MBB Policy Briefing

The Malta Business Bureau is the EU-Business advisory office of the Malta Chamber of Commerce, Enterprise and Industry, and the Malta Hotels and Restaurants Association.

Common Consolidated Corporate Tax Base in Europe

In 2011, the European Commission submitted its proposal COM(2011)121 for a Common Consolidated Corporate Tax Base. According to the Commission, this proposal aimed to tackle fiscal impediments to growth in the EU, such as over- and double taxation, which often came about due to a lack of inter-jurisdictional interaction. Another aim of the proposal was to increase tax compliance. One major concern was the artificial corporate shifting of profits to the lowest tax jurisdiction by certain companies in order to minimise their overall tax contribution.

The Commission committed to ensuring consistency in the national tax systems, but claiming that there would be no intention of harmonizing tax rates. This is due to the fact that differences in rates allows a certain degree of tax competition to be maintained. Such flexibility would allow Member States to consider both their market competitiveness and budgetary needs in fixing their tax rates. Member States have responded by consistently lowering tax-rates in direct competition to one another. In order to compensate for this, most governments have broadened their tax base, with a number offering targeted regimes or rulings that provide considerably lower rates for certain types of income or companies.

Under the 2011 proposal, companies that belong to the same group (parent company + establishments[1] around the EU) would have consolidated their taxable profits and tax losses into one single tax computation. The resulting consolidated taxable profit would then be allocated between Member States according to a pre-determined formula. The tax rate at which the profits are taxed remains the prerogative of the individual Member States to which those profits have been allocated under the pre-determined formula. The formula for apportioning the consolidated tax base is based on three equally weighted factors: labour (payroll and no. of employees), assets and sales. The proposal also set out terms for the depreciation of long-life assets and pool assets.[2]

Companies would have had the ability to opt-in/opt-out of CCCTB as a group (i.e all-in/all-out). Thus, companies/groups would have been able to assess which option suits it the most and elect accordingly. In addition, it was attempted to make CCCTB more attractive by making all costs relating to research and development deductible. Companies who opt-out from CCCTB would have been eligible for tax incentives on R&D costs.

The 2011 proposal was overwhelmingly voted in favour of by the European Parliament, but was ultimately stalled at Council level due to disagreements on the implementation of the consolidation concept.

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[1] Qualifies if parent has the right to exercise more than 50% of the voting rights and holds more than 75% of subsidiary's equity or more than 75% or rights giving entitlement to profit

[2] For exact rate of depreciation, efer to MBB CCCTB impact assessment, April 2012 – page 10-11

2015 Commission Communication COM(2015)302: A Fair and Efficient Corporate Tax System in the EU

In June, the Commission published a communication advocating the resubmission or a proposal for a common consolidated corporate tax base in the EU. It is clear that CCCTB is seen as a solution to corporate profit shifting. The Commission does not see much changes to its original proposal save for the following:

1. Making CCCTB mandatory: the Commission believes an optional CCCTB would limit its effectiveness as a tool for preventing profit shifting. The Commission will work to make CCCTB mandatory for multinational enterprises, at the very least.
2. A two-step approach: it is considered that the ambitious scale of the proposal is ultimately what saw it stall at Council level, particularly with regards to consolidation. The Commission is therefore proposing that consolidation is postponed until after the common tax base has been agreed and implemented. Until full consolidation is introduced, groups should be able to offset profits and losses they make in different Member States. This would allow temporary cross-border loss relief so that they pay tax on their net profits in the EU.
3. Improving double taxation dispute resolution mechanisms: Double taxation can be a serious tax obstacle for businesses operating on more than one Member State. CCCTB would eliminate this risk, but until this is agreed, a coordinated EU approach to dispute resolution, possibly as a fixed EU instrument, should be put in place over and above the current multilateral Arbitration Convention agreed by Member States.

The Commission has committed to reviewing the elements of the proposed base (2011 proposal) in order to reflect the discussions at Council level. However, it is clear that the Commission and Parliament (given its overwhelming support in 2011) are both convinced that CCCTB is far and away the best way forward to tackle tax avoidance through profit shifting, as well as issues arising from double taxation.

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