CCTB/CCCTB positions and ongoing processes
For the countries to decide

• Article 115 TFEU provides for the **Council, acting unanimously** in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to 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.

• Outline of the following short presentation:
  - Economic and Social Committee and European Parliament
  - Country positions and perspectives
  - Business positions and perspectives.
European Economic and Social Committee

- Rapporteur: Michael McLoughlin (Ireland)

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<td>16/12/2016</td>
<td>1st study group</td>
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Common corporate tax base

See also 2016/0336(CNS)

Subject
3.45.04 Company taxation

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**European Parliament**

**Key players**

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European Parliament

Common consolidated corporate tax base (CCCTB)

See also 2016/0337(CNS)

Subject
3.45.04 Company taxation

Key players

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The committee decided not to give an opinion.
Initial road map

• On 6 December 2016 the EU Council noted the two step approach proposed by the Commission concerning CCTB and CCCTB and supported the view that work should focus as a priority on the elements of a common tax base. It also invited Member States to, as a start, “concentrate their efforts on the rules for calculating the tax base and, in particular, on the new elements of the relaunched initiative (chapters I to V)”.

• The Maltese Presidency intends to start the examination of the CCTB proposals with a view to stabilise the text on the novel aspects of the CCTB by the end of June 2017.

(doc. 5988-2017, 6 February 2017)
Subsidiarity – MS objections

• Article 12 TEU: Early-warning mechanism for subsidiarity control. Allows national parliaments to object to Commission proposals on the grounds that it breaches the principle of subsidiarity.

• If these “reasoned opinions” represent at least 1/3 of the votes allocated to national parliaments and their chambers, the Commission must review the draft legislation. The Commission may then decide whether to maintain, amend or withdraw its proposal. (“the yellow card“ procedure).

• A number of national parliaments have sent reasoned opinions to the European Commission: Ireland, Luxembourg, Malta, Netherlands, Sweden, (UK) and Denmark. No yellow card. Some selected points are mentioned in the following slides.
Ireland

- Has concerns regarding corporate decline in **tax revenue** (proposals narrows tax base currently existing in Ireland) and questions the rationale that proposals will lead to greater **investment and growth**. Impact assessment suggests that CCCTB may increase growth in the EU up to 1.2%, however is silent on the impact on individual Member States.

- **Allocation** factors arbitrary, ignoring intangible assets, favouring larger countries. Proposals will impact on the smaller open economies of some Member States, including Ireland, disproportionally.

- A **single rate** as part of the consolidation proposal will entail the abolition of two rates currently in operation in Ireland, namely 25% non-trading tax rate and 33% Capital Gains Tax rate.

- Proposals **may be counterproductive** to ongoing OECD BEPS initiatives.

- Still **transfer pricing issues towards third countries**.

- Case **law and expertise** regarding taxation will be lost leading to uncertainty.

- **Unlikely to remove tax planning**.

- Concerned about the consequences for the national courts if the **ECJ becomes a supreme court**.
Tax policy is not only a fundamental element of the sovereignty of Member States to determine freely, but an expression of social and economic policy choices that take account of the specificities of each State.

CCCTB will lead to lower tax revenue which it will be necessary to compensate with higher tax rate.

Concern that the proposals may have disproportionate impact on small, open economies.

Tax competition will lead to race to the bottom.

Doubts that proposals will lead to a reduction of administrative burdens.
Malta

- The CCTB will impose additional **administrative burdens on tax administrations** as they would have to administer two tax bases in parallel.
- It will create **uncertainty** for smaller businesses as they need to figure out which tax base is most appropriate for them.
- Cross-border loss relief can reduce the tax base significantly leading to a loss of **revenue**. Also, a study needs to be had on the effect on certain sectors, e.g. revenue from property companies.
- It is **not** envisaged that the pro-business aspects introduced by the Commission in the CCTB proposal will offset the above negative effects.
- Implementing the C(C)CTB as a whole does not preclude the possibility that there will be an **increase in tax competition** since the likelihood of Member States to resort to tax rate reductions will continue as a tax incentive to attract foreign investment.
- Mechanisms aimed at reducing unwarranted or unintended opportunities of **tax avoidance are already regulated** by the Code of Conduct Group (Business Taxation) and the ATA Directive.
- The **apportionment formula** causes distortion.
There is no reason why consolidation should be mandatory for groups with turnover above EUR 750 million.

EU Commission impact assessment based on unrealistic assumptions.

Risk proposals will result in reduced corporate tax revenue in NL.

The links with countering tax avoidance is too far-fetched.

The proposals does not provide for a minimum rate of corporate tax, say 20%.

Proposals are unduly complex, and will result in complicated implementation with existing rules.

Allocation key works to the detriment of a country as NL which specialises in trade and service.

The aims of creating more business-friendly environment for investment and strengthening tax avoidance not met. ATA Directive will lead to desired harmonisation of tax base.

Unnecessary go further than OECD BEPS.

Undermines NL concepts of taxable profit, limits participation exemption and ends IP box.
The ATA Directive – that was adopted while NL chaired the EU – already leading to extensive anti-avoidance measures.

CCTB only permits competition in terms of tax rates and this would lead to a race to the bottom.

Would face same problems as inflexible VAT system.

Proposals would cost NL growth, jobs and tax revenues.

Proposals may work well for larger countries with manufacturing industries, but it is certainly not good for small countries with an open economy, such as NL.

Proposals do not show how an European solution provides added value for “all actors involved“.

Already agreement at OECD level re. the mutual transfer pricing used as basis for int. allocation of profits.

Allocation key ignores the creation of value through intangible and financial assets – and this is disadvantageous for modern economies.
In the opinion of the Riksdag, the design of the corporate taxation must take place in such a way that there is scope for each Member State to take into account specific conditions as regards the structure of the business sector. The Riksdag therefore shares the Government’s assessment that the Member States are initially better suited to determine the design of the corporate taxation.

ATA Directive has already solved central issues.

As regards the design of the proposed allocation key, the Riksdag notes that the outcome of the allocation of profits is highly dependent on national conditions in each Member State and will therefore differ significantly between the Member States.

The Riksdag further shares the Government’s assessment that the proposal in many regards is vaguely and imprecisely formulated, difficult to overview and that it also lacks clarity, for example, how the proposal relates to already concluded double taxation agreements and the impact of the fact that the provisions on accounting are disconnected from the tax system.
UK*  
House of Commons 
European Scrutiny Committee

• The proposals would be **ineffective in tackling tax avoidance**, particularly at the global level. The most effective way to tackle tax avoidance is through implementing the **OECD BEPS outputs** agreed by the G20, to ensure profits are taxed where they are generated.

• A CCCTB would risk creating **mismatches outside the EU**. Multinationals would still be able to exploit differences in tax systems between the EU and the rest of the world.

• Yet to see evidence that apportioning profits using the **formula** set out in the CCCTB would remove the ability for tax planning any more than the current transfer pricing rules.

• The CCTB **removes many of choices**, for example imposing an EU level choice of exemptions for R&D and innovation, and leaving Member States the limited options not to tax gifts, charitable donations and pension provisions.

• The **fairness of tax systems**, incl. the balance between equity and debt, is a matter for which Member States are pre-eminently responsible and accountable to their own people, and which needs to be looked at in the round in the context of each member States’ tax system taken as a whole.

• The advantage of the proposals to corporates is focused on a reduction of compliance costs **rather than an increase in the opportunity to trade**. Offset by increased administrative costs for MS.

* A UK House of Commons Committee passed a motion stating CCCTB breaches the principle of subsidiarity, which the UK government supported. However, because the “reasoned opinion” was not delivered within the European Commission’s 8 week deadline (Christmas recess meant Commons time was limited) the UK was not formally one of the countries opposing on subsidiarity grounds.
Denmark

Parliament of Denmark
European Affairs Committee

• **A majority** of the Committee (Danish People’s Party, the Liberal Party, the Red-Green Alliance and the Conservative Party): Proposals contrary to the principle of subsidiarity. ... considerable uncertainty about the **financial consequences** for Denmark of the proposed directives.

• **A minority** of the Committee (the Social Democratic Party and the Alternative): Proposals in line with the principles of subsidiarity and proportionality. ... however attentive to the draft allocation key in the CCCTB proposal, which will favor countries with large domestic markets, while smaller export economies - like Denmark – can expect a loss in revenue in respect of income from corporate taxation. ... emphasize that efforts are made in negotiations to reach a fairer allocation key as well as a **floor on the effective corporate tax** in the EU’s Member States.

• The Liberal Party and the Conservative Party generally supports measures that are aimed at creating a maximum amount of **transparency** regarding the tax payments of large corporations, ensuring fair and equal competition between corporations and preventing tax avoidance, tax evasion and aggressive tax planning. Positive to the overall purpose of the two directives but skeptical that tax base will be eroded considerably.

• A CCCTB may prove to have far-reaching economic consequences for small export-oriented countries such as Denmark that can risk business flight and job losses. As **such positive** towards the purpose of the proposed directives but **want a model that does not undermine the countries’ tax bases.**
Note the countries that have not submitted objections

- Information about initial country positions at ECOFIN meeting 8 November 2016: http://video.consilium.europa.eu/en/webcast/76d5b814-3845-4356-93ce-2d52dba3c4f6

- Also some of the countries that have not made subsidiarity objections have reservations regarding the proposals. See as an example Austria next slides.
Austria

While underlining its agreement in principle with the proposal, Austria draw attention the problematic areas):

• The proposed directives harbour a certain number of risks, such as possibility of a considerably heavier administrative burden of two systems without contributing to the urgently needed transparency.

• Should be examined if the envisaged “tax privileges” (e.g. for R&D expenses) would lower the tax revenues - would be “undesirable and difficult to explain to the population, as citizens expect CCCTB to generate higher tax revenues and/or impose higher taxes on multinational corporations”

• A minimum tax rate should be established as a matter of urgency - without a minimum tax rate a uniform tax base would further intensify tax competition within EU.

• Rejects the proposal of introduction in two stages and advocates simultaneous introduction of CCTB and CCCTB.

• In conclusion, point out that within the framework of EU tax policy it should still be possible for MS to set their own priorities with regard to corporate income tax.
What is business’ view – DI*

- Companies are becoming more and more global. This trend is driven by commerce, not by the countries’ different tax rules, which are rather perceived as an obstacle that has not kept pace with developments.

- Companies use considerable resources to ensure compliance with complex legislation. The Danish Ministry of Industry, Business and Financial Affairs has calculated that the purely administrative burden of accounting and bookkeeping as well as tax compliance amounted to DKK 14 billion for Danish companies in 2014.

- Even though many countries in their national legislative process would like to create simpler rules, the overall trend is for countries to adopt increasingly complex national tax rules supplemented by complex anti tax avoidance rules aimed at cross-border transactions; and most recently also national variants of general anti-abuse rules.

- For all but the very largest multinationals, the complex rules can be almost impossible to navigate and greatly hinder the growth of companies across national borders.

- Against this backdrop DI see significant potential in the adoption of common corporate tax rules in the EU on the calculation of taxable income (CCTB) and the consolidation of corporate income within the EU (CCCTB).

* Some points from DI's consultation response of 7 December 2016 to the Danish Ministry of Taxation on the EU Commission's proposals.
What is business’ view - concerns

• When the European Commission originally presented the proposal on CCCTB in 2011, DI emphasized the importance of optionality for each company to decide whether it would apply the rules or continue to apply the existing national rules. Moreover, DI emphasized it was important that the proposal comprised consolidation (including a comprehensive one-stop-shop tax return) and the countries’ free right to set the national tax rates.

• On a number of points the Commission’s current proposal has been adjusted compared to the 2011 proposal, including that it now contains a number of new anti tax avoidance rules and no longer include optionality for companies with a group turnover exceeding EUR 750 million. DI would have preferred the proposal without these restrictive rules, but acknowledges that they may be necessary in order to achieve adoption of the proposals.

• It is crucial for DI that according to the new proposals, countries retain the right to independently set the tax rate for taxable CCTB/CCCTB income. It is vital, both for companies and the countries, that the national tax rate may reflect companies’ other terms and conditions in each country. Without this right to set the tax rate, Denmark risks a development whereby companies increasingly establish themselves in larger countries because of the commercial benefits that this may entail.

• The allocation key should better reflect economic reality. If smaller Member States lose tax revenue, companies risk being subject to increased taxes.
• No position paper yet...

**UEAPME** (The European Association of Craft, Small and Medium-sized Enterprises) has expressed support towards CCTB and CCCTB
Will the proposals be adopted?

Some of the recent EU regulation concerning corporate tax


- Directive (EU) 2016/1164 of 12 July 2016 on rules against tax avoidance practices that directly affect the functioning of the internal market (ATA Directive), COM (2016) 26

Current willingness in Member States to adopt EU rules on corporation taxation. If agreement can not be reached among all EU Member States on CCTB / CCCTB, it seems likely that some countries will want to establish "enhanced collaboration" - at least 9 countries required (example FTT).
What is the alternative?

UK could become 'tax haven' of Europe if it is shut out of single market after Brexit, Chancellor suggests

The country will do ‘whatever we have to do’ to keep economy afloat, says Philip Hammond

Corporation tax

Hungary to offer EU’s lowest corporate tax rate

Viktor Orban seeks to lure foreign direct investment with 9% rate

US trade

US will ‘leapfrog’ the world with tax reforms, says Kevin Brady

Republican is leading congressional effort for radical overhaul of taxation system (Destination Based Cash Flow Tax)

Tax Policy Reforms in the OECD 2016

The trend of CIT rate reductions, which had slowed down after the crisis, seems to be gaining renewed momentum. Five OECD countries implemented or legislated general CIT rate reductions in 2015 and four have announced CIT rate cuts in the coming years.
Thank you for your attention