

European Business Initiative on Tax (EBIT)

Comments on CCCTB WP 57, 59, 60, 61 and 62

EBIT have pleasure in submitting comments on the above referenced working papers of the European Commission in relation to the Common Consolidated Corporate Tax Base (CCCTB).

WP 57

Double threshold

We would echo the comments of three Member States who questioned the purpose of a double threshold for CCCTB. One of the principal benefits of the CCCTB is the cross-border tax consolidation, beyond the Marks-and-Spencer concept of “final” losses.

We would suggest, therefore that either the threshold for consolidation is reduced to >50%, or that the 75% threshold for consolidation is maintained, but that in either case there is no lower threshold for single entity CCCTB computations without consolidation.

“Comitology”

EBIT would agree with Business Europe that the CCCTB Directive should be as detailed as possible and cover all the fundamental features of the common tax base, to ensure as much uniformity as possible, i.e., limiting comitology to a few matters of detail.

“The Bridge”

EBIT agrees with the Commission that of necessity, CCCTB must start from national GAAP, and accordingly, it is difficult if not impossible to be prescriptive as to the elements of any “bridge” between a particular national GAAP and the CCCTB base.

EBIT notes, moreover, that many EU national GAAPS are converging, or will over time converge with IFRS, albeit that in certain mainly specialised areas, this convergence may never be 100%.

Optionality

EBIT supports the Commission and the majority of Member States and Business Europe in the view that CCCTB should be optional, requiring a formal election by a multinational business.

Withholding Taxes

EBIT favours elimination of source taxation on withholding tax between EU tax payers subject to CCCTB but not in the same CCCTB consolidated group.

Entity Scope

EBIT acknowledges that the listed entity subject to listed Member State corporation taxes approach is an approach that has proved to be workable as regards Parent / Subsidiary and Interest and Royalties and Tax Mergers Directives.

Nonetheless, EBIT would be happy if the CCCTB entity scope were to be expanded to cover all entities subject to corporate tax in participating Member States. EBIT acknowledges that this might mean that an entity in one Member State is eligible for CCCTB, whilst not in another.

No Tax Balance Sheet

EBIT agrees with the Commission and Business Europe and is strongly against the CCCTB involving a mandatory tax balance sheet.

Financial assets

Paragraph 26 of WP57 includes "financial assets" in the category of "fixed business assets" as well as tangibles and intangibles.

However, WP57 does not appear to propose any specific CCCTB tax treatment for financial assets having a term of more than 12 months.

EBIT understands that for regular corporates, this is likely to be historic cost less any permanent impairment provisions. However, as the Commission have acknowledged, for many financial services businesses, a fair market value approach will be mandatory for local GAAP purposes, and so should presumably be followed for CCCTB tax base purposes. EBIT notes that this is the subject of a separate study.

Intangible assets - Intellectual property

Please can the Commission clarify their thinking when they refer to "intangible assets with an indefinite life" in paragraph 29 of WP57. Whilst EBIT recognises that the concept of intangibles with an indefinite life has some support in IFRS (historic cost less permanent impairment provisions but only where necessary), in practice, our experience is that very few businesses account for intangibles as having an indefinite life.

Inventories

EBIT disagrees with the one Member State which has expressed doubts on the inclusion of indirect costs for valuation of inventories. EBIT understands this is generally permissible if not recommended or mandatory under most national GAAPs and is also envisaged under IFRS2.

Foreign Income

EBIT, as Business Europe, would endorse CCCTB being based as far as possible on the exemption method. It is, however, acknowledged that this may lead to difficulties as regards eligibility to reduced rates of withholding tax where older treaties include a "subject to tax" test.

WP 60

CCCTB possible elements of the sharing mechanism.

Financial Services Sector

EBIT notes that a different (or possibly several different) sharing formulae will be necessary for the financial services sector, as in general, sales will not be an appropriate factor for, in particular, the banking sector. Moreover, it may well be appropriate to include financial assets (loan books) in the property element of any revised sharing formula for banks.

Intangible assets - Intellectual property

EBIT notes that Intellectual Property is not included in the sharing mechanism formula in property. Intangible assets such as know how, patents and marketing intangibles are often difficult to value and locate. Today, divisional head offices determine the strategy to address the key value drivers in the industry and not the relevant local companies. Intellectual Property is usually strongly associated with innovation, research and development, smart marketing etc. By ignoring the Intellectual Property element, an "innovative" Member State will no longer be "rewarded" for being innovative and risk-taking. Even if Intellectual Property is represented to some extent in the payroll and real estate based property factors, there is bound to be insufficient reward for innovation as the brand value uplift would be spread via the allocation formula and particularly the sales by destination element to all participating EU countries. Please can the Commission clarify their thinking on how this could result in a fair attribution of profit to all participating EU countries and how this ties in with the EU's Lisbon Process and comprehensive initiatives on innovation and competitiveness.

WP 61

CCCTB: possible elements of the administrative framework.

EBIT supports the Commission's overall "1 Stop Shop" approach.

Right to Interpretation

EBIT agrees with the Commission's suggestion that it would be useful to give taxpayers the right to request a statement of the tax authorities' interpretation of the Directive on a detailed point not explicitly covered by the Directive.

Single Threshold

EBIT agrees with the Commission that it would be preferable to have a single threshold for opting into CCCTB and for consolidation. Whether this should be 75% or >50% EBIT considers should be a matter for further discussion.

Assessment Period

EBIT considers that the 3 year period after the final date of the filing of the consolidated CCCTB return for the principal tax authority to issue amended assessments is too long. EBIT considers that this should be, at most, 2 years from the final filing date, but preferably only 1 year. Taxpayers need legal certainty as early as possible.

EBIT encourages the European Commission in its consultation efforts and it is committed to discussing its views with all stakeholders. EBIT can be contacted through its Secretariat:

Bob van der Made
Manager Tax & Legal Services
PricewaterhouseCoopers
Tel: + 31 (0) 6 130 96 2 96
Email: bob.van.der.made@nl.pwc.com

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