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## The Rebirth of CCCTB: Lessons from US Multistate Tax Compact

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0n June 17 2015, the Commission re-launched the CCCTB Directive after being four years discussions in the Council of the European Union. In 2016 the Commission will issue a completely new CCCTB Directive Proposal, with several major changes comparing to the original proposal issued in 2011.

In the re-launch announcement, the Commission takes a realistic approach in its action plan: implementing the CCCTB Directive "step-by-step". It means that the "consolidation" element, will be suspended for now and implemented later. The priority of implementation is to establish a "common" tax base. After the common tax base is harmonized and mandatory applicable to all taxpayers, and the consolidation is implemented later. Hopefully.

This "step-by-step" decision is an obvious political compromise to the four years rejection from Member States and it might be inspired by the France-Germany joint initiative to harmonize corporate income tax between them. Therefore, the new "CCCTB" for the time being becomes "CCTB", a common corporate tax base. CCTB is not a group taxation system and it does not adopt the formulary apportionment. On the contrary, the Commission re-emphasizes the importance of the transfer pricing rules. The Commission is still aware of the difficulties and high expenses of applying the transfer pricing rules nowadays, but the Commission decides to give another chance to this classical system.

In its action plans, the Commission provides a substitute for cross-broader loss offsetting instead of the original consolidation mechanism in 2011 proposal. Although not consolidated, the cross-broader loss offsetting is still possible for the parent and the subsidiary, and the losses will be recaptured later when the loss-making subsidiary makes profits again.

Although the long-term goal is to harmonize the national corporate income tax base fully and adopt a mandatory consolidation system, the Commission still insists that they are not going to harmonize the corporate income tax rate.

**What the Commission wants to achieve and what it leaves out**

The new CC(C)TB initiative, emphasized the fairness of sharing the tax between the Member States. This goal is in line with the OECD BEPS project. The profits should be taxed fairly in the country where they are being generated. The national preferential regimes, such as patent boxes, should not be abused to shift tax base. Transactions of intangibles should be evaluated at a fair price.

This new initiative tries to strike a balance between the political pressure from EU Member States due to resistance to harmonizing the direct tax, and the need to a more integrated internal market. The Commission gives in regarding the consolidation mechanism, and consequently the formulary apportionment rules in the original 2011 proposal are left out too. The one-stop-shop mechanism by that the taxpayer only needs to file one single tax return is also left out, because the consolidation is not implemented. Almost all the administrative advantages that the 2011 original proposal provides, have disappear in the new initiative.

**The way ahead**

The Commission has taken into account the BEPS concern while re-launching the CCCTB Directive. This is a right direction because a new system can create more tax avoidance possibilities when it aims to solve the old problems. The Commission expressly mentioned in the new initiative that the CCCTB Directive not only aims to makes the EU a cheaper place to conduct business, but also an important tool to combat tax avoidances. In this regard, the Commission's new CCCTB initiative gives in too much to the political pressure and misses another greatest advantage that the CCCTB Directive could have provided: the consolidated group taxation. It is the consolidation group taxation structure that provides more transparency and thus eliminates aggressive tax planning through intra-group transactions. A mere common corporate tax base, CCTB, may still also lower the compliance costs, but it does not solve the inherent problems from an economic-integrated group. The Commission's new initiative suspends the adoption of consolidation, and this will make the CCCTB's anti-avoidance goal much harder to achieve.

Therefore I have two suggestions for the Commission for drafting their new CCCTB Directive Proposal. First of all, it should not be too slow from the step one (i.e. harmonizing the tax base) to the step 2 (i.e. adopting the consolidation regime). It is because the consolidation element can function as streamlining the tax base calculation and combating tax avoidance scenarios from related companies. Postponing the consolidation is not smart and can render the CCCTB Directive meaningless. Furthermore, the formulary apportionment rules that divide the consolidated tax base, also need further modifying because the rules in the original proposal are still too rough.

Secondly, the Commission should consider the possibility again to implement the CCCTB by the procedure of "enhanced cooperation". In 2011 proposal the Commission rejects this possibility from the very beginning, and the concern of violating the subsidiarity principle also arises and almost trigger the yellow card procedure. In fact, the harmonization via enhanced cooperation is exactly the step-by-step approach. If the Commission adopts this procedure to precede the CCCTB Directive, it is a realistic solution to the current resistance from EU Member States.

In fact, harmonizing tax rules through enhanced cooperation between several countries is not the innovation of European Union. There is already a long-standing example in United States of America: The Multistate Tax Compact. This compact is initiated voluntarily by several states of USA to pursue uniformity of tax rules at state level. This compact also established an organization, i.e. the Multistate Tax Commission (MTC). The underlying idea of the Multistate Tax Compact is that states' cooperation can function even better to promote inter-state trade. The Compact member states have plenty experiences of not only establishing uniform tax rules but also joint auditing.

The Multistate Tax Compact is comparable to the concept of enhanced cooperation under EU law. When the Commission started to design the CCCTB Directive in early 2000's, it took the experiences from USA as reference. Therefore the CCCTB Directive Proposal has a three-factor formula very similar to rules provided by the Multistate Tax Commission. It is pity that the Commission does not dig further to gain experiences from USA. If they do, they might find out surprisingly that MTC staff has started to notice the development of the CCCTB Directive and takes it in their reform discussions. The European Commission should take this re-launch opportunity to contemplate the right direction for an internal market bravely rather than being conservative or playing safe.

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