Draft Opinion of the European Committee of the Regions — A fair and efficient corporate tax system in the European Union

(2016/C 051/07)

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POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS,

1. reiterates that any legislative proposal from the Commission, including those relating to taxation under Articles 113, 115 or 116 of the Treaty on the Functioning of the European Union, must comply with the principles of subsidiarity and proportionality;

2. supports the four objectives set out in the Commission's action plan on corporate taxation, which are as follows:

— re-establishing the link between taxation and where economic activity takes place; this is the place where value is created, i.e. the place where research, development and production actually take place;

— ensuring that Member States can correctly value corporate activity in their jurisdiction;

— creating a competitive and growth-friendly corporate tax environment for the EU, resulting in a more resilient corporate sector, in line with the recommendations in the European semester;

— protecting the single market and securing a strong EU approach to external issues;

3. considers that the existing legislation on corporate taxation — whether at national, European or global level — is no longer suited to the current economic context of globalisation, mobility, digital technologies, new business models and complex business structures;

4. highlights the complexity of the current rules on corporate taxation within the EU, as well as the lack of coordination and complementarity between the different systems of the various Member States;

5. regrets that some companies, particularly multinationals, take advantage of this situation to reduce their tax bill, either through legally improper tax fraud practices and illegal tax avoidance or through the use of aggressive tax planning strategies, which, while they may be lawful, go against the spirit of the legislation in question;

6. stresses that, in both cases, these companies are ultimately subject to a level of taxation which is far from fair, as it is so low in relation to their revenue;

7. notes that some calculations estimate the annual loss of potential tax receipts in the European Union due to tax avoidance, tax fraud and aggressive tax planning at around EUR 1 000-billion [1]; also notes that this loss of revenue harms public finances at all levels, including for local and regional authorities; moreover, adequate, transparent and effective tax collection which is fair for all companies would bring about reductions in the tax burden;

8. proposes that all international agreements to which the European Union is party, including trade agreements and economic partnership agreements, should include provisions on the promotion of good governance in tax matters, both in terms of transparency and combating harmful tax practices, and calls on the European Commission to insist on this point in its ongoing negotiations, particularly on the Transatlantic Trade and Investment Partnership and on the Trade in Services Agreement (TiSA);

9. deplores the existence and extent of these harmful tax practices at a time when many taxpayers — particularly private individuals — in some Member States are subject to a higher tax burden due to austerity policies; believes that this lack of tax equity harms social and economic stability;

10. notes that the complexity of the current rules on corporate taxation, whilst a huge benefit for certain large companies that take advantage of the loopholes therein, is a clear disadvantage for small, medium-sized and micro businesses, as this administrative burden hinders their activities, in particular cross-border activities;

11. considers that this also constitutes a competitive imbalance between businesses, mainly between large multinationals, which have the necessary resources to shield themselves from taxation through aggressive tax planning, and small and medium-sized enterprises (SMEs), which do not;

12. notes that there is, at EU level and over the long term, a general trend of reduction in statutory corporate tax rates;

13. stresses, however, that this decrease in rates has in recent years been accompanied by various developments such the broadening of tax bases, an increase in the number of companies being created and low interest rates (limiting tax-deductions), which should have led to an increase in corporate tax revenues;

14. notes that it is difficult to compare the effective rates applied in different Member States and therefore suggests developing a common method of calculation so as to make it possible to draw up a comparative table of the effective tax rates across the Member States;

15. supports — in the light of OECD studies showing that some multinational companies are using strategies that enable them to pay only 5 % in corporate tax while smaller companies are paying up to 30 % — the call for multinationals to be required to disclose a set of aggregated information in their financial statements for each Member State and third country in which they operate, including profit or loss before tax, tax on profit or loss, number of employees and assets held; this information should be made available to the public, possibly in the form of a central EU register;

Common consolidated corporate tax base (CCCTB)

16. recognises the dual potential offered by a common consolidated corporate tax base (CCCTB): firstly in the fight against aggressive tax planning, tax fraud and tax avoidance, and harmful tax competition between Member States, and secondly in achieving the aim of strengthening the single market and reducing the administrative burden weighing on companies of all sizes that engage in cross-border activities;

17. considers that determining their tax base using a single set of tax rules instead of 28 would simplify matters and mean administrative cost savings for companies, and that this would be particularly significant for SMEs active in several Member States;

18. stresses, therefore, the positive effects that a CCCTB is likely to have on economic growth, employment and tax equity as well as on public finances, including those of local and regional authorities;

(1) *Closing the European Tax Gap*, report for the Group of the Progressive Alliance of Socialists & Democrats in the European Parliament, by R. Murphy, Director of Tax Research UK. Available online: http://www.socialistsanddemocrats.eu/sites/default/files/120229_richard_murphy_eu_tax_gap_en.pdf (EN).

Local and regional aspects of a CCCTB

19. considers that, despite the fact that it is not geared explicitly towards local and regional taxes — at least in the 2011 proposal — a CCCTB would have an impact on the tax revenues of local and regional authorities, part of which is derived, depending on the Member State, from local or regional taxes levied on the national tax base and/or a share of national corporate taxes;

20. calls on the Commission to carefully study the potential impact on local and regional authorities, particularly on their budgets, of a new legislative proposal to implement the CCCTB, without however restarting the whole procedure for analysing the impact of the CCCTB, which would unnecessarily delay its implementation;

21. stresses that in some Member States, local and regional taxes would be affected by the introduction of a CCCTB system, in that, for the sake of simplification, it would make sense for this also to be used to determine local and regional taxes;

The CCCTB and tax rates

22. stresses that the CCCTB is not designed to harmonise tax rates, given that the current Treaties do not include any specific article on direct taxation. However, the fact that harmonisation is not planned under the current Treaties does not mean that Member States cannot envisage closer cooperation in this field;

23. notes that the statutory rates of corporate tax in the various Member States are an imprecise or even a deceptive indicator, given the many divergences between tax bases, as well as deductions and preferential schemes; stresses that in some cases the effective tax rate bears no relation to the statutory rate;

24. in the interests of transparency, therefore, calls for Member States and regions with legislative powers in the area of corporate taxation to provide the Commission with detailed figures on the actual average rate of corporate income tax applied, including all deductions;

Making the CCCTB mandatory and postponement of consolidation

25. welcomes the Commission's desire to make the CCCTB mandatory in its new proposal, at least for multinational companies, since it is obvious that those engaging in aggressive tax planning, tax avoidance or tax fraud would not subscribe to a CCCTB system which prevents these practices if it were optional;

26. points out that in its 2011 opinion, the Committee had proposed that the CCCTB be made mandatory following a transition period, at least for companies of a certain size ([2]);

27. considers it desirable to immediately introduce a common consolidated corporate tax base. Since the negotiations on consolidation have been difficult and protracted, supports the Commission's approach concerning the postponement of the CCCTB's consolidation element if this allows for progress to be made with the negotiations on the other elements of the proposal, in particular establishing the common tax base. Notes, therefore, the announcement made in its 2016 work programme adopted on 27 October of its plan to withdraw the current CCCTB proposal, but wonders to what extent its intention to replace it 'with proposals for a staged approach starting with agreeing a mandatory tax base' anticipates the conclusions of the public consultation launched by the Commission on 8 October, which is due to run until 8 January 2016;

28. reiterates, however, that consolidation must remain an objective of the EU institutions and Member States in the area of corporate taxation, in that it would provide a solution to the issues of intra-group transfer pricing within the European Union and the associated issues of tax evasion, and additionally would mean simplification and substantial administrative cost savings for companies;

29. feels that if the negotiations on consolidation fail, a minimum tax rate could be considered;

([2]) Opinion of the Committee of the Regions on a *Common Consolidated Corporate Tax Base (CCCTB)*. Rapporteur: Gusty Graas (LU/ALDE). Ref: ECOS-V-018/CdR 152/2011 fin. Available online: http://webapi.cor.europa.eu/documentsanonymous/cdr152-2011_fin_ac_fr.doc

30. expresses concern furthermore that the temporary cross-border compensation mechanism envisaged by the Commission pending the introduction of consolidation could give rise to new opportunities for aggressive tax planning; in the light of this risk, which would result in a considerable loss of revenue for Member States, the CoR calls on the Commission to speed up the originally proposed timetable for implementation;

Other considerations concerning the CCCTB

31. considers that the favourable treatment reserved for debt and interest in many tax systems hampers the diversification of business funding models and prevents the strengthening of equity financing of companies in the EU, something commonly practised in other countries;

32. therefore calls on the Commission and the Member States to encourage greater diversification of funding sources for companies, which would undoubtedly be beneficial for growth and employment;

33. points to the Committee's proposal, voiced in its 2011 opinion on a CCCTB, to include recurrent costs relating to environmental protection and reducing greenhouse gases when drawing up the list of deductible expenses, including when it comes to initiatives for adopting integrated production processes with low environmental impact;

34. calls on the Commission to include the possibility of such a deduction in its new legislative proposal expected in 2016;

35. also reiterates, as expressed in 2011, that if it is to achieve its goal of reducing red tape, the application of a common consolidated tax base should be accompanied by the implementation of common accounting rules;

Work of the OECD

36. welcomes the fact that the work of the Organisation for Economic Cooperation and Development (OECD) led to the adoption by the G20 heads of state and government in Antalya on 16 November 2015 of its Action Plan on base erosion and profit shifting involving 62 countries; however, considers the measures concerning public country-by-country reporting to be inadequate, as BEPS Action 13 provides for automatic reporting of information solely to the tax authorities of the Ultimate Parent Entity's jurisdiction of tax residence, given that in the EU there is already a reporting requirement for banks and extractive industries established in the EU;

37. calls for the BEPS package to be implemented by the European Commission and the Member States and regions with legislative powers in the area of corporate taxation on a binding basis through a new anti-BEPS directive in order to combat these phenomena effectively within the EU;

38. considers it encouraging that ECOFIN has agreed the 'modified nexus approach' and believes, furthermore, that the 'modified nexus approach', defined at OECD level in the context of the BEPS-package and by the ECOFIN Code of Conduct Working Group, relating to patent boxes, should also be anchored in binding EU law under this directive;

Non-cooperative jurisdictions

39. considers that alongside the initiatives and necessary steps taken within the Union, it is crucial to strengthen the European approach towards non-cooperative jurisdictions or tax havens;

40. believes that in this area in particular, the lack of unity and coordination between Member States are the factors allowing companies to avoid fair taxation;

41. welcomes the Commission's publication of a 'list of uncooperative tax jurisdictions in third countries' appended to the Communication, and considers this to be a strong symbolic initiative;

42. considers, furthermore, that the publication of this list should form the basis for an ambitious discussion between all Member States aimed at establishing a common and coordinated approach to these jurisdictions at European level, in order to combat the harmful tax practices they facilitate;

43. questions whether the criterion used to draw up the list of non-cooperative tax jurisdictions published by the Commission is too restrictive, given that they must be identified as such by at least ten Member States;

44. welcomes, in this regard, the agreements signed in May 2015 by the EU, on the one hand and Switzerland, Andorra and Liechtenstein on the other hand, as this constitutes an important step forward towards transparency and combating tax fraud;

45. considers that the automatic exchange of information provided for in the agreements referred to in the previous point is an effective tool for reducing and combating aggressive tax planning and should be rolled out further; furthermore, welcomes the fact that several non-cooperative jurisdictions on the Commission's list have adopted or have committed to adopting the global standard in this regard.

Brussels, 4 December 2015.

The President
of the European Committee of the Regions

Markku MARKKULA