

The CCCTB Proposal - What companies should know

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After many years of protracted debate and false starts, on the 16th March the European Commission (“EC”) put forward its proposal and draft Directive for the ‘Common Consolidated Corporate Tax Base’ (“CCCTB”). What is the significance of this? Does the fact that a proposal has been put forward make CCCTB any more of a reality?

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What is in the CCCTB proposal?

Tax base

The CCCTB proposal contains a single set of rules which companies operating within the EU could use to calculate their taxable profits. In other words, a company or group of companies would have to comply with just one EU system for computing its taxable income, rather than different rules in each Member State in which they operate. Under the CCCTB, companies active in more than one EU Member State would only have to file a single tax return for all their activities in the EU (‘one-stop-shop’). Cross-border loss relief would be possible and there would be no transfer pricing rules in the CCCTB area.

Formulary apportionment

After the tax base has been calculated, it would subsequently be re-distributed or apportioned to the relevant Member States participating in CCCTB according to an agreed pre-set formula. The formula would be by reference to:

- Labour
- Assets
- Sales

The labour factor will consist of two elements: payroll and the number of employees. The asset factor will include tangible fixed assets such as land, buildings, plant and machinery and fixtures and fittings (1/3) but significantly excludes intangibles and financial assets, with certain limited exceptions. The third factor, sales, refers to sales by destination. The allocation of profits to these factors will be on a 1/3 each basis.

Tax rate

Member States would then tax the profits allocated to them at its own domestic corporate tax rate.

An optional system

The CCCTB, as proposed, would be applied as an “opt-in” system, i.e. a corporate group would be allowed to opt for the CCCTB rather than it being mandatory. The option to apply the CCCTB is envisaged to be either “all-in” or “all-out”. This means that companies belonging to a group cannot as individual companies opt for the CCCTB, but only jointly with the other members of the group.

Is the proposal workable? CCCTB or just CCTB?

There are some significant questions raised by the proposal which make it difficult to see how CCCTB will ever be workable in practice and if it will ever achieve the desired objectives of the EC to reduce compliance costs and facilitate cross border expansion at reduced cost.

Multiple tax systems?

The 'optionality' of the proposal would mean the operation in participating Member States of a dual corporate tax system, i.e. one for CCCTB groups who have opted in and one for those who stay outside the system. This would surely be cumbersome and potentially unworkable for some Member States.

Assuming that a number of Member States object to CCCTB (which is more or less a certainty based upon the political opinions expressed by some Member States to date), to the extent that it is implemented it may only be adopted by a smaller group of Member States. This could give rise to a situation where a group operating within the EU may have subsidiaries applying CCCTB in one Member State but not another therefore still finding itself still dealing with different tax systems. In these circumstances it is difficult to see how this could necessarily always lead to a reduction in a multinational group's compliance burden and costs.

Transfer pricing & tax treaties

The EC argues that the introduction of a common system will eliminate transfer pricing disputes. However, given the relatively crude factors by which profits will be apportioned, in particular the normal exclusion of intangible and financial assets from the equation, one would have to expect that transfer pricing disputes will be replaced by disputes relating to the apportionment formula. In addition, it is not clear exactly how the CCCTB system will operate vis-à-vis third countries where tax treaties are in place with individual Member States, although it is understood that such treaties will override the CCCTB rules.

The possibility of consolidation and particularly the ability to share losses cross-border between Member States could certainly be an attractive proposal for companies. However, interestingly, the 'Pact for the Euro' agreed on 11 March 2011 by the Euro Heads of State and Government, acknowledged the EC's CCCTB proposal but also referred to possible development of a common corporate tax base as opposed to a common consolidated corporate tax base. This casts some doubt as to whether the 'consolidated' piece of the CCCTB will ever become reality. Given the fact that the savings associated with the benefits of consolidation are estimated by the EC to be €1.3 billion, the overall benefits of the proposal have to be undermined if the consolidation is not ultimately provided for.

Competitiveness

It should be noted that whilst the EC estimates that the proposal will give rise to savings for business of approximately €3 billion, other independent assessments have found contrary to this and concluded that savings arising from reduced transfer pricing disputes are eroded by the costs of transitioning to a CCCTB system and managing it going forward.

The EC argues that the main driver behind CCCTB is to make the EU more competitive as a place to do business in the context of the Europe 2020 Strategy. However, one might argue that if the CCCTB system stops at the EU borders, other European locations such as Switzerland and the EEA countries may have a potential competitive advantage in attracting investment to the detriment of the EU overall.

Next steps for the Directive

Whilst the CCCTB has been on the EC's agenda for a number of years, the Proposal made on 16th March is just the start of a long procedural process which will involve much more technical analysis and political debate. This will include consideration by the European Parliament which, along with the Member States through the Council of Ministers, can request the EC to make

amendments to the proposed Directive. Ultimately, in order to take effect, the Directive in whatever format ultimately emerges from the process, must be put before the Finance Ministers in the ECOFIN Council for agreement.

The ECOFIN Council can adopt the proposed directive only if it is acting unanimously. If there is no unanimous support among the Member States, the CCCTB proposal may be discussed under the enhanced cooperation procedure 'as a last resort'. This procedure permits a smaller group of at least nine Member States to implement a particular policy provided that a 'qualified majority vote' of the ECOFIN Council is achieved. In the current economic and political climate, this is not impossible.

It should be stressed, however, that it is hard to assess how much support there really is among the 27 Member States for CCCTB, even under the enhanced cooperation procedure. This makes any prediction as to the likelihood of the CCCTB being adopted and by when quite difficult. If it were to be adopted through the enhanced co-operation procedure, the earliest expected date for implementation would be 2013/2014.

How PwC can help you

We have a dedicated EU direct tax specialist team which is a part of a PwC network of EU tax experts. This group closely monitors all EU developments of importance to business. We can provide you with more detail on the provisions of the proposed Directive and evaluate the potential impact on your business using a proprietary software tool.

We will also keep you up to date with CCCTB as the proposal winds its way through the political process.

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