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The European Commission proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM (2016) 683 final

Due to the complex and comprehensive nature of the Directive, the tight timeframe provided for comments does not warrant a thorough and in-depth analysis of the many provisions included in the Directive. The Confederation of Swedish Enterprise will therefore, at this stage, concentrate on providing general views on the proposal and also briefly touch upon a few specific issues.

Opinion

The Confederation of Swedish Enterprise supports the European Commission's aim to address cross-border obstacles in the corporate tax field. The lack of cross-border profit and loss relief and the large number of transfer pricing disputes within the EU frequently result in international double taxation, thus constituting significant barriers to the Single Market.

The Confederation of Swedish Enterprise believes that the CCCTB could provide a solution to these problems. However, in order for the CCCTB to be able to tackle these problems and to attract the interest and support from the business community, the CCCTB should meet at least the following four key conditions:

- 1. The CCCTB needs to be optional for companies*
- 2. The system needs to allow for the consolidation of profits and losses*

3. The CCCTB needs to reduce compliance costs with a “one stop-shop” mechanism

4. The system must leave any decision on tax rates to national governments

As we have pointed out in our comments to the proposal on CCTB we are deeply concerned about the fact that the original CCCTB proposal has been split into a two-staged approach, where consolidation is introduced only in the second stage. A common corporate tax base without consolidation is of little or no interest for businesses. Without an explicit commitment to CCCTB by Member States, the Confederation of Swedish Enterprise urges the Swedish government to oppose the proposal on CCTB and instead focus on reaching agreement on the proposal for a Directive on Double Taxation Dispute Resolution Mechanisms in the European Union.

Background

On October 25, 2016, the European Commission presented a proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB). The proposal is the second in a two stage re-launch of the 2011 CCCTB proposal.

General comments

As expressed in our submitted comments 2016-11-24 on the CCTB Directive, The Confederation of Swedish Enterprise is deeply concerned about the fact that the original CCCTB proposal has been split into a two-staged approach. A system with a common corporate tax base without consolidation would be of little or no interest for businesses. In order to remove cross border tax obstacles, intra-group transactions need to be disregarded for tax purposes. A common, but not consolidated, corporate tax base would, irrespective of the proposed loss relief re-capture mechanism, suffer from the same transfer pricing problems in the EU as exist today. It would also not lead to the true administrative simplification that is achieved with consolidation.

A major concern for the Confederation of Swedish Enterprise is that Member States will not commit to consolidation, i.e. the second stage of the process proposed by the Commission. In addition, we believe that even the limited loss-offset envisaged during the first phase, may be met by considerable opposition from Member States.

The Confederation of Swedish Enterprise is of the opinion that consolidation should be allowed from the start. If not, any decision on CCTB needs to be an integral part of a consolidated system, committed to by Member States from the outset. Without agreement on consolidation, we believe that the proposal for a CCTB Directive should be withdrawn.

The Confederation of Swedish Enterprise believes it is paramount that the corporate tax system in Europe is conducive to investment, growth and job creation. Tax obstacles to cross-border investments must be removed and the administrative burden of complying with tax rules must be substantially reduced. A level-playing field is required to ensure European competitiveness.

The European Commission has made the fight against tax evasion, tax avoidance and aggressive tax planning a key priority and has pushed a very active agenda in this area. The Confederation of Swedish Enterprise support these efforts but believes that such rules must be introduced and applied in a uniform and consistent manner in all Member States. Furthermore, the rules must be compatible with rules applied in other important economic areas such as the US and Japan.

The Confederation of Swedish Enterprise welcomes the renewed emphasis to reduce double taxation in the EU and the efforts to ensure that tax systems are also efficient, so that they can support a stronger and more competitive economy. We concur with the EU-Commission that this should be done by creating a more favorable tax environment for businesses that reduces compliance costs and administrative burdens, and ensure tax certainty. In particular, the importance of tax certainty in promoting investment and stimulating growth has been recently recognized by G20 leaders and has become the new global focus in the taxation area.

Fighting against tax avoidance and aggressive tax planning, both at EU and at global level, must therefore go hand in hand with creating a competitive tax environment for businesses. They are the two sides of the same coin.

The renewed proposal for a CCCTB is presented as both an anti-avoidance measure and as an economic efficiency enhancing measure. A CCCTB would, properly implemented, considerably improve the functioning of the Single Market from a tax perspective. Cross-border companies would benefit from a single set of rules to calculate their taxable profits in the EU, rather than a medley of different national systems. They would be able to file a single tax return for all their EU activities through a "One-Stop-Shop" system, dealing with just one Member State rather than multiple tax authorities.

Consolidation will also mean that losses in one Member State can automatically be set off against profits in another, thereby allowing cross-border companies to enjoy the same treatment as purely domestic ones. In addition, transfer pricing concerns would be eliminated in the CCCTB-area.

The Confederation of Swedish Enterprise would like to reiterate the importance of not making the CCCTB compulsory for any company. Regrettably, the renewed proposal for CCCTB does only entail optionality for SMEs. The purpose of a CCCTB is to provide for a competitive tax system which boosts business activity and strengthens the European economy. In our opinion, the CCCTB should be made optional for MNEs as well. Furthermore, we believe it would be desirable for governments to make the CCCTB optional since it would ensure a gradual impact on revenues.

In addition, regardless of how competitive a new system may be, any shift from a domestic tax system to a common system within the EU will present significant costs. These costs may occasionally outweigh the benefits of a new system. A compulsory shift could therefore prove to be contradictory in terms of economic growth and competitiveness. Optionality is key to ensure a competitive system. Making the system optional would subject it to a “market test”, ensuring the system’s competitiveness in an international context. Without optionality, the CCCTB may not evolve sufficiently over time to be competitive compared to tax systems in other important economic areas.

Specific comments

Apportionment of the Common Consolidated Corporate Tax Base

A major challenge in a CCCTB lies in developing an allocation formula that can be accepted by all Member States. The Commission has, at an early stage, stated that the allocation formula should be easy to apply, difficult to manipulate and result in a fair allocation of the tax base. To achieve this result a formula comprising three equally weighted factors are proposed. The factors are labor, assets and sales by destination.

The labor factor is divided equally between payroll and number of employees. The Confederation of Swedish Enterprise would have preferred a calculation based solely on payroll, since the connection between a company’s productivity and number of employees can be questioned.

The asset factor consists of all fixed tangible assets. Intangibles and financial assets are excluded from the formula. Although we can appreciate that there

are some difficulties connected with having the latter assets included in the formula, these difficulties should not be overestimated. Considering the fact that these assets, and intangible in particular, generate great value in a group, the issue should be analyzed thoroughly before intangibles and financial assets are dismissed from the allocation formula. Valuing acquired intangibles should not be too difficult since the acquisition price should provide a good starting point. In order not to discriminate companies with self-generated intangibles, it should be analyzed further if such intangible could be allowed a higher weighting in the labor factor concerning R&D services.

The third component, however, raises serious concern and will clearly be to the disadvantage for smaller Member States, with small domestic markets. Having the sales factor included in the allocation key, and at an equal importance as the production factors labor and capital, could result in considerable revenue losses for smaller countries. In addition, the sales factor can easily be manipulated. By routing the sale of goods to a Member State through an independent intermediary in a third country the system can be circumvented. This would undermine the legitimacy of the allocation formula.

Tax rates

National governments must retain the right to set corporate tax rates on their taxable profits. This is equally important in the CCCTB as in phase one, CCTB.

Interaction with third countries

The Confederation of Swedish Enterprise believes that the interaction of the CCCTB with the tax system of third countries is very important. The effects on tax treaties, and the multilateral instrument being developed in the G20/OECD context must be analyzed thoroughly.

THE CONFEDERATION OF SWEDISH ENTERPRISE



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