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MEETING DOCUMENT

From: To:	Presidency Working Party on Tax Questions (Direct Taxation – CCTB)
Subject:	Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) - Second Presidency compromise on provisions needed for evaluating the impact on national tax revenues

Delegations will find attached a document from the Presidency in view of the meeting of the Working Party on Tax Questions (Direct Taxation - CCTB) on 16 April 2018.

Delegations will find in annex a second Presidency compromise on the specific provisions which are relevant and key for evaluating the impact of the Proposal for a Council Directive on a Common Corporate Tax Base (doc. 13730/16) on national tax revenues.

New text (compared to the first Presidency compromise set out in WK 2676/2018) is marked in **bold and underlined**, deletions are marked with ~~strikethrough~~.

Disclaimer:

The purpose of this Presidency compromise text is solely for the purpose of evaluating the impact of the Proposal, as amended, on national tax revenues. It is without prejudice to the positions of the Member States in further discussions on this proposal, including on these provisions.

Background:

During the meeting of the HLWP on 28 February 2018, delegations agreed to the idea of evaluating the impact of the CCTB proposal on national tax revenues using a common methodology (CORTAX model[1]) and common hypotheses (frozen Presidency compromise text) for the sake of comparability of results.

They furthermore agreed that the key provisions of the CCTB proposal that should be frozen for this purpose are the following:

- Article 2.1.c: whether the scope of EUR 750 million is maintained or not;
- Article 3.1.a: whether the qualifying subsidiary should have a right to exercise more than 50% of the voting rights;
- Articles 4: a number of definitions, notably 5-6-12-13-19-22-23-23a;
- Article 7: elements of the tax base;
- Article 8.d: exempt revenues;
- Article 10: other deductible items;
- Article 12.a-c-d: non-deductible items;
- Article 33: individually depreciable assets.

This evaluation would be done in the course of 2018 by Member States (who hold the data necessary for running such exercise), with the technical assistance of the Commission services. A workshop organised by the Commission is scheduled for this purpose in April 2018.

Member States would remain free to run an evaluation on their national tax revenues based on different/complementary scenarios, but would need to run the evaluation, as a minimum, based on the hypotheses set out in the present compromise text.

[1] See doc. WK 990/2018

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

(…)

Article 2

Scope

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:

(…)

(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;

(…)

Article 3

Parent company and qualifying subsidiaries

1. A qualifying subsidiary means every immediate and lower-tier subsidiary in which the parent company holds the following rights ~~at the end of the financial year preceding the relevant financial year~~:

(a) it has a right to exercise more than 50 % of the voting rights; and

(…)

Article 4

Definitions

For the purposes of this Directive, the following definitions shall apply:

(…)

(5) 'revenues' means proceeds of sales and of any other transactions, net of value added tax and other taxes and duties collected on behalf of government agencies, whether of a monetary or non-monetary nature, including proceeds from disposals of assets and rights, interest, dividends and other profits distributions, proceeds of liquidations, royalties, subsidies and grants, gifts received, compensations and ex-gratia payments. Revenues shall also include non-monetary gifts made by a taxpayer. Revenues shall not include equity raised by the taxpayer or debt repaid to it;

(6) 'expenses' means decreases in net equity of the company during the tax year in the form of outflows or a reduction in the value of assets or in the form of a recognition or increase in the value of liabilities, other than those relating to monetary or non-monetary distributions to shareholders or equity owners in their capacity as such.

(12) 'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance, as defined in national law, including payments under profit participating loans, imputed interest on convertible bonds and zero coupon bonds, payments under alternative financing arrangements, the finance cost elements of finance lease payments, capitalised interest included in the balance sheet value of a related asset, the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, the defined yield on net equity increases as referred to in Article 11 of this Directive, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

(13) 'exceeding borrowing costs' means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other taxable revenues that the taxpayer receives and which are economically equivalent to interest revenues;

(19) 'fixed assets' means tangible assets acquired or created by the taxpayer and intangible assets acquired that are capable of being valued independently and that are expected to be used in the business for producing, maintaining or securing income for more than 12 months, except where their acquisition or construction cost is less than EUR 1,000. Fixed assets shall also include financial assets, with the exception of financial assets held for trading in accordance with Article 21.

(22) 'long-life fixed tangible assets' means fixed tangible assets with a useful life of 15 years or more. Buildings, aircraft and ships shall be considered to be long-life fixed tangible assets;

(23) 'medium-life fixed tangible assets' means fixed tangible assets that do not qualify as long-life fixed tangible assets under point 22 and have a useful life of eight years or more.

(23a) 'short-life fixed tangible assets' means fixed tangible assets that do not qualify as long-life or medium-life fixed tangible assets under points 22 and 23, and have a useful life of less than eight years.

CHAPTER II

CALCULATION OF THE TAX BASE

(…)

Article 7

Elements of the tax base

<u>**[1.]**</u> The tax base shall be calculated as revenues less exempt revenues, deductible expenses and other deductible items.

<u>**[2. By way of derogation from paragraph 1, Member States shall be allowed to apply the balance sheet method in which the tax base shall be defined as the difference between the carrying amount of (net) business assets at the end of the tax year and the carrying amount of (net) business assets at the end of the preceding tax year, plus the value of any repayments of nominal capital and profit distributions made during the tax year and minus any additions to business assets made during the tax year pursuant to corporate law.**</u>]

<u>*Presidency comment:*</u>

During the WPTQ meeting held on 8 March 2018 some delegations expressed their preference for the balance sheet approach for calculating the tax base. However:

1. Member States need to follow common minimal hypotheses when assessing the impact of the proposal on their national tax revenues so that results are comparable.

2. The Commission services noted that the outcome of the impact assessment would be substantially the same regardless of the approach chosen – balance sheet approach or transactional approach.

3. The CORTAX model uses the transactional approach and would not be able to simulate the balance sheet approach.

Against this background, the Presidency proposes the following compromise:

- *common evaluation (by all MS) based on transactional approach (paragraph 1);*
- *additional optional evaluation based on balance sheet approach (paragraph 2, above in square brackets), for those MS interested in such an option.*

Since this additional evaluation would require an adjustment of the CORTAX model, interested Member States would need to wait for its adjustment but this would not prevent all MS to perform the common evaluation based on the transactional approach.

Article 8

Exempt revenues

The following revenues shall not be included in the tax base:

(…)

(d) received profit distributions ~~with the exception of hidden profit distributions~~, provided that the taxpayer has ~~maintained~~ a minimum holding of 10 % in the capital or 10 % of the voting rights of the distributing company for **<u>an uninterrupted period of at least</u>** 12 ~~consecutive~~ months, with the exception of profit distributions from shares held for trading as referred to in Article 21(4) and profit distributions received by life insurance undertakings in accordance with point (c) of Article 28;

<u>Presidency comments</u>:

Further to the views expressed by some delegations during the meeting on 8 March 2018 the Presidency:

- *withdraws its proposal for an amendment;*
- *aligns the text with the PSD.*

The Presidency acknowledges that the holding period in the PSD is optional, however proposes the above period as a common rule further to the meeting on 1 February, where some Member States opposed to the introduction of options. Besides, the availability of options will not be in line with a common hypothesis for an impact assessment.

It should also be considered that the Commission proposal of this article contains a holding period. Its removal will widen the scope of the proposed exemption.

The same considerations apply with respect to the 10% requirement for a minimum holding of voting rights. The Presidency is of the view that the proposed compromise text is a common rule.

(…)

Article 10

Other deductible items

A deduction shall be made in respect of the depreciation of fixed assets referred to in Articles 30 to 40.

(…)

Article 12

Non-deductible items

By way of derogation from Articles 9 and 10, the following items shall be non-deductible:

(a) profit distributions and repayments of equity or debt;

(…)

(c) the transfer of retained earnings to a reserve that forms part of the equity of the company;

(d) corporate tax and similar taxes on profits;

(…)

(...)

CHAPTER IV

DEPRECIATION OF FIXED ASSETS

(…)

Article 33

Individually depreciable assets

1. Without prejudice to paragraph 2 and Articles 37 and 38, fixed assets shall be depreciated individually over their useful lives on a straight-line basis. The useful life of a fixed asset shall be determined as follows:
   (a) commercial, office and other buildings, as well as any other type of immovable property in use for the business, with the exception of industrial buildings and structures: 40 years;
   (b) industrial buildings and structures: 25 years;
   (c) long-life fixed tangible assets, other than the assets referred to in points (a) and (b): 15 years;
   (d) medium-life fixed tangible assets: 8 years;
   (e) short-life fixed tangible assets: 5 years;
   (f) fixed intangible assets, **<u>including acquired goodwill</u>**: the period for which the asset enjoys legal protection or for which the right has been granted or, where that period cannot be determined, 15 years.

<u>Presidency comments:</u>

Further to the views expressed by a number of delegations during the meeting held on 8 March 2018, the Presidency reintroduces the text for depreciation of acquired goodwill. The useful life is proposed to be 15 years, which is in line with the comments made by most of the delegations on the text of this article.

2. Second-hand buildings and other types of immovable property, second-hand long-life fixed tangible assets, second-hand medium-life fixed tangible assets, second-hand short-life fixed tangible assets and second-hand fixed intangible assets shall be depreciated in accordance with the following rules:
   (a) second-hand commercial, office or other buildings, as well as any other type of immovable property in use for the business, with the exception of industrial buildings and structures: 40 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 40 years, in which case it shall be depreciated over that shorter period.

(b) second-hand industrial buildings and structures: 25 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 25 years, in which case it shall be depreciated over that shorter period;

(c) second-hand long-life fixed tangible assets, other than the assets referred to in points (a) and (b): 15 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 15 years, in which case it shall be depreciated over that shorter period;

(d) second-hand medium-life fixed tangible assets: 8 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 8 years, in which case it shall be depreciated over that shorter period;

(e) second-hand short-life fixed tangible assets: 5 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 5 years, in which case it shall be depreciated over that shorter period;

(f) second-hand fixed intangible assets: 15 years, unless the remaining period for which the asset enjoys legal protection or for which the right has been granted can be determined, in which case it shall be depreciated over that period.