

**Resolution**  
of the Bundesrat

**Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)**

**COM(2016) 683 final; Council document 13731/16**

At its 952nd session on 16 December 2016, the Bundesrat adopted the following position pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

The proposal in general

1. An EU-wide Common Consolidated Corporate Tax Base (CCCTB) supported by all the Member States provides an opportunity for increasing the transparency of corporate taxation, reducing compliance costs for companies, removing existing Internal Market barriers and facilitating cross-border activities. In this respect, the Bundesrat welcomes and supports the Commission's efforts to create a common and consolidated corporate tax base.
2. However, greater tax harmonisation will only have a positive impact if the consolidation applies EU-wide to all Member States. The two-step approach the Commission is aiming for must therefore ensure that if agreement is reached on a Common Consolidated Corporate Tax Base (CCCTB), then consolidated computation and apportionment of profits must also take place using the common tax base, and this must be binding for all Member States. It would not be acceptable if Member States were able to unilaterally reject consolidation.

3. The form of the proposed directive as a semi-obligatory system – in which consolidation is binding only for those groups of companies liable for corporation taxation and meeting certain criteria in terms of size while being optional for other groups of companies liable for corporation tax but not meeting these criteria – needs to be reconsidered. This optionality would mean that tax authorities would have to administer two systems in parallel, including two markedly different legal procedures, generating a sizable administrative burden. The Bundesrat therefore takes the view that the CCCTB should apply for all groups of companies subject to corporation tax.
4. However, it feels that consolidation is only viable if accompanied by harmonised tax rates between the Member States and a fair distribution that does not leave Germany at a unilateral disadvantage or allow any abuses. This is not (yet) a given.
5. The proposed directive does not address the harmonisation of tax rates. The Bundesrat has repeatedly (see BR-Document 971/01 (Resolution), BR-Document 281/06 (Resolution), BR-Document 463/07 (Resolution), BR-Document 155/11 (Resolution)) expressed the fear that the Commission's one-sided strategy of harmonising and consolidating the corporate tax base without simultaneously aligning nominal rates would trigger additional tax competition with regard to taxation of mobile economic factors. Ultimately, this kind of tax-cutting spiral would whittle away the tax bases of all Member States. It is therefore essential that harmonisation and consolidation of the tax base be accompanied by harmonisation of tax rates – at least by creating a tax rate band with a firm lower limit.
6. The distribution mechanism envisaged in the proposed directive does not currently allow an appropriate distribution of the tax base between the Member States involved. This means that high-tech countries like Germany are disadvantaged by the fact that the value of their self-produced intangible assets is not included in the distribution of the assessment base.
7. The fact that the country where the parent company's senior management is located would distribute the tax base autonomously is also questionable. As it also has an 'interest' in the distribution of the tax base, there is always a concern that the other Member States entitled to revenue might be disadvantaged. There are no effective control mechanisms for the other Member States entitled to revenue.

8. Implementation of the CCCTB requires the creation of specific procedures, which at present do not (yet) exist under German law (e.g. income tax self-assessment). It will therefore also entail the establishment of new administrative bodies. This is expected to create an additional administrative burden.
9. The Bundesrat would like the proposed directive to refer even more comprehensively to the rules of national constitutional and procedural law. The special arrangements envisaged under the proposed directive on national constitutional and procedural law should remain confined to the absolute essentials.
10. Delegating legal acts to the Commission, as the proposed directive envisages for certain arrangements, entails the risk that Member State competences in the area of direct taxation might be transferred to the Commission. Any erosion of Member States' rights by way of delegated legal acts should be rejected.
11. Furthermore, many other aspects of the proposed directive need to be amended, expanded and clarified. It should therefore be fundamentally revised. This applies in particular to the administrative rules in the proposed directive. Similarly, the rights of the tax authorities in the Länder in relation to tax enforcement cannot be curbed.
12. Introducing a common and consolidated tax base is an ambitious aim which is unachievable in the short term. In view of the considerable implications of a common European corporation tax law, careful examination of the project, including the budgetary implications, is essential. Planning for an evaluation of the impact of the proposed directive should start as soon as possible, since creating a model or carrying out a simulation would be likely to take some time.
13. The question as to whether Germany will endorse the proposed directive must remain open until all aspects of the proposed directive have been conclusively evaluated. The Bundesrat reserves the right to submit further opinions on specific provisions of the proposal.

Nomination of a representative to discuss the proposal

14. Pursuant to Section 6(1) EUZBLG (Act on Cooperation between the Federation and the Länder in European Union Affairs) in conjunction with Part I of the

*Bund-Länder-Vereinbarung* (Federal/Regional Agreement), the Bundesrat nominates to discuss this proposal in Council bodies

a representative of the Land of

Hessen

Ministry of Finance

(Torsten Falk).

Direct transmission to the Commission

15. The Bundesrat is sending this opinion directly to the Commission.