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2014-2019

Committee on Legal Affairs

2016/0336(CNS)

13.9.2017

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB)
(COM(2016)0683 – C8-0471/2016 – 2016/0336(CNS))

Rapporteur: Evelyn Regner

PA_Legam

SHORT JUSTIFICATION

I. Introduction

This proposal, together with the proposal for a Council Directive on a Common Corporate Tax Base (2016/0337 (CNS)), is a re-launch of the 2011 Commission initiative on a Common Consolidated Corporate Tax Base for the EU. The purpose of the two proposals is to provide EU legislation in this area which is suited to an economic environment that has become more globalised, mobile and digital where Member States find it increasingly difficult to fight effectively against aggressive tax planning practices through unilateral action in order to protect their national tax bases from erosion and counter profit shifting.

II. An effective implementation of the consolidation

The implementation of a Common Consolidated Corporate Tax Base is essential in the fight to achieve justice between businesses within and outside of the EU from a taxation point of view. One of the main threats to tax justice is the widespread practice of profit shifting. Once implemented fully, the Common Consolidated Corporate Tax Base will make it possible to attribute income to where the value is created through a formula based on three equally weighted factors that are more resilient to aggressive tax planning practices than transfer pricing. In this way, loopholes between national tax systems, in particular transfer pricing, which accounts for around 70% of all profit shifting in the EU, could be eliminated and a major step towards a fair, efficient and transparent tax system could be taken. Consequently, the two proposals should be viewed as a package and should be implemented side by side in order to achieve more tax justice. The Common Consolidated Corporate Tax Base should be in place by the end of the year 2020.

In relation to the general fairness of our taxation systems, corporations must bear their share of the burden, and it is thus essential that new tax exemptions do not erode the tax base. Measures that incentivise private entities to invest in the real economy have to be supported, as the current investment gap in the EU is one of the key sources of its economic weaknesses. However, tax reliefs for companies need to be carefully constructed and implemented only where their positive impact on jobs and growth is evident and any risk of creating new loopholes in the taxation system is excluded. Therefore, promoting innovation and investment should be done through public subsidies rather than through tax exemptions.

In order to fight aggressive tax planning structures effectively as well as to avoid two parallel tax regimes, the Common Consolidated Corporate Tax Base base should be mandatory for all companies with a turnover higher than 40 million euros. The thresholds for micro, small, medium and large undertakings have long been defined. The concept goes back to the 4th Company Law Directive of 1978. The need for the introduction of a new threshold has not been until now satisfactory justified by the Commission. Since SMEs do not have the resources to invest into letterbox company structures in order to shift profits artificially, they are being pushed into a competitive disadvantage vis-à-vis multinationals. In order to ensure a healthy single market it is essential to establish a fair, efficient, transparent and growth-

friendly common corporate tax base system based on the principle that profits should be taxed in the country where they are generated.

Taking into account the digital change in the business environment, it is necessary to define the concept of a digital business establishment. Companies which raise revenues in a Member State without having a physical establishment in that Member State have to be treated the same as companies with a physical establishment. Therefore, the CCCTB has to apply for digital corporations as well.

III. Introduction of a minimum corporate tax rate in the proposal

A common and just minimum corporate tax rate is the only way to create equal and fair treatment between different subjects doing business in the EU, and within the larger community of tax subjects. Failing to put such a minimum rate in place will only lead to a situation where the race to the bottom on tax rates will be intensified. The existence of a Common Consolidated Corporate Tax Base will mean that Member States will no longer be able to compete through tax bases and therefore the economic incentives to compete via tax rates will increase. On average, corporate tax in the EU decreased from 35 % in the 1990s to 22.5 %. today To end the race to the bottom on corporate tax rates at EU level, a minimum corporate tax rate of 25% needs to be introduced.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs,as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive
Recital 1

Text proposed by the Commission	*Amendment*
(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. Furthermore, tax planning structures have become ever-more sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. Although those situations highlight	(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence and interaction of 28 disparate corporate tax systems. Furthermore, tax planning structures have become ever-more ***aggressive and*** sophisticated over time, as they develop across various jurisdictions and effectively take advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing the tax liability of companies. Although those

shortcomings that are completely different in nature, they both create obstacles which impede the proper functioning of the internal market. Action to rectify those problems should therefore address both types of market deficiencies.

situations highlight shortcomings that are completely different in nature, they both create obstacles which impede the proper functioning of the internal market. ***Within a more globalised, mobile and digital economic framework,*** action to rectify those problems should therefore address both types of market deficiencies ***through the alignment of the corporate tax base in the Union and the creation of a fairer and more coherent business environment in which companies can operate***.

Amendment 2

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. It is therefore necessary to provide for mechanisms that ***discourage*** companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed***.***

Amendment

(2) To support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. ***A corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would increase the transparency of the activities of multinational enterprises and enable the public to assess their impact on the economy.*** It is therefore necessary to provide for mechanisms that ***prevent*** companies from taking advantage of mismatches amongst national tax systems in order to lower their tax liability. ***Groups with establishments within the Union should support Union principles of good governance.*** It is equally important to also stimulate growth and economic development in the internal market by facilitating cross-border trade and corporate investment. To this end, it is necessary to eliminate both double taxation and double non-taxation risks in the Union through eradicating disparities in the

interaction of national corporate tax systems. At the same time, companies need an easily workable tax and legal framework for developing their commercial activity and expanding it across borders in the Union. In that context, remaining cases of discrimination should also be removed

Amendment 3

Proposal for a directive
Recital 3

Text proposed by the Commission	*Amendment*
(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)[1], a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies resident in the Union and promote the objective of making it a more competitive location for investment internationally. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in countering tax avoidance. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal market.	(3) As pointed out in the proposal of 16 March 2011 for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) [1], a corporate tax system which treats the Union as a single market for the purpose of computing the corporate tax base of companies would facilitate cross-border activity for companies resident in the Union and promote the objective of making it a more competitive location for investment internationally. The proposal of 2011 for a CCCTB focussed on the objective of facilitating the expansion of commercial activity for businesses within the Union. In addition to that objective, it should also be taken into account that a CCCTB can be highly effective in improving the functioning of the internal market through countering tax avoidance schemes. In this light, the initiative for a CCCTB should be re-launched in order to address, on an equal footing, both the aspect of business facilitation and the initiative's function in countering tax avoidance. ***Once implemented in all Member States, the CCCTB would ensure that taxes are paid where profits arise***. Such an approach would best serve the aim of eradicating distortions in the functioning of the internal

market.

[1] Proposal for a Council Directive COM (2011) 121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

[1] Proposal for a Council Directive COM (2011) 121 final/2 of 3.10.2011 on a Common Consolidated Corporate Tax Base.

Amendment 4

Proposal for a directive
Recital 4

Text proposed by the Commission	*Amendment*
(4) Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, it is necessary to divide the ambitious CCCTB initiative into two separate proposals. At a first stage, rules on a common corporate tax base should be enacted, before addressing, at a second stage, the issue of consolidation.	(4) Considering the need to act swiftly in order to ensure a proper functioning of the internal market by making it, on the one hand, friendlier to trade and investment and, on the other hand, more resilient to tax avoidance schemes, it is necessary to divide the ambitious CCCTB initiative into two separate proposals. At a first stage, rules on a common corporate tax base should be enacted, before addressing, at a second stage, the issue of consolidation. ***However, implementing the CCTB without consolidation would not address the problem of profit shifting. Therefore, it is essential that consolidation is applied in all Member States as from 1 January 2021.***

Amendment 5

Proposal for a directive
Recital 5

Text proposed by the Commission	*Amendment*
(5) ***Many aggressive tax planning structures tend to feature in a cross-border context, which implies that the participating groups of companies posses a minimum of resources. On this premise,***	(5) ***In order to fight aggressive tax planning structures effectively as well as to avoid two parallel tax regimes,*** the rules on a common base should be mandatory for ***all*** companies ***except SMEs. The***

for reasons of proportionality, the rules on a common base should be mandatory ***only*** for companies ***which belong to a group of a substantial size***. ***For that purpose, a size related threshold should be fixed on the basis of the total consolidated revenue of a group which files consolidated financial statements.*** In addition, in order to better serve the aim of facilitating trade and investment in the internal market, the rules on a common corporate tax base should also be available, as an option, to companies which do not meet those criteria.

thresholds for micro, small, medium and large undertakings are defined by Fourth Council Directive 78/660/EEC (the 4th Company Law Directive).[1a] Since SMEs do not have the resources to invest in letterbox company structures in order to shift profits artificially, they are at a competitive disadvantage vis-à-vis multinationals. In order to ensure a healthy internal market, it is essential to establish a fair, efficient, transparent and growth-friendly common corporate tax base system based on the principle that profits are taxed in the country where they are generated. In addition, to ensure coherence between the two steps of the CCCTB initiative, the rules on a common base should be mandatory for companies which would be considered as a group should the full initiative materialise. In order to better serve the aim of facilitating trade and investment in the internal market, the rules on a common corporate tax base should also be available, as an option, to companies which do not meet those criteria.

[1a] Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978).

Amendment 6

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission	*Amendment*
	(5a) Taking into account the digital change in the business environment, it is necessary to define the concept of a digital business establishment. Companies that generate revenues in a Member State without having a physical establishment

in that Member State should be treated in the same way as companies having a physical establishment. Therefore, the CCCTB should also apply to digital businesses.

Amendment 7

Proposal for a directive
Recital 10

Text proposed by the Commission	*Amendment*
(10) The formula apportionment for the consolidated tax base should comprise three equally weighted factors, namely labour, assets and sales by destination. Those equally weighted factors should reflect a balanced approach to distributing taxable profits amongst the relevant Member States and should ensure that profits are taxed where they are actually earned. Labour and assets should therefore be allocated to the Member State where the labour is performed or the assets are located, and would thereby give appropriate weight to the interests of the Member State of origin, whilst sales should be allocated to the Member State of destination of the goods or services. To account for differences in the levels of wages across the Union and thus allow for a fair distribution of the consolidated tax base, the labour factor should comprise both payroll and the number of employees (i.e. each item counting for half). The asset factor, on the other hand, should comprise all fixed tangible assets, but not intangible and financial assets because of their mobile nature and the resulting risk that the rules of this Directive could be circumvented. Where, due to exceptional circumstances, the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause should provide for an alternative method of income allocation.	(10) The formula apportionment for the consolidated tax base should comprise three equally weighted factors, namely labour, assets and sales by destination. Those equally weighted factors should reflect a balanced approach to distributing taxable profits amongst the relevant Member States and should ensure that profits are taxed where they are actually earned***, including in the case of activities in the digital economy sector which do not necessarily require a fixed establishment in a Member State in order to carry on an activity there***. Labour and assets should therefore be allocated to the Member State where the labour is performed or the assets are located, and would thereby give appropriate weight to the interests of the Member State of origin, whilst sales should be allocated to the Member State of destination of the goods or services. To account for differences in the levels of wages across the Union and thus allow for a fair distribution of the consolidated tax base, the labour factor should comprise both payroll and the number of employees (i.e. each item counting for half). The asset factor, on the other hand, should comprise all fixed tangible assets, but not intangible and financial assets because of their mobile nature and the resulting risk that the rules of this Directive could be circumvented. Where, due to exceptional circumstances, the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause should provide

for an alternative method of income allocation. ***Nevertheless, the three equally weighted factors are more resilient to aggressive tax planning practices than the widespread transfer pricing methods for allocating profit currently in use. As a result, loopholes between national tax systems, in particular in respect of transfer pricing, which accounts for approximately 70% of all profit shifting in the Union, could be eliminated and a major step taken towards a fair, efficient and transparent tax system.***

Amendment 8

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) To end the race to the bottom on corporate tax rates at Union level, a minimum corporate tax rate in the Union is required. On average, corporate tax rates in the Union decreased from 35% in the 1990s to 22,5% at present. By adopting the CCCTB, Member States will no longer be able to compete through further decreases in their corporate tax rates.

Amendment 9

Proposal for a directive
Article 1 – paragraph 2

Text proposed by the Commission	*Amendment*
2. A company that applies the rules of this Directive ***shall cease to*** be subject to the national corporate tax law ***in respect of all matters regulated by this Directive***, unless otherwise stated.	2. A company that applies the rules of this Directive ***shall remain*** subject to the national corporate tax law***. In the event of a conflict between this Directive and the national corporate tax law, the latter shall take precedence***, unless otherwise stated.

Amendment 10

Proposal for a directive
Article 2 – paragraph 1 – introductory wording

Text proposed by the Commission	*Amendment*
(1) The rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent establishments in other Member States, where the company meets all of the following conditions:	(1) The rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent ***and digital business*** establishments in other Member States, where the company meets all of the following conditions:

Amendment 11

Proposal for a directive
Article 2 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR ***750 000 000*** during the financial year preceding the relevant financial year;	(c) it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR ***40 000 000*** during the financial year preceding the relevant financial year;

Amendment 12

Proposal for a directive
Article 2 – paragraph 2– subparagraph 1

Text proposed by the Commission	*Amendment*
This Directive shall also apply to a company that is established under the laws of a third country in respect of its permanent establishments situated in one or more Member States where the company meets the conditions laid down in	This Directive shall also apply to a company that is established under the laws of a third country in respect of its permanent establishments situated in one or more Member State***, and in relation to revenues accrued in one or more Member***

points (b) to (d) of paragraph 1.

States, where the company meets the conditions laid down in points (b) to (d) of paragraph 1.

Amendment 13

Proposal for a directive
Article 2 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. This Directive shall also apply to businesses established under the laws of a third country in respect of their digital business establishments that are specifically directed towards consumers or businesses in a Member State or that principally receive their revenue from activity in a Member State, where the business meets the conditions laid down in points (b) to (d) of paragraph 1. For the purpose of ascertaining whether a digital business establishment is specifically directed towards consumers or businesses in a Member State, the physical locations of the consumers or users and suppliers of the goods and services provided shall be taken into account, in accordance with the OECD's BEPS Action 1. If those cannot be ascertained, regard shall be had to whether the digital business establishment is conducting its business under the top level domain of a Member State or of the Union or whether, in relation to mobile application-based businesses, the digital business establishment is distributing its application via a Member State-specific part of a mobile application distribution centre or whether the business is conducted under a domain which – for example as a result of the use of names of Member States, regions or towns – makes it clear that the digital business establishment is directed towards consumers or businesses in a Member State, or whether the business activity is subject to general terms and conditions

	applicable specifically to the Union or a Member State, or whether the web presence of the digital business establishment provides advertising space specifically aimed at consumers and businesses in a Member State.

Amendment 14

Proposal for a directive
Article 3 – paragraph 1 – point 28 a (new)

Text proposed by the Commission	*Amendment*
	(28a) 'digital business establishment' means - taking into account the findings from OECD BEPS Action 1 - an establishment which is specifically directed towards consumers or businesses in a Member State, with due regard to the physical locations of the consumers or users and of the suppliers of the goods and services provided. If those cannot be ascertained, regard shall be had to whether the establishment is conducting its business under the top level domain of the Member State or of the Union or, in relation to mobile-application-based businesses, is distributing its application via the Member State-specific part of a mobile application distribution centre or whether the business is conducted under a domain which – for example as a result of the use of names of Member States, regions or towns – makes it clear that the establishment is directed towards consumers or businesses in a Member State, or the business activity is subject to General Terms and Conditions applicable specifically for the European Union or a Member State, or the web presence of the business offers advertising space specifically aimed at consumers and businesses in a Member State.

Amendment 15

Proposal for a directive
Article 3 – paragraph 1 – point 28 b (new)

Text proposed by the Commission	*Amendment*
	(28b) 'an effective corporate tax rate' means corporate tax paid in relation to earnings and profits as set out in the financial statements of a company.

Amendment 16

Proposal for a directive
Article 6 – paragraph 1 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) all its digital business establishments.

Amendment 17

Proposal for a directive
Article 73 – paragraph 1

Text proposed by the Commission	*Amendment*
For the purposes of this Directive, the scope of controlled foreign company legislation under Article 59 of Directive 2016/xx/EU shall be limited to relations between group members and entities that are resident for tax purposes, or permanent establishments that are situated, in a third country.	For the purposes of this Directive, the scope of controlled foreign company legislation under Article 59 of Directive 2016/xx/EU shall be limited to relations between group members and entities that are resident for tax purposes, or permanent establishments ***or digital business establishments*** that are situated, in a third country.

Amendment 18

Proposal for a directive

Article 79 – paragraph 1

Text proposed by the Commission	*Amendment*
The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter VIII of this Directive on the apportionment of the tax bases between the Member States.	The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council ***and to the European Parliament*** on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter VIII of this Directive on the apportionment of the tax bases between the Member States.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Common Consolidated Corporate Tax Base (CCCTB)
References	COM(2016)0683 – C8-0471/2016 – 2016/0336(CNS)
Committee responsible Date announced in plenary	ECON 24.11.2016
Opinion by Date announced in plenary	JURI 24.11.2016
Rapporteur Date appointed	Evelyn Regner 28.11.2016
Discussed in committee	3.5.2017
Date adopted	7.9.2017
Result of final vote	+: 13 –: 8 0: 0
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Sergio Gaetano Cofferati, Luis de Grandes Pascual, Angel Dzhambazki, Rainer Wieland, Tiemo Wölken
Substitutes under Rule 200(2) present for the final vote	Gabriel Mato, Andrey Novakov

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

13	+
ALDE	Jean-Marie Cavada
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
VERTS/ALE	Max Andersson, Julia Reda
S&D	Sergio Gaetano Cofferati, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken

8	-
ALDE	António Marinho e Pinto
ECR	Angel Dzhambazki
PPE	Gabriel Mato, Andrey Novakov, Axel Voss, Rainer Wieland, Tadeusz Zwiefka, Luis de Grandes Pascual

0	0

Key to symbols:
+ : in favour
- : against
0 : abstention