Common Consolidated Corporate Tax Base (CCCTB): An Update

Introduction

After almost ten years of consultation, drafting and discussion, the European Commission published its eagerly anticipated proposal for a Common Consolidated Corporate Tax Base (CCCTB) on 16 March 2011[7]. The proposal generated much commentary and controversy, even before its publication. Our intention in this article is to provide an overview of the CCCTB proposal, where it currently stands and what will happen next.

What Is the CCCTB?

The draft Directive contains 136 Articles and is divided into 18 Chapters. As this proposed legislation falls into the direct taxation field, it is covered by Article 115 of the Treaty on the Functioning of the European Union (TFEU), which obliges the Council to act unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee.

The CCCTB proposal is intended to provide a single set of rules that companies operating within the EU could use to calculate their taxable profits. Essentially, the intention is that a group of companies[8] operating within the EU would have to comply with only one system for the calculation of its taxable income. The Commission has proposed that the CCCTB would be optional for companies to join.

According to the proposal by the Commission, the CCCTB would make it possible for groups of companies to consolidate all profits and losses across the EU. The single consolidated tax return would be used to report the consolidated base of the group, after which all Member States in which a group company is active would be entitled to tax a certain portion of that base, according to a specific formula based on three equally weighted factors (assets, labour and sales by destination). This work would all be done through the tax authorities of the group's principal Member State in what the Commission calls a "one-stop-shop" approach. The Commission argues that a Directive is needed to tackle the tax obstacles that are barriers to the completion of the Single Market and that place additional costs on businesses that trade across borders. It is worth reiterating that the focus of the CCCTB proposal is on the corporate tax base rather than on corporate tax rates, although this is the subject of some contention. Ireland would not support any proposals on the harmonisation of corporate tax rates.

Recent Developments Involving the CCCTB at Political Level

The European Council conclusions of 24/25 March 2011 created the Euro Plus Pact for Stronger Economic Policy Coordination for Competitiveness and Convergence. This pact, which was endorsed by all euro area members, plus Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania, includes commitments on tax policy coordination. The Pact states that:

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[7] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM (2011) 121 final – 2011/0058 (CNS).

[8] For CCCTB purposes, a company will form a group with its permanent establishments in other Member States.

"developing a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European Business."

It goes on to say that "the Commission has presented a legislative proposal for a common consolidated corporate tax base". The Pact is somewhat ambiguous, perhaps unintentionally, as it appears to support the development of a Common Corporate Tax Base (without the consolidation element) rather than endorsing or developing further the work of the Commission's CCCTB.

Further developments at the political level took place in July 2011, when as part of the overall package of measures to ensure the financial stability of the euro area agreed by Heads of State or Government of the euro area at their meeting of 21 July 2011, Ireland indicated a:

"willingness to participate constructively in the discussions on the Common Consolidated Corporate Tax Base draft directive (CCCTB) and in the structured discussions on tax policy issues in the framework of the Euro+ Pact framework."[9]

After this meeting, both Chancellor Merkel and former President Sarkozy met to discuss the ongoing financial stability issues in the euro area. In their joint letter of 17 August 2011 to President Van Rompuy, a specific reference is made to the CCCTB where both leaders seek a commitment from Member States:

"to finalize the negotiation on the Commission's proposal on 'a common consolidated corporate tax base' before end 2012. Euro area member states should be ready to consider enhanced cooperation for further progress on tax coordination."[10]

The CCCTB featured again in the conclusions of the European Council of 23 October and the euro area summit of 26 October 2011. In the context of the Euro Plus Pact, tax policy coordination and the CCCTB will become a more regular reporting feature of the European Council, meaning that each Presidency will have to ensure that these files are given adequate attention in the Council Working Party on Tax Questions.

Before the December 2011 European Council, Chancellor Merkel and former President Sarkozy wrote jointly to President Van Rompuy with proposals for stabilising the euro and additional measures that should be invoked to improve the functioning of the internal market. Included in these measures was a reference to a "convergence and harmonisation of corporate tax base".[11] It is clear that the issue of a common harmonised corporate tax base remains on the agenda of European politics.

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[9] Statement by the Heads of State or Government of the Euro Area and EU Institutions, 21 July 2011, para. 10.

[10] Letter to President Van Rompuy from Chancellor Merkel and President Sarkozy, 17 August 2011, http://www.elysee.fr/president/root/bank_objects/lettre_english_final_version.pdf.

[11] Letter to President Van Rompuy from Chancellor Merkel and President Sarkozy, December 2011, http://www.reuters.com/article/2011/12/07/us-eurozone-france-letteridUSTRE7B612Y20111207.

The March 2012 European Council introduced a new reporting requirement relating to certain specific tax dossiers. Each Presidency must now report to the European Council progress in relation to the proposals on energy tax, savings tax, financial transaction tax and the CCCTB. The Council stated that "work and discussions should be carried forward on the Commission proposals".[12] This new reporting requirement was implemented in June 2012.

CCCTB and Subsidiarity

All Member State parliaments are entitled to scrutinise European Union legislation in accordance with the principle of subsidiarity. The Dáil Select Committee on Standing Order 103 examined the CCCTB in May 2011 and following its examination, the Committee determined that the CCCTB was in breach of the principle of subsidiarity, which, in short, requires that any legislation from the EU only be enacted if the benefits of acting at the level of the EU outweigh the benefits of individual Member States acting to address a specific problem.[13] The Committee concluded that:

- The EU failed to provide sufficient detail that would allow national parliaments to assess fully the impact of the CCCTB.

- The Commission had not established that EU legislation was justified as the best way to meet the broader objectives of the proposals, and actions by individual Member States alone could suffice.

- The plan would introduce a second, parallel tax system within each Member State. This would not improve the simplicity and efficiency of EU corporate tax systems.

- There was a concern that the proposal may suit larger Member States more and did not adequately address the needs of start-up SMEs.

Nine Member States, with a total of 13 votes,[14] voted that the CCCTB breached the principle of subsidiarity. However, this fell short of the Treaty requirement of 18 votes, which would have forced the Commission to re-examine whether the CCCTB was in conformity with the principle of subsidiarity. The Commission subsequently replied to all Member State parliaments that had raised a concern on subsidiarity.[15]

Ireland's Position on the CCCTB

Ireland's position on the CCCTB is one of scepticism, but it is constructively engaging in the policy and technical debate. As outlined above, the 21 July summit formally set out Ireland's position and participation in the CCCTB dossier. Ireland is not alone among Member States that are sceptical about the CCCTB proposal, but all Member States are participating in the technical debate on the dossier. As the Minister for Finance has stated on a number of

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[12] European Council Conclusions 1/2 March 2012, http://register.consilium.europa.eu/pdf/en/12/st00/st00004-re02.en12.pdf.

[13] http://www.oireachtas.ie/parliament/mediazone/pressreleases/title-2179-en.html.

[14] Each Member State has two votes.

[15] http://www.ipex.eu/IPEXL-WEB/dossier/document.do?code=COM&year=2011&number=121&extension=FIN.

occasions, despite Ireland's scepticism on the merits of the proposal, the Government's view is that it is vital that Ireland is represented in the debate, because only by actively engaging in the process can we ensure that we bring all of the issues of concern to the table. Ireland's approach to translating constructive engagement into practice has involved a number of different aspects.

Firstly, before the publication of the CCCTB, the Department of Finance commissioned a study on the budgetary and economic impact of the CCCTB on the European Union, which was published in January 2011 and is available on the Department's website (www.taxpolicy.gov.ie). A second study – on compliance costs – was commissioned by the Irish Tax Institute, IBEC and the Irish Banking Federation. The aim of this analysis was two-fold: to assess the potential impact of the proposal on the Exchequer and to examine whether the proposal is rigorous enough to stand up to the requirements of a modern corporate tax system. The analysis of the impact assessments provides important evidence-based material for use by Irish officials at the European Council Working Party on Tax Questions and justifies a sceptical but constructive approach in the discussions.

Secondly, Irish officials are engaging in the Working Party on Tax Questions as appropriate and when necessary. As the discussions on the CCCTB are still in the early stages, the interventions have focused on posing detailed questions and observations to the European Commission. As the work on the dossier advances, it will be necessary to consider new text for inclusion in the draft proposal.

Thirdly, the Irish approach is to engage with Irish business representatives and our EU partners on the dossier and ascertain their opinions on how the CCCTB proposal may impact on them. Engagement with our EU partners allows us to build a pan-European picture of the potential impact of the current proposal and areas where there may be some difficulties. This last aspect will be important in the run-up to and during the Irish Presidency of the European Council from 1 January 2013.

Current State of Play at the Technical Level

The proposal is currently being examined in the European Council Working Party on Tax Questions. Further meetings are at the discretion of the rotating EU Presidencies. Currently, Cyprus holds the Presidency of the European Council. There were four meetings during the Danish Presidency, which preceded that of Cyprus.

The work by Denmark focused on the calculation of the common corporate tax base from the perspective of a single taxpayer; also presented was a first proposal for compromise text, on certain specific elements of the proposal. It is important to emphasise that all Member States are engaged in the discussions, but the technical examination in the Council is still at the early stages. No political decisions have been taken by ECOFIN on the work on the dossier. The European Parliament and the European Economic and Social Committee examined the CCCTB in parallel to the discussions in the Council, but as taxation falls under the principle of unanimity, as laid down in the Treaty on European Union, the role of these two institutions is limited to consultation only.

Franco-German Bilateral Initiative on Corporate Tax Harmonisation

Entirely separate to the CCCTB proposal, but relevant nonetheless, the German and French Governments have indicated a desire to examine the possibilities for more closely aligning their corporate tax regimes with each other and have established a technical working group to do this. It is likely that whatever emerges from this process will feed into the wider consideration of the Commission proposal.

What Will Happen Next?

At the time of writing, Cyprus has assumed the Presidency of the European Council. It has indicated that it will continue work on the technical issues on the CCCTB proposal. If, at some point in the future, whenever technical discussions on the proposal have been completed, agreement cannot be reached by all 27 Member States acting unanimously, it is possible that the enhanced cooperation procedure, as provided for in the Treaty on European Union, could be considered for the CCCTB, which would mean that a smaller group of EU Member States might decide to move forward with the proposal among themselves. However, in the short term, the work during the Cypriot Presidency and the subsequent Irish Presidency will be to finish a first reading of the proposal, giving Member States an opportunity to air their initial technical views and concerns. From Ireland's perspective, the engagement with the CCCTB is ongoing, and examination of this complex proposal is still at the early stages.