

## Common Consolidated Corporate Tax Base (CCCTB) and its impact on Belgian corporate taxation

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## Common Consolidated Corporate Tax Base

### **AIM**

• • • *To remove tax obstacles in cross-border operations*

- § A common EU tax base that is available as an option for internationally active groups
- § The consolidation of different tax bases
- § Appropriate apportionment of tax base to MS
- § Member States are free to set rates on their share of consolidated tax base



## CCCTB - Benefits

- n Tax rules as though one jurisdiction
- n Avoids over-taxation, double taxation and high compliance costs
- n Easier for businesses to expand across borders



## CCCTB – Core elements

### Common tax base

- n The CCCTB provisions follow the general principles of corporate taxation rules in the Member States. They are not aligned with those of any specific Member State.
- n The approach follows the Anglo-Saxon practice of profit and loss account (P/L) calculation, not the continental European balance sheet tradition.



## CCCTB – Core elements

### Optional common tax base

- n The CCCTB will be optional for companies resident (EU companies) or active (permanent establishments in the EU of third country resident companies) in the EU
- n National corporate income tax rules will continue to be available (including R&D schemes, patent boxes, tonnage taxes, etc) for those companies not opting for the CCCTB system
- n Company - or whole Group (all in/all out) opts for the CCCTB for 5 years, OR remains in national system



## CCCTB – Core elements

### Common corporate tax base

- n The CCCTB will only apply to corporate companies and underlying corporate tax in the EU
- n Permanent establishments in the EU of third country corporate companies are only allowed when they are subject to corporate taxation and the company has a similar form of company as an EU company
- n Transparent entities (Personengesellschaften, Partnerships, Hybrid entities, etc. ) non profit organisations, trusts, foundations, investment funds, pensions funds etc. cannot participate as taxpayers in the CCCTB



## CCCTB – Core elements

Common consolidated corporate tax base

- n For groups of companies the tax base is the result of the consolidation of the tax bases of the members of the group
- n The consolidation is the sum of the profits/losses of the members. The tax base of the group members includes transactions between group members only at cost



## CCCTB – Core elements

Common consolidated corporate tax base

- n The common tax base is shared out between Member States according to a formula = “formula apportionment”
- n Member States may adjust their share of the base when Directive specifically permits (old losses, local taxes, some insurance provisions)
- n The tax base is the result of the application of rules for taxable income and deductible expenses (i.e. Profit and loss account approach [P/L])



## CCCTB – Major issues

### CCCTB companies/Groups

- n The CCCTB needs specific rules for the entry to and the exit from the CCCTB system (either as single companies or a group of companies)
- n For the groups there are two conditions: voting rights and ownership rights
- n Voting rights: more than 50% (rule: one company never in member in two groups [consisting of subsidiaries and permanent establishments])
- n Ownership rights: more than 75% (of company capital or entitlement to profit) (idea: reduce complexity from minority shareholders as far as possible)



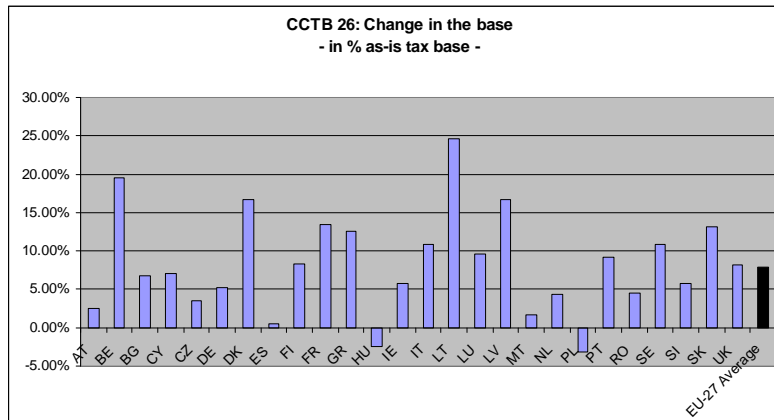
## CCCTB – Major issues

### Administrative rules

- n Minimum approach necessary to ensure the application and functioning of the CCCTB system in the EU
- n Main simplification – concept of Principal Tax Payer and Principal Tax Authority and judicial appeals in one country



## CCCTB - Effects on base



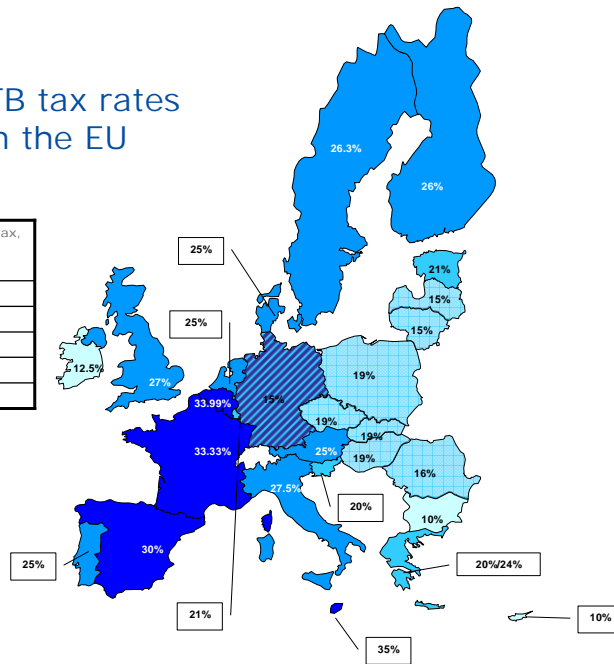
## CCCTB impacts on

- n The size of the taxable bases, and the distribution of the corporate tax bases among the EU Member States (not a policy objective)
- n The administrative costs for tax administrations and the compliance costs for taxpayers
- n Welfare and main macroeconomic variables



## CCCTB tax rates in the EU

Corporate Income tax, Nominal Rates (%)	
< 15	
15 -< 20	
20 -< 25	
25 -< 30	
>= 30	



## CCCTB provisions which might influence the corporate tax practice in Belgium PE concept

- n In the CCCTB proposal permanent establishments are defined in Article 5.
- n The text of Article 5 from 'purpose and objective' and from the wording itself relies on the wording of Article 5 of the OECD model convention.
- n In the CCCTB there are specific rules for the taxation of profits of third country permanent establishments:
  - Article 73 'Switch-Over clause'
  - Article 78 'Associated enterprises' in relation with Article 79 'Adjustment of pricing in relations between associated enterprises'.



## CCCTB provisions which might influence the corporate tax practice in Belgium PE concept

- n Usually exemption method applies in relation to income realised by a third country permanent establishment (Article 11)
- n Switchover to credit system, if the general taxation in the third state is below ~9.8% (40% of the average CIT rates in the Member States) or a specific tax regime applies (Article 73) – Will Belgium be able to apply a different approach in national CIT practice?
- n A third country permanent establishment is considered an associated enterprise to the taxpayer (company or group of companies) in the EU. No common rules or specific methods are laid down for the profit attribution between taxpayers and third country permanent establishment.
- n From the legal instrument as a Directive and the absence of specific rules in the CCCTB proposal it follows that the rules and provisions of the Member States apply in regard to profit attributions deriving from dealings as covered by Article 7 2. of the OECD model convention.



## CCCTB provisions which might influence the corporate tax practice in Belgium Advance rulings/APA

- n With the option to the CCCTB the provisions of the CCCTB system as implemented by the Member States become binding for the companies/group of companies.
- n Due to the general contradiction of the content of the rulings and the provisions of the CCCTB, advance rulings referring to profit base determination less relevant. Advance rulings and APA on transfer pricing aspects between the group members in the EU as well.
- n Advance rulings and APA on transfer pricing issues in relation to third country group members and associated enterprises will generally remain valid (as the current state of view).
- n With the book value roll-over (Articles 44 [general rule] and 45 [qualification of fixed assets for depreciation purposes]) for assets entering the system, any Advance rulings or APA which laid down valuation and ownership rules/ and which are reflected in the value for tax purposes of these assets do effectively continue to apply and are - via formula apportionment – reducing the taxable profits in all Member States in which the group is active.





## CCCTB provisions which might influence the corporate tax practice in Belgium Research and Development schemes (R&D)

- n The CCCTB has general beneficial rules for R&D:  
Within the scope of the proposed CCCTB directive, R&D costs are fully deductible from the tax base. However, such deduction cannot go beyond 100% of R&D costs but may include research and development expenditure of a capital nature (which often is not allowed under countries domestic tax provisions). According to Article 12 of the draft Directive deductible expenses include all costs of sales and expenses incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development.
- n The BE R&D regime (80% tax exempt patent income) cannot be applied within the CCCTB system for groups or companies
- n Possible impact: Substitution of the BE R&D regime by other R&D direct support measures or application of the CCCTB R&D rules also in national CIT system?



## CCCTB provisions which might influence the corporate tax practice in Belgium Notional interest deduction/Profit Participating Loans (PPL)

- n The CCCTB has no similar rules compared to the notional interest deduction.
- n Articles 102 and 103 prohibit any additional deductions from the apportioned profit share which means that the notional interest deduction is lost for CCCTB groups.
- n Profit Participating Loans (PPL) are sometimes used by MNEs in the EU to benefit from mismatches in national taxation systems. In the CCCTB system all transactions between the CCCTB group members are neutralised (Article 59 Elimination of intra-group transactions). Consequently the PPL mismatch issues should disappear for CCCTB groups.
- n It should be expected that this approach also has an impetus on the mismatch discussion in the Code of Conduct Group in Council and in the OECD.



## CCCTB provisions which might influence the corporate tax practice in Belgium

### Double taxation conventions with third countries

- n The double taxation conventions with third countries remain unchanged as far as the CCCTB has no overriding provisions (of course, impact only for the BE side).
- n Withholding tax rates for in and out of BE payments continue to be applied.
- n However, withholding taxes on interest and royalties are shared out between Member States (as tax revenues or as tax credits) (Articles 76 and 77). This rule might trigger changes to the tax policy approach for withholding taxes under double taxation conventions concluded or negotiated.
- n No sharing of withholding taxes for dividend income under the CCCTB.
- n At this stage there is no significant impact seen for the BE parent company model with US LLCs as subsidiaries.



## Other CCCTB provisions of specific relevance

- n Principal taxpayer and principal tax authority (one tax declaration for up to 27 Member States), results in a set of rules on central database, administrative rules,
- n Treatment of pre-CCCTB losses



## Time table

- n Discussion in Council starting in May
- n Discussions in EP and ECOSOC expected to start in the coming months.
- n Discussions and negotiations probably 2 years and implementation period of at least 2 to 3 years – realistically seen in the EU 1.1.2016 or 1.1.2017
- n Work on other corporate tax directives required from timetable and optionality
- n Annual work programme 2011 – recast of the Interest and Royalty Directive



Questions? Comments?

Thank you for your attention!

