Position Paper

Insurance Europe response to the EC consultation on the re-launch of the Common Consolidated Corporate Tax Base (CCCTB)

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4. Policy directions

The Commission believes that the CCCTB system can be an effective tool against aggressive tax planning and at the same time retain its attractiveness to the business. **What are your views?**

- Neutral

Insurance Europe would welcome any solution to the excessive cumulative complexity of current national tax regimes and recognises that the aim of CCCTB is to help to address this.

Insurance Europe would emphasise the need for the introduction of a "one-stop-shop", which will allow companies to have only one tax authority as a contact and to file a single tax return for the whole of their activity in the EU. This will considerably reduce administrative costs both for taxpayers and tax authorities.

These revised proposals seem to extend the scope of CCCTB to tackling various forms of international tax avoidance. The main aim of the CCCTB is to create a level playing field as far as calculation of corporate tax is concerned and to allow Europeans companies to have a global view of their tax base. In this respect, it can be seen as a tool to tackle aggressive tax planning. It will however not prevent companies from benefitting from any favourable tax treatment provided by Member States.

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Insurance Europe believes that implementing rules which are consistent with the Organisation for Economic Cooperation and Development's (OECD) base erosion and profit shifting (BEPS) recommendations at EU level would be the best way to address international tax avoidance.

The Commission envisages re-launching the CCCTB in a staged approach which will consist of 2 steps: Firstly, agreement on the tax base, secondly, moving on to consolidation. **What are your views on the staged approach?**

- Neutral

It is essential that, if CCCTB is to be attractive, there must be optionality. A two stage process without consolidation will be an enormous compliance burden in having to comply with up to 28 member states tax regimes. Consolidation will have the positive effects of cancelling out the tax impact of intra-group business transactions, achieving cross border loss-offset, attaining tax neutrality in cross border restructuring activities and avoiding potential double taxation arising from conflicting tax jurisdictions. Therefore, a common consolidated tax base will eliminate most of the major tax obstacles that presently handicap new investments within the EU. Furthermore, consolidation is especially important for financial institutions like insurance companies, since under supervisory law their business activities often cannot be carried out in one entity but rather in separate legal entities and the activities in different segments are therefore very often bundled in a parent company. Notwithstanding these benefits, Insurance Europe believes that in order to be attractive, there needs to be optionality to allow businesses who believe they will derive benefits to opt into CCCTB and those that don't not to opt in.

It is a priority of the Commission to promote discussion in Council of certain BEPS-related international aspects of the common base before the re-launched CCCTB is proposed. The aim will be to arrive at consensus on how to implement certain OECD anti-BEPS best practice recommendations in a uniform fashion across the EU. The intention would be to create a common playing field in defending the Single Market against base erosion and profit shifting. **What are your views on agreeing on such a common approach?**

- In favour

Insurance Europe believes that sufficient time should be allowed to appropriately design the features of the various proposals which make up the CCCTB, to ensure that they are consistent with the main OECD BEPS recommendations.

Insurance Europe also believes that it is very important not only to create a level playing field in defending the Single Market against BEPS, but also to ensure that EU companies are not disadvantaged compared to non-EU companies who will implement the OECD recommendations on BEPS. Therefore, it is crucial that the EU focus on implementing OECD best practice recommendations only at the same pace and to the same extent as other non-EU jurisdictions.

OECD BEPS and CCCTB seem however to be projects with different objectives (i.e. prevent international tax evasion vs. creating an intra-EU level playing field for calculating corporate tax).

5. Scope, anti-avoidance

5.1. Scope of the CCTB/CCCTB Proposal

What are your views on making the proposal for a CCCTB obligatory for all EU companies which are part of a group?

- Against

Certainty and predictability are core criteria for the acceptance of a tax system. However, a completely new taxation framework will unavoidably lack the same level of profoundness as a mature national tax system. For a fairly long time, it will be difficult for taxpayers to evaluate the consequences of the determination of taxable income according to the new system. Furthermore, some businesses would find increased complexity and compliance costs if CCCTB is applied to EU operations, but not to non-EU operations. Insurance Europe therefore believes that taxpayers (whether they are part of a group or not) should be allowed to opt for the CCCTB regime.

Moreover, the threshold of 75% of capital could be problematic, in particular in the presence of minority shareholders.

What are your views on offering non-qualifying companies the option to apply the rules?

- In favour

5.2. Anti-avoidance elements

In view of recent developments, the CCCTB system should include more robust rules to defend itself against aggressive tax planning. **Which of the elements of the CCCTB system would you reinforce so that the system can better respond to tax avoidance?**

- Other

Insurance Europe believes that the outcome of the OECD BEPS project should be implemented in the EU at the same pace and to the same extent as other non-EU jurisdictions. The implementation of the BEPS outcome at EU level would also prevent different unilateral legislations and thus fragmentation amongst Member States. Working towards a greater degree of harmonisation and producing practical guidance and tools to enable implementation of OECD BEPS recommendations would be far more effective than coming up with different initiatives.

6. Hybrid mismatches, research and development

6.1. One option to address hybrid mismatches would be to require enterprises to follow in a Member State the classification of entities and/or of financial instruments adopted in the other Member State or the third country which is party to the transaction. **In your view, can hybrid mismatches be effectively addressed through any other measures than the one suggested above?**

- Other

Insurance Europe believes that the implementation of measures against hybrid mismatches at EU level should be done according to the OECD BEPS recommendations in the final guidance for Action 2, meaning that any hybrid financial instrument rules should only apply to related party holdings. The reason for this is that Action 2 BEPS proposals deal with all aspects of hybrid mismatches in a complete way.

Insurance Europe also believes that any rules on hybrid instruments should have no negative impact on the hybrid regulatory capital of insurers. This type of capital is not designed to create tax mismatches and its use does not constitute a harmful tax practice. Any rules placing an additional tax burden on these instruments would increase the cost of raising capital and therefore adversely impact the competitiveness of the insurance sector. Hybrid instruments are essential to the insurance industry for regulatory and commercial reasons, given that insurance companies use these instruments to meet their regulatory solvency and capital adequacy requirements. Virtually all major European insurers have issued such instruments in the market.

For these reasons, Insurance Europe strongly believes that both external (widely held and/or traded) and intra-group hybrid capital issued for regulatory (and rating) purposes in the insurance sector should be explicitly exempted from any hybrid financial instrument rule, as these types of capital are issued for non-tax purposes and cannot be regarded as tax abusive.

The OECD has recognised that the hybrid financial instrument rule should only apply to a financial instrument entered into with a related person or where the payment is made under a structured arrangement and the taxpayer is party to that structured arrangement. The OECD also decided to leave the tax treatment of hybrid regulatory capital to national authorities, as explained at page 11 of the Action 2 report. "Countries remain free in their policy choices as to whether the hybrid mismatch rules should be applied to mismatches that arise under intra-group hybrid regulatory capital".

6.2. Treatment of costs for research and development

In the currently pending CCCTB proposal, the Commission has proposed a favourable treatment of costs for Research and Development (R&D) by making these costs fully deductible in the tax year they are incurred, with the exception of costs relating to immovable property. **What are your views on the existing framework for R&D?**

One option for rendering the CCCTB more favourable to promoting R&D could be to introduce more generous provisions for deducting R&D costs, such as super deductions which are currently applied by a number of Member States (e.g. Croatia, the Netherlands and the UK)? **What are your views on making the existing framework for R&D more favourable?**

- Neutral

7. Debt Equity Bias, Cross-Border Loss Relief

7.1. Debt Equity Bias

Corporate tax systems usually favour debt-financing over equity-financing by treating interest payments as a tax deductible expense with no equivalent deduction for the return paid to equity. **Should debt bias be addressed in the proposal?**

- Other

Insurance Europe doesn't necessarily see the connection between addressing the debt-equity bias and the CCCTB proposal.

The corporate tax debt equity bias could be addressed via three possible policy options.

- Option 1 is the Comprehensive Business Income Tax (CBIT) that disallows any financing costs as deductible expense.
- Option 2 is the Allowance for Corporate Equity (ACE) that allows the deductibility of actual interest payments and of a notional interest on equity.
- Option 3 is the Cost of Capital Allowance (COCA) that allows the deductibility of a notional interest on capital (equity and debt).

In your view, which option would be best suited to address the corporate debt bias? If you suggest that another option would be better suited to address the corporate debt equity bias, what design would you suggest?

"Allowance for Corporate Equity (ACE)" would be the best solution to address the corporate debt bias. After the financial crisis, it is evident that equity in the corporate sector has to be strengthened. Not only does it reduce vulnerability in the event of a financial crisis, but it is also important for the establishment of companies for which the loss (in the absence of sufficient equity) is private.

This is particularly the case for risky investments. Higher solvency for companies is also positive for lenders and can reduce macroeconomic fluctuations. Under an ACE rule, companies would be allowed to deduct the cost of equity finance in a similar way to the deduction for interest payments. As all profits are taxed but the cost of financing can be deducted, the result would be that only pure profits are taxed. By taxing only pure profits, the level of economic activity and investment plans are not distorted by taxation. When a company raises finance, it will receive a tax relief corresponding to the normal profit and any profit above that level generated by the new assets will be taxed. As an important result, an ACE would eliminate the incentive for debt shifting, which removes the need for anti-avoidance measures like thin capitalisation rules.

However, there is an interaction with BEPS Action 4 and any allowance for ACE should not result in reductions to relief on interest. A number of instruments issued by insurers are long term and are priced on the basis that interest relief is obtained. If the interest relief is lost then the effective costs of these instruments would increase.

7.2. Temporary mechanism for cross-border loss relief

The Commission envisages proposing a temporary mechanism for cross-border loss relief with recapture until the consolidation step (CCCTB) is agreed. The aim will be to balance out the absence of the benefits of consolidation during the first step (CCTB) of the proposal. **What are your views on such a temporary mechanism for cross-border loss relief?**

- In favour

Insurance Europe would highlight that in two separate rulings - C-446/03 (*Marks & Spencer plc v. David Halsey - Her Majesty's Inspector of Taxes*) and C-172/13 (*European Commission v. United Kingdom of Great Britain and Northern Ireland*) - the European Court of Justice (ECJ) established that the denial of cross-border loss deductibility is not contrary to European Law. Nevertheless, the losses of foreign subsidiaries may still be deducted in the Member State of the parent company if the losses of the subsidiary are considered final based on factual circumstances (i.e. when they cannot be used in the Member State of the subsidiary). However, the rules of this exception are hard to satisfy. Therefore, the only possibility for multinational groups to claim cross-border group relief is the consolidation which would be achieved through the CCCTB. If consolidation is not implemented as a first step, Insurance Europe would be in favour of a temporary mechanism for cross-border loss relief.