Common (Consolidated) Corporate Tax Base
The EC’s re-launch proposals for a Council Directive on a CCTB (685) and a CCCTB (683) of 25 October 2016

Prof. Dr. Luc De Broe (KU Leuven)
Holder of the Deloitte Chair in International & EU Tax Law

Belgisch Instituut voor Openbare Financiën, 6 February 2017
Agenda

i. Overview & key features

ii. Comparison CCCTB – Belgian CIT regime (and contemplated reform)

iii. Views expressed by Member States

iv. Personal arguments in favor and against the adoption of C(C)CTB
Common (Consolidated) Corporate Tax Base

Key features
Common (Consolidated) Corporate Tax Base

History of the CCCTB project

The key changes from the 2011 proposal are:

- Objective changed: harmonized corporate tax system that favors cross-border trade and investment (2011), now also anti-tax avoidance objective
- Mandatory adoption for consolidated groups above a certain threshold (€750 million)
- Two-step approach (1st step: common tax base; 2nd step: common consolidated tax base)
- Additional incentives for R&D
- Allowance for equity financing
- Transition regime for relief on intra-group losses (pre CCCTB-approval)
- Introduction of ATAD measures
Common (Consolidated) Corporate Tax Base
October 2016 relaunch

Step 1: Adoption of Common Corporate Tax Base (CCTB)
Intended to apply from 1 January 2019

Step 2: Adoption of Common Consolidated Corporate Tax Base (CCCTB)
Intended to apply from 1 January 2021

Automatic transition

If approved, Member States must adopt and publish legislation

- CCTB - by 31 December 2018
- CCCTB - by 31 December 2020
Common (Consolidated) Corporate Tax Base

Groups within scope

- Mandatory for parent companies and/or qualifying subsidiaries (art. 3)
  - Incorporated in a Member State
  - Total consolidated group revenues over €750 million during the previous financial year
  - Prescribed legal form
  - Subject to corporate income tax
- A qualifying subsidiary – immediate and lower tier where parent has:
  - more than 50% of voting rights, and
  - more than 75% of capital or of the rights to profit
- Permanent establishments (of qualifying non-EU companies) situated within the EU also included (art. 5 – reference to new OECD MC definition)
- Companies below threshold: opt-in for minimum of 5 years
Common (Consolidated) Corporate Tax Base
Calculation of tax base

**Broad tax base** (art. 6-7): all revenues (i.e. profits minus losses when realized) less

- Exempt revenues (art. 8)
  - Dividends and capital gains on 10% shareholdings held for 1 year
- Deductible expenses (art. 9)
  - “in the direct business interest of the taxpayer” (art. 9(1))
  - “with a view to obtaining or securing income” (art. 9(2))
- Other deductible items (art. 10-11)
- Accounting rules on determination of profit/expenses are not material:
  taxable events measured individually, consistently + continuously (timing, valuation and quantification = Art. 15 – 41)
Common (Consolidated) Corporate Tax Base
Calculation of tax base

Exhaustive list of **non-deductible items** (art. 12):

a. Profit distributions and repayments of equity or debt  
b. 50% of entertainment costs, up to an amount that does not exceed \([x]\)% of revenues in the tax year  
c. The transfer of retained earnings to a reserve that forms part of the equity of the company  
d. Corporate tax and similar taxes on profits  
e. Bribes and other illegal payments  
f. Fines and penalties, incl. charges for late payment, that are due to a public authority for breach of any legislation  
g. Expenses incurred by a company for the purpose of deriving income that is exempt pursuant to art. 8 c), d) and e)  
h. Gifts and donations other than those referred to in art. 9(4)  
i. Acquisition or construction costs or costs connected with the improvement of fixed assets which are deductible under arts. 10 and 18 (“depreciable assets”), except for R&D costs  
j. Losses incurred by a PE in a third country
Common (Consolidated) Corporate Tax Base
Calculation of tax base

Limitation of the deductibility of **interest** (Interest limitation rule – art. 13, see slide 12)

Expenditure incurred for the **benefit of shareholders** (closed-end companies – art. 14)

Temporary relief for losses of immediate subsidiaries and permanent establishments (art. 42)
- Taxpayers may deduct losses incurred in the same tax year by immediate qualifying subsidiaries or PEs in other MS
- Full deduction in case of PE, proportional to the participation in case of subsidiary
- Temporary implies
  i. A recapture mechanism, inter alia, once the subsidiary/PE becomes profitable or, at the latest, in 5 years
  ii. The regime will be available until the entry into force of CCCTB (which will include full loss compensation within CCCTB-group)

**Full and permanent relief** of losses once the CCCTB (phase 2) will become applicable
Common (Consolidated) Corporate Tax Base

Specific new elements

Super-deduction for Research and Development costs (art. 9 (3))

R&D costs fully deductible

Additional super-deduction of 50% up to €20 million of costs and 25% above this limit (except for costs related to movable tangible fixed assets)

Additional enhanced super-deduction for 100% of costs for start-up companies (if opt in) up to €20 million and 25% above this limit (except for costs related to movable tangible fixed assets), provided that:

- It is not listed
- It has less than 50 employees
- It does not have associated enterprises
- The annual turnover and/or balance sheet does not exceed €10 million
- It is not registered for longer than 5 years
- It is not formed through a merger

Example

A company spends €30 million on R&D in a given year. Under C(C)CTB it will be allowed to deduct:

- The full costs from its taxable income = €30 million
- An additional 50% for the first €20 million = €10 million
- An additional 25% for the remaining €10 million = €2.5 million

In total, the company can deduct €42.5 million from its tax base, due to its R&D spending.

If this company is a qualifying start-up, it will be allowed to deduct:

- The full costs from its taxable income = €30 million
- An additional 100% for the first €20 million = €20 million
- An additional 25% for the remaining €10 million = €2.5 million

Resulting in a total tax deduction of 52.5 million
Common (Consolidated) Corporate Tax Base
Specific new elements

**Allowance for growth and investment (AGI) (art. 11)**

= **Tax deduction** of defined yield on **increases** in the ‘AGI equity base’

**AGI equity base** = own equity – tax value of stakes in associated companies

**Increase/decrease** = calculated on difference between end of tax year and first day of first tax year under C(C)CTB (in first ten years)

Yield: based on a 10 year euro government bond + 2% risk premium. Floor of 2%

Mirror image: **decrease** of the AGI equity base leads to **taxable income**

---

**Example**

1.1.2019: a company with a participation in a subsidiary joins the CCTB

- **1.1.2019:**
  - Tax value of the company’s participations: 400
  - Equity: 1000
  - AGI equity base: 600

- **31.12.2019:**
  - Participations value: 400
  - Equity: 1200
  - AGI equity base: 800

= **increase** in the AGI equity base: **200** (800-600)

**Defined yield for deduction to be applied to 200**

- **31.12.2020:**
  - Participations value: 400
  - Equity: 900
  - AGI equity base: 500

= **decrease** in the AGI equity base: **100** (500-600)

**Defined yield for taxation to be applied to 100**
Common (Consolidated) Corporate Tax Base
CCTB in relation to ATAD I and II

**Interest limitation rule (art. 13)**

- Borrowing costs **fully deductible** up to the interest or other taxable financial income received
- **Exceeding** borrowing costs deductible for max. 30% EBITDA (excl. tax exempt income) or up to €3 million
  - If national rules provide that a txp is permitted or required to act on behalf of a group: 30% of **group EBITDA** or €3 million
- Exception for standalone companies & financial undertakings
- Full deduction of exceeding borrowing costs incurred on loans
  - Concluded before the date of the political agreement on the CCTB Directive ("grandfathering clause")
  - Used to fund long-term public infrastructure projects if within the EU
- Unlimited carry forward of non-deductible exceeding borrowing costs

**Main deviations from ATAD:**

- Optional items have become obligatory (e.g. unlimited carry forward of non-deductible exceeding borrowing costs, exclusion of financial institutions, group ratio etc.) or are not available (e.g. group equity escape provision; carry back of non-deductible exceeding borrowing costs; carry forward of unused interest)
- Resulting in far less discretion for Member States
- "**Grandfathering clause**" takes into account new date for existing loans to escape limitation rule
Exit taxation (art. 29)

- **Asset or business transfer** to/from head office to PE in another MS or in a third country **to the extent that transferor MS no longer has the right to tax the transferred assets** due to the transfer = exit tax

- **Transfer of tax residence** to another MS or to a third country, except for those assets which remain effectively connected with a PE in the first MS = exit tax

- Calculate **fair market value** gain (price agreed between unrelated willing buyer/seller)

- **Step up** in MS of entry: fair market value in MS of departure to be accepted

- Not applicable to asset transfers related to the financing of securities, assets posted as collateral or in case of asset transfer in order to meet prudential capital requirements or for liquidity management purposes, provided that the assets are set to revert to the transferor MS within 12 months

Main deviations from ATAD:
- Elimination of optional deferred payment: 5 year instalments (for transfers within EU/EEA with EOI-clause)
- Hence also no (optional) interest on instalment payments
- Entry step up = mandatory
Common (Consolidated) Corporate Tax Base
CCTB in relation to ATAD I and II

Switch-over clause (art. 53)
- No exemption for received profit distributions or capital gains on shares of an entity in a third country
  - If the entity is subject to a statutory CIT rate < 50% statutory CIT rate of txp MS
  - Unless contrary to applicable double tax convention
- Taxable base = foreign income – tax credit for tax paid in the third country

Main deviations from ATAD:
- Deleted from ATAD proposal due to strong objections by Member States but reintroduced in C(C)CTB
GAAR (art. 58)

For the purposes of calculating the tax base under CCTB, a MS shall disregard an arrangement or a series of arrangements which, having been put into place for the **essential purpose** of obtaining a tax advantage that defeats the object or purpose of the CCTB, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.

An arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

Arrangements or a series thereof that are disregarded in accordance with paragraph 1 shall be treated, for the purpose of calculating the tax base, by reference to their economic substance.

**Main deviations from ATAD:**
- “Essential purpose” instead of “main purpose or one of the main purposes” (narrower scope in CCTB)
- Reference to economic substance for calculation of taxable base (ATAD: “national law”)
Common (Consolidated) Corporate Tax Base
CCTB in relation to ATAD I and II

**Hybrid mismatches (art. 61-61a)**

- Not part of 2011 CCCTB proposal – introduction into new proposal as a result of ATAD (I and II)
- **Hybrid mismatches of financial instruments, entities or PE presence** (Art. 4 (31))
- Insofar as **double deduction** → deduction only in the source MS
- Insofar as **deduction without inclusion** → denial of deduction by source MS
- Deduction without inclusion **involving a third country**:  
  - If payment sourced in a MS → denial of deduction by source MS
  - If payment sourced in third country → inclusion of the payment in tax base in residence MS, *unless* denial of deduction or inclusion of the income by the third country
- **Non-taxation without inclusion involving a PE** → inclusion of income by residence MS
- **Non-taxation without inclusion involving a third country PE** → MS concerned to require inclusion of the income into tax base
- ...

In line with ATAD I and II
Common (Consolidated) Corporate Tax Base
CCTB in relation to ATAD I and II

Concept of “associated enterprises” (art. 56)

- Associated enterprises =
  - **Taxpayer** (i.e. company in scope of CCTB) participates in the management, control or, directly or indirectly, the capital of a **non-taxpayer** (i.e. company outside scope of CCTB)
  - Taxpayer and non-taxpayer participate in mgm, control or capital of taxpayer and non-taxpayer, or of taxpayers not in the same group
  - Taxpayer with third country PE or non-taxpayer with MS PE

- **Participation**
  - In control = holding > 20% voting rights
  - In the capital = right of ownership > 20% capital
  - ...

17
Adjustment of pricing in relations between associated enterprises (art. 57)

Where conditions are made or imposed in relations between associated enterprises that differ from those that would have been made between independent enterprises, any income that would have accrued to the taxpayer but because of those conditions has not so accrued, shall be included in the income of that taxpayer and taxed accordingly.

Income attributable to a permanent establishment is what the permanent establishment would be expected to earn, in particular in its dealings with other parts of the same taxpayer, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the taxpayer through the permanent establishment and through other parts of the same taxpayer.
Common (Consolidated) Corporate Tax Base

Comparison with Belgian CIT
Common (Consolidated) Corporate Tax Base
Current Belgian CIT regime

Main legislative amendments required under C(C)CTB

- **100% DRD**
- **Super-deduction of R&D costs** instead of proposed IID regime
  - Towards 3 IP regimes?
    a. (Old) PID remains applicable until 30.06.2021 for patents granted or requested prior to 1.7.2016
    b. (New) IID regime applicable to qualifying IP granted or requested as from 1.7.2016 (in line with the OECD’s modified nexus approach)
    c. Super-deduction and enhanced super-deduction for start-ups in application of C(C)CTB
- **Limitation of interest deduction**
  - Quid loans concluded before 17 June 2016 which are grandfathered under ATAD?
  - Quid “equally measures” which may be applied until 2024 under ATAD?
- **Introduction of CFC-legislation**
- **CCCTB anti-hybrid rule ↔ amended Parent-Sub Directive (implemented into BE law)**
- **Introduction of a mechanism for (temporary) loss relief** (direct subsidiaries and PEs) with recapture
- **Introduction of switch-over mechanism** (in line with Belgian DTC’s?)
## Common (Consolidated) Corporate Tax Base

### Contemplated CIT reform

<table>
<thead>
<tr>
<th>Envisaged changes</th>
<th>C(C)CTB provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Limitation of tax losses carried forward</td>
<td>• Unlimited carry forward</td>
</tr>
<tr>
<td>• Participation exemption subject to 24 months holding requirement</td>
<td>• 12 month holding period</td>
</tr>
<tr>
<td>• Limitation of interest deduction in accordance with ATAD (many optional elements)</td>
<td>• Strict (uniform) interest limitation rule</td>
</tr>
<tr>
<td>• 100% DRD; national set of anti-abuse measures</td>
<td>• 100% DRD; switch-over clause (+ GAAR)</td>
</tr>
<tr>
<td>• Elimination of NID</td>
<td>• Introduction of AGI (&quot;NID à l’italienne&quot;)</td>
</tr>
<tr>
<td>• Phased reduction of CIT rate to 23% by tax year 2020</td>
<td>• C(C)CTB does not touch upon CIT rate (but will have an impact if domestic tax base is reduced)</td>
</tr>
</tbody>
</table>
Common (Consolidated) Corporate Tax Base

Views expressed by MS
The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. It aims to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at EU level is justified in light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the EU does not take action unless it is more effective than action taken at national, regional or local level (Art. 5(3) TEU).

(i) Necessity test – Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved to a sufficient extent by EU action?

(ii) Greater Benefits – Would the objective be better achieved at EU level, i.e. would EU action provide greater benefits than action at MS level?
Common (Consolidated) Corporate Tax Base
Views expressed by MS - General

- It is closely bound up with the **principle of proportionality**, which requires that any action by the EU **should not go beyond what is necessary to achieve the objectives** of the Treaties.

- **Protocol No 2** requires the Commission to take into account the regional and local dimension of all draft legislative acts and to make **a detailed statement** on how the principle of subsidiarity is respected. This Protocol allows national Parliaments to object to a proposal on the ground that it breaches the principle (Art. 6), as a result of which the proposal must be reviewed and may be maintained, amended or withdrawn by the Commission, or blocked by the European Parliament or the Council. The draft law must be reviewed when 33% of national parliaments object to proposed EU-legislation.

  - Various MS have expressed their views through a **Reasoned Opinion**, arguing that the principles of subsidiarity and proportionality are not respected by the EC’s proposals.
  - The 33%-threshold has not been met (7 out of 28 national parliaments), thus the **“formal yellow card procedure”** was not initiated.
Common (Consolidated) Corporate Tax Base
Views expressed by MS – The Netherlands

Application of **two parallel tax systems** is inefficient

ATAD already tackles anti avoidance, and forms a sufficient harmonization of tax bases

- No clear link between CCCTB and countering tax avoidance
- No necessity to consolidate and redistribute corporate tax income on EU basis

**CCBT unnecessarily interferes with existing Dutch tax law**

- Changes definition of “fiscal profit”
- Limits the participation exemption
- Ends the innovation box regime

Apportionment is negative for trade and service country, like the Netherlands

TP rules already exist - **No advantages in comparison to existing TP rules**

Impact assessment of EU includes unrealistic premises (e.g. increase of tax rate of 16 MS)

- High risk of reduction of corporate tax income on national level
Dutch political parties opposing the relaunch of C(C)CTB

VVD:
- Opposed to transferring more sovereignty to Brussels - EC shows that it is insensitive to the criticisms of the general public
- 2011 proposal: EC’s impact assessment showed that CCCTB would have negative impact on MS
- Will cost the Netherlands economic growth, jobs and tax revenues
- Negative impact for small countries with open economy
- Maintaining two parallel corporate tax systems is costly

CDA:
- Tax laws fall under the national sovereignty of the MS
- ATAD already adopted, sufficiently tackles anti avoidance
- Optional system leads to new forms of tax avoidance
- Undesirable deviation from OECD agreements on TP rules
Common (Consolidated) Corporate Tax Base
Views expressed by MS – The Netherlands

Dutch political parties opposing the relaunch of C(C)CTB (cont’d)

PVV:
- Not shown that EU approach offers advantages compared to actions by individual MS
- May have an overall negative impact on the GDP of the EU (cfr. EC’s impact assessment on 2011 proposal – deadweight loss of 11-12 billion € for the Netherlands)
- Possible reduction of investments in the Netherlands
- Apportionment is negative for trade and service country, like the Netherlands, as intangible and financial assets are not included
- Higher costs + additional administrative burdens compared to current system based on tax treaties

Dutch political parties supporting the relaunch of C(C)CTB

D66:
- Proposals comply with subsidiarity principle, but:
- narrower tax base than current Dutch corporate tax base
- CCTB does not correspond with tax treaties
- allocation key in CCCTB is not advantageous for the Netherlands
Common (Consolidated) Corporate Tax Base
Views expressed by MS – The Netherlands

**Dutch political parties supporting the relaunch of C(C)CTB**

**ChristenUnie:**
- CCTB complies with subsidiarity principle, CCCTB does not

**PvdA:**
- Proposals comply with subsidiarity principle
- Suitable to tackle tax avoidance – CCTB is a first step, and CCCTB a final step after BEPS
- Suitable to counter harmful and tax competition among MS (e.g. the current ongoing race to the bottom)

**SP:**
- Proposals comply with subsidiarity principle, but:
  a. proposals also need to include minimum base and minimum rate
  b. opposed against possible tax shopping due to optional application of CCCTB

**GroenLinks:**
- Proposals comply with subsidiarity and proportionality principle, but:
  a. suggestion to remove optionality (for companies below the threshold)
  b. suggestion to introduce minimum rates to avoid race to the bottom
  c. need for further specification of R&D incentive and allowance for equity
  d. allocation key needs to include intangible assets and services
Common (Consolidated) Corporate Tax Base
Views expressed by MS – Malta

**Presidency of the Council of the EU**

Impacting national fiscal and budgetary sovereignty which is an essential function of a MS

Additional optional system for ‘smaller’ businesses will only complicate tax rules

MS may be required to change tax rates

- Potential race to the bottom

**Parallel systems of TP rules**

- For transactions with non-CCCTB companies or other CCCTB-groups and transactions under CCCTB rules

One-stop shop-principle results in national companies forced to interact with a foreign tax administration

After ATAD I and II (and other incentives) no need for further action against tax avoidance on EU level

**Apportionment is arbitrary**

- More advantageous to labour-intensive economic sectors

- Penalises high level productivity/high added value activities/limited market size

Risk of redistribution of wealth from relatively poor EU MS to more developed and richer EU MS
Common (Consolidated) Corporate Tax Base

Views expressed by MS – Luxembourg

Proposals infringe national tax sovereignty, but also tax, social and economic policy of MS

Anticipated negative budgetary effect on certain MS (Luxembourg) which may force MS to raise tax rate

Risk to negatively impact MS with smaller open economies

Race to the bottom for tax rates as single national competence

Two different, parallel tax systems

- Increase of administrative burden
- Threat for principle of equality

CCCTB excludes TP rules within EU

- Divergence with OECD’s negotiated outcome on TP principles
- Contradictory to existing international agreements of Luxembourg
Common (Consolidated) Corporate Tax Base
Views expressed by MS – Ireland

EC did not meet procedural requirements to provide detailed statement with sufficient quantitative and qualitative indicators

Proposals infringe national tax sovereignty

Negative impact on Ireland:
- Anticipated decline of Irish tax receipts with 1.4% of GDP may be underestimated
- Overall EU growth may increase up to 1.2% - No information on impact on MS with smaller open economies
- Many indications that there will be a narrower tax base than under current Irish corporate tax
- Significant national case-law and administrative practice/expertise will be lost which may lead to uncertainty for businesses
- CCCTB may undermine role of national courts – Citizens must rely on ECJ
- No reduction of administrative burdens
CCCTB imposes **a single tax rate** within MS – Ireland currently has two rates (25% - 33%)

Two different, **parallel tax systems**: SMEs not opting in vs. MNEs and SMEs opting in

**Interferes** with phased implementation of **BEPS** actions and undermines OECD negotiated outcome on ALP and TP

**Apportionment is arbitrary**

- Ignores existence of intangible assets
- Allocation on sales benefits countries with larger customer bases

May distort **the EU’s competitive position** in the global market
Common (Consolidated) Corporate Tax Base
Views expressed by MS – Sweden

Non-compliant with principle of subsidiarity

- **Erosion of MS’ sovereignty** to levy and maintain sufficient tax revenue in order to finance welfare
- Member States are better suited to determine the design of the corporate taxation

Difficult to assess objectives of each proposal separately as Commission’s objectives concern the entire corporate package

C(C)CTB is **incoherent with ATAD**

- ATAD introduced minimum standards
- Undesirable to introduce absolute anti-abuse rules without margin for MS

**Allocation key in CCCTB is arbitrary**

- Dependent on national conditions
- Application will differ significantly between MS

Proposal contains vague and imprecise formulations and a lack of clarity

- E.g. quid effects on double taxation agreements
Common (Consolidated) Corporate Tax Base
Views expressed by MS – Denmark

Contrary to the principle of subsidiarity

- Tax policy lies outside of the scope of the EU competence

CCCTB apportionment will **favour countries with large domestic markets**

- May have far-reaching economic consequences for small export-oriented countries

Unduly rigid and **inflexible** rules are not desirable

Many indications that there will be **a narrower tax base** than under Danish corporate tax

CCCTB **triggers shopping** between MS with lowest tax rates
Common (Consolidated) Corporate Tax Base
Views expressed by MS – United Kingdom

Quid **relevance** of opinion in light of Brexit?

Tax base is crucial for MS’ **sovereignty**

- With direct effect on tax revenue, but also on social and policy choices
- e.g. rigid exemptions for R&D, capital bias, limited options not to tax gifts, charitable donations and pension provisions

EC acknowledged **adverse effects** on investment, employment and GDP in its impact assessment of 2011 proposal

Requirement of unanimous agreement hinders dynamic and flexible CCTB

**MS are better suited** to tackle global tax avoidance (through OECD) than the EU

Reduction of compliance costs may be outweighed by **increased administrative costs**

**Risk creating mismatches outside the EU** with MNE exploiting difference between the EU and the rest of the world
## Common (Consolidated) Corporate Tax Base
### Views expressed by MS – Summary

<table>
<thead>
<tr>
<th><strong>Sovereignty of MS</strong></th>
<th><strong>Negative impact on MS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Interferes with existing tax law and concepts</td>
<td>Apportionment key is arbitrary and negative for smaller/service economies</td>
</tr>
<tr>
<td>- Restricts tax, social and economic policy of countries</td>
<td>Negative impact assessment of 2011 proposal</td>
</tr>
<tr>
<td>- Negative financial impact may also restrict tax rate policy</td>
<td>CCTB leads to narrower tax base</td>
</tr>
<tr>
<td>- Tax base on EU level is inflexible due to unanimity requirement</td>
<td>Risk for negative budgetary effects (tax revenue)</td>
</tr>
<tr>
<td></td>
<td>May trigger race to the bottom</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Parallel corporate taxes</strong></th>
<th><strong>Incompatible with intl instruments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Complicate tax rules</td>
<td>- Incompatible with and no improvement of TP rules</td>
</tr>
<tr>
<td>- Higher administrative burden/need for expertise</td>
<td>- No clear link with objective to counter tax avoidance</td>
</tr>
<tr>
<td>- Undesired tax planning opportunities for SMEs</td>
<td>- Interferes with OECD initiatives (BEPS)</td>
</tr>
<tr>
<td>- Parallel application of CCCTB and TP rules</td>
<td>- Incompatible with existing intl tax agreements</td>
</tr>
<tr>
<td></td>
<td>- ATAD was sufficient harmonization</td>
</tr>
</tbody>
</table>

**Concerns**
“there is consensus among governments that moving to a system of formulary apportionment of profits is not a viable way forward; it is also unclear that the behavioural changes companies might adopt in response to the use of a formula would lead to investment decisions that are more efficient and tax-neutral than under a separate entity approach.”

Common (Consolidated) Corporate Tax Base

Arguments in favor and against adoption of the proposals
Common (Consolidated) Corporate Tax Base Advantages

**CCTB**

Measure **against tax competition** within EU
- at least as far as tax base is concerned
- but shift to tax competition within EU on tax rates and credits
- and tax competition remains outside EU (CH and UK as closest neighbours)

Measure **against tax avoidance** within EU
- but tax avoidance is pushed to EU borders (enact common withholding tax at EU border!)

**Mandatory for MNE:** avoids cherry picking = predictability from budgetary perspective
- but optional for non MNE’s allows cherry picking and unequal treatment between non MNE’s

**Positive technical rules:** Cross border loss relief, AGI (NID à l’italienne), Super R&D Deduction

EU Impact assessment: **increase investment and employment** of 3,1% and 0,4%; overall **growth increase** 1,1%, **limited social impact** (see Preamble)
Common (Consolidated) Corporate Tax Base

Advantages

CCCTB

No TP within EU group

Cross-border loss relief within EU

No EU intra-group tax avoidance

One-stop shop:

- reducing compliance cost by 2.5% and time by 10% (Preamble)
Common (Consolidated) Corporate Tax Base
Downsides and uncertainties (CCTB)

MS fiscal autonomy regarding MNE’s eliminated
- “One size fits all” ignores significant differences between economic fabrics of MS
- MS lose ability to develop CIT policy where economically/socially justified as cyclical measure or as structural measure (in particular for smaller open economies)

Directive in tax matters is a rigid instrument because of unanimity
- Current draft not sophisticated
- Political urgency driven by public opinion does not justify poor legislation
- If approved unchanged, many changes needed in future: risk of being under constant review and/of being blocked because of unanimity rule = hindrance to Member States & business
- Inappropriate instrument to react swiftly to developments market

Need for impact assessment per country both for CCTB and CCCTB
- Impact on Belgian budget and on Belgian economy to be measured urgently
Common (Consolidated) Corporate Tax Base
Downsides and uncertainties (CCTB)

Need for a serious impact assessment on EU level taking into account the global picture

- EC impact assessment uses results of the EC Joint Research Centre (2016), computed using the CORTAX simulation – However, the EC acknowledges that the CORTAX model contains caveats:
  - Does not properly reflect important cross-border tax planning channels (such as hybrid mismatches, patent box regimes and intra-group loans)
  - Over-emphasises the benefits from consolidation for MNEs
  - Does not feature the possibility to opt in for domestic firms resulting in unrealistic magnitude of the estimated impacts on production.
- EC impact assessment remains general and does not discuss the impact on individual MS or businesses
- CORTAX simulation shows a decrease of Belgian CIT income by 0.08% of the GDP
- EU has taken lead in striking international tax avoidance and turned non-mandatory BEPS standards into EU hard law through ATAD 1 (2016) & II (2017)
  - Negative impact on investment climate within EU and reduced attractiveness of EU as basis for headquarters
  - Adding CCCTB may further impact competitiveness of EU towards 3th countries (+ effect of Brexit)
Common (Consolidated) Corporate Tax Base
Downsides and uncertainties (CCTB)

If MS lose out on tax revenues: expect rate increases and/or alternative taxes (trade tax, tax on robotics etc.)

Tax competition within EU continues through rates and credits, tax competition by non-EU-countries continues = tax avoidance continues

Cost of running two parallel CIT systems
- high implementation and enforcement cost for MS (compare to MOSS in VAT)

Uniform application guaranteed?
- Rulings by domestic tax authorities or by a central EU authority?
- Litigation: in national courts but final word is with ECJ: slow and costly process, ECJ has insufficient tax capacity
Common (Consolidated) Corporate Tax Base
Downsides and uncertainties (CCTB)

**Little compliance benefit before CCCTB:**
- still tax returns in each MS and compliance with local law for non regulated matters

**May restrict expansion of EU groups:** reaching threshold of 750 mio € requires to step into CCCTB

**Uncertain technical/legal aspects**
- Quid pre-entry tax attributes other than losses (Art. 47)?
  - Exclusion of carry-forwards of tax-free dividends is against EU law (*Cobelfret*-case law)
- TP rules are inadequate: do not apply to group members & no measure to avoid double taxation (Art. 56 & 57)
- Quid concurrence CCCTB and tax treaties (in particular profit allocation & TP-rules)?
- Quid concurrence CCCTB and other EU Tax Directives (in particular PSD, MD, ATAD)
- Quid alignment to BEPS minimum standard: where is modified nexus approach? CCCTB focus is on research-input only
- Can Belgian innovation box (modified nexus approach) continue to apply next to R&D super
Common (Consolidated) Corporate Tax Base
Downsides and uncertainties (CCTB)

Incorrect incorporation of ATAD into CCTB

- Various ATAD measures are incorporated differently into CCCTB or no longer optional
  - Although GAAR under CCCTB is more proportionate than under ATAD (Cadbury Schweppes- case law)
  - Interest limitation: entry into force of CCCTB-grandfathering clause creates uncertainty vis-à-vis two ATAD grandfathering clauses
- Undesired relaunch of switch-over clause which was abandoned under ATAD

Allowance for Growth and Investment (NID à l’italienne)

- Negative AGI = company paying taxes when equity is reduced = penalization for companies in distress
- Notional deductions will likely trigger counterveiling measures under US tax (treaty) law

Financial impact on MNE’s (transition measures required)

- Impact on pre-entry tax attributes (other than losses)
- Impact on key tax parameters; capex decisions made on domestic depreciation and interest deduction rules
Common (Consolidated) Corporate Tax Base

Downsides and uncertainties (CCCTB)

Formulary apportionment *contradicts worldwide accepted OECD TP rules*

Formulary apportionment *favors* industry based-economies and MS with big consumer markets

Formulary apportionment *detrimental to* service economies, MS hosting corporate HQ, MS where intangibles are held

In general *not in favor of* small(er) economies and small(er) consumer markets
Conclusions and recommendations

**Immature and untimely proposal**

- Parallel objectives of ATAD and CCCTB (anti-tax avoidance): tax avoidance sufficiently handled under BEPS, ATAD and State investigations
- ATAD I only to be implemented by 31 December 2018, ATAD II, not even approved yet
- ATAD evaluation report due in 2020
- Unstable political and economic climate
  - new US presidency = new US tax policy – “America first” destroys jobs in Europe/Belgium (VIVES-study)
  - Brexit negatively impacts jobs in Europe/Belgium
  - elections in 2017 in France, Netherlands, Germany
- Inadequate impact assessment at EU level
- No public impact assessment at Belgian level and presumably other MS as well

**Great caution: do not jump quickly on bandwagon but take time for a break**

- Time needed for thorough reflection and impact assessment at MS level and EU level
- Belgian assessment is matter of urgency as Belgium should take official position in near