



Council of the European Union
General Secretariat

Brussels, 26 January 2018

WK 980/2018 INIT

LIMITE

**FISC
ECOFIN**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Tax Questions (Direct Taxation – CCTB)
Subject:	C(C)CTB: flexibility for Member States

Delegations will find attached a document for the Working Party on Tax Questions (Direct Taxation-CCTB) meeting on 1 February 2018

C(C)CTB: flexibility for Member States

1. During the ECOFIN Council of 23 May 2017 several ministers argued for more flexibility as regards the rules of the CCTB proposal. This was echoed by several delegations in WPTQ meetings on the Article-by-Article examination of the CCTB proposal.
2. The call for more flexibility can be construed in several ways:
 - a. Flexibility may imply including options for Member States as regards certain provisions in the Directive. It would then be up to the Member States whether they want to make use of these options. In this context reference is made for instance to the various options in the Anti-Tax Avoidance Directive¹, e.g. in respect of interest limitation..
 - b. Flexibility may also mean making entire provisions (e.g. the allowance for growth and investment, or the super R&D deduction) optional for Member States or to delete them from the Directive and leave flexibility to Member States to apply similar provisions outside the scope of the Directive (e.g. through tax credits or social security contributions).
 - c. Some delegations also argued for maintaining the possibility of applying stricter anti-abuse rules than those included in the Directive. These delegations referred in particular to ATAD Article 4 (minimum level of protection), which allows Member States to have stricter anti-abuse rules. In this context it should be noted that the ATAD provides for a minimum standard whereas the CCTB is intended as a common standard.
3. Leaving aside the advisability of having any of the above options in a Common Base, these could in principle be included in the CCTB in order to accommodate Member States' wishes for specific provisions. However, these would render the Directive as a 'minimum' standard as in ATAD, i.e. not a 'common' corporate tax base.
4. More importantly, flexibility becomes more problematic when it comes to consolidation:
 - a. Pursuant to Article 7 of the CCCTB proposal the tax bases of all group members should be added together into a consolidated base. Consequently, a specific tax break granted or refused by a Member State to a group member in the context of the CCTB becomes diluted and thus less effective if the group member's tax base is only one part of the group's consolidated tax base.
 - b. The same goes for stricter anti-abuse rules applied by a Member State. The application of stricter rules than those of the CCTB does not seem to be very effective as this would only protect a part of the consolidated tax base which would not correspond with the apportioned share of the MS with stricter rules.

¹ Council Directive (EU) 2016/1164.

- c. Moreover, having different rules in place for different group members would go against the principle of the common consolidated base whereby group members in different member states would normally be taxed on the same footing.
5. The only optional provisions that have been included in the CCTB and CCCTB proposals relate to the following deductible items: gifts and donations (Article 9, paragraph 4, of the CCTB), pension provisions (Article 24 of the CCTB) and equalisation provisions for insurance undertakings (Article 28, paragraph (d) of the CCTB). Because some Member States may want to allow a deduction for one or more of these items, whilst others may not, these are only deductible from the apportioned share pursuant to Article 44, paragraph (d), (e) and (f). Consequently, they are not deductible from the common base.
6. From a mere drafting perspective it would not be impossible to include more items that are only deductible from the apportioned share in Article 44 of the CCCTB. However, this would add more complexity to the CCCTB if an extensive catalogue of options and a corresponding catalogue of items only deductible from the apportioned share, were to be included in the CCCTB. Taxpayers would have to check in which Member States they can deduct certain items from the apportioned share. Moreover, the relation between the deductible item, the group member's activities and the Member State's apportioned share would not always be obvious.

Questions to delegations

- 1. What kind of flexibility would delegations want to include in the CCTB: in respect of the tax base, tax incentives and/or anti-abuse measures?*
- 2. In respect of tax incentives and considering the objective not to undermine the consolidation phase, would delegations want to have flexibility through the CCCTB (deductions from the apportioned share) or through tax credits outside both directives?*
- 3. In respect of anti-abuse rules, how do delegations view the fact that such flexibility would de facto apply to a part of the CCTB that is not the apportioned share under the CCCTB?*