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SGD

Dear President,

I would like to thank you for the opinion of the Senato della Repubblica on the Commission proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB) {COM(2011)121 final}, in which you support the Commission's efforts to remove fiscal obstacles to growth in the EU single market.

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.

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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 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 thus 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 estimated 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 specific points raised in the Opinion, the Senato della Repubblica made some suggestions which relate to specific items of the CCCTB proposal. The Commission has attentively studied these points and observes the following.

As a general comment, the Senato considers that the legal text of the CCCTB Proposal does not appear to be sufficiently detailed in certain areas.

The Commission understands that national corporate tax systems may contain more detailed provisions than the CCCTB proposal, mainly due to the fact that they have evolved over a long period of time. However, it is convinced that the CCCTB system is a sufficiently comprehensive set of rules and would enable companies to determine their tax base in a simpler manner. Proposed in form of a Directive, as required by Article 115 TFEU, the CCCTB system is meant to become binding upon the Member States as to the result to be achieved and leave the choice of form and methods for its implementation to the national authorities (cf. the third paragraph of Article 288 TFEU). This does not mean, however, that any element essential to the effective functioning of the system is missing.

The Senato seems sceptical about the fact that the common rules deal with computing the tax base exclusively and do not set a common minimum and maximum tax rate.

The Commission is convinced that the possibility of diverging rates across the EU can contribute to its overall competitiveness. The CCCTB framework does not involve any harmonisation of tax rates (or the setting of a minimum tax rate). The CCCTB aims to enhance fair tax competition within the EU by making it more transparent. To this end, it provides for a set of common rules for the tax base and leaves the rates to be determined by the Member States.

The Senato also expresses some concern about the power attributed to the Commission to adopt 'delegated acts' (Article 290 TFEU), as the authorisation is given without time limit. Moreover, it takes the view that Annexes I and II contain essential elements of the Proposal and, in that sense, should not be subject to updates according to the procedure of Article 290.

The Commission would like to reassure the Senato that, despite the absence of a time-limit, the Treaty procedure for 'delegated acts' sufficiently protects the legislative prerogative of the Council, as the authorisation to the Commission may be revoked at any time. In addition, all delegated acts shall be notified to the Council, which may object within a period of three months (Articles 128 and 129 of the Proposal).

The Commission further considers that the lists of national company forms and taxes in the annexes to the proposal do not constitute essential elements thereof.

Furthermore, the Opinion of the Senato makes a few specific suggestions for improvements to the Proposal.

In particular, the Senato suggests that the concepts of 'central management and control' (Article 5 of the Proposal) and 'place of effective management' (Article 6(3) & (4) of the Proposal) need further clarification.

The Commission is of the view that the use of the terms 'central management and control' and 'effective management' is not likely to create interpretation problems, especially if one considers that both concepts are widely used in international tax practice.

The Senato della Repubblica also recommends introducing a percentage ceiling on bad debt deductions (Article 27 of the Proposal).

According to the Commission, the CCCTB lays down sufficient requirements for, and limits to, the deductibility of bad debt receivables. If those conditions are fulfilled, there is no reason why the taxpayer should be subject to a cap.

The Senato della Repubblica suggests to reconsider the application of the 'one-stop-shop' principle in the system. It expresses the concern that this practice may weaken the effectiveness of audits, as, in the CCCTB, a group of companies would mainly deal only with the Principal Tax Authority.

The Commission would like to clarify that the proposed Directive provides for a self-assessment process and the Principal Tax Authority has primarily processing tasks. If the Member States involved in a group disagree with the assessment, they may initiate an audit (Article 122). Furthermore, in the event of a disagreement between Member States about the content of an 'amended assessment', the assessment can be challenged before the courts of the Principal Tax Authority (Article 123).

Finally, I wish to reassure the Senato that the Commission will support, as necessary, and primarily through training, all Member States' tax authorities, so that they can reach a sufficient level of expertise which will allow them to successfully perform their tasks as Principal Tax Authorities.

I would like to thank you again for the Opinion of the Senato della Repubblica 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,

*Maroš Šefčovič
Vice-President*