

EUROCHAMBRES  
**Position Paper**  
**2007**



**COMPANY  
TAXATION –**  
*complement the  
freedoms of the Single  
Market to foster the  
growth of European  
businesses*

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## Introductory Remarks

Despite recent progress, the European Union does not yet enjoy an effective Single Market. Although economic, technological and institutional obstacles to cross-border trade are progressively pulled down and deep economic integration is implemented within the European Union, tax systems have only been partially adapted to this process.

Different tax systems - and thus tax divergences - represent real obstacles for companies which operate across Europe, hampering the functioning of the Single Market and undermining the competitiveness of European businesses.

The free movement of goods, people and capital within the European Union as well as the changeover to the single currency for the Euro area members have progressively highlighted the inadequacy of relying on numerous different national tax systems. The need to comply with a multiplicity of different rules results in unacceptable costs and represents an obstacle to cross-border economic activity. It also impacts heavily on investors' choices and business' location.

EUROCHAMBRES' detailed comments and proposals are elaborated in detail in the paper below. In short, European Chambers strongly encourage the EU institutions and the Member States:

- Ø To accept and support rigorous, fair, transparent and healthy tax competition in Europe and to recognise it as a driving force to enhance business growth and job creation
- Ø To support the introduction of a consolidated, optional and uniform Common Consolidated Corporate Tax Base. The CCCTB should be adopted rapidly - through enhanced cooperation if needed. In this respect, an independent and neutral 'Tax Court' attached to the ECJ should be created to deal solely with taxation issues
- Ø To support tax coordination in order to achieve better compliance with tax rules and more even tax weight, to eliminate discrimination and to prevent non-taxation and abuse
- Ø To support the introduction of cross-border loss-relief measures, that would represent an important intermediate step pending the adoption of the CCCTB. We favour a 'temporary loss transfer scheme'
- Ø To simplify the intra-EU VAT system, especially through the restructuring of the procedure for claiming a VAT refund and the adoption of cross-border deductibility rights
- Ø To combat VAT fraud and to rapidly reach agreement on a common business-friendly mechanism to effectively tackle the issue
- Ø To bring forward administrative simplification in the field of taxation for both companies and tax administrations - especially through the creation of 'one-stop shops'



## 1. Tax Competition

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EUROCHAMBRES believes that healthy tax competition between the EU Member States is a powerful driving force for reducing tax rates and enhancing business growth and job creation in Europe.

European Chambres of Commerce are in favour of *rigorous, fair, transparent and healthy* tax competition, without restrictions. Transparency is a precondition to have fair competition and it is especially important for SMEs, which are often unable to afford expensive tax advice. Corporate tax rules should be made sufficiently comparable, so that companies can easily recognise differences in the tax systems and relevant procedures.

All of the above should translate into the creation of a common base and free competition in terms of rates - always avoiding any common tax rate (or minimum tax rate). However, it is clearly neither in the business interest nor in the interest of the Member States' economies to engage in a war of tax rates.

## 2. Common Consolidated Corporate Tax Base <sup>1</sup>

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Having to satisfy the requirements of 27 different tax systems, compliance costs are much higher for companies with at least one subsidiary in another Member State, and costs increase with the number of subsidiaries in other countries; furthermore, compliance costs are disproportionately higher for SMEs. Having this in mind, EUROCHAMBRES supports measures that would help minimize tax payment costs.

A common consolidated tax base would provide companies established in more than one Member State with the possibility of computing their group income according to a single set of rules. This would help reduce discretionary practices and thus decrease compliance costs, cut administrative burdens, eliminate cases of double taxation and build a more business friendly and transparent tax system.

In this respect, EUROCHAMBRES supports the Commission's suggestions for the creation of a Common Consolidated Corporate Tax Base (CCCTB)<sup>2</sup>, which could be instrumental to achieve a better functioning Internal Market, addressing the tax obstacles which exist for corporate taxpayers operating in more than one Member State. A CCCTB which is *clear, simple and user-friendly* would help enhance the competitiveness of European businesses and attract investment, in line with the goals of the renewed Lisbon Strategy for Growth and Jobs.

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<sup>1</sup> The harmonisation of the tax base is supported by the majority of EUROCHAMBRES' members. However, the **British Chambers of Commerce (BCC)** do not support any move in this respect. Moreover, **Chambers of Commerce of Ireland** fear that the dynamism that brought the recent Irish economic boom would be severely hampered by the current proposals for CCCTB and tax coordination at European level. They are also unsure on how the proposed referential tax base would work in practice and are not convinced that this model would be the best to meet the needs of European growth. Irish Chambers also fear that comparability of tax regimes within Europe will not lead to greater transparency but will increase tax competition between Member States. While expressing doubts on the CCCTB model, the **Cyprus Chamber of Commerce** is ready to analyse its developments further.

<sup>2</sup> EUROCHAMBRES also sustains the **'Home State Taxation'** pilot project. This project did not receive endorsement by Member States and is currently not part of the Commission's agenda. It should be reintroduced.



The implementation of the base should be **optional**: Member States must make the CCCTB available to eligible companies - who would then be free to adopt it or not.<sup>3</sup> This point is especially relevant for SMEs, which have the possibility to keep the existing tax regime.

Member States must retain full sovereignty over their tax revenues as they will continue to set their own tax rates. We therefore welcome the Commission's clarifications that it does not intend to extend the work on the base to the rate.

Chambers' believe that the CCCTB should be consolidated and be as large as possible - ideally, a large base combined with low rates - eliminating the co-existence of 27 different tax bases as well as the costs and uncertainties of complying with transfer pricing rules. Moreover, it would allow for automatic cross-border consolidation of profits and losses. In this context, unrealised profits should not be taxed.

The CCCTB should be - as much as possible - **uniform**, with a strong limitation of specific adjustments or exemptions for participating Member States, as it is currently the case with the VAT system.

The apportionment system should ensure a fair split of tax revenues between the Member State in which the parent company is based and the Member State where the subsidiary is located. The apportionment of the consolidated group should result from micro-economic factors - wages, balance sheets, sales and capital - and not from macroeconomic factors such as Gross National Expenditure (GNE).

The CCCTB should apply to corporate enterprises as well as to 'transparent bodies'<sup>4</sup>, in which case the profit is calculated at the level of the enterprise - but taxing the (share of the) profit at the level of every owner (personal income tax). In general, the CCCTB will certainly ease cross-border activities for those companies being part of the CCCTB 'group'. For the remaining enterprises it is important to foster further developments in the field of tax coordination.

While the Commission will present a legislative proposal on the CCCTB in summer 2008 at the earliest - and taking into account the legal and economic consequences of changing established national tax provisions - we believe that the CCCTB has to be developed **rapidly**. If no unanimity among Member States can be reached, those willing to implement it should be able to do so through 'enhanced cooperation'<sup>5</sup>.

With regard to the CCCTB judicial framework - the establishment of an **appeal procedure** and the relevant body in charge - we are aware that many options are being considered. Neither the ECJ nor national Courts represent the ideal bodies to solve CCCTB-related disputes in an efficient and timely

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<sup>3</sup> This view is shared by a majority of Chambers. The **French Chambers of Commerce (ACFCI)** take a different position, namely that the CCCTB should be mandatory for categories of companies - large ones which operate across the Single Market - but optional for SMEs which operate domestically. They argue that if simplicity and reduction in administrative costs are part of the purpose, then running an additional system beside national tax regimes in place would be nonsense and it could lead to competition between different tax systems.

<sup>4</sup> In Germany, for example, 80% of companies are *Personengesellschaften* (transparent bodies). While for corporate enterprises the enterprise is directly subject to the tax regime, for transparent bodies the profit is calculated at the level of the enterprise - but taxation applies to the (share) of the profit at the level of every owner (personal income tax).

<sup>5</sup> There is currently a group gathering some 18 Member States fully in favour of the set up of the CCCTB.



manner. We therefore sustain the creation of a special 'Tax Court' attached to the ECJ but dealing solely with taxation cases, which is independent, neutral and delivering binding interpretative decisions<sup>6</sup>.

### 3. Tax co-ordination in the EU

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EUROCHAMBRES welcomes the three Commission Communications on 'tax co-ordination in the EU'<sup>7</sup>. Given that individual taxpayers will not be covered by the CCCTB, the base will not necessarily apply to all corporate taxpayers and/or Member States. There will thus be a need to address the interaction between the CCCTB and other aspects of direct taxation.

European Chambers welcome this co-operative approach, which could be an optimal way to abolish tax barriers in Europe. In reality, the system would suppose *de iure* a voluntary approach but would foster, *de facto*, a strong impetus to deeper tax coordination among EU Member States.

The tax coordination package would be important for those enterprises which do not apply the CCCTB. Better co-ordination could also help achieving better compliance with tax rules and more even tax weight, eliminating discrimination and double taxation (as set down in art. 293 EC Treaty) and preventing non-taxation and abuse.

European Chambers of Commerce support the Fiscalis 2013 Programme, which could improve tax cooperation between participating countries, their administrations and officials, having a potentially positive impact on the fight against tax fraud.

#### 3.1 Cross-border loss offset

The possibilities of cross-border loss offsets remain very limited, and frequently groups are taxed on profits generated in one Member State without being able to take into account losses made in another. The offset of losses is thus generally limited to the amount of profits generated in the Member States in which the investment is made. This clearly distorts business decisions within the Internal Market and can constitute a major barrier for companies trying to establish a subsidiary in another Member State. To solve this situation, Member States should set up measures enabling the off-set of losses incurred by group companies across borders. In particular, the current situation favours domestic investments and large companies in comparison with SMEs when it comes to cross-border investments.

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<sup>6</sup> This view is shared by a majority of Chambers. The **Cyprus Chamber of Commerce** would rather opt for a Committee for CCCTB cases. It would gather the Member States and the Commission together and adopt decisions through QMV.

<sup>7</sup> 1. **COM(2006) 823 final** *Co-ordinating Member States' direct tax systems in the Internal market*; 2. **COM(2006) 824 final** *Exit taxation and the need for co-ordination of Member States' tax policies*; 3. **COM(2006) 825 final** *Tax treatment of losses in cross-border situations*.



EUROCHAMBRES supports the timely introduction of cross-border loss relief measures, which would represent an important step pending the adoption of the CCCTB<sup>8</sup> - an ambitious project which might take a long time to be implemented.

In the framework of the options presented in the Commission Communication on '*Tax treatment of losses in cross-border situations*'<sup>9</sup>, which represent alternative ways to ensure a minimum level of loss compensation, EUROCHAMBRES favours the 'temporary loss transfer' scheme, under which a loss incurred by a subsidiary situated in another Member State, which was deducted from the results of the parent company, is subsequently recaptured once the subsidiary returns to profitability.

In the framework of the co-ordination of direct tax systems in the Internal Market, Controlled Foreign Companies (CFC) rules try to prevent resident companies from avoiding domestic tax by diverting income to subsidiaries in countries with a significantly lower level of taxation and thus tax abuse. There is a need to avoid disproportionate restrictions on cross-border activities which go against Community law and seriously hamper business. The application of CFC rules should thus be abolished progressively.

EUROCHAMBRES is also of the view that EU Member States should avoid including other Member States in 'black lists'. Overall, Member States should progressively stop the 'black list' practice.

#### 4. Transfer pricing

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EUROCHAMBRES supports the activities of the EU Joint Transfer Pricing Forum (TJPF) and welcomes the renewal of its mandate for another two years (renewable further). European Chambers of Commerce also regard as important the implementation of the APA-Codex, with the introduction of Guidelines for Advance Pricing Agreements within the EU whose aim is to prevent transfer pricing disputes and associated double taxation from arising in the first place.

Moreover, we welcome the adoption of a code of conduct on transfer pricing documentation for associated enterprises in the EU, which helps eliminating double taxation caused by transfer pricing distortions.

#### 5. Parent-subsidiary and 'mergers' directives

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EUROCHAMBRES welcomes the successful adoption of the 'parent-subsidiary' directive, which contains a comprehensive list of the covered companies, relaxes conditions for exempting dividends from withholding tax and eliminates double taxation for subsidiaries of subsidiary companies.

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<sup>8</sup> This view is shared by a majority of Chambers. The **Polish Chamber of Commerce** is of the view that the problem of cross-border loss offset generates too many interpretational doubts to be implemented at EU level. Moreover, the presented solutions may also cause problems of non-compliance with domestic tax by companies and tax abuse. In this framework, the new scheme for cross-border offset of losses should be implemented after deep legal and economic analysis and wide discussion between entrepreneurs and Member States.

<sup>9</sup> **COM (2006) 825 final** *Tax treatment of losses in cross-border situations*.



However, we regret that the current situation regarding the mergers & acquisitions (M&A) Directive<sup>10</sup> is not satisfactory. It is not applicable in many instances because its provisions are adopted only for tax purposes by Member States. However, company law systems in many Member States do not contain provisions which can facilitate M&As and should be amended accordingly.

In this respect, we welcome the recent Commission Communication on a simplified business environment for companies<sup>11</sup>, which highlights the problems posed by the Third and Sixth Company law Directives, underlining that rules continue to differ between Member States and that the existence of minimum requirements in EU law prevents Member States from adapting their national laws to changing needs.

One of the most important features of the Directive is that both the SE (European Company) and the SCE (European Cooperative Society) will be able to transfer their respective registered offices between Member States without being dissolved and going into liquidation. However, it seems that many countries do not have national provisions on this point and thus local legislation is not able to support company law.

## 6. VAT Package

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### 6.1 8<sup>th</sup> and 6<sup>th</sup> Directives

European Chambers of Commerce are highly critical of the procedure for claiming refund of VAT paid in another Member State (application of the 8<sup>th</sup> Directive), because of the burdensome administrative formalities as well as from the failure to respect deadlines for reimbursement.

EUROCHAMBRES welcomes the political agreement reached at the ECOFIN Council meeting of 5 June 2007 on elements of the VAT package - the place of supply of services, the mini one-stop shop, the draft Directive on refund and administrative cooperation. Efforts should be stepped up to reach agreement on the change of the place for supply of services for B2C supplies for telecom, broadcasting, electronic and maritime services<sup>12</sup>.

With respect to the 6<sup>th</sup> Directive and its latest recast - through Directive 2006/112/EC - the current system is inefficient, complex, unfair and ambiguous. The appeal procedures to the ECJ delay final decisions on domestic law, leaving taxpayers unsure of their position, with problems in one jurisdiction that can put in question accepted practice in other countries.

EUROCHAMBRES is in favour of cross-border deduction rights in order to simplify the recovery of VAT paid by an entity subject to Community tax in a Member State where it is not established. Moreover, there should be provisions in the legislation of all Member States to allow for group registration so that inter-group transactions are not subject to VAT.

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<sup>10</sup> Directive 2005/19/EC.

<sup>11</sup> COM (2007) 394 final on a simplified business environment for companies in the areas of company law, accounting and auditing.

<sup>12</sup> The Chamber of Commerce of Luxembourg cannot agree on the change of the principle of country of origin to the country of destination for B2C services since it is an 'essential interest' for Luxembourg, which generates about 1% of GNP from these fiscal resources.



## 6.2 Combating VAT fraud

On 31 May 2006, the Commission adopted a Communication<sup>13</sup> in view of launching a debate on a European strategy to combat tax fraud, given the extent of the problem as well as the impossibility for Member States to effectively tackle it unilaterally. On 28 November 2006, the Council called for the development of an anti-fraud strategy at EU level for indirect taxation and - more specifically - 'carousel' fraud.

In the framework of the elements contained in the Communication, EUROCHAMBRES regrets that no agreement in the Council has been found on the main elements of the package and Member States show very divergent positions, especially with regard to (i) the taxation of intra-Community transactions and (ii) the introduction of the option of applying a blanket reversal of tax liability (a general reverse-charge mechanism).

On the introduction of a general reverse-charge mechanism, European Chambers of Commerce take a prudent approach. EUROCHAMBRES believes that a fundamental criterion underlying any kind of mechanism to combat VAT fraud should be business-friendliness. We can support the work of the Commission in analysing further the reverse-charge mechanism option - among others - to see whether it would prove to be the most business-friendly mechanism, and to report back by the end of 2007. Moreover, we generally support a more efficient exchange of information between national public administrations in this field.

On the Commission's launch of a wide political debate on how to simplify and rationalise the current VAT rates structure - especially the reduced VAT rates<sup>14</sup>, European Chambers of Commerce consider important to carefully evaluate further<sup>15</sup> the impact of VAT reduced rates on job creation, economic growth and the functioning of the Internal Market. Moreover, the impact on inflation from possible rises in VAT rates should also be taken into account.

## 7. Administrative simplification for companies and tax administrations

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The performance of tax administrations must be enhanced and companies should be given the means to comply more rapidly with their tax duties. This can be done through the administrative simplification of the taxation systems. The set up of **one-stop shops** is part of the solution with regard to many of the tax issues mentioned in this Position Paper.

One-stop shops could allow the CCCTB 'group' to deal with only one tax administration and with one administrative authority. In the same way, for tax policy co-ordination, easily accessible one-stop-shops could be coupled with the elimination of double impositions and discriminations between different systems

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<sup>13</sup> **COM (2006) 254 final** concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud.

<sup>14</sup> **COM (2007) 380 final** on VAT rates other than standard VAT rates.

<sup>15</sup> The Commission presented in June 2007 a study conducted by an independent think tank (Copenhagen Economics) on this subject: *Study on reduced VAT applied to goods and services in the Member States of the European Union*.



as well as with a harmonisation of company law in order to avoid double taxation of hybrid entities (companies considered as 'transparent' in a Member State and not so in another).

With regard to the VAT system and the delays incurred in reimbursement of VAT, which causes serious problems of cash flow for SMEs, the proposed one-stop-shop system<sup>16</sup> could simplify the reimbursement system and ensure that the 6-month deadline is respected in all countries.

## 8. Taxation and ECJ jurisdiction

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Member States are obliged to comply with - and also enjoy - the freedoms of the Single Market, also with respect to their tax legislation. While taxation is one of the fundamental rights of a state and Member States must be free to set their own tax rates, this should be done in accordance with the EU Treaties.

The ECJ jurisdiction must not be restricted with regard to taxation. While the ECJ is certainly the guarantor for EU compatible national tax law, EUROCHAMBRES calls on the Member States to reach political agreement on the various taxation dossiers currently discussed.

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<sup>16</sup> **COM(2004) 728 final** *Proposal for a Council Regulation amending Regulation (EC) No 1798/2003 as regards the introduction of administrative cooperation in the context of the one-stop scheme and the refund procedure for value added tax.*

