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Two-step introduction of CCCTB: the price is too high to accommodate politicians

Theo Keijzer (Dorean Global Tax Policy BV) · Friday, September 23rd, 2016

Introduction. I have been actively supporting an EU based corporate income tax to reflect the single internal market rather than a fragmented framework with 28 competing tax laws. I've done so since the early 1990's, after the publication of the Ruding Report (following earlier proposals by eg. Van den Tempel). The CCCTB approach as introduced in 2011 (CCCTB 2011) is an excellent medicine to many of the ills of the stalled economic fortunes of the European Union.

Unfortunately, many parliaments and ministers of Member States (MS) disagreed with the CCCTB proposal. In addition, meetings between MS to iron out technical issues around CCCTB showed a lack of enthusiasm further killing the optimism of the EU Commission. The parochial, pedestrian and ill-informed views of politicians on the CCCTB dossier show a lack of understanding the intricacies of globalization and competition for the investment dollar or euro. Rather politicians, parliaments and governments focused on the possible (in percentage terms small to negligible) loss of tax proceeds for their country; they did typically not address the upside nor see the impact of their decision on the unattractiveness of the EU and the consequential significant loss of taxable profit and thus much lower tax proceeds.

The EU Commission announced a two phase introduction of the CCCTB to acknowledge the political reality rejecting CCCTB 2011. The new text proposal for both phases (CCTB and CCCTB) is expected in November 2016. The first phase, CCTB, provides for a corporate income tax without consolidation across the EU. 28 member states will each enact a law with same text. How this will be administered is uncertain. One element of the CCTB is clear: there will be a cross border loss relief system in place enabling loss recapture between MS.

The EU Commission expects most politicians who opposed CCCTB 2011 because of the perceived impact of tax proceeds on their country, now to agree to a system of cross border loss relief. Meaning, accepting losses imported from other countries (fact that there will be a recapture later will no doubt be irrelevant to these politicians). How realistic is this? Not, I fear. Consequently, it is most likely the CCTB will be accepted by MS without a loss recapture framework. They will point to the next phase where this will happen. Whether the next phase, CCCTB, will ever materialize is uncertain.

Discrimination. It is understood the CCTB and CCCTB regime will contain a discriminatory element. Large corporates must transition to the CCTB/CCCTB framework whereas SME's can continue to use and benefit (these benefits are explained below) from existing corporate tax regimes in MS. It is questionable whether an uneven playfield can provide a fair competition.

Unfortunately, it doesn't stop here. The new CCTB will cause current domestic advantages to be stopped; benefits like patent regimes or full exemption systems. This will result in major transition problems and costs without the compensating benefit of a cross border consolidation and ease of administration.

An example of a loss of benefit: on September 20, 2016 it was proposed in the Netherlands to improve the Patent box/Innovation regime. This benefit will be lost for those having to move to CCTB.

Why should the business community embrace the CCTB phase? Double taxation will continue to exist; there will be 28 laws administered in 28 different countries. We already have this today. Only, today the laws are significantly different whereas under CCTB the text should be the same. What doesn't change is that the MS have 28 different cultures and approaches to administering the new CCTB tax framework. That will cause double tax and tax disputes across borders to continue to exist.

No consolidation or fiscal unit. On top of all this there is one other element in the CCTB that causes untold pain. In a recent discussion I had with prof. Bertil Wiman from Sweden, he mentioned the problem of losing the fiscal unit or consolidation at a country or MS level. Wiman raises a very important point. The CCTB will transition the tax affairs of a company from the current local corporate tax law (with consolidation or fiscal unit regime) to another local corporate tax law, CCTB. However, in the CCTB phase taxpayers will lose the benefit of a consolidation or fiscal unit approach, at MS level. Consequently, the CCTB proposal will not only have a negative impact for reasons mentioned above, it will wholesale kill the EU investment climate for lack of consolidation or fiscal unity rules at country level. This must be remedied. Especially since it is uncertain whether we will quickly transition from CCTB to CCCTB phase. I am familiar with the arguments by the EU Commission about a mandatory time line for CCCTB to be agreed at time of adoption of CCTB. EU politics have shown in the (recent) past to find escapes from earlier agreements where none ought to be. This CCTB to CCCTB process will not be different.

It is almost impossible to develop a consolidation or fiscal unit remedy for CCTB, especially bearing in mind ECJ jurisprudence making it difficult to restrict consolidation or fiscal unit to one country. Discrimination between larger and smaller taxpayers will not help this issue either. Consequently, it is unlikely CCTB will be a realistic first step in a two-step process to CCCTB.

Conclusion. The CCTB was only invented as a first step to accommodate politicians who are unable (at best unwilling) to see the wider global picture. It is better to drop the CCTB intermediate step for reasons outlined above and tackle the issue head-on: introduce the CCCTB immediately. This not only avoids expensive administrative frameworks for the taxpayers but will give a much needed boost to the investment climate in the European Union.

In case politicians continue to reject the CCCTB for reasons mentioned above, the EU Commission has today – unlike in 2011- another trump card. The CCCTB as an ultimate remedy for tax avoidance. If this doesn't work in today's political hype on tax planning, what will?

I wish the EU Commission success in their adventure to change course, drop the CCTB phase and move directly to the CCCTB system. It is never too late in the EU.

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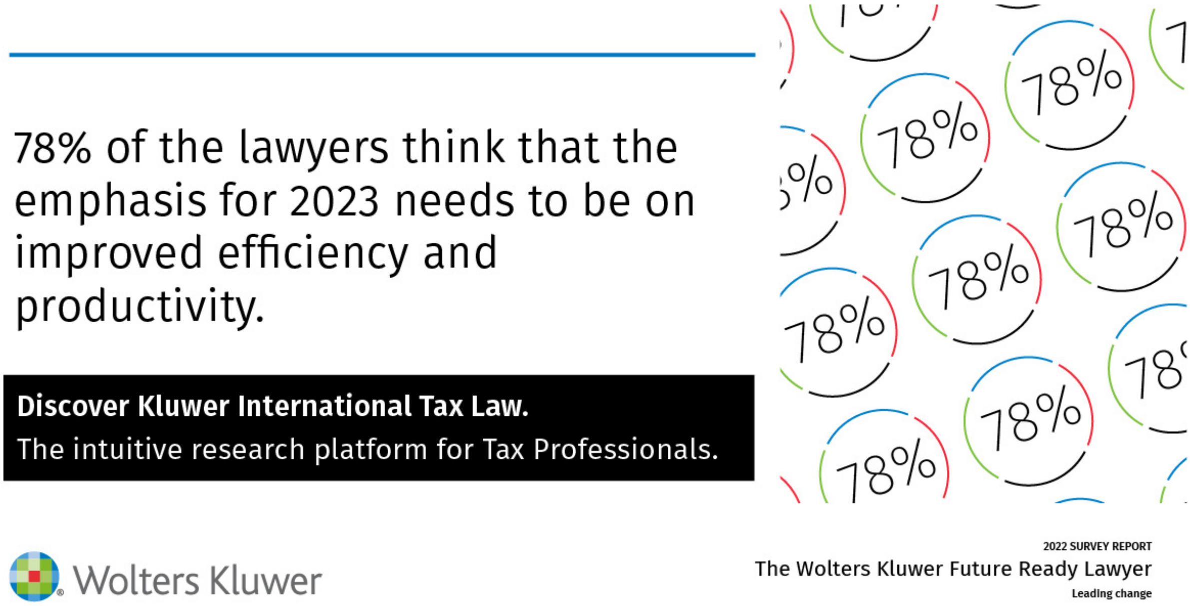

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