the proposed combination of the three equally-weighted factors (assets, labour and sales by destination) offers the best option. It was found that this scheme offers the fairest results and that these are the most resilient to attempts of manipulation and tax avoidance practices.*

*It therefore follows that the allocation of profits through a formula is likely to guarantee a more efficient way for allocating profit within an integrated group that operates in a single market, as compared to traditional transfer pricing methodologies. This is because the factors have a direct relevance to the real economy since they are referring to the key income-producing elements of a company: assets, personnel and sales. The factors are consequently more difficult to manipulate through shifting artificially their values to lower taxing Member States.*

*The Commission does not share the view that the formulary apportionment unjustifiably favours countries with bigger populations. Sales by destination bring the point of taxation closer to consumption and, in this way, create a framework which cannot easily be manipulated simply by moving the point of production. Therefore, the destination principle attaches taxation where profits are earned. This is a straightforward and clear principle.*

### Tax rates

*As such, the proposals do not deal with the levels at which tax rates should be set at the national level. The proposals harmonise the corporate tax base, which is a prerequisite for rectifying identified distortions in the internal market. Otherwise, Member States remain free*

*to decide which tax rate to apply to the share of the base that they get allocated through the formula.*

#### *Impact on national tax revenues*

*The Commission wishes to note that Member States' budgetary choices are likely to depend on a variety of factors, all possible combinations of which cannot be modelled and assessed. However, the impact on the revenues of Member States of the Common (Consolidated) Corporate Tax Base will ultimately depend on national policy choices with regard to possible adaptations of the mix of different revenue collection elements. Member States will hence have all the flexibility to control the impacts on tax revenues.*

*The Commission would like to clarify that, in the absence of detailed actual revenue data from national tax administrations, gathering quantitative evidence on the impacts of the Common (Consolidated) Corporate Tax Base on individual national revenues would be particularly challenging and require the use of both representative and accurate data in the quantification of the future tax charge.*

*The Commission would like to point out that assessing the impacts of a cross-border corporate tax system where more than one jurisdiction is involved is an inherently complex exercise. This can mainly be done through a model which brings together national data originating in disparate corporate tax systems. Although the modelling exercise that has been undertaken is state-of-the-art, it is clear that there are inherent limits in all such models. In addition to the work of the Commission, national Ministries of Finance may also use the models and tax return data at their disposal to complement the analysis provided in the impact assessment.*