Proposal for a Directive on a Common Consolidated Corporate Tax Base (CCCTB)
The Austrian Federal Chamber of Labour is by law representing the interests of about 3.4 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske
President

Christoph Klein
Director

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members’ gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.
The AK’s position in detail

According to calculations by the OECD, the tax avoidance strategies of multinational groups result in tax deficits of between 100 and 240 billion USD per annum, i.e. between 4% and 10% of annual global corporate tax. That is why the BAK essentially welcomes the draft directives on the introduction of a Common Consolidated Corporate Tax Base, because ultimately these problems can only be addressed effectively through the implementation of a group taxation. However, the proposals of the Commission do not go far enough; in the opinion of the BAK the following changes are necessary:

- The draft directives do not stipulate a minimum tax rate for corporation tax. However, a minimum tax rate is essential, in addition to the Common Consolidated Corporate Tax Base, in order to combat the tax avoidance strategies of multinational groups effectively.
- The introduction of the Common Corporate Tax Base must be adopted, together with consolidation.
- The threshold of 750 mil. euros annual turnover for mandatory application is set too high, since aggressive tax shelter schemes play a role in considerably smaller enterprises.
- The tax exemption sum for growth and investments is not justified objectively and the deductible nature of fictitious equity yield rates must be viewed critically. Effective regulations to combat misuse would be better in this case so as to put an end to financing companies in low tax countries.

Background

On 25 October 2016, the European Commission presented its latest, long-overdue, proposals for a comprehensive reform of corporation taxation in the European Union. Highly profitable groups find it easy to pay no or almost no tax on earnings, even though they are earning record profits. According to the calculations of the OECD, the tax avoidance strategies of multinational groups are responsible for tax deficits of between 100 and 240 billion USD per annum, i.e. between 4% and 10% of annual global corporate tax. The rules for the taxation of international groups, which essentially date back to the 1920s, are quite simply outdated. Globalisation and digitisation have brought about a revolution in the corporate world, while the rules for corporate taxation have remained almost unchanged. Multinational groups are active around the globe. Taxation laws remain the province of individual countries. There are no standardised regulations of how to determine corporate profits. At first glance this multiplicity of differing regulations appears to be an obstacle to cross-border economic activity. But a second look reveals that it is precisely this multiplicity of differing regulations on corporation and capital taxation that allow multinational enterprises to minimise the tax they pay on earnings. In June 2015, the European Commission finally published an action plan to introduce more equitable and efficient corporation taxation. A key
point of the Commission’s new strategy is to ensure that all companies pay tax where profits are generated⁴.

An important aspect of how to achieve this objective of companies paying tax on their profits where the profits were generated is the plan to introduce the Common Consolidated Corporate Tax Base⁵. On 25 October 2016, two draft directives to introduce a common consolidated corporation tax base were presented. The first draft directive defines the basic principles for introducing a common corporation tax base⁶. The second draft contains the provisions for the Common Consolidated Corporate Tax Base⁷.

Despite decades of discussion on the introduction of standardised regulations for corporation taxation, it was not until 2011 that the Commission presented a draft directive on the introduction of a Common Consolidated Corporate Tax Base⁸. This proposal was discussed among the Member States; however, the Council has not yet come to a consensus. Nevertheless, in view of the recent change in public opinion and the work of the OECD and EU to combat tax avoidance strategies, the Commission is attempting for a second time to introduce a Common Consolidated Corporate Tax Base into the EU.

This time it is a two-stage process. As a first step the common corporation tax base is to be introduced. Consolidation is to be introduced in a second step, together with its distribution among the Member States, according to the allocation table⁹.

### Common Corporate Tax Base

With the introduction of the Common Corporate Tax Base, a common set of rules will be implemented in the EU to determine profits so that taxable earnings and also rules on which expenses or depreciation can be recognised in fiscal terms, and to what extent, in all Member States, can be standardised within the EU. The draft proposal largely follows the old proposal from 2011. The planned incentive for research and development, the so-called tax-exempt sum for growth and investment and - as long as step 2, consolidation, has not been implemented - also the plan to allow cross-border loss adjustment - are new. There follows a short overview of the salient points of the common tax base:

1. **Mandatory application to large corporate groups with a consolidated turnover of more than 750 million euros per annum.** This is an important step forward compared to the proposal of 2011, where its application was at the discretion of the individual groups. However, the threshold of 750 million euros turnover has been set too high.

2. **The incentive for research and development stipulates that research and development costs as a whole are essentially tax deductible as operating expenditure.** In addition, another 50% of expenditure of up to 20 million euros per annum for research and development will be tax deductible. For research and development expenditure in excess of the 20 million euros threshold, 25% of costs above the 20 million euros threshold will be tax deductible as additional expenditure. And for start-up companies tax exemption of 100% is planned over and above expenses.
3. The so-called Allowance for growth and investment is intended as a tax-exempted sum to the amount of the notional fictitious equity yield rate (current risk-free interest rate + risk premium, currently 2.7%) in the event of group equity being increased (e.g. through issuing new shares, retained profit, etc.). This tax-exempt amount is to be applicable for ten years.

4. The proposed directive contains, as a transitional solution - as long as consolidation, the second step in the current proposal of the Commission, is not implemented - the possibility of cross-border loss offset. Losses written by subsidiaries will be (temporarily) tax deductible in the parent company, even if it has its headquarters in another Member State. However, as soon as the subsidiaries write profits, or at the latest after five years, subsequent taxation will allow these losses to be reincorporated within the parent company so that this is only a temporary tax shield.

**Common Consolidated Corporate Tax Base**

Consolidation lies at the heart of this proposed reform. A common tax base is the necessary foundation. Consolidation means that the profits of the whole group are taxed by adding all profits and losses of all companies in the group. These consolidated earnings will be distributed among the Member States where the group is active, according to an allocation formula. Each Member State can tax the percentage of profits apportioned to it at its own rate of corporation tax. The allocation formula, which is unchanged from the 2011 proposal, will apportion assets, work and turnover to Member States according to profits. Tangible assets will be used in the case of financial assets. Intangible assets and investments will not be included because of their mobility, as there is a great risk of tax avoidance. The factor labour is composed of 50% the number of employees and 50% aggregate wages. Turnover means turnover to be reported at the place of destination.

This allocation is intended to ensure a fair correlation between the place where profits are generated and the place of taxation. Profits should be taxed where they are generated.

The Commission has proposed a two-stage process - first the introduction of the Common Corporate Tax Base and then, shortly afterwards, the introduction of consolidation - but without presenting an exact timetable.

These proposals to introduce a Common Consolidated Corporate Tax Base are urgently needed and long overdue. In addition to lowering compliance costs and the possibility of cross-border loss adjustment, they are also intended to create an effective instrument against tax avoidance. Standardised rules for corporation taxation in the EU will close loopholes and eliminate discrepancies which facilitate aggressive tax planning, thus reducing damaging tax competition.

The tax dodges of multinational groups can only be combatted effectively if the whole group is considered as a single

$$\text{Share A} = \left( \frac{1}{2} \frac{\text{Sales}}{\text{Sales}} + \frac{1}{3} \frac{\text{Payroll}}{\text{payroll}} + \frac{1}{2} \frac{\text{No of employees}}{\text{employees}} + \frac{1}{3} \frac{\text{Assets}}{\text{Assets}} \right) \times \text{Consolidated Tax Base}$$
company and a single tax rate applied. All tax avoidance schemes to shift profits to low tax countries or tax havens will become obsolete when profits of the whole group are taxed. These group profits will be allocated to the relevant countries using an appropriate allocation table - and the allocation mechanism proposed by the Commission appears to be quite appropriate - and taxed there. However, the Commission’s proposal stipulates that Member States can tax the allocated profits at their own rate of corporation tax. A minimum tax rate is not stipulated. The justification of the Commission is that nominal tax rates are not the most important reasons for shifting profits; rather non-transparent advance tax agreements and loopholes in national tax regulations are responsible. This is true in part today. However, this is because nominal tax rates do not currently play a significant role and because special privileges can bring about a markedly greater impact with regard to actual tax rates. And ultimately it is the actual tax rates that are decisive. However, we must assume that nominal tax rates will play a decisive role when the tax base is harmonised between the EU Member States. And it can be assumed that profits will be shifted to where the nominal tax rates are the lowest. This process has already started. For example, Belgium has declared its intention to abolish privileges such as the “National Interest Regime” while lowering the corporation tax rate to 20%. This problem can be expected as long as there is a common corporate tax rate without consolidation.

The proposal of the Commission describes a two-stage scheme: first the common tax base and then, in a second stage, consolidation will be introduced. This is not acceptable. As soon as the Common Tax Base is determined, consolidation must also be adopted. It is conceivable that the common tax base will come into force before consolidation, so as to give both countries and companies the necessary time for this major adjustment. However, it is essential to adopt both steps at the same time in order to ensure that the whole scheme will in fact be implemented. And it is also necessary to determine a minimum tax rate. The Commission’s proposal is also open to other objections. The threshold of 750 million euros annual turnover for mandatory application is set too high, since aggressive tax shelter schemes play a role in significantly smaller enterprises as well. The tax-exempt sum for growth and investment must also be viewed critically and should in fact be deleted completely. In this situation, effective rules to combat misuse by blocking the use of financing companies in low tax countries are better than tax-deductible fictitious equity yield rates.

Generally speaking, the proposal is a step in the right direction. However, it is essential that the common tax base and consolidation are adopted together and a minimum rate for corporation tax is determined.
Footnotes

1 IP/16/3471, Strasbourg, 25.10.2016


3 COM(2015) 302 final, Brussels, 17.06.2015

4 MEMO/16/2265, Brussels, 21.06.2016

5 COM(2015) 302 final, Brussels, 17.06.2015


8 COM(2011) 121 final, Brussels, 16.03.2011

9 IP/16/3471, Strasbourg, 25.10.2016


12 MEMO/16/3488, Strasbourg, 25.10.2016

13 Auerbach (2016): Toxic Tax Deals
Should you have any further questions please do not hesitate to contact

**Martin Saringer**  
T: +43 (0) 1 501 65 2448  
martin.saringer@akwien.at

and

**Amir Ghoreishi**  
(in our Brussels Office)  
T +32 (0) 2 230 62 54  
amir.ghoreishi@akeuropa.eu

**Bundesarbeitskammer Österreich**  
Prinz-Eugen-Straße 20-22  
1040 Vienna, Austria  
T +43 (0) 1 501 65-0

**AK EUROPA**  
Permanent Representation of Austria to the EU  
Avenue de Cortenbergh 30  
1040 Brussels, Belgium  
T +32 (0) 2 230 62 54  
F +32 (0) 2 230 29 73