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WORKING PAPER

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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Tax Questions (Direct Taxation – CCTB)
Subject:	CCTB: Scope vs. Flexibility of the Common Base

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 1 February 2018.

CCTB: Scope vs. Flexibility of the Common Base

1. Currently the text of the proposal for a Council Directive on CCTB (doc. 13730/16) aims for a mandatory application of the Common Base for companies as defined in Article 2 paragraph 1 and paragraph 2. The main conditions are being a corporate taxpayer and in a group of companies exceeding EUR 750 Million threshold for consolidated group revenues. Other companies can opt into the Common base for a period of at least 5 tax years (paragraph 3 of Article 2).
2. In past discussions in WPTQ and HLWP meetings there was a clear preference among some delegations for an extension of the scope of the Common Base to include all corporate taxpayers resident or situated in their tax territory. Other delegations appeared more reluctant to pursue this approach.
3. The main argument put forward by those delegations clearly in favour of one common tax base for all corporate taxpayers in their territory, whether part of a group or standalone companies, is that it is neither effective nor advantageous for tax authorities to have two parallel set of rules for the taxation of domestic companies, one for the implementation of the Common Base and the other the continuation of the current CIT taxation system.
4. There are in principle only two possible approaches to address this issue: either the compulsory scope of the Common Base is extended to cover all CIT taxpayers in the MS (extended scope), or those MS that wish so may voluntarily, and based on national tax policy interests, adjust their national CIT rules to bring them in line with the Common Base rules (unilateral adjustment).
5. The pros and cons of each approach are discussed below:

Extended scope

Such a change would increase certainty for business, address the inefficiency of having to run two corporate tax systems in parallel and reduce to the risks of mismatches between national CIT systems.

The downside of this approach is that, not only many more harmonised rules would be needed in the CCTB (e.g. for specific sectors or industries which are typically below the EUR 750 million threshold), but also the flexibility for MS national tax policy measures would be strongly restricted (see separate room document "C(C)CTB: flexibility for Member States").

There would therefore be an increased need for having flexible solutions in place for swift and targeted amendments and changes to the Common Base provisions.

In addition, there would be questions on the subsidiarity and proportionality aspects within such an approach, whilst several national parliaments have already expressed strong concerns with existing Commission's proposals.

Unilateral adjustment of the national CIT system to the Common Base

This approach provides the MS with the possibility to decide on and implement targeted and specific provisions for certain types of companies (start-ups or SMEs) or branches and sectors. Within the EU legal framework deriving from the Treaty Freedoms, secondary legislation and state aid rules, the national parliaments could decide on short term or ad-hoc measures to support certain industries and sectors, for example in case of natural disasters.

The administrative burden from running two parallel CIT systems in one MS would be avoided by those MS electing this approach. This approach would also make unnecessary a discussion of the subsidiarity and proportionality aspects from a mandatory application of the Common Base to all CIT taxpayers.

For businesses (not subject to the mandatory C(C)CTB rules) there would be a higher level of uncertainty from possible future changes to the CIT rules in a MS compared to a situation in which the tax base would be completely fixed in a Directive. However, this uncertainty would be compensated by the possibility for relatively easy and swift amendments to the national tax system in justified circumstances (e.g. cyclical economic crisis or sector specific needs like in the case of a banking crisis).

Questions to delegations

- 1. Do the delegation share the analysis above or do they see other options for an extended scope without the foreseen downsides?*
- 2. Which option would delegations prefer in terms of way forward?*