

CCCTB – what it really means

March 2011

Threats against the Irish 12.5% rate of corporation tax and our tax base as a result of the proposed introduction of the Common Consolidated Corporate Tax Base (“CCCTB”) by the EU are constantly cited in newspaper headlines in recent months. The ongoing defence of the 12.5% rate is a strongly fought public battle. As a country we have expressed anti-CCCTB sentiment however the CCCTB debate has had little focus on how Ireland and other Member States may be able to stay outside the boundaries of this proposal which is at the forefront of the European Commission’s (“EC”) policy agenda.

“To improve the business environment, I will propose very soon a Common Consolidated Corporate Tax Base, better known as the ‘CCCTB’. This initiative has substantial benefits to offer companies operating within the Single Market, as the business community itself fully recognises”

EU Commissioner for Taxation and Customs, Algirdas Semeta, February 2011



What is CCCTB?

CCCTB represents a fundamental shift in the taxation of corporate groups operating in the EU. It proposes a formulary approach to the allocation of profits amongst entities within corporate groups operating in EU Member States. Under CCCTB, taxable profits will be calculated by reference to a uniform set of rules which will not be formally linked to local or international accounting standards. Once the taxable profit base has been calculated, it would then be allocated to the individual Member States by reference to:

- Payroll
- Sales
- Assets (excluding intellectual property).

This allocation may potentially be on a 1/3 each basis. Each Member State would then tax its share of the base at its own domestic rate.

This is a radical departure from traditional taxing norms and could fundamentally change the way multinational groups are structured within Europe.

What does CCCTB mean for Ireland?

It is intended that a formal EU Proposal for a Directive CCCTB will be brought forward later this month, possibly as early as 16 March. While CCCTB may be firmly on the European agenda the mechanisms in place for implementing EU tax law mean that Ireland cannot be forced to implement it. In order for the proposal for the Directive to become effective, as a tax measure EU law requires the consent of all the 27 Member States. Given the resistance of a number of Member States, including Ireland, to CCCTB, it seems unlikely that the Member States will unanimously agree to the Directive. Nonetheless, this does not mean that CCCTB will fall at this hurdle.

The EU/TFEU Treaties contain a procedure called ‘enhanced co-operation’ which effectively permits, as a measure of last resort where unanimity cannot be achieved, a smaller group of at least nine Member States to implement a particular policy. In order for a smaller group of Member States to proceed on the basis of enhanced co-operation, the Treaties provide for the Member States to agree to

“Our position on the CCCTB is well known. We do not favour it for reasons of principle and practicality. The proposal cuts across national sovereignty and subsidiarity.”

Department of Finance, Ireland

do so via a ‘qualified majority vote’ (“QMV”), i.e. the consent of 72% of the Council members representing the Member States and comprising at least 65% of the population of these States. Assuming that CCCTB may only proceed on the basis of enhanced co-operation, some commentators are speculating that the earliest date for the introduction of CCCTB will be 2013/14.

Given the current political environment, it is expected that whilst CCCTB will not be unanimously approved, Member States will not block the path for other Member States who wish to implement CCCTB and a QMV vote for enhanced co-operation could be secured. This means that if CCCTB proceeds on this basis, Ireland, along with other Member States, can stay outside of it.

What will the impact of CCCTB be?

CCCTB purports to reduce costs and remove impediments to growth by:

- Providing businesses with a single set of tax rules and only one tax administration to deal with (one-stop-shop)
- Facilitating cross border loss relief
- Removing intra-group transfer pricing requirements
- Eliminating double taxation, or situations where income falls outside the charge to taxation, as a result of disparities and mismatches among national tax rules.

Whilst all of the above are laudable objectives, it is questionable whether CCCTB can achieve these goals. An array of complex tax issues must be considered and dealt with in order to determine what the common underlying tax base is and how this base will be allocated to the various Member States. In addition,

the intention to allocate the tax base by reference to sales, payroll and assets is a dramatic departure from traditional OECD principles of allocating profits by reference to functions and risks. One must suspect that transfer pricing issues will be replaced by disputes relating to the method of formulary apportionment (i.e. the allocation of profits on crude measures such as sales and payroll). It will be interesting to see how these issues are addressed in the Directive given their complexity. It is difficult to envisage that a simpler system will evolve as a result of CCCTB.

So finally....

The publication of the proposal for a Directive will generate much comment and opinion, however, the complexity of decision-making in EU law means that Ireland may not have to fear this proposal as much as may be suggested.

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“We will continue to highlight the difficulties we believe such a proposal could cause. We believe that resources would be better targeted at real barriers and at clearly identifiable problems what will yield true benefits for Member States”

Department of Finance, Ireland