

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Re-launch of the Common Consolidated Corporate Tax Base (CCCTB)		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG TAXUD.D	DATE OF ROADMAP	October 2015
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ADDITIONAL INFORMATION	http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm		
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A. Context, Subsidiarity Check and Objectives
<p>Context</p> <p>The idea of harmonising corporate taxation across the EU internal market is not a recent development. Instead, it appears as early as in policy documents of the 1960s.</p> <p>On 16th March 2011, the Commission proposed a Directive for a Common Consolidated Corporate Tax Base (CCCTB). The proposal is one of the Commission’s REFIT initiatives. It is still pending in Council and the Commission has signalled its intention to withdraw in parallel to the relaunch. The proposal aims at reducing administrative burdens and simplifying the Single Market for businesses in the European Union (EU). It would allow companies to treat the Union as a single market for the purpose of corporate tax, would facilitate cross-border activity for companies resident in the Union and promote the objective of making the Union a more competitive location for investment internationally.</p> <p>Since 2011, partly as a result of the recent financial and economic crisis, it has become clear to the international community that the current rules for corporate taxation no longer fit the modern context. Corporate income is taxed at national level, but the economic environment has become more globalised, mobile and digital. Business models and corporate structures have become more complex, making it easier to shift profits.¹</p> <p>Given that Europe's priority today is to promote sustainable growth and investment within a fairer and better integrated Single Market, a new framework is needed for a fair and efficient taxation of corporate profits.</p> <p>On 17th June 2015, the Commission published an Action Plan for a Fair and Efficient Corporate Tax System in the European Union and identified 5 key areas for action in the coming months (COM (2015) 302 final). The Action Plan, which takes the form of a Communication, reviewed existing company tax policies and contributes to the aim of establishing a system of corporate taxation whereby business profits are taxed in the jurisdiction where value is actually created.</p> <p>The re-launch of the CCCTB lies at the heart of the Action Plan. It is presented as an overarching initiative which could be an extremely effective tool for meeting the objectives of fairer and more</p>

¹ The Commission Staff Working Document ([SWD\(2015\) 121 final](#)) gives a detailed overview of the historical development and the current issues and challenges in the taxation of multinational profits.

efficient taxation. It features as the main tool for fighting against aggressive tax planning, attributing income where the value is created. In addition, the CCCTB system includes rules which address certain of the key Action Items of the OECD initiative on Base Erosion and Profit Shifting (BEPS).

The present initiative builds upon recently adopted tax initiatives, such as the Parent-Subsidiary Directive revisions (2014 and 2015) and extends these into the CCCTB, which covers a much greater scope of legislation.

Issue

- Although businesses which are commercially active in Europe look at the EU as a Single Market from an economic and sales' strategic point of view, they have to comply with up to 28 divergent corporate tax systems. This is a cumbersome process, both timing-wise and economically, which diverts the effort out of the main thrust of doing business.
- Current transfer pricing rules, in addition to being very costly in compliance, have not proved effective in tackling profit shifting over the last decades.
- The divergence of national rules for computing the corporate tax base has allowed aggressive tax planning to flourish over the last decade, in particular when national rules are not drafted to consider the cross-border dimension of business.
- Specifically, mismatches which arise in the interaction amongst disparate national tax and tax treaty rules distort the EU Single Market as they create risks of both double taxation and double non-taxation, depending on the facts of each case.

The size of the problem and the main drivers are explained in detail in the Commission Staff Working Document SWD(2015) 121 final. It is shown there that the existence of profit shifting practices is demonstrated in many academic and empirical studies. Although the impact on total tax revenues is hard to measure, it is expected to be considerable. Estimates for the United States (Zucmann, 2014 and IMF, 2014) find revenue losses of up to 25 per cent of CIT revenue, while research by the IMF (2014) comprising 51 countries concludes that "the (unweighted) average revenue loss is about 5 % of current CIT revenue – but almost 13 per cent in non-OECD countries".²

Member States' budgets have significantly suffered from unfair tax competition practices which result in national tax bases being eroded as taxpayers engage in schemes that shift income to be taxed at low rates under harmful preferential tax regimes. It thus happens that taxpayers may be making use of high-quality public infrastructure in carrying on their commercial activity and generating value whilst contributing very little to the national budget of these Member States.

Taxpayers who do not benefit from practices of unfair tax competition often find themselves in a non-competitive position vis-à-vis those that engage in tax engineering their affairs.

Aggressive tax planning severely affects the competitive position of **SMEs** which cannot usually afford the high consulting fees associated with putting together global tax efficient solutions.

- EU Member States tend to experience the effects of aggressive tax planning in a more intense manner due to the highly integrated structures of the Single Market. Namely, EU taxpayers can make use of the tax-free treatment offered by certain corporate tax Directives in the EU (e.g. no withholding tax on qualifying royalty payments in the EU) in order to maximise the tax benefits deriving from taking advantage of the interaction between disparate national tax rules.
- Having recently emerged from a deep economic and financial crisis, Europe is gradually recovering. In this context, Europe and the world, today, often place fairness at the heart of their tax policies. Now, it is time to act against practices of unfair tax competition which are partly

² Sources; Zucman, G. (2014) "Taxing across Borders; Tracking Personal Wealth and Corporate Profits", Journal of Economic Perspectives, 28(4): 121-48 and IMF (2014) "Spillovers in International Corporate Taxation", IMF Policy Paper, May 9.

responsible for the recent downturn in the economy; otherwise, we risk facing similar problems in the coming years.

- Without a review and re-launch of the CCCTB proposal, little progress can be expected and the problems will get worse.

Subsidiarity check [add the dimension of tax avoidance risks]

(a) Legal Basis

Direct tax legislation falls within the ambit of Article 115 of the Treaty on the Functioning of the EU (TFEU). The clause stipulates that legal measures of approximation which directly affect the functioning of the internal market shall take the legal form of a Directive.

(b) Subsidiarity

The envisaged proposal for a Directive complies with the principle of Subsidiarity.

The system of the CCCTB aims to tackle market distortions, mainly resulting from the fragmentation of the EU into 28 disparate tax systems. Such a situation is a serious impediment to businesses when they are active in more than one Member State in the EU. It also happens that corporate taxpayers may take advantage of the interaction between disparate tax systems for the purpose of deriving illegitimate tax benefits. Non-coordinated action, planned and implemented by each Member State individually, would replicate the current state of fragmentation and mismatches, as companies would still need to deal with as many tax administrations as the number of Member States in which they maintain a taxable presence.

Most of the approaches set out in this proposal for a Directive, such as the relief for cross-border losses, Controlled Foreign Company (CFC) legislation and the General Anti-Abuse Rule (GAAR) in the field of tax anti-abuse, interest deductibility limitation rules, exit taxation or tax-free group restructurings, would be ineffective and likely to create distortion in the market (notably, through double taxation or non-taxation) if each Member State applied its own system. Neither would disparate national rules for the allocation of profits improve the current - already complex - process of allocating business profits amongst associated enterprises.

The nature of the subject requires a common approach to achieve the best outcome.

A single set of rules for computing, consolidating and sharing the tax bases of associated enterprises across the EU is expected to attenuate market distortions caused by the current interaction of 28 national tax regimes. Further, the building blocks of the system, especially cross-border loss relief, consolidation and the distribution of the group tax base through a formula, would serve the envisaged objectives to the full if they are part of a common regulatory umbrella. Accordingly, the reinforced anti-abuse mechanisms, which constitute a key feature of the present 're-launch' initiative, may only deliver a positive input if they are implemented through common rules across the multinational group. Different levels of defence, depending on each Member State's national policy priorities, would risk rendering the policy ineffective.

The analysis demonstrates that these matters may only be dealt with by laying down legislation at the level of the EU, since they are of a primarily cross-border nature. This proposal is therefore justified by reference to the principle of Subsidiarity because individual uncoordinated action by the Member States would fail to achieve the intended results. What is more, a common approach for all Member States would have the highest chances of achieving the intended objectives.

Main policy objectives

The initiative to re-launch the CCCTB derives from the Action Plan of 17th June 2015. It is meant to contribute to making the overarching objective of the Action Plan for fairer tax competition become a reality in the Single Market. As initially conceived, the CCCTB focused on facilitating business,

primarily those active in more than one Member State within the EU. Yet, in the aftermath of the economic crisis, another aspect of the CCCTB came into light: In addition to creating a business friendly environment, the CCCTB could also function as an effective tool against aggressive tax planning.

To this purpose, it is necessary to adjust the currently pending proposal, to make it more robust in resisting aggressive tax schemes (e.g. by adding rules which limit the deductibility of interest or CFC legislation fixed by reference to the level of effective taxation).

B. Option Mapping

The Action Plan calls for a renewed approach to the pending proposal. The preparation of the renewed approach will include steps to strengthen the robustness of the proposal against aggressive tax planning practices. To the end, the re-launched CCCTB will be made into a mandatory system, at least for multinationals. Furthermore, in an effort to achieve results faster and better manage such a lengthy piece of legislation, the renewed approach will be deployed in 2 steps; efforts will first concentrate on agreeing the rules for a common tax base, and consolidation will be left to be adopted at a later stage.

In practical terms, the Commission is considering tabling two new Proposals: the first instrument will lay down the provisions for a Common Corporate Tax Base (CCTB) whilst the second will add the elements related to consolidation (i.e. CCCTB). In parallel to this relaunch, the Commission intends to withdraw the currently pending proposal.

There is no doubt that a fully-fledged CCCTB would make a major difference in reinforcing the link between taxation and the jurisdiction where profits are generated. Yet, it is clear that it will take time to reach agreement on such an extensive piece of legislation. Bearing this in mind, the Action Plan suggests that Member States continue working on some international aspects of the common base which are linked to the OECD project on Base Erosion and Profit Shifting (BEPS) while the 're-launch' proposals are under preparation. According to the Action Plan, agreement to convert these BEPS-related elements into legally binding provisions shall be achieved within 12 months.

An impact assessment will be prepared to assess the impacts of the CCCTB; it is envisaged to build on and refine the previous economic analysis. Given the two-step approach, the impact assessment would, in particular, analyse separately the CCTB and CCCTB, i.e. a corporate tax system without and with consolidation. In addition, the analysis will be expanded to take into account the effects anticipated through certain new developments, such as addressing debt bias in corporate taxation and further promoting R&D.

Baseline scenario – no EU policy change

The baseline scenario would be to maintain the 28 separate corporate tax bases in the EU. This would imply that the current situation and challenges, as described in the Commission Staff Working Document (SWD(2015) 121 final) accompanying the 17th June Communication, will continue to exist. All in all, the general economic trends point to an increase in the internationalisation of production, from which it can be inferred that the current problems deriving from a fragmented EU corporate tax landscape are likely to increase in the absence of policy intervention.

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

The different options to overcome the fragmentation, reduce compliance costs and improve the taxation of international profits follow the initial impact assessment of the CCCTB proposal and cover (1) a mandatory CCTB, (2) optional CCTB, (3) mandatory CCCTB, and (4) optional CCCTB. They will also include analysis on how to best address issues like the debt bias and fostering research and development within the CC(C)TB proposal. A directive is an instrument best suited to guarantee basic

<p>common rules, applicable in all Member States. In particular, the need for a directive to ensure legal certainty is the usual way to act in company law, not only in the tax area. A directive is the most adequate way for achieving the objectives set out above.</p>
<p>Alternative policy approaches</p>
<p>Other policy approaches (e.g. via soft law) are not relevant, given the nature of the problem, i.e. the attribution of profits under the current international tax rules leads to complexity, fragmentation and creates incentives for tax avoidance and harmful tax competition.</p>
<p>Alternative policy instruments</p>
<p>In the tax area self-regulation and non-regulatory alternatives are not an option for tackling tax avoidance by companies.</p> <p>As regards international standards, the OECD BEPS initiative has come forward with proposals for improving the current taxation of international profits to reduce tax avoidance. At the same time, the problems faced by the EU go beyond the issue of closing loopholes in the existing international setup. Tax avoidance and aggressive tax planning by multinational companies distort price signals in the single market and thereby the allocation of resources. Companies which engage in tax avoidance practices are more profitable and face lower capital costs compared to domestic companies. This issue has to be addressed at the EU level to ensure a level playing field for different types of companies. Reforms must be tailored for the EU context and fix inconsistencies on an EU-wide basis. A common EU approach will reinforce the Single Market as a whole and protect it from base erosion.</p>
<p>Alternative/differentiated scope</p>
<p>The scope of the proposal should be designed as broad as possible, to also allow smaller companies which would benefit from simpler tax rules when expanding abroad. However, for SMEs, the CCCTB could be optional to the extent that they do not have associates with which they have to form a group under the rules of the Directive.</p>
<p>Options that take account of new technological development</p>
<p>Some of the problems that the initiative aims to address are particularly relevant in the digital sector but the solutions need to cover all business – digital and non-digital – so, no specific "digital" solutions are foreseen.</p>
<p>Preliminary proportionality check</p>
<p>This proposal represents the most proportionate answer to the identified problems. It mainly targets companies within cross-border groups which primarily suffer from operating in a fragmented regulatory and fiscal landscape of disparate national rules. Furthermore, in this context, the risks of tax avoidance practices, notably in terms of base erosion and profit shifting, are high.</p> <p>The present initiative is expected to create more favourable conditions for investment in the single market, as tax compliance costs should be expected to decrease. Specifically, companies would be likely to derive considerable benefits from the elimination of transfer pricing formalities, the possibility to transfer losses across national borders within the same group as well as from tax-free intra-group reorganisations. The positive impact should outweigh possible additional financial and administrative costs which national tax authorities would have to undergo for the purpose of implementing the system at a first stage.</p>

Moreover, the re-launched CCCTB takes stock of the current priorities in international tax law, which focus on creating fairer corporate systems and effectively combating against aggressive tax planning. Interest deductibility limitation rules, CFC legislation, a GAAR, exit taxes will be revised to reflect the new realities but only to the extent necessary for creating a joint defence mechanism for the protection and improved functioning of the Single Market.

The measures laid down in this proposal are both suitable and necessary for achieving the desired end (i.e. proportionate). They namely deal with harmonising the corporate tax base, which is a prerequisite for curbing the identified tax obstacles, tackling tax avoidance schemes and rectifying the elements that distort the single market. In this regard, it should also be clarified that this proposal does not involve any harmonisation of tax rates (or setting of a minimum tax rate). Indeed, the determination of rates is treated as a matter inherent in Member States' tax sovereignty and is therefore left to be dealt with through national legislation.

C. Data Collection and Better Regulation Instruments [D4]

Data collection

Within the context of this project, the Commission is due to launch a study with the Joint Research Centre. The study will build on the work prepared for the currently pending proposal and will update and expand the analysis.

Consultation approach

The Commission has launched in September 2015 an open public consultation to gather views in particular on the following:

- To what extent the CCCTB could function as an effective tool against aggressive tax planning, without compromising its initial objective of making the Single Market a more business-friendly environment.
- Which criteria should determine the companies to be subject to the rules of a mandatory CCTB/CCCTB. Whether non-qualifying companies should still be given the possibility to opt for applying the common rules.
- Whether the staged approach, as announced in the Action Plan, whereby priority will be given to agreeing the tax base before moving to consolidation, would be a preferable way forward.
- Whether, in the short-term, it would be useful to agree common rules for implementing certain international BEPS-related aspects of the common tax base based on the current proposal until the Commission adopts the new (revised) CCTB/CCCTB proposal.
- How the debt bias issue should be addressed.
- Which types of rules would best foster R&D activity.
- Whether a cross-border loss relief mechanism aimed to balance out the absence of the benefits of consolidation during the first step (CCTB) could help in keeping the business in the CCCTB.

The Commission might furthermore complement the public consultation with more targeted consultations addressing national administrations, corporate taxpayers, and academics.

The launch of the stakeholder consultations related to this initiative will be announced in the consultation planning that can be found on [Your Voice in Europa](#) and the [project specific internet pages](#) of the Commission.

Will an Implementation plan be established?

Yes No

D. Information on the Impact Assessment Process

The start of the Impact Assessment is foreseen for September 2015.

The Commission is due to set up an Inter-Service Steering Group (ISSG) composed of representatives from the following Directorate-Generals and Internal Services:

DG Communication Networks, DG Content and Technology; DG Competition; DG Economic and Financial Affairs; DG Environment; DG Financial Stability, Financial Services and Capital Markets Union; DG Internal Market, Industry, Entrepreneurship and SMEs; DG Justice and Consumers; DG Research and Innovation; DG Taxation and Customs Union; DG Trade; the Legal Service; and the Secretariat-General.

E. Preliminary Assessment of Expected Impacts[D4]

The impacts of a CCCTB have already been assessed in the original impact assessment of 2011. Based on this work as well as the analysis conducted in the Commission Staff Working Document (SWD(2015) 121 final), a new impact assessment will be launched. The main contributions will be an updated and improved modelling of the economic impacts of the CCCTB. This will also include analysis on how to best address new issues, such as like the debt bias.

Likely economic impacts

The CCCTB is expected to lead to a reduction of compliance costs and reduce the fragmentation of the single market. This should offer new investment opportunities. It should also help to ensure that profits are taxed where economic activity takes place and reduce the possibilities of tax avoidance.

Likely social impacts

To the extent that a CCCTB reduced the risks for profit shifting, the proposal would be expected to help increase the fairness of the tax system.

Likely environmental impacts

N/A

Likely impacts on simplification and/or administrative burden

The proposal should significantly reduce administrative burdens since companies operating under the CCCTB would only have to deal with one set of tax rules. The renewed proposal should also lead to simplification and reduction of administrative burdens within the EU tax administrations given the streamlining of tax rules (see also box below on public administrations).

Likely impacts on SMEs

Most SMEs are not likely to be affected, unless they have associates with which they have to form a group under the rules of the Directive. A positive feature is that, should SMEs wish to expand internationally, the CCCTB would be an advantage given that previous figures show that the system reduces the costs of moving abroad within the EU.

Likely impacts on competitiveness and innovation

The CCCTB will most likely make the EU more competitive compared to other economic areas. Third country investors would have to deal with only one set of tax rules. Complexities, loopholes and mismatches deriving from the existence of 28 different tax systems would be reduced. To the extent that a CCCTB could also allow for R&D incentives it might also foster innovation.

Likely impacts on public administrations

Tax administrations should face a decrease of administrative costs. The reason is that many reporting requirements for companies in a CCCTB group would disappear within the EU. In turn, administrations would require less resource to check and verify complex documentation, for example in the field of transfer pricing.

Likely impacts on third countries, international trade or investment

Likely impacts on third countries, international trade or investment are subject to further analysis.