Position Paper

Insurance Europe comments on the European Commission's proposals for a Common Consolidated Corporate Tax Base (CCCTB)

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General comments

Insurance Europe supports the European Commission's aim to simplify the determination of taxable income for cross-border companies but believes that certain aspects of the Commission's proposals need to be addressed to ensure added value for European businesses. Similarly, Insurance Europe supports any measures designed to counter aggressive tax planning and avoidance but believes that a Common Corporate Tax Base (CCTB) would not adequately meet the objectives that are set out in the proposal in this regard.

The European Commission has proposed a two-step approach to the adoption of a CCCTB. The Council is asked to first agree on a common tax base and only then on consolidation.

Insurance Europe would like to emphasise that it is only through consolidation that the expected advantages of the CCCTB in terms of reinforcing the European Single Market can truly be achieved because consolidation recognises a company's cross-border activity within the EU. These expected advantages include cross-border loss offset, addressing transfer pricing and double taxation concerns, the possibility of EU-wide tax-neutral restructuring and equal treatment of incorporated subsidiaries and permanent establishments within the EU. Without consolidation, there would be no benefits for taxpayers to justify the introduction of a new system.

Consolidation is especially important for insurance undertakings because - according to supervisory rules - the various insurance business activities often cannot be carried out in one entity but rather must be split into separate legal entities. For example, personal lines of insurance (life, health) may generally not be carried out by property and casualty insurers. Therefore, in practice, the activities of insurers that are active in different segments are bundled below a parent company. This effectively shelters the assets held to cover the claims of, for example, life insurance policyholders against potential losses in the property and casualty business. However, the reasons for tax consolidation do not allow for such a distinction, as with regard to taxation, no disadvantage for policyholders can arise.

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Technical comments

In Insurance Europe's view, the draft CCTB directive lacks principles; as a result, many inconsistencies will arise with respect to the computation of the tax base. The comments provided in what follows are therefore non-exhaustive.

- VAT rules for financial services should complement consolidation

The advantages of consolidation will not be achieved if they are not accompanied by new VAT rules for financial services. Under current VAT rules, transactions between the members of a group will continue to be relevant for VAT purposes and will routinely lead to a VAT burden even under the CCCTB. For VAT purposes alone, it would still be necessary to address transfer prices. In particular, for insurance companies and financial services providers not entitled to input tax deduction, an unjustified tax burden would arise in this respect. Therefore, the consolidation of tax bases should be linked with the simultaneous introduction of a VAT group that is admissible across borders. Insurance Europe's views on this issue were presented in more detail in a recent position paper.

- The need for optionality

Insurance Europe acknowledges that the Commission has proposed a *mandatory* Common Corporate Tax Base as a first step. Nevertheless, Insurance Europe believes that an *optional* approach to the CCCTB is needed. Such an approach would allow companies that have no intention of expanding beyond their national borders - and who therefore only work within one tax system - to not have to shift needlessly to a new system. This is important as several insurers, particularly life insurers, focus only on the domestic market. It should also be said that some businesses would face increased complexity and compliance costs if the CCCTB is applied to EU operations only, but not to non-EU operations. Furthermore, a new taxation framework will unavoidably lack the same level of profoundness as a mature national tax system. It will therefore be difficult for taxpayers to evaluate the consequences of the determination of taxable income according to the new system, when in fact predictability and certainty are essential for the acceptance of a new tax system. An optional approach would allow taxpayers the needed flexibility to make this determination.

- Need for legal certainty for taxpayers

Insurance Europe is concerned by the lack of mechanisms in both draft directives to ensure the uniform application of law by Member States. Article 1 in both proposed directives states that recourse to national law is excluded in respect of all matters regulated by the directives. Insurance Europe interprets this to mean that where there are regulatory gaps, national law is applicable. Given that the directives do not reach the same level of technical complexity as national tax systems, taxpayers would be confronted globally with a lack of legal certainty. In such cases, tax authorities will always opt for the revenue-friendly interpretation of the law.

- National taxes as deductible operating expenditures

The proposed directive notes that the Commission will replicate a list of non-deductible expenses previously featured in Article 11 and Annex III of the Commission's proposal for a CCCTB in 2011[1], with some modifications. Article 11 of the 2011 proposal prohibited the deduction of corporate income tax whereas Annex III prohibited the deduction of taxes comparable to corporate tax in various jurisdictions.

In this context, Insurance Europe would propose a critical assessment of whether the taxes listed in Annex III are in fact comparable to an income tax. Insurance Europe would welcome the opportunity to work with the Commission on this review in the context of taxes that impact on the European insurance industry.

[1] EC 2011 CCCTB proposal 2011/0058 (CNS)

- Valuation of technical provisions

The 2011 CCCTB proposal did not include any valuation provisions regarding amounts stated in the balance sheet. In order to ensure uniform application across the EU, in addition to the current reference to the [Directive 91/674/EEC](), the CCTB Directive should make an explicit reference to the Article 56 of the same directive regarding the valuation of technical provisions for insurance undertakings, which reads: "*The amount of technical provisions must at all times be such that an undertaking can meet any liabilities arising out of insurance contracts as far as can reasonably be foreseen*." Having regard to the need of uniform application of the law, the above principle should be expressly included in Article 28(d) of the draft CCTB Directive.

- Recognising the equalisation provision for tax purposes

With respect to the insurance sector, Article 28(d) of the draft CCTB Directive states that *"the technical provisions of insurance undertakings established in compliance with Directive 91/674/EEC shall be deductible, with the exception of equalisation provisions. A Member State may provide for the deduction of equalisation provisions".*

However, Article 44(d) of the draft Consolidation Directive states that optional technical provisions as provided for in Article 28 of the draft CCTB Directive may be deducted. In Insurance Europe's understanding, Article 44(d) refers to the equalisation provision according to Directive 91/674/EEC, as the other technical provisions are generally deductible when establishing the uniform tax base. The European insurance industry believes this rule is appropriate. However, it must be ensured that those Member States which have exercised the option according to Article 62 of the above directive and introduced an equalisation provision according to Article 30 of the directive under commercial law, should recognise it also for tax purposes. Without this recognition under tax law, the obligation under commercial law to set up an equalisation provision is untenable. Equalisation provisions are indispensable for enabling insurance companies to cover large claims, such as those which arise after natural catastrophes. Insurance Europe therefore suggests expanding Article 28(d) of the proposed CCTB Directive to address this issue.

- Formulary apportionment

Recital 11 of the draft Consolidation Directive proposes an adjusted formula for the apportionment of the consolidated tax base in certain sectors including insurance. Article 41 clarifies the adjustment for insurance: the asset factor should be 10% of the value of the financial assets; the sales factor should be 10% of all earned premiums, net of reinsurance, allocated investment returns transferred from the non-technical account, other technical revenues, net of reinsurance, and investment revenues, fees and commissions, excluding value added tax, other taxes and duties.

Insurance Europe would point out that formulary apportionment would require development of an international consensus on several key issues, which it is understood that OECD countries do not believe to be attainable in the short or medium term. Further, formulary apportionment would not be immune from manipulation and would not ensure that profits are truly aligned with value. Accordingly, it is most productive to focus on directly addressing the specific issues arising under the current arm's length system[2].

In addition, formulary apportionment is far from being a simpler option, as it would require all countries to agree on a common tax base and uniform allocation keys or risk creating significant opportunities for "stateless income", new opportunities for harmful tax competition (i.e. how to ensure audits are effectively activated and appropriately coordinated) or indeed double taxation. Getting such global consensus would be extremely difficult, at least in part because using simple allocation keys are unlikely to be able to reflect value creation across a diverse range of industries[3].

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[2] OECD BEPS FAQ 54

[3] OECD BEPS FAQ 108

On the diverse range of interest points there are particular challenges in applying formulary apportionment to insurance business models, Insurance Europe would also reference Part IV of the OECD's *2010 Report on the Attribution of Profits to Permanent Establishments.*