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WORKING PAPER

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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Tax Questions (Direct Taxation – CCTB)
Subject:	Allowance for growth and investment ('AGI') – Article 11 CCTB

Delegations will find attached a document from the Presidency on Article 11 (Allowance for growth and investment ('AGI')), in view of the meeting of the Working Party on Tax Questions (Direct Taxation - CCTB) on 23 March 2017.

Common Corporate Tax Base (CCTB) - Article 11

Allowance for growth and investment ('AGI')

1. On 6 December 2016, the ECOFIN Council (doc. 15315/16) invited Member States to, as a start, *“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)”*.
2. At the last WPTQ meeting on 16 February 2017, the new elements of the relaunched CCTB proposal were examined article by article, including Article 11 relating to the Allowance for growth and investment (AGI).
3. At this occasion and in subsequent bilateral contacts, delegations raised a number of comments:
 - a. some delegations expressed concerns about the potential negative effect on tax revenues (narrowing of the tax base), whereas the Commission assured that the measure would be broadly budget neutral for Member States given that it has very positive economic benefits that result in additional tax revenues compensating the direct costs for the AGI;
 - b. some delegations requested practical examples about the implementation of the 10 year reference period and the treatment of (good) losses;
 - c. some delegations questioned the fact that "equity" is not explicitly defined in the Directive whilst there is reference to the concept of "value for tax purposes" regarding the participations in the capital of associated enterprises (as in the Italian ACE);
 - d. one delegation criticised the potentially pro-cyclical nature of the AGI, meaning that taxpayers in financial difficulty would be less likely to benefit from the notional interest deduction;
 - e. one delegation expressed concerns about possible impacts on bilateral tax treaties, in particular with the USA (LOB clause);
 - f. comments were also made on the need for clarifications regarding how this will be applied to aspects relating to permanent establishments and effects on the rule in case of mergers or other corporate reorganisations;
 - g. Most delegations opposed the prospect for referring to delegated acts in connection with the anti-abuse provisions and requested that these are integrated in the Directive instead;
 - h. Finally, many Member States noted that with a view of understanding the pros and cons of such a rule, it would be appropriate to analyse the rule in more detail.

4. The Maltese Presidency intends to stabilise the text of this Article by the end of June 2017. Feedback by delegations on the present document will therefore help the Presidency prepare a preliminary compromise text for this Article at the subsequent WPTQ meeting.
5. A separate document by DG TAXUD addresses the issue of the neutral impact of the AGI on tax revenues, as compared to debt financing. An example is also provided on the functioning of the 10-year reference period for computing increases in equity.
6. Note: according to the Commission, currently Belgium, Italy and more recently Cyprus apply an ACE, whilst Portugal has an ACE for its SMEs (under eligibility conditions), and Austria, Latvia and Croatia experienced an ACE in the past but abandoned it.

Main orientations

7. Some delegations raised questions about the approach chosen by the Commission. As acknowledged by the Commission's impact assessment, the AGI is one specific version of an ACE: it is incremental (contrary to a system that looks at the entire stock of a company) with a moving reference date; that is, it is only granted to the extent that there are equity increases over a period of no longer than 10 tax years. In the Commission's view, the AGI rule does not include a definition of "equity" because the system of the common tax base is not designed on the basis of a tax balance sheet. Instead, it is the Profit & Loss Account that is adjusted for taxation in accordance with the common tax rules of the Directive. Consequently, it is the Commission's view that the concept of "equity" should be taken, as delineated in financial accounting. The Presidency does not intend to fundamentally change this general approach, if the foreseen effect on tax revenues is indeed neutral (see above).
8. Paragraphs 4 and 5: some delegations raised questions about the 10-year reference period chosen by the Commission. This issue can be further examined at technical level if delegations have particular issues in this respect, particularly following the explanations and example in DG TAXUD's room document.
9. Paragraph 6: it was suggested to bring the foreseen anti-abuse measures in the text of the Directive and derive inspiration from the Italian ACE law, rather than refer to delegated acts (see section II). The Commission expressed some reticence about this prospect on the grounds

that it is always useful to maintain some degree of flexibility in order to be in a position to swiftly tackle future developments. It could also be considered whether there is a need to enhance the AGI with new definitions. The Presidency is ready to explore these options, though it will require substantial work at technical level. Drafting suggestions from countries that already have experience with an ACE type of rule would be welcome.

QUESTIONS:

- 1. Do delegations share the above analysis?*
- 2. Do delegates share the opinion that (in principle) the AGI as proposed by the Commission is effective in addressing the debt/equity bias? If not, what measures/changes should be introduced to make this more effective?*
- 3. The Commission proposal already lists down what the actual anti-abuse provisions could deal with in the context of this article. What further anti-avoidance measures could be envisaged?*