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WORKING PAPER

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MEETING DOCUMENT

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| From: | Austrian delegation |
| To: | Working Party on Tax Questions (Direct Taxation – CCTB) |
| Subject: | Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) |

Delegations will find attached a document from the Austrian Delegation in view of the meeting of the Working Party on Tax Questions (Direct Taxation - CCTB) on 30 May 2017

24 May 2017

Art. 11 CCTB – Allowance for Growth and Investment (AGI)

1. General remarks

Austria wants to stress that the CCTB proposal's scope should be **limited** to provisions concerning the calculation of the harmonised corporate **tax base**. Providing rules that grant tax incentives for investment and growth should rather be left to the **Member states'** discretion for action regarding their **fiscal policy**. National economic needs vary and therefore Member States may require different instruments to face the respective challenges. The proposal should therefore not provide a standardized concept, since it may not fit all member states' requirements. Further, providing such rules would in particular go beyond what has been the initial idea of the common (consolidated) tax base.

Austria had a similar regulation (deductible yield on equity increase) in its income tax act from 2000 to 2003 ("Verzinsung des Eigenkapitalzuwachses").

2. Technical remarks

In general

From Austria's point of view, only a marginal tax benefit for taxable entities will result from this article since merely the equity increase falls within its scope, not the equity itself, whereas borrowing costs on the total amount of debt (not only on the increase in debt) are deductible. Thus the debt/equity bias will remain.

Paragraph 2

Austria does not support the definition of "**equity**" in the new draft, because first the term itself is quite vague and imprecise and second it is disproportional to create a new meaning of the term "equity" only within Art. 11, whereas the same term is interpreted differently in other European legal acts. The suggested reference to national accounting laws has to be

treated with caution, because in this case the aim of a “common” tax base would be interfered.

Paragraph 3

Art. 11 para 3 is unclear. According to the preliminary draft compromise, an amount equal to the defined yield on the AGI equity base decrease shall become taxable “provided that where the AGI equity base *decrease* is due to a loss, the AGI equity base shall be determined without regard to such loss.”

Let’s look at the following examples (inspired by the example in WK 2837/2017). The only difference is that in the first example, there is a capital reduction and in the second example, the company – as intended by the directive – issues new shares.

| | | | |
|-------------------------------|------------|-------------------------------|------------|
| AGI equity base 1.1.2021 | 600 | AGI equity base 1.1.2021 | 600 |
| capital <i>reduction</i> 2021 | -100 | capital <i>increase</i> 2021 | 100 |
| loss 2021 | -40 | loss 2021 | -40 |
| AGI equity base 31.12.2021 | 460 | AGI equity base 31.12.2021 | 660 |
| AGI equity base 31.12.2018 | 600 | AGI equity base 31.12.2018 | 600 |
| <i>Decrease</i> Art 11 para 4 | -100 | <i>Increase</i> Art 11 para 4 | 60 |

Losses remain out of consideration only in case of an AGI equity base *decrease*, not in case of an AGI equity base *increase*. This leads to **asymmetric** results. The base for the taxable yield is 100, whereas the base for the deductible yield is only 60, not 100.

Furthermore, the third sentence (“The latter provision shall apply mutatis mutandis in respect of *losses brought forward from previous tax years*. In this context, decreases in the AGI equity base due to losses shall be computed according to the rules provided for in this directive.”) is quite unclear and we would therefore appreciate examples.

In the Austrian regulation, only an increase in equity was relevant. Decreases did not result in taxation.

Paragraph 4

The process of calculating the AGI equity tax base is **prone to manipulation** since the company could adjust its equity for a single date (the **closing date**). But also an average observation does not seem suitable: in the Austrian regulation (contrary to the process in the draft at hand) the AGI equity tax base was calculated on an average observation: After aggregating the equity base of each calendar day, the sum was divided by the number of days of the specific business year and compared to the highest value in the preceding 7 years. Both for the taxpayers and the fiscal authorities this process seemed to be very complicated, resulting in the circumstance that only a small amount of entities opted for this clause. So neither calculating on the basis of a fixed date nor on the basis of a weighted average equity is easy to manage.

Furthermore, the period of 10 years is too long for Austria, as our retention period is only 7 years.

Paragraph 6

Austria supports the deletion of the Commission's power to adopt delegated acts. Nevertheless, this "anti-abuse rule" still remains unclear.

Multiple granting

As the Italian delegation has shown, there are various constellations that allow multiple granting. Art. 11 should provide for regulations preventing this. The Austrian law, too, had rules on how to deal with increase in equity and participations.

Besides all those various technical problems, Austria wants to stress again that a tax incentive like the AGI should be left to the Member States' discretion and that the CCTB should concentrate on the necessary elements for calculating the tax base.