In order to increase competitiveness of the European Union, the Commission is proposing to harmonise the rules of calculating the corporate income tax base throughout the EU and to allow for cross-border tax consolidation.

The aim of this project is to decrease compliance costs for businesses operating in several Member States, eliminate the need to apply complex transfer pricing rules often leading to disputes and double taxation and allow for cross-border set-off of profits and losses. According to the proposed directive ("CCCTB Directive") eligible companies that opt for the system would calculate their tax base on a group level, consolidating the results for all of their EU subsidiaries and permanent establishments.

Corporate tax rates would remain in the competence of each Member State and thus rest unharmonised. Therefore, after calculating the consolidated tax base of a group, the tax base would be shared between Member States according to a formula, and Member States could then apply their own corporate tax rate to their share of the consolidated tax base.

Eligible companies

Companies that can benefit from the consolidated system shall:

- Operate in one of the qualifying company forms (listed in Annex I);
- Be subject to corporate tax (as listed in Annex II).

For companies meeting the above criteria, joining the system is optional. However, once a mother company joins the system, all its qualifying subsidiaries and permanent establishments shall also join. Subsidiaries qualify if the parent company owns more than 50% of the votes and at the same time more than 75% of capital or rights entitling to profits.

Calculating the common consolidated tax base ("CCCTB")
The tax base shall be calculated as revenues, less exempt revenues, deductible expenses and other deductible items.

The following types of revenues are exempted:

- Subsidies linked to acquisition, construction or improvement of depreciable fixed assets;
- Proceeds from the disposal of assets which are depreciated in a pool;
- Profit distributions received;
- Proceeds from the disposal of shares; and
- Income of a permanent establishment in a third country.

All costs and expenses incurred for the purpose of obtaining or securing income are deductible, including costs related to R&D, costs related to raising equity or debt for the company and donations to charitable bodies up to 0.5% of revenues. Deduction is also allowed for bad debt.

Non-deductible expenses include penalties for breach of legislation, bribes, profit distributions and 50% of entertainment costs. In addition, the costs associated with acquisition of exempt revenues are non-deductible. The deemed level of costs incurred for such purpose is 5% of exempt revenues, unless the taxpayer evidences a lower level of costs.

As regards depreciation, two types of assets are distinguished. Buildings, fixed assets with a useful life of at least 15 years and intangible assets shall be depreciated individually on a straight line basis (buildings over 40 years, tangible assets over 15 years, intangibles over the period of their legal protection or 15 years). Other fixed assets shall be depreciated together in an asset pool, at a rate of 25% per annum.

Profits and losses from transaction between group members are ignored for the purposes of calculating the consolidated tax base. The tax bases of group members shall be consolidated, allowing for cross-border set-off of profits and losses. The application of transfer pricing legislation would be eliminated for transactions between members of a tax group.

Consolidated losses can be carried forward, including losses generated by group members before entering the consolidated system.

The CCCTB Directive contains a general anti-abuse provision, as well as specific ones such as non-deductibility of interest paid to low tax third countries, CFC rules etc.

**Apportionment of the tax base**

The consolidated tax base shall be distributed among Member States where group members are located according to an apportionment formula, combining the following three factors with equal weight:

- Labour factor (consisting of the number of employees and payroll costs with equal weight);
- Asset factor (comprising tangible fixed assets);
Sales factor (sales are allocated for goods to the country of destination of the product rather than to the country of production, for services to the country where physically carried out).

Adoption procedure and timetable

The proposed directive was adopted by the European Commission on March 16. To come into force, the directive will have to be adopted unanimously by EU member countries meeting in the Council, after consultation of the European Parliament. The timetable considered by the European Commission is aiming at an adoption by 2013, with two or three years left for Member States to transpose the directive in their respective domestic tax law. The possibility to opt for the CCCTB should not be opened before 2015 at the earliest.

Some interesting points to note:

- As the CCCTB system will be optional for the companies, domestic corporate income tax systems, including those allowing for tax consolidation, will co-exist with the CCTB system.
- Potential conflicts that may arise between application of the CCCTB Directive and double tax treaties entered into between a Member State and a third country are not fully dealt with by the CCCTB Directive.
- A few countries have already indicated that they would not approve the introduction of the CCCTB in their Member State: if this countries confirm their opposition, this would make it impossible to reach the unanimity required for the adoption of the directive but it could not be discarded that, even in this situation, some Member States decide to go ahead through enhanced co-operation.

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