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Euro Tax Flash from KPMG's EU Tax Centre

France and Germany agree on a common position paper on EU CCCTB

Common Corporate Tax Base - Common Consolidated Corporate Tax Base - France – Germany

On June 19, 2018, German Finance Minister Olaf Scholz and his French counterpart Bruno Le Maire issued a common position paper on the European Commission's proposal for a Common Corporate Tax Base (CCTB). The position paper, which suggests a number of modifications to the proposed measures, aims at fostering the current discussions on the CCTB Directive at EU level and encourage a timely adoption by all Member States of the initiative.

Background

In March 2011 the European Commission launched a proposal for a Common Consolidated Corporate Tax Base (CCCTB). This envisaged an optional system for companies to apply a common set of rules to compute taxable profits, including the ability to form a consolidated group, wherever they were based in the EU. Its main objective was to facilitate cross-border business activity within the EU.

The discussions between EU Member States since 2011 made clear that there was not sufficient support for adopting the CCCTB proposal in its entirety. On October 25, 2016, the European Commission therefore published legislative proposals to relaunch the initiative, introducing a two-step approach (see ETF 303). Under this approach, Member States should first agree on rules for a Common Corporate Tax Base (CCTB), after which agreement should be reached on the consolidation element. Under the new proposals the focus of attention has moved from the objective of simplifying compliance to facilitate cross-border investment to countering tax avoidance, however neither the original proposal nor the current proposals involved changes to Member States' corporate tax rates.

The Position Paper

On June 20, 2018, France and Germany issued a common position paper on the European Commission's proposal for a CCTB Directive at EU level. While expressing their support to the CCCTB initiative, the German-French position paper suggests a number of modifications.

As regards the scope and general principles foreseen by the current European Commission's proposal, Germany and France in particular argue that:

- The CCTB should apply to all corporate taxpayers, irrespective of their size and legal form. In this respect, the Commission's proposal foresees that the CCTB would be mandatory only for large corporate groups, i.e. broadly, with consolidated revenue exceeding EUR 750 million, while the system would be optional for other companies.
- The general principles for profit and loss recognition should be supplemented, i.e. the tax base should be computed on the basis of accounting principles and the business asset comparison method.
- The CCTB should not feature any tax incentives such as the proposed R&D and equity financing incentives.
- The provisions on cross-border loss relief should only be discussed at a second stage, as part of the negotiation on the CCCTB Directive.
- A reasonable transitional period of at least four years should be considered

The position paper also mentions that to ensure an effective tax harmonization of the corporate tax base, further discussions will be necessary regarding the approximation of corporate income tax rates.

Both countries further suggest a number of technical amendments to the proposed definition of the tax base, including on the deductibility of certain expenses (e.g. taxes and duties other than profit taxes, gifts and donations, entertainment costs, or a 5% add-back to be included in the participation exemption regime), and on certain clauses to be clarified, such as on hidden profit distributions, asset depreciation, hedging instruments, and insurance undertakings. While noting agreement on the principle of tax depreciation of an acquired goodwill, the paper nonetheless considers that a possibility should be left to the Member States to introduce this measure gradually. When it comes to tax losses, both countries share the opinion that the CCTB should include a minimum taxation of profits (i.e. limiting loss carry-forwards to 50-60% of the taxable profit after deduction of EUR 1 million) and a one-year loss carry-back for an amount of up to EUR 1 million.

As regards the inclusion of anti-base erosion and profit shifting (BEPS) measures, Germany and France take the common view that:

- The CCTB Directive should be more consistent with the Anti-Tax Avoidance Directive ((EU)2016/1164), especially with respect to the general anti-abuse rule, the hybrid mismatches clause and the exit taxation provision.
- As to the interest limitation rules, both countries are in favor of the group escape clause, the carry-forward of unused interest and the deletion of exceptions for long-term public infrastructure projects and financial undertakings.
- They also express support for the switch-over rule, provided that the benchmark rate is a single rate for all Member States and the scope also covers the income of EU-

based entities.

- However, they consider that the controlled foreign companies (CFC) rules provided for by the CCTB proposal are insufficient and argue in favor of the principle of an effective minimum taxation.
- Both countries also support the introduction of a limitation rule on the deduction of interest, royalties and other remuneration to countries with a favorable tax regime.
- Finally, transfer pricing provisions should remain in the competence of the Member States until the implementation of the CCCTB Directive.

EU Tax Centre comment

While the stated objective of the position paper is to give a new dynamic to the discussions between Member States on the adoption of a common tax base, it remains to be seen to what extent this will have an impact on the current negotiations at the level of the Council. In this respect, certain Member States have expressed concerns that the proposed rules may be a step too far towards harmonization, which could be exacerbated by some of the suggestions put forward by France and Germany, including on the concept of minimum effective taxation and the approximation of the corporate tax rate within the EU.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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