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MEETING DOCUMENT

From:	Presidency
To:	High Level Working Party
Subject:	Common Corporate Tax Base (CCTB): - State of play and way forward

Delegations will find attached a document from the Presidency in view of the meeting of the High Level Working Party (Taxation) on 11 May 2017.

Common Corporate Tax Base (CCTB):
State of Play and Way Forward

I/ State of play

1. As part of relaunching the 2011 Common Consolidated Corporate Tax Base (hereafter "CCCTB") proposal, the Commission put forward end October 2016 a proposal for a Council Directive on a Common Corporate Tax Base, hereafter "CCTB" (doc. 13730/16 FISC 170 IA 99) and a new proposal for a Council Directive on a CCCTB (doc. 13731/16).
2. The CCTB proposal lays down common corporate tax rules for computing the tax base of companies within the EU. On this basis, taxpayers would then have to calculate their tax liability by applying the national corporate tax rate and possible tax credits (both out of CCTB scope) applicable in their Member State of residence.
3. The main changes compared to the 2011 proposal are:
   a. its mandatory character for large companies;
   b. a super-deduction for research and development (R&D) expenses to support innovation (Article 9);
   c. a new Allowance for Growth and Investment (AGI) to address the debt financing bias (Article 11);
   d. and a temporary loss relief (Article 42), pending agreement on the CCCTB.
4. The CCTB and CCCTB proposals were presented to the WPTQ on 3 November 2016 and followed by a general exchange of views. The impact assessment (doc. 13730/16 FISC 170 IA 99 ADD 2 + 3) that accompanied the two proposals was examined at the same meeting and raised a number of questions, notably on the expected impact on national tax revenues.
5. On 6 December 2016, the Council discussed the way forward concerning the proposals on a CCTB and on a CCCTB, and took the view that work should focus as a priority on the elements of a common tax base (doc. 15315/16). It also invited Member States, as a start, to "*concentrate their efforts on the rules for calculating the tax base and, in particular, on the new elements of the relaunched initiative (chapters I to V)*".
6. In its EU BEPS Roadmap (doc. 5988/17), the Maltese Presidency announced its intention to start the examination of the CCTB proposal with a view to stabilise the text on its novel aspects (Articles 9-11-42) by the end of June 2017.
7. The WPTQ subsequently proceeded with the article-by-article examination of the CCTB proposal, with a particular focus on these Articles, and followed up the discussion on the impact assessment at its meeting of 16 February 2017.

8. This technical examination having revealed some different perspectives across Member States, the Presidency devoted the subsequent WPTQ meeting of 23 March 2017 to discussing possible ways forward on Articles 9-11-42. The Commission services also responded at this occasion to a number of concerns and questions raised by delegations. The Commission services have, in particular, also elaborated further with examples on the application of the AGI (Art11) and the loss relief with recapture rule (Art42)
9. On this basis, the Presidency was then able to table a preliminary draft compromise on these 3 Articles at the WPTQ meeting of 26 April 2017. Whilst progress could be made on a number of technical aspects, discussions however confirmed a number of more political issues on which guidance will be required by the HLWP in order to enable further progress.

II/ Main political issues

a) impact on national tax revenues

10. Whilst a number of delegations have raised general concerns about the impact of the overall 2016 CCCTB initiative on their national tax revenues, similar concerns have been echoed by delegations in relation to the above-mentioned three novel elements of the CCTB proposal.
11. With regard to the impact on national tax revenues of the overall 2016 CCCTB initiative, the Commission services have underlined that before the proposal was put forward they conducted an assessment which focused on the impact at the overall EU level but it is not possible for them to make such differentiated assessment per Member State as this would require country-specific data and models that they do not have. Delegations were expressly invited by the Presidency to present to the WPTQ any national impact assessment that they would undertake.
12. As for the impact on national tax revenues of the three novel elements, several delegations noted an element of political opportunity assessment: any tax policy decision that is not motivated by the fight against tax fraud and avoidance has indeed economic impacts that will *in fine* require an element of prior political evaluation and decision. At the same time, such political evaluation and decision is not for WPTQ on direct taxation to make. It should be discussed in a broader context of EU's competiveness.
13. Against this background, the Presidency would suggest to progress technical work (in line with December 2016 Council conclusions) and leave aside considerations related to impact on national tax revenues until this point in time when a horizontal political opportunity evaluation is possible.

b) need for flexibility with a view to national economic policies

14. Whilst examining the proposed super deduction for R&D (Article 9), but also in their preliminary comments on the overall CCTB proposal, many delegations insisted on the need to keep a margin of flexibility within the common corporate tax base in order to enable national economic policy decisions to be tailored to each Member State's specificities. At the same time however, it is also recognised that the attractiveness of a CCTB for taxpayers would stem from them facing a common set of rules across all Member States.
15. This limitation with regard to national corporate tax law measures is clear from paragraph 2 of CCTB Article 1: "*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*".
16. Against this background, the Presidency proposed in Article 9 to allow the super deduction on R&D costs only provided that the taxpayer is not entitled to a tax credit on the same costs (after the computation of the common base), in order to prevent companies from cumulating the two tax benefits.
17. Beyond this issue of national tax incentives to R&D, the level of flexibility to be allowed in respect of the common corporate tax base might in this context need further reflection, also in the light of political calls for more coordination of national economic policies within the Union.

c) overall competiveness of EU corporate taxation

18. Throughout the discussions the issue of competiveness has been a key consideration. This needs to be looked at not only from a national economic perspective but also from a broader economic perspective of the EU overall vis-à-vis the rest of the world. Corporate taxation is a key element of a competitive business environment. External pressures on corporate tax systems are bound to increase and this requires a joint reflection on how EU corporate tax policy can respond to these challenges, going beyond the issue of securing tax revenues.
19. A modern corporate tax system in the EU could help address these global challenges head-on. It could enhance the EU's comparative advantage, facilitating access to the biggest single market in the world by providing certainty though consistent and stable tax rules that remove obstacles for businesses of all sizes. It could also help improve the collective performance where the EU still lags behind, notably boosting productivity by prioritising investment in R&D and reducing distortions in financing sources. At the same time, it should ensure a level playing field for all businesses, large and small, including those in the digital economy.

20. In this context, the Presidency believes that it may be appropriate to have a broader economic policy reflection on the key features for the CCTB which Member States think are essential for a competitive corporate taxation system in the EU. These could include:
    a. Incentivising innovation, research and development: The EU underinvests in private R&D compared to other global innovation leaders. There is therefore a need to ensure that the corporate taxation in the EU supports investment in private R&D and intangible assets.
    b. Distortions to investment and financing decisions: Investment remains weak and behind other economies hit by the global crisis, whilst Europe's capital markets are still relatively underdeveloped and fragmented. There is therefore a need to ensure that corporate taxation in the EU provides a neutral tax treatment for debt and equity and allows companies of all sizes to access external funding to stimulate growth.
    c. Drivers of value and location of activity in modern global businesses: The global economy is becoming increasing digitalised. There is therefore a need to ensure that corporate taxation in the EU is fit for this challenge, and is able to support the growth and change in value chain of digital firms in an efficient and effective manner.

QUESTIONS

1. *In the face of increased international competition, which elements of corporate taxation do Member States consider key to enhance the overall competitiveness of EU's internal market vis-à-vis the rest of the world?*
2. *How do Member States think that the C(C)CTB proposal could be an instrument to enhance the competitiveness of the EU? Do you agree that consideration should be given to consolidation aspects of the CCCTB proposal in this context?*
3. *Do you agree to continue the technical work on the CCTB proposal while leaving aside considerations related to impact on national tax revenues for the time being?*
4. *What degree of flexibility on the aspects of the common base is sought by your delegation?*