A study whether the Common Consolidated Corporate Tax Base (CCCTB) is a rescue tool for aggressive tax planning

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Preface

This thesis is submitted in partial fulfillment of the requirements for the Master of Science's Degree in International Business Tax and Economics at the Tilburg University. Studying at Tilburg University was a wonderful experience. I am so thankful for all the lectures at the Tilburg University, I have learned so much during this past year. This university has very good study facilities and I also love the green campus.

During the Business Taxation lectures I found the topics on the Common Consolidated Corporate Tax Base very interesting and from then on I knew that I wanted my thesis to be about this topic. I would like to thank everyone who assisted me in any possible way during this process. In particular, I thank my supervisor, Mrs. K. Jonas, who guided me in full during the research and writing process. I also want to thank my second supervisor prof. dr. P.H.J. Essers and all my colleagues from IBTE who were always so kind and helpful during this year.

Last I would like to thank my parents for giving me the opportunity to study and my aunt for being here for me from the beginning.

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List of abbreviations

BEPS = Base Erosion and Profit Shifting

CbCR = Country by Country Report

CCTB = Common Corporate Tax Base

CCCTB = Common Consolidated Corporate Tax Base

CEN = Capital Export Neutrality

CFC = Controlled Foreign Company

CIN = Capital Import Neutrality

CIT = Corporate Income Tax

CSR = Corporate Social Responsibility

DTC = Double Tax Convention

EC = European Commission

EU = European Union

G20 = Group of twenty

IASB = International Accounting Standards Board

MNE = Multi-National Enterprises

OECD = Organization for Economic Co-operation and Development

R&D = Research and Development

SME = Small Medium Enterprises

TIEAs= Tax Information Exchange Agreements

Chapter 1

Introduction

Taxation has many purposes. The most important purpose of taxation is usually to raise revenue to finance public expenditure.[1] Recently because of the globalization of companies a lot of attention has been drawn on some highly profitable MNE's (Multi-National Enterprises) that pay no or little corporate income tax worldwide (Apple Inc., Starbucks, Google Inc.) which is thought of as aggressive tax planning. Our national economies have benefited from the action of international integration deriving from the exchange of world views, products, ideas, and different characteristics of culture. Even though globalization is nothing new, the integration of domestic economies and markets has been happening a lot faster compared to the years before. The relocation of manufacturing companies from high-cost to low-cost locations, the free stream of capital, getting rid of trade barriers, technological and telecommunication developments, the importance of managing risks, the development, protection and exploiting of intellectual property. These are all factors that played a relevant role on the way cross-border activities take place. The increase of trade and the direct investments in many countries abroad are all due to globalization. Globalization also stimulates growth, decreases poverty, increases employment, and stimulates and promotes innovation. As the economy became more worldwide so did corporations.[2] Worldwide organizations now represent a large percentage of global GDP. Intra-firm trade also represents an increasing percentage of overall trade. Globalization had changed from country-specific models to global models based on matrix management companies and integrated supply chains that mainly focus on several functions at a regional or global level.[3] These changes became worse as a result of the growing complexity of tax planners in identifying and using the legal arbitrage chances and the barriers of acceptable tax planning, thus giving the MNE's more confidence in taking aggressive tax positions. These changes created chances for MNE's to significantly reduce their tax burden.

Aggressive tax planning

It has been reported that multinational companies like Google Inc. and Apple Inc. have an effective tax rate of 3% and 1%.[4] Aggressive tax planning was first introduced in the OECD's 2008 Intermediaries report as planning which involves a tax position that is maintainable but has unintended and unpredicted tax revenue effects. Taking a tax position that is advantageous to the taxpayer without publicly revealing that there is doubt whether notable matters in the tax return correspond to the law.

[1] Alley, C., & S. James, (2005), The Interface Between Financial Accounting and Tax Accounting: A Summary of Current Research. University of Waikoto, Department of Accounting. Hamilton: University of Waikoto: 6
[2] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en: 7
[3] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en: 7
[4] Fuest, C., C. Spengel, K. Finke, J. H. Heckemeyer, & H. Nusser (2013), Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform: 1

Aggressive tax planning started because companies wanted to avoid paying taxes and started creating all sorts of loopholes to do so.[5] Aggressive tax planning does not depend so much on the validity of tax planning but more on legitimacy under vague standards.[6] Because some Multi-National Enterprises are able to pay little or almost no tax by finding a way to break the existing tax rules shows that the way Multi-National Enterprises are taxed needs to be improved.[7] According to the BEPS initiatives, aggressive tax planning is connected to tax avoidance and tax evasion. The previously mentioned information's duty is to support the tax administration (and courts) to check correct compliance with tax obligations. They have a threatening effect on tax avoidance and tax evasion behavior in connection with aggressive tax planning.[8] The actual meaning of aggressive tax planning is still vague.[9] Although the legal meaning of aggressive tax planning is not clear, according to the European Commission aggressive tax planning is explained as follow: aggressive tax planning is composed of benefiting from the technicalities of a tax system or of mismatches between tax systems with the aim to decrease tax liability.[10]
Of course aggressive tax planning can have consequences not only for other companies but also for the country where the company is situated. Companies that perform aggressive tax planning distort fair tax competition compared to companies that actually do pay their fair share.[11] A lot of tax revenue is lost each year due to aggressive tax planning. Multi-Nationals benefit from the provisions that countries provide but they take advantage by paying little or almost no tax. Multi-Nationals benefit from government expenditures but they do not pay their fair share. [12]

The globalization changes have led to an unpleasant situation in which citizens have become more sensitive to tax fairness problems. It has become an essential problem for all[13]:

- Many governments are dealing with less revenue and a higher cost in order to make compliance certain. In other words, Base Erosion and Profit Shifting (BEPS) undermine the integrity of the tax system. This because the public, the media and other taxpayers believe that low corporate taxes are unfair. In developing countries the absence of tax revenue leads to insufficient funding of

[5] Bastings C. (2011), Belastingrecht en de geest van de wet, Weekblad voor Fiscaal Recht
[6] Panayi, C. (2015), Is Aggressive Tax Planning Socially Irresponsible?: 545
[7] Fuest, C., C. Spengel, K. Finke, J. H. Heckemeyer, and H. Nusse (2013), Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform: 1
[8] Dourado, A. P. (2015), Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6: 42
[9] Dourado, A. P. (2015), Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6: 43-44
[10] Dourado, A. P. (2015), Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6: 44
[11] Dourado, A. P. (2015), Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6: 43-44
[12] OECD/G20 BEPS Project (2013), Hybrid mismatch arrangements. Tax policy and compliance issues: 8
[13] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en: 8

public investment that could stimulate economic growth. Overall resource allocation affected by tax-motivated behavior is not good.

- MNE's reputations may be in trouble if their effective tax rate is considered to be lower then what is acceptable. Simultaneously, diverse companies may estimate such risk differently and not succeed in taking advantage of legal opportunities to decrease companies tax burden can put it at a disadvantage. Companies that are active in domestic markets, including family owned businesses or new innovative companies, have problems when it comes to competing with MNE's that have the ability to change their profits across borders to avoid or decrease tax. Honest competition is being negatively affected by the changes of BEPS. When tax regulations allow companies to decrease their tax obligations by changing their income from jurisdictions where income producing activities are organized, other taxpayers in that jurisdiction have to carry a bigger share of the burden.

There are a couple of reasons why aggressive tax planning has become a major problem for countries. One of the reasons is that tax planning has become more advanced. It has become really hard to introduce effective provision to avoid aggressive tax planning without companies relocating their business operations. This is an issue that needs to be solved cross-border. Another reason why aggressive tax planning is a problem for Member States is because tax planners create mismatches and loopholes between the different national systems and the different Double Tax Conventions. In order to close these loopholes and make common defenses better actions need to be taken.[14]

Also due to the economic crisis which was in the year 2010, Member States have to examine their national tax systems again. It is not easy to explain that some corporations succeed to avoid paying their fair share just because they manage to create such loopholes. The fair tax system can be implemented if governments can take regulations or laws to avoid aggressive tax planning.[15]

The Group of twenty (G20) leaders wanted to come with a solution to prevent multinational profit shifting and tax avoidance in June 2012. The Organization for Economic Co-operation and Development (OECD) published its report "Addressing Base Erosion and Profit Shifting" on 12 February 2013. This report resumes the temporary findings of the OECD´s. The OECD released an action plan which contains 15 actions on 19 July 2013.[16] This action plan contains actions against Base Erosion and Profit Shifting (BEPS), it also contains deadlines to implement these actions. The action plan also includes the necessities and methodologies in order to ensure the implementation.[17] On October 5, 2015 the final proposals for the 15 BEPS Actions were made public. The BEPS results give

[14] Terra, B. & J. Kajus (2012), Tax evasion and avoidance: Questions and answers

[15] Terra, B. & J. Kajus (2012), Tax evasion and avoidance: Questions and answers

[16] Fuest, C., C. Spengel, K. Finke, J. H. Heckemeyer, and H. Nusse (2013), Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform: 1

[17] Action Plan on Base Erosion and Profit Shifting: 10-11

the conclusions of the work that has been done the last two years, also including a plan for the upcoming work and a timetable for implementation.[18]

Common Consolidated Corporate Tax Base (CCCTB)

The European Commission came up with a proposal to counter tax avoidance and evasion. This proposal is the CCCTB. In this thesis I am going to verify whether the CCCTB is a positive improvement for Member States. In Europe, they try to achieve a kind of common tax base, not for all taxpayers but for multinational companies for example if you have a multinational company with subsidiaries all over the world, in every country you find an independent national tax system and in every country the subsidiaries have to declare what their profit is. They have to face all different tax inspectors. In order to have a harmonized tax base of companies active within the European Union, the Common Consolidated Corporate Tax Base (CCCTB) was introduced.[19] The CCCTB was originally launched in 2011 as a draft directive, but that proposal was too competitive for the Member States to agree at once. Nonetheless, there was still strong demand by the Member States for the benefits that the CCCTB could offer to Member States and businesses in the European Union among other things, to counteract aggressive tax planning. That is why the Commission improved the original CCCTB proposal and then re-launched it.[20] The European Commission re-launched the CCTB (Common Corporate Tax Base) and the CCCTB on 25 October 2016.[21] To counteract aggressive tax planning is high on the list for the European Commission at the moment. Companies only have to file one tax return for all their activities performed in the European Union and they can offset losses in one Member State against profits in another Member State. By making use of an apportionment formula, the consolidated taxable profits are shared between the Member States in which the group is active. The profits are then taxed in each Member State with the tax rate from that Member State.[22]

As explained before aggressive tax planning is a problem that needs to be avoided. Globalization causes mismatches and aggressive tax planning, and in order to solve this problem there needs to be one harmonized tax system. According to the European Commission the CCCTB is a way to avoid this problem. The aim of this proposal is to make it easier for businesses that are established in the EU

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[18] Kamerbrief (2015), Betreft Appreciatie uitkomst BEPS-project en vooruitblik Nederlands fiscaal vestigingsklimaat: 3

[19] Common Consolidated Corporate Tax Base (CCCTB): http://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

[20] Common Consolidated Corporate Tax Base (CCCTB): http://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

[21] Mandatory Common Corporate Tax Base ('CCTB') and the Consolidated Common Corporate Tax Base ('CCCTB')(2016): https://www.banning.nl/publicaties/mandatory-common-corporate-tax-base-cctb-and-the-consolidated-common-corporate-tax-base-ccctb/

[22] Common Consolidated Corporate Tax Base (CCCTB): http://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

by having a harmonized tax system for all taxpayers and make it harder for taxpayers to perform aggressive tax planning.[23] The European Commission identified some general principles for the design of a company tax system. These general principles are: vertical equity, horizontal equity, efficiency, effectiveness, simplicity, transparency and certainty, consistency and coherence, flexibility and enforceability.[24] In order to verify whether the CCCTB is a positive improvement for Member States, this system is tested by looking if the CCCTB meets these general principles. This is done by answering the following research question: **Does the Common Consolidated Corporate Tax Base (CCCTB) meet the general principles that the European Commission identified for the design of a company tax system?**

This research question is answered by the following sub-questions:

1. What has already been done against aggressive tax planning?
2. What is the CCCTB and what are the aims?
3. Does the Common Consolidated Corporate Tax Base (CCCTB) meet the general principles of the European Commission?

In this thesis, a literature study is performed by employing academic literature and recent articles from academic journals. The first few chapters are theoretical chapters which are done by doing the literature study. This thesis is divided into 5 chapters with an introduction as the first chapter where there is explained what the problem is. The second chapter explains what has already been done against aggressive tax planning on international-, EU-, and national level by giving the examples of the Netherlands and Belgium, followed in chapter three by the developments of the CCCTB and their aims. In the fourth chapter I did a research rather the CCCTB meets the general principles of the European Commission. These theoretical chapters form a solid basis to finally come to a conclusion and answer the research question in chapter 5.

[23] Mandatory Common Corporate Tax Base ('CCTB') and the Consolidated Common Corporate Tax Base ('CCCTB')(2016): https://www.banning.nl/publicaties/mandatory-common-corporate-tax-base-cctb-and-the-consolidated-common-corporate-tax-base-ccctb/

[24] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 3-5

Chapter 2

Steps already taken against aggressive tax planning

2.1 Introduction

In this chapter explains what has already been done against aggressive tax planning. The first paragraph is an introduction. The second paragraph explains what has already been done on international level against aggressive tax planning, in this paragraph the development of Base Erosion and Profit Shifting is explained. The third paragraph explains what has already been done on EU level to avoid aggressive tax planning. In the fourth and fifth paragraph examples of two Member States are given on what steps have already been taken to avoid aggressive tax planning in those two Member States. The two Member States are the Netherlands and Belgium. The sixth paragraph contains a conclusion.

2.2 Steps taken on international level against aggressive tax planning

In 2013 the OECD released the Addressing Base Erosion and Profit Shifting report, followed by an action which contains 15 actions against Base Erosion and Profit Shifting, as well as deadlines on when to implement these actions.[25] Base erosion is a problem which needs to be taken seriously because it is risky to tax income, tax sovereignty and tax fairness not only for OECD member states but also non-members. It is of great importance and also very necessary that more work is done on the data connected to base erosion and profit shifting (BEPS). BEPS is a serious problem that needs to be taken care of.[26]

The G20 finance ministers ordered the OECD to make an action plan to address BEPS issues in an organized and extensive way. This Action Plan should especially allow countries with national and worldwide tools that will tune in better to tax with economic activity. The Action Plan Addressing Base Erosion and Profit Shifting:

1. Recognizes actions that are necessary to address BEPS;
2. Puts deadlines to apply these actions and
3. Recognizes the resources that are necessary and the methodology to apply these actions.[27]

The focus in the report "Addressing Base Erosion and Profit Shifting" is to introduce the problems connected to BEPS in a neutral and extensive way. The first thing that is described are studies and data that are accessible in the public area concerning the existence and size of BEPS (reviews of the studies

[25] Fuest, C. Spengel, K. Finke, J. H. Heckemeyer, and Hannah Nusse (2013), Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform: 1
[26] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing: 5
[27] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing.: 11

are covered in Annex B). Then there the developments that have been taking place globally and that have an effect on corporate tax situations are explained. The center of the report focuses on the central elements that underlie the taxation of cross-border activities, but also the BEPS chances these elements may generate. The report also examines a few popular corporate structures (explained into more details in Annex C) and point out the main problems that these structures raise.[28]

The report "Addressing Base Erosion and Profit Shifting" concluded that in addition to a need for a growth in transparency on effective tax rates of Multi-Nations Enterprises, key pressure areas cover those connected to[29]:

- Mismatches in entity and instrument characterization taking place internationally including, hybrid mismatch arrangements and arbitrage;
- Implementing treaty theories to financial gains obtained from the supply of digital goods and services;
- The behavior toward intra-group financial transactions for tax purposes, related party debt-financing and captive insurance.
- Transfer pricing, especially in connection with the shifting of risks and intangibles, the artificial splitting of ownership of assets between legal entities that are in a group, and arrangements between similar entities that would hardly ever occur between independents;
- The effect that anti-avoidance measures have, especially GAARs, CFC regimes, thin capitalization rules and rules to put a stop to tax treaty abuse;
- The accessibility of damaging preferential regimes.

It has been shown that after a while the tax practices of a couple of multinational companies have become more aggressive, which brought up serious compliance and fairness issues. These compliance and fairness issues were already brought up in 2006 by tax commissioners at the meeting of the Forum on Tax Administration in Seoul and various measures have been developed to better examine and react to aggressive tax planning projects that result in enormous income losses. A couple of countries are intensively working on this in order to make their audit performance better. Making these tax compliance better not only on-shore but also off-shore, is still important for both securing governments' income and making sure that all businesses play by the same set of rules. Determined action is necessary from tax administrations, which should collaborate in trading not only intelligence and information, but also controlling the productiveness of the strategies used, for instance with regard to extra tax revenue gathered, and with regard to increased compliance.[30]

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[28] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing:6
[29] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing: 6
[30] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing: 6-7

To be able to address base erosion and profit shifting, that is essentially because of a great number of connecting elements, an extensive action plan was developed. The most important aim of the action plan is to supply countries with national and international tools, with the purpose to improve aligning rights to tax with real economic activity.[31] The contribution of all stakeholders is necessary to develop an extensive solution. Not only all member states but also third countries and especially G20 economies are part of the development of the action plan.[32]

The evolution of the action plan mainly supplies an extensive reply that allows for the links between the various pressure areas. There is also a search for improved information and data on BEPS. The various elements of the action plan cover suggestions to evolve[33]:

- Tools to put a stop to or balance out the consequences of hybrid mismatch arrangements and arbitrage;
- Developments or explanations to transfer pricing rules to refer to particular areas where the present rules realize unpleasant consequences from a policy point of view. The work that is being done now on intangibles, that is a specific area of concern, would be incorporated in a wider reflection on transfer pricing rules;
- Modernized solutions for the problems connected with the jurisdiction to levy tax, specifically in the range of digital goods and services. Solving these problems may incorporate a review of treaty provisions;
- Even more successful anti-avoidance actions, as an addition to the former items. Anti-avoidance measures can be incorporated in national laws or incorporated in international instruments for instance General Anti-Avoidance Rules, Controlled Foreign Companies rules (CFC rules), other anti-treaty abuse provisions and Limitation of benefits rules.
- Rules on how to treat intra-group financial arrangements, like those connected to the deductibility of payments and the implementation of withholding taxes and
- Solutions to counter unfavorable systems in such a way that as to achieve a desired result, taking into account elements like transparency and substance.

[31] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing: 8
[32] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing: 9
[33] OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing: 10

The action plans are divided as follow:[34]

- Action 1 Address the tax challenges of the digital economy;
- Action 2 Neutralize the effects of hybrid mismatch arrangement;
- Action 3 Strengthen Controlled Foreign Company rules;
- Action 4 Restrict base erosion by having interest deductions and other financial payments;
- Action 5 Counter harmful tax practices in such a manner to achieve desired result, taking into consideration transparency and substance;
- Action 6 Prevent treaty abuse;
- Action 7 Prevent the artificial avoidance of PE status;
- Actions 8, 9, 10 Making sure that the consequences of transfer pricing are in accordance with value creation
  Action 8 – Intangibles
  Action 9 – Risks and capital
  Action 10 – Other high-risk transactions;
- Action 11 Set up methodologies to gather and examine data on BEPS and the actions to tackle it;
- Action 12 Require taxpayers to disclose their aggressive tax planning arrangements;
- Action 13 Re-examine transfer pricing documentation;
- Action 14 Make dispute resolution mechanisms more effective and
- Action 15 Develop a multilateral instrument.

On October 5, 2015 the final proposals for the 15 BEPS Actions was made public. The BEPS results give the conclusions of the work that has been done the last two years, also including a plan for the upcoming work and a timetable for implementation.[35] It set the stage for the implementation of the different proposals at a local country level as well.[36] All 15 actions of the final BEPS report are further explained in the first appendix.

The OECD/G20 BEPS Project sets out 15 actions, of which a lot cannot be tackled without improving bilateral tax treaties. Given the complete number of treaties in effect, if these changes are implemented on a treaty-by-treaty basis this would be a long process. Action 15 of the BEPS Project was focused on analyzing the possibility of developing a multilateral instrument in order to allow countries to quickly change their tax treaties to apply the tax treaty that is related to the BEPS recommendations.[37] The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the Multilateral

[34] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing: 14-24
[35] Kamerbrief (2015), Betreft Appreciatie uitkomst BEPS-project en vooruitblik Nederlands fiscaal vestigingsklimaat: 3
[36]Global Tax Alert (2015), OECD releases final reports on BEPS Action Plan: 1
[37] Multilateral instrument for BEPS tax treaty measures: the Ad hoc Group: http://www.oecd.org/tax/treaties/multilateral-instrument-for-beps-tax-treaty-measures-the-ad-hoc-group.htm

Instrument) is meant to exchange results from the OECD/G20 BEPS Project into more than 2000 treaties worldwide. It will apply minimum standards to counter treaty abuse and to make dispute resolution mechanisms better as well as giving flexibility to meet the need of particular tax treaty policies. It will allow governments to make their tax treaties better with the other tax treaty measures developed in the OECD/G20 BEPS Project as well.[38] The members of the ad hoc Group on the Multilateral Instrument concluded the discussions on the text of the Convention on 24 November 2016. Ministers and also other high-level representatives of more than 70 jurisdictions were part of the signing ceremony of the MLI in Paris on June 7th 2017. 67 countries and jurisdictions, covering 68 jurisdictions from all continents and levels of development signed the MLI. The US however did not sign the MLI.[39]

2.3 Steps taken on EU level to Avoid Aggressive Tax Planning

The European Union already took steps in order to fight tax fraud and tax evasion. In order to make sure that the governance in taxation is good, the European Union has put their focus on three principles. According to the European Union the Member States must take these principles into account. The principles are also being promoted by the European Union internationally. [40] The European Union has put their focus on the following three principles:

1. Transparency

Member States have been working together when it comes to transparency and the exchange of information. In the last few years this cooperation between the different Member States has been notably increased. The rules that the European Union came up with have been really advantageous for national tax authorities. These rules have made it easier to recognize tax evasion and fraud because of the exchange of data, information and experiences.

2. Information exchange

In the last few years important new legislation has been approved to increase administrative cooperation even more. Approximately, €20 billion on information of taxable revenue is exchanged every year between Member States and five countries outside of the European Union (including Switzerland and Liechtenstein) as well as ten dependent or associated territories of Member States outside the European Union (including Jersey, Guernsey, the Isle of Man, the Cayman Islands and

[38] Multilateral Instrument (2016), Information Brochure: 1
[39] Gurría, A. (2017) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
[40] Terra, B, & J. Kajus (2012), Tax evasion and avoidance: Questions and answers

Aruba) take part in the European Union network of cooperation in this field by means of agreements providing for identical or the same measures as those of the European Union Savings Directive.[41]

3. Fair tax competition

The European Union also tries to stimulate fair tax competition by introducing the Code of Conduct on Business Taxation. The Commission had a debate with Switzerland and Liechtenstein to also promote the principles of the Code of Conduct outside of the European Union.[42]

Other steps taken by the EU are the following:

Double taxation conventions

To tackle aggressive tax planning Member States have to make sure that their Double Taxation Conventions do not give companies a chance to evade taxation entirely. They have to search for a clause and contain this in their Double Taxation Conventions (not only with each other but also with countries outside of the European Union) saying that they will refrain from taxing certain income only if it is taxed in the other state.[43] A Double Taxation Convention is an agreement between two countries in order to prevent double taxation or double non-taxation. This convention provides information on which state can tax.[44]

General Anti-Abuse Rules (GAAR)

Member States are also getting motivated to accept a common General Anti-Abuse Rule. If a common General Anti-Abuse Rule is accepted by Member States, Member States would pay no attention to artificial arrangements that are used to avoid taxation and allow them to tax actual economic substance.

Anti-Tax Avoidance Directive

The Commission launched its proposal for an Anti-Tax Avoidance Directive on 28 January, 2016 which is part of the Anti-Tax Avoidance Package. The Directive (EU) 2016/1164 was taken in on 20 June 2016 by the Council determining rules that are against tax avoidance practices and that have an effect on the functioning of the internal market right away. In order to supply a comprehensive framework of anti-abuse measures the Commission introduced its proposal on 25th October 2016, to complement the rule that is available now on hybrid mismatches. The rule on hybrid mismatches targets to stop companies from making use of national mismatches to evade taxation. The Commission

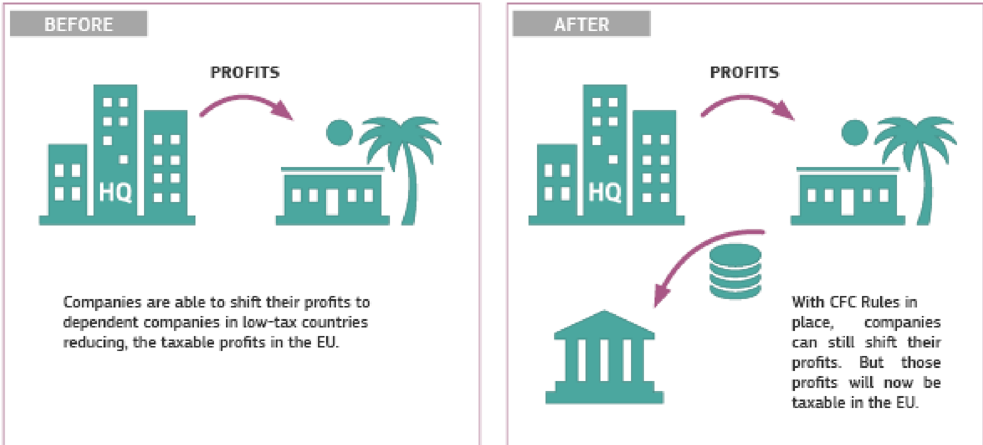
[41] Terra, B, & J. Kajus (2012), Tax evasion and avoidance: Questions and answers
[42] Terra, B, & J. Kajus (2012), Tax evasion and avoidance: Questions and answers
[43] Terra, B, & J. Kajus (2012), Tax evasion and avoidance: Questions and answers
[44] Lang, M. (2013), Introduction to the Law of Double Tax Conventions, 2nd edition, Linde Verlag: 30

not only published the proposal but also its Staff Working Document. Five legally-binding anti-abuse measures are included in the Anti-Tax Avoidance Directive that has to be applied by all Member States against common forms of aggressive tax planning. These measures should be applied by the Member States from 1 January 2019. A minimum level of protection is created against corporate tax avoidance in the EU, while making sure that there is a fairer and safer business environment.[45]

The anti-avoidance measures in the Anti-Tax Avoidance Directive other than the rule on hybrid mismatches, are[46]:

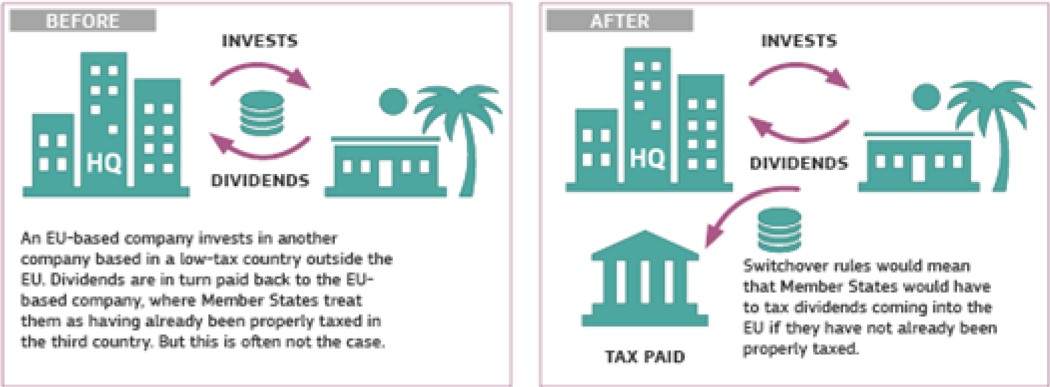
1. Controlled foreign company rules: to discourage profit shifting to a country where the tax rate is low or to a country with no tax at all.

Figure 2 - Controlled foreign company (CFC)[47]



2. Switchover rule: to prevent double non-taxation of certain income.

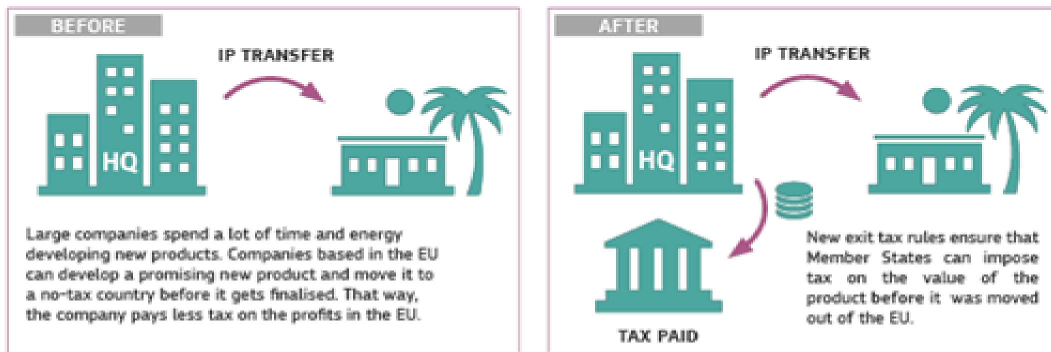
Figure 3 – The switchover[48]



[45] The Anti Tax Avoidance Directive: https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package/anti-tax-avoidance-directive_en
[46] The Anti Tax Avoidance Directive: https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package/anti-tax-avoidance-directive_en
[47] The Classic Profit Shift: Controlled Foreign Companies (CFC) Rules: https://ec.europa.eu/taxation_customs/sites/taxation/files/violet_1.png
[48] The switchover: Taxing Dividends Effectively: https://ec.europa.eu/taxation_customs/sites/taxation/files/violet_4.png

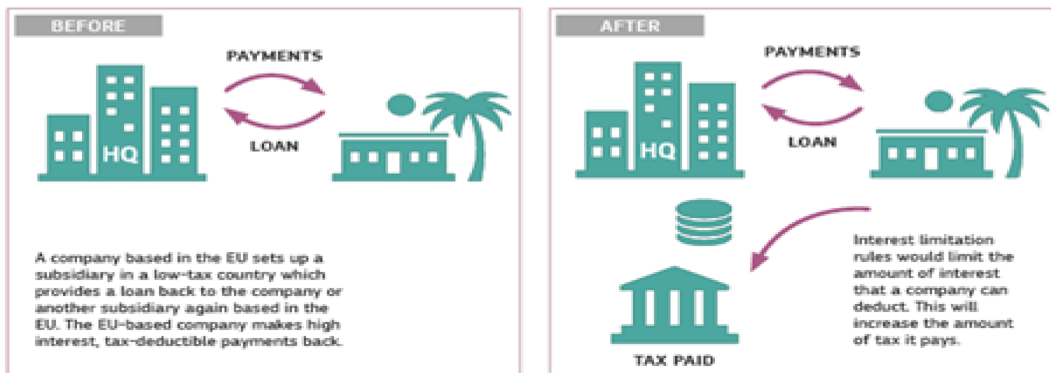
3. Exit taxation: to prevent companies from avoiding tax when moving their assets from one country to another.

Figure 4 – The patent flight: New exit taxation rules[49]



4. Interest limitation: to discourage artificial debt arrangements designed to reduce taxes.

Figure 5 – The low tax loans: Interest limitation rules[50]



5. General anti-abuse rule: to prevent aggressive tax planning when other rules do not apply.

Figure 6 – The safety net: A general Anti abuse rule (GAAR)[51]

[49] The Patent Flight: New Exit Taxation Rules: https://ec.europa.eu/taxation_customs/sites/taxation/files/violet_5.png
[50] The Low Tax Loans: Interest Limitation Rules: https://ec.europa.eu/taxation_customs/sites/taxation/files/violet_2.png
[51] The Safety Net: A General Anti-Abuse Rule (GAAR): https://ec.europa.eu/taxation_customs/sites/taxation/files/violet_6.png

The Council of the European Union approved the Directive on 29 May 2017 improving the Anti-Tax Avoidance Directive. The Directive which is known as ATAD 2 expands the range of ATAD to hybrid mismatches including third countries for example countries that are not part of the EU. ATAD 2 also contains structures of hybrid mismatches which are not mentioned by ATAD.[52] The ATAD 2 will help the EC search for determining minimum rules that balances out hybrid mismatches, where at least one of the parties connected with this is a corporate taxpayer in one of the EU Member State.[53]

Although measures have already been taken at EU level, the European Commission thinks that the CCCTB is the ideal proposal to combat aggressive tax planning because according to the European Commission, the CCCTB should provide a harmonized tax base which will combat mismatches and aggressive tax planning.

2.4 Steps taken on national level in the Netherlands and Belgium against aggressive tax planning

The Netherlands

The Netherlands is often under discussion as tax haven and because of this the Netherlands wants to take part in avoiding tax evasion but this should not have an effect on being attractive for foreign multinational companies and at the same time, fair competition and preservation of jobs in the Netherlands must be secured. In the Netherlands the aim is to prevent tax evasion without making it less attractive for foreign companies to invest in the Netherlands.[54] The Netherlands combats aggressive tax planning by taking part in the BEPS-project. The BEPS reports present standards and solutions to counter tax evasion in an impressive number of areas. [55] The Netherlands also prevents aggressive tax planning by taking part in improving the fiscal transparency and the exchange of information. The Netherlands worked together with the OECD, the EU and the G20-countries on developing a new global standard to automatically exchange information of financial details, the so called Common Reporting Standard.[56] Also on national level some steps were taken to avoid aggressive tax planning by including anti-abuse provisions in tax treaties with 23 developing

[52] Ernst & Young (2017), EU Council adopts Directive (ATAD 2) to address hybrid mismatches with third countries: 1

[53] Ernst & Young (2017), EU Council adopts Directive (ATAD 2) to address hybrid mismatches with third countries: 2

[54] Kamerbrief (2015), Betreft Appreciatie uitkomst BEPS-project en vooruitblik Nederlands fiscaal vestigingsklimaat: 4 & 11

[55] Kamerbrief (2015), Betreft Appreciatie uitkomst BEPS-project en vooruitblik Nederlands fiscaal vestigingsklimaat: 4

[56] Nederland verwelkomt voortgang strijd tegen internationale belastingontwijking (2014): https://www.rijksoverheid.nl/actueel/nieuws/2014/09/16/nederland-verwelkomt-voortgang-strijd-tegen-internationale-belastingontwijking

countries.[57] The Dutch system has always taken into account internationally operating companies and ensures that national and cross-border companies are treated equally.[58]

Belgium

Till not long ago, Belgian tax policy has been adjusted to meeting budgetary challenges, particularly in the wake of the economic crisis. As public anger in Belgium increased over the tax practices of some multinationals, Belgium's former government became aware that the fight against aggressive tax planning could help to sort out the passage of certain measures through Parliament. In a tax mix shift put into action at the end of 2015, the government decreased social security grant and individual income taxes for employees and the self-employed to stimulate employment, and present other incentives for investment and innovation. Indirect taxes and taxes on financial income for individuals were expanded. The fight against tax fraud, a key responsibility of Belgium's Minister of Finance, still is a high priority. New on the political agenda is a possible corporate income tax improvement that is for the most part aimed at decreasing the corporate income tax rate from 33.99 to 25 percent or as low as 20 percent by 2020.[59]Belgium being a founding member of the OECD, has completely contributed to the BEPS initiative but not from the beginning on. So far, Belgium has put some particular anti-BEPS measures into action in direct response to the OECD project. Some anti-abuse rules to protect the tax base of individuals and corporations against aggressive planning have been around for quite some time. Not long ago, the government has taken more steps that meet the spirit of the OECD BEPS project. Stepped-up enforcement of anti-BEPS rules Specific anti-abuse rules backed by a GAAR have been in place for a couple of years. Interest, royalties and service fees paid to tax havens cannot be deducted except if the taxpayer can show that the expenses are connected to transactions actually carried out and do not exceed normal limits.[60]

As seen in the examples about the Netherlands and Belgium, we can conclude that these countries are busy implementing BEPS and other EU measures.

[57] KPMG (2016), Moving from talk to action in the European region: 28
[58] KPMG (2016), Moving from talk to action in the European region: 28
[59] KPMG (2016), Moving from talk to action in the European region: 12
[60] KPMG (2016), Moving from talk to action in the European region: 13

2.5 Conclusion

The steps taken on international level to avoid aggressive tax planning was the release by the OECD of the report "Addressing Base Erosion and Profit Shifting" this was followed by an action plan containing 15 actions. On October 5, 2015 the final proposals for the 15 BEPS Actions was made released

On EU-level the anti-tax avoidance directive was introduced. The anti-avoidance measures in the Anti-Tax Avoidance Directive other than the rule on hybrid mismatches, are:

1. Controlled foreign company (CFC) rules;
2. Switchover rules;
3. Exit taxation;
4. Interest limitation and
5. General anti-abuse rules.

In this chapter there was also explained what has already been done on national level in two Member States. The two Member states are the Netherlands and Belgium. We saw that these countries are busy implementing BEPS and other EU measures.

Chapter 3
Common Consolidated Corporate Tax Base

3.1 Introduction

In order to have a harmonized tax base of companies active within the European Union, the Common Consolidated Corporate Tax Base (CCCTB), was introduces in 2011 as a draft directive.[61] In this chapter the Common Consolidated Corporate Tax Base will be explained. In the second paragraph the developments of the CCCTB will be addresses followed by the third chapter which explains the aims of the re-launched CCCTB. The fourth paragraph explains how the CCCTB works in practice. This chapter ends with a conclusion.

The EU tries to harmonize the tax base of companies in different ways. The two most important sources of European Union law are primary and secondary law.

Primary law comes for the most part from the establishment of Treaties, to be specific both the Treaty on the Functioning of the EU and the Treaty on the EU. The distribution of the capability of these treaties between the EU and MS's are explained by these treaties and they also establish the powers of the European institutions. As a result the treaties decide the legal framework in which the EU organizations apply European policies. Primary law also covers the revised EU Treaties, the protocols added to the established Treaties and to the revised Treaties and also the Treaties on new MS's entering into the EU.

The secondary law consists of unilateral acts and agreements.

Whereas the unilateral acts can be split into two types:

- The unilateral acts which are part of the Treaty on the Functioning of the EU concerning Art. 288. These are decisions, regulations, opinions, directives and recommendations;
- The unilateral acts which are not part of the Treaty on the Functioning of the EU concerning Art. 288..

The Conventions and Agreements are split into:

- International agreements;
- Agreements taken between Member States and
- Agreements taken between the EU institutions.[62]

[61] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 1

[62] Sources of European Union law (2010): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14534

3.2 The development of the CCCTB

The European Commission recognized that corporate taxation in the European Union is a big hindrance to achieve a common market. There are 28 Member States which means 28 different corporate tax systems which results in European companies facing administrative issues and very high compliance costs.[63] In order to combat this problem, the EC announced a Draft Council Directive on a Common Consolidated Corporate Tax Base, on March 16, 2011 together with a broad and detailed impact assessment.[64]

The CCCTB stands for:

- **C**ommon: one set of rules for companies operating in all EU Member States;
- **C**onsolidated: consolidating a group's gains and losses in the EU;
- **C**orporate: It only applies to the taxation of companies;
- **T**ax **B**ase: The tax base can be determined by adding the gains and losses followed then by subtracting exempt income and deductions.[65]

In general the corporate income is taxed at national level, but because the economic environment has become more globalized, mobile and digital, business models and corporate structures have become more difficult, which makes it easier for companies to shift profits. The deviation of national corporate tax systems have also permitted aggressive tax planning to grow over the last years. Therefore, when national rules are set up without taking into account the cross-border dimension of business activities, it is possible that mismatches appear in the interaction between different national corporate tax systems. These mismatches generate a hazard of double taxation and double non-taxation and through this they distort the functioning of the internal market.[66] According to the European Commission the ideal proposal to combat these problems in the EU is the CCCTB.[67]

The CCCTB proposal includes a three-step approach[68]:

1. Resolution of corporate taxable income of group members derived from a harmonized set of tax accounting rules;
2. Consolidation of the individual corporate tax bases to the common tax base;

[63] Lang, M., P. Pistone, J. Schuch, C. Staringer (2008), Common Consolidated Corporate Tax Base, volume 53, Linde Verslag: 5
[64] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg : 1
[65] KPMG (2011), The KPMG guide to CCCTB, KPMG International Cooperative
[66] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 2
[67] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 5
[68] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 1

3. Assigning the consolidated tax base to group members which are located in different Member States by making use of a formula apportionment.

The Member States will retain their right to tax the assigned share of the consolidated tax base by using their own national corporate tax rate. The European Commission designed the CCCTB with the intention form a fundamental change of corporate taxation in Europe to decrease inefficiencies and distortions that are present at the moment, derived from having 28 different tax regimes at the same time, and to generate an integrated single market to do business in the EU. Great advantages are visible from the introduction of the proposed CCCTB such as the removal of transfer pricing concerns, the removal of double taxation resulting from conflicting tax claims between Member States and, of also, in decreasing the administrative burdens and tax compliance cost. However, the CCCTB proposal enhances a couple of new problems such as, specific rules when transitioning.[69]

The CCCTB proposal does not get involved with financial accounting regulations neither will it harmonize tax rates. Therefore every Member State will keep its national rules on financial accounting and retain its right to tax the assigned part of the consolidated tax base at the level of each group member making use of its own national corporate tax rate. The CCCTB expressly encourages tax competition on the basis of national corporate tax rates within the EU. The proposed Council Directive is relevant to so-called appropriate companies within the EU.[70] However, it should be taken into consideration that the proposed directive is not mandatory. Companies have the choice to continue to be fully governed by the national tax system or to be taxed under the proposed CCCTB. Consequently, Member States will have to manage two corporate tax systems at once. The choice to apply the proposed CCCTB would be available for a starting term of five tax years, which can be expanded for a consecutive term of three tax years, except if a notice of termination is given. Companies that choose for the proposed CCCTB only have to file a single tax return with the principal tax authority in one Member State (one-stop-shop system) for the group's entire activities in the EU.[71]

Adopting the CCCTB

Looking back at the 2011 launched CCCTB it can be said that it would require all 28 Member States to agree with the CCCTB however, it was not likely that the CCCTB at that time would ever see the light of day. The main reason of this dispute was connected to the second of the three "Cs" in CCCTB, which stands for "consolidated". Cross-border consolidation demands a mechanism for the sharing the consolidated tax base among Member States. At the time a company that was part of a multinational

[69] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 1

[70] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 5

[71] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg : 5

enterprise was taxed individually in its state of residence on its individual profit. Taking into consideration the intra-group dealings, this profit is determined based on the arm's length standard.[72] When applying the CCCTB however, the consolidated profit would be split by using a certain formula which takes into consideration the location of a multinational enterprise's assets, workforce and sales. The European Commission confesses that the effects of the new system in terms of tax revenue gains or losses for individual Member States are uncertain. It is therefore not a surprise that Member States are unwilling to embrace a reform that could possibly end up in a notable loss of tax revenue. Based on an short outline of the underlying problem of the allocation of profits of multinational enterprises and the basic features of the CCCTB, it could be argued that an adoption of the CCCTB before the 2016 re-launch was not recommended since that system of consolidation plus formulary apportionment was not a powerful alternative to separate accounting and the arm's length standard. As an alternative, the introduction of an enhanced CCTB without consolidation and formulary apportionment was suggested.[73]

There is still a need for more targeted measures to address the most serious issues in the short to medium term. Besides that, there are issues that continue to exist even if a CCCTB is introduced, for example, because CCCTB would not cover all forms of direct taxation and personal income tax (and not individual entrepreneurs) and would not automatically be relevant to all corporate taxpayers (because of optionality) and/or Member States (in the case of adaption under increased cooperation) and because there will be a need to address the interaction between the CCCTB and other aspects of direct tax systems.[74]

In general, it could be argued whether all or even some Member States would adopt the original CCCTB system in the scope during that time. For this reason the EC also came up with a way that would present the CCCTB by using two steps. The first step would be to replace the 28 national tax accounting rules within Member States by a harmonized tax system. The Common Corporate Tax Base would only have an affect on the calculation of the corporate tax base. The second and the third step of a CCCTB include the consolidation of individual group members' income and allocating the consolidated tax base after that, would be excluded for the present. Despite the fact that, a few of the benefits of the CCCTB would, not be accomplished by the CCTB, the two-step approach appeared to

[72] Röder, E. (2012), Proposal for an Enhanced CCTB as Alternative to a CCCTB with Formulary Apportionment: 126

[73] Röder, E. (2012) Proposal for an Enhanced CCTB as Alternative to a CCCTB with Formulary Apportionment: 126

[74] Lang, M., P. Pistone, J. Schuch & C. Staringer (2008), Common Consolidated Corporate Tax Base, volume 53, Linde Verslag: 35

be more likely to get through the political process in the EU and seems to be a promising place to start to achieve a harmonized corporate tax.[75]

Re-launched CCCTB

As suggested, the two was introduced in 2016. The European Commission re-launched the CCTB and the CCCTB on 25 October 2016. The difference between the proposal of 2011 and the re-launched CCCTB is that the re-launched initiative would set obligatory regulations for groups that exceed a particular size, to enhance the resilience of this system against aggressive tax planning practices. It would also be important for the rules to be a choice to entities that are liable to corporate tax within the Union but do not meet the standards that would make them liable to the common framework.[76]

The debates in Council since 2011 have shown that the CCCTB proposal, being a very aspiring project, would not be adopted easily, as a whole, without an organized approach. Therefore, different elements (in particular, tax consolidation) have given rise to a tough debate and could be holding back progress on other underlying features of the system. In an attempt to get round these delays in making progress, the Commission, in its Action Plan of June 2015, recommended a step-by-step approach to the CCCTB. One of the most important features is that the re-launched CCCTB is divided into two proposals that can be applied in two stages as described above. Member States will be capable to agree on the common base first, before working on the more difficult consolidation feature. This process should make the negotiation procedure more manageable, facilitating more constructive discussions and quicker agreement, without lowering the general level of ambition. As stated by this, it is enunciated that there will only be worked on a consolidation if the agreement is first ensured on an obligatory regulations for a common corporate tax base. The Commission will present two proposals, i.e. for a CCTB and a CCCTB, at the same time and as part of a single initiative. The advantages of CCCTB will only be visible when both common tax base and consolidation are introduced. However, the common tax base can be used while consolidation is being discussed and will already bring some essential advantages to the EU's corporate tax environment. The common base sets down common regulations for businesses to calculate their taxable profits. It will therefore get rid of the desire for businesses to deal with many diverse national regulations when they have activities that are cross-bordering in the EU. This will significantly decrease compliance costs and administrative obligations.[77]

The proposal of 2011 for a CCCTB, which is at the moment still pending in Council, will be taken out at the exact time as the Commission accepts the new proposals. In this regard, it is fundamental that

[75] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 2

[76] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 3

[77] European Commission-Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

tax consolidation continues to last as a necessary principle of the CCCTB initiative, as the essential tax barriers faced by companies within the Union can best be tackled within a consolidated group.[78]
The focus in this Directive is on the so-called 'second step' of the staged approach, this is after the components of the common base have been accepted. If this is not reached, the proposal for a CCCTB will still be undecided for examination in Council. The CCCTB sets the conditions for being in a group, sets out the possible forms that a group can take and includes rules on the technicalities of consolidation. In addition to issuing the required adjustments when entering and leaving the group, the text deals with business reorganizations, with the center of attention being the particularities of cross-border groups and more clearly, the treatment of losses and unrealized capital gains. There are also provisions on the dealings between the group and other entities; these provisions essentially relate to the treatment of withholding taxes and credit relief for double taxation. One of the main components of the proposal is the formulary apportionment, i.e. the mechanism of weights used for assigning the consolidated tax base of the group to the suitable Member States. Under the rules on the common base companies may keep on applying their national rules for administering their tax liability whereas, the CCCTB would demand a particular administrative framework in order to adapt the structures of cross-border groups.[79]

According to the EC the updated CCCTB can better meet new and upcoming corporate tax challenges compared to the original proposal, in particular because:[80]

1. The CCCTB will be obligatory for the biggest companies

The CCCTB will be mandatory for all groups with worldwide combined revenues of more than €750 million. This should support to maximize its possibility as an anti-avoidance instrument. Big groups will not be able to choose other than the CCCTB system merely to carry on with aggressive tax planning. Even if companies fall underneath the threshold it will still be possible for them to decide on the CCCTB, in order to take advantage of the greater clarity, certainty and cost-savings it will bring.
The obligatory feature also means that the related corporations will know where they stand when it comes to the EU's anti-abuse rules and they will not have to make needless accommodations. This will help to generate more foreseeable surroundings for corporations in the EU.[81]

2. The CCCTB would support Research and Development (R&D)

A new R&D motive has been involved to motivate companies in the EU to put money into research and innovation, which are main factors of growth. Companies that invest in R&D will receive a

[78] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 3
[79] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 3
[80] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm
[81] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

deduction for their R&D costs. To support small and innovative companies that decide to choose for the CCCTB, an even better deduction will be given to start-up companies. These start-up companies are permitted to subtract to a maximum of 200% of their Research and Development costs, under specific circumstances.[82]

3. The CCCTB would get rid of the inducement for debt accumulation

According to the EC, the CCCTB would address the debt-bias that is now available in taxation, which lets companies subtract the interest that has been paid on their debts but not the costs of equity. This debt-bias not only distorts financing decisions but also makes companies more vulnerable to liquidation and erodes the solidity of the total economy. That is why, the CCCTB launches an 'Allowance for Growth and Investment' (AGI), that will give companies identical benefits for equity as they get for debt. This will reward companies for reinforcing their financing structures and tapping into capital markets. This initiative chimes with the Commission's plan for a Capital Markets Union that searches to give corporations access to different, more diverse sources of financing.[83]

The Commission's most important priorities are not only to have more influence but also to make taxation fairer and more powerful in the EU, as explained in the Action Plan from June 2015. The last two years, the Commission moved forward an aspiring agenda to realize this, especially through the fight against tax evasion and avoidance. There have already been some milestone achievements. Member States have put up to new transparency rules for tax rulings and reports on multinationals' activities that relate to tax. They have accepted binding anti-abuse measures against some of the most ordinary forms of tax avoidance and have started working on a new EU list of third countries that refuse to respect tax good governance standards.[84]

Other transparency measures put forward by the Commission are now being discussed, involving public country-by-country reporting requirements for the biggest corporations in the EU. Besides that, the work of the Commission in the state aid area is addressing dishonest tax advantages that a couple of Member States have given to particular corporations.[85]

For a long time, a more holistic improvement of corporate taxation in the EU is necessary. There has to be a right balance between implementing the improvements that are required to make taxation fairer and supplying a foreseeable, growth-friendly tax surroundings for businesses. This package provides

[82] European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[83] European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[84] European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[85] European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

the EU a forward-looking framework for corporate taxation, which not only fulfills the 21st century needs of corporations but also of Member States and the economy as a whole.[86]

There are three unrelated initiatives in the new package of corporate tax reforms:[87]

1. The Common Consolidated Corporate Tax Base (CCCTB)

The Commission has updated and re-launched the Common Consolidated Corporate Tax Base (CCCTB), which could be the most aspiring corporate tax improvement ever put forward in the EU. The CCCTB will supply Member States with a completely new system for taxing multinationals, in such a way that the EU will become more business-friendly when also getting rid of the main channels of profit-shifting.

2. Updated mechanisms to find a solution for double taxation conflicts

Double taxation is one of the most important tax barriers for businesses in the Single Market. The Commission has put forward better procedures to sort out double taxation discussions in the EU to bring more certainty for businesses.

3. Measures to tackle tax loopholes with non-EU countries

This proposal builds on to the Anti-Tax Avoidance Directive, which was agreed, with measures to stop corporations from exploiting differing rules or ‘mismatches' between the tax systems of Member States and those of non-EU countries.

3.3 Aims of the re-launched CCCTB

The aims of the re-launched CCCTB according to the European Commission are the following:

The CCCTB should improve the Single Market for corporations

According to the EC the CCCTB should very much lessen administrative burdens, compliance costs and tax barriers for cross-border companies in the EU. They should be able to use one EU system to calculate their taxable income, rather than having to deal with several national rulebooks. It should also be possible to present their tax return for all of their EU activities through a "One Stop Shop" system, which means that they only have to deal with one administration, just as purely domestic companies do. The CCCTB should allow corporations to compensate profits from one Member State against losses in another Member State, which is especially important for smaller and start-up companies.[88] The CCCTB should be a secure, transparent EU-wide system, enshrined in EU law. This will give companies with much greater legal sureness and lessen tax barriers like double taxation.

[86]European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[87]European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[88]European Commission - Fact Sheet, Strasbourg (2016): http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

With the CCCTB, time used up on yearly compliance activities should be reduced by 8% while the time used for establishing a subsidiary would lessen to 67%, which makes it easy for companies, also for SMEs (Small Medium Enterprises), to set up in a foreign country.[89]

The CCCTB should help to prevent tax avoidance

According to the EC, the CCCTB should have an effect when fighting corporate tax avoidance. The big groups in the EU are the companies that have the ability to perform aggressive tax planning, this is why EC has suggested to make it mandatory for them. According to the EC, the CCCTB should get rid of mismatches and loopholes between national systems, which corporations nowadays can exploit to avoid paying taxes. Consolidation should eliminate the need for complex transfer pricing, which is one of the most important vehicles for shifting profits within groups. Besides that, the common base should generate complete transparency on the effective tax rate of every Member State, by eliminating any non-transparent and favorable tax regimes that now exist in national systems. The profits are then taxed in each Member State with the tax rate from that Member State.[90] It should decrease tax competition that is damaging. Anti-abuse measures are also included in the CCCTB, this to safeguard the Single Market against base erosion and profit shifting to non-EU countries. These anti-abuse measures are in accordance with the measures in the Anti-Tax Avoidance Directive (ATAD). In July 2016 Member States agreed on this Anti-Tax Avoidance Directive.[91]

The CCCTB should boost growth and investment

The CCCTB after the re-launch focuses on the necessity for expanded growth and the availability of jobs in the internal market, and also countering aggressive tax planning practices.[92] It should give companies foreseeable rules, a level-playing field and decrease compliance costs. This should attract more businesses to invest in the EU. It should also boost investment in R&D, which eventually leads to growth.[93]

[89] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[90] Common Consolidated Corporate Tax Base (CCCTB): http://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

[91] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[92] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 5

[93] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

Besides that, when adopting the CCCTB this would mean that the income that is currently lost because of tax avoidance will be channeled into the public purse for productive investment, as aggressive tax planning is limited by the CCCTB.[94]

3.4 The CCCTB in practice

In the new and improved CCCTB, Member States will have a chance to agree on and introduce the common base first, secondly the consolidation, preferably right afterwards. Depending on how the system works:[95]

1. The common base gives the single set of regulations to determine how a business's profit will be taxed, once different exemptions and deductions have been accounted for. For instance, the common base will make sure that all Member States grant the same rate of depreciation for a specific asset or grant the same specific expense to be tax-deductible. Meaning that businesses will only have to make reference to one set of regulations when calculating their taxable profits and the calculation will also be consistent throughout the EU.
2. Consolidation will make it possible for a group to add up all the profits and losses of the businesses that are part of the group in different Member States, to come to a net profit or loss for the whole EU. Established on this net figure, the regulations in the common base will be applied in order to determine amount of profits the groups will be taxed on. This is one of the most important attractions for corporations in the CCCTB, the ability to offset losses in one Member State against profits in another. This is especially important to help companies that just started and companies that are expanding in the Single Market, because this would ensure that their cross-border activities are treated the same way as resident companies. This however, will only be relevant when looking at the second step of the CCCTB. By making use of cross-border loss offset, it is possible for a parent company in one Member State to not be taxed on its profits because of the losses the subsidiary has in another Member State. When the subsidiary starts making profits again, the Member State where the parent company is situated will "recapture" the taxes that it relieved when the subsidiary was making the losses. No Member State would have to carry lengthy burdens of a company that is not making any profit in another Member State.[96]

The moment the tax base of the business is established, the business's taxable profits will be shared out between the Member states in which the business is operative using an apportionment formula. Depending on where the business is active, each Member State in which the business is active can tax their share of the business's profits at their own national rate.

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[94] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm
[95] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm
[96] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

The formulary apportionment

The introduced CCCTB would not make use of the arm's length principle as a way to allocate taxable income between jurisdictions but this would be replaced by a formula apportionment.[97] The moment a business's consolidated tax base has been set up, each Member State in which the business is operational will have the right to tax part of this base. The CCCTB formula is made up of three equally weighted factors.[98] The percentage of the business's base that a Member State can tax will be determined based on 3 factors that are evenly weighted:

1. The assets the business has in that Member State (e.g. buildings, machinery);
2. The labor the business has in that Member State (e.g. the number of employees and employment costs) and
3. The revenues that the business mad in that Member State. The factor for revenues will be calculated on the basis of destination (e.g. where the goods are sold/shipped to or where the service is carried out).

Formula apportionment does not look to assign income to its source without fault. In fact, the reasoning behind formula apportionment is to supply a practical solution for allocating profit between jurisdictions with the result to better deal with the problems of simplicity and enforceability. Still, formula apportionment is not arbitrary. Depending on the choice of apportionment elements, this approach aims to allocate the consolidated tax base to activities where the profit generated.[99]

Transparency and efficiency of the corporate taxation

Transparency and efficiency of the corporate taxation in the EU will also be as a result of the common base. Member States would no longer have the opportunity to have secret components in their tax bases for example preferred rulings that can result into harmful tax competition and profit shifting.
According to the EC, the CCCTB would also get rid of the disparity and options between national tax systems that are used often by aggressive tax planners. However, consolidation continues to be the aim and should be included by the Council when the common base is accepted. Businesses not only need consolidation for the cross-border loss offset but also to present one EU tax return through the One Stop Shop system. On the other hand Member States need consolidation to keep away from the difficult transfer pricing system which is crucial for profit shifting. Also the formulary apportionment is needed within consolidation to make certain that a fair link between the place where companies make their profits in the EU and where tax is levied.[100]

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[97] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 7

[98] Röder, E. (2012) Proposal for an Enhanced CCTB as Alternative to a CCCTB with Formulary Apportionment: 130

[99] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 7

[100] European Commission - Fact Sheet (2016), Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

3.5 Conclusion

The European Commission recognized that corporate taxation in the European Union is a big hindrance to achieve a common market. There are 28 Member States which means 28 different corporate tax systems which results in European companies facing administrative issues and very high compliance costs.[101] In order to combat this problem, the EC introduced a Draft Council Directive on a Common Consolidated Corporate Tax Base, on March 16 2011 together with a broad and detailed impact assessment.[102] The CCCTB is a harmonized system used to determine the taxable profits of businesses in the EU by giving one set of regulations that are used for businesses to calculate their tax base, instead of different national regulations. Businesses that use the CCCTB system will be able to compensate their losses in one Member State with the profits in another. In that way these companies will get the same treatment as domestic businesses. The CCCTB will make it simpler, will cost less and make it more appealing for businesses to perform across the Single Market. According to the European Commission the CCCTB is a way to combat aggressive tax planning and on 26 October, 2016 the CCTB and the CCCTB was re-launched. These proposals can only be adopted if the ECOFIN Council (which consists of Ministers of Finance from 28 Member States) reaches unanimity.[103]

[101] Lang, M., P. Pistone, J. Schuch & C. Staringer (2008), Common Consolidated Corporate Tax Base, volume 53, Linde Verslag: 5

[102] Spengel, C. & Y. Zölkau (2012), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg: 1

[103] Mandatory Common Corporate Tax Base ('CCTB') and the Consolidated Common Corporate Tax Base ('CCCTB') (2016): https://www.banning.nl/publicaties/mandatory-common-corporate-tax-base-cctb-and-the-consolidated-common-corporate-tax-base-ccctb/

Chapter 4
General Tax Principles

4.1 Introduction

According to the EC the CCCTB is a way to avoid the problem of aggressive tax planning. The European Commission identified some general principles for the design of a company tax system. In order to verify whether the CCCTB is a positive improvement for Member States, this system is tested by looking if the CCCTB meets these general principles.

When explaining a common consolidated tax base for corporations it is important to start with some general principles in mind. These may be helpful as a sort of evaluation framework, or to recognize some issues which will need to be dealt with when discussing individual structural elements of the tax base. As a matter of fact, it is hard to see how Member States which at the moment have different tax bases could agree on one common tax base without the explicit or implicit broad agreement on some underlying tax principles.[104] Currently, there is no existing statement of EU-wide tax principles. Neither does there seem to be clear individual national sets of tax principles. Nonetheless, there are currently two sets of principles that may be applicable when designing a common consolidated tax base: the general principles for the design of (corporation) tax systems and the accounting principles for the determination of profits, respectively.[105] However in this thesis only the general principles will be mentioned. The Commission Services Study 'Company Taxation in the Internal Market' recognized some general principles for designing a company tax system. The second paragraph offers an overview of these general principles and rather the CCCTB meets these principles.[106]

In this chapter we will see rather the CCCTB meets the general tax principles that the Common Consolidated Corporate Tax Base Working Group (CCCTB WG) designed.

4.2 The general principles

When discussing the principles, principles are considered to be the underlying principle or main assumptions creating the basis of a chain of reasoning.[107] Principles do not give comprehensive information, but they only give guidance.[108]

The CCCTB Working Paper on General Tax Principles coped with general principles when designing and evaluating tax systems. These general principles are: vertical and horizontal equity; efficiency and

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[104] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels:2
[105] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 2
[106]Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 2
[107]Freedman, J. & G. Macdonald (2008), The Tax Base for CCCTB: The role of principles, Oxford University Centre for Business Taxation sa¨id Business School, Park end Street Oxford OX1 1HP WP: 3
[108]Freedman, J. & G. Macdonald (2008), The Tax Base for CCCTB: The role of principles, Oxford University Centre for Business Taxation sa¨id Business School, Park end Street Oxford OX1 1HP WP: 4

neutrality; effectiveness; simplicity, transparency and certainty; consistency and coherence; flexibility and enforceability. There has been decided that these principles are all valued differently when taking into account the components of a tax base. As expected they are abstract and most of the time they not give concrete answers. Even so, these principles do give an essential framework not only when thinking about the tax base but also for analyzing the accounting solution to profit measurement. These principles are considered to be more helpful compared to the wider general principles when putting together the structural components of the tax base. The Commission did not make them into a official statement or code yet. [109]

The underlying aim of a company taxation base is to supply a measure of profits which may then be exposed to a rate of taxation in order for individual states to raise an amount of revenue. The definition of the profits to be taxed should then satisfy as far as possible a number of extra criteria stemming from general economic principles.[110] The CCCTB only harmonizes the corporate tax base, which is necessary for holding back recognized barriers that distort the internal market and to counter aggressive tax planning. Also, the re-launched CCCTB does not limit Member States' jurisdiction to decide their desired amount of tax revenues in order to meet their budgetary policy targets. Taking this into consideration, it does not have an effect on Member States' right to set their own corporate tax rates.[111]

The general principles that will be mention in this chapter are:

- **Vertical equity** in a tax system means that the burden of taxation should be split in accordance with the taxpayers′ respective ability to pay.[112] Individuals that have a higher income should pay tax at a higher (average) rate. A person's wealth decides its ability to pay taxes.[113]
- H**orizontal equity** means that taxpayers in the same economic circumstances should receive identical treatment.[114] The horizontal equity principle is almost similar to neutrality because it is thought of as if it is identical before tax it should also be identical after tax.[115] So in other words taxpayers that are in similar economic situations should have comparable tax treatment. In case of transnational economic activity taxation, the horizontal equity principle makes reference to the decent allocation of the tax base between the States based on where businesses function.

[109] Freedman, J. & G. Macdonald (2008), The Tax Base for CCCTB: The role of principles, Oxford University Centre for Business Taxation sa¨id Business School, Park end Street Oxford OX1 1HP WP: 6
[110] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 3
[111] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 5
[112]Hodžić, S. (2015), The impacts of the common consolidated corporate tax base in Croatia: 329
[113] Spengel C. & C. Wendt (2007), A Common Consolidated Corporate Tax Base for Multinational Companies in The European Union: Some Issues and Options: 11
[114] Hodžić, S. (2015), The impacts of the common consolidated corporate tax base in Croatia: 329
[115]Freedman, J. & G. Macdonald (2008), The Tax Base for CCCTB: The role of principles, Oxford University Centre for Business Taxation sa¨id Business School, Park end Street Oxford OX1 1HP WP: 9

- **Efficiency** is broadly acknowledged as an underlying economic principle of optimal taxation. Efficiency is achieved when taxes are neutral to the behavior of economic agents and if they don't have an effect on their decisions.[116] It should not matter whether you earn your income abroad or in the state of resident at the end of the day the tax rate of the resident country is the benchmark. This is called capital export neutrality. In case of capital import neutrality, it doesn't matter what the tax burden is in the state of residence because you only look where the activity is carried out. In other words there will be no discrimination when it comes to who invests in that state.[117]
- **Effectiveness** is actually the capacity of the tax base to realize its basic objectives.[118]
- **Simplicity** cannot be left out when designing a CCCTB. Efficiency and competitiveness within the European market would be promoted by a simple tax system. Different from, the administrative burden of increasingly detailed and complex tax rules forms a notable problem. It costs tax authorities a lot of money to monitor such systems. Simplicity is a matter of competitiveness this because it allows the businesses to control their resources from administrative tasks to productive activities that encourages growth.[119] **Transparency and Certainty** implies that the principles must also be certain and clear.[120] When defining the tax base, the rules need to be clear in order for the transparency requirement to apply.[121]
- **Consistency & Coherence** means that two transactions that have the same economic effect, they should also have the same fiscal effect.[122]
- **Flexibility** under the general principles means that the tax base should be able to react to changes.[123] The economic conditions where companies are operating change after a while wherefore it should be possible for the tax base to modify to these changes.[124]
- **Enforceability** is also one of the general principles. A connected principle is that a tax system should be enforceable without any difficulty and taxes should be really hard to avoid and evade. A tax system that cannot be enforced is not likely to be fair or neutral, because taxpayers will have to

[116] Spengel C. & C. Wendt (2007), A Common Consolidated Corporate Tax Base for Multinational Companies in The European Union: Some Issues and Options: 12

[117]Freedman, J. & G. Macdonald (2008), The Tax Base for CCCTB: The role of principles, Oxford University Centre for Business Taxation sa¨id Business School, Park end Street Oxford OX1 1HP WP: 8

[118] Hodžić, S. (2015,) The impacts of the common consolidated corporate tax base in Croatia: 329

[119] Gammie, M., S. Giannini, A. Klemm, A. Oesreicher, P. Parascandolo & C. Spengel (2015), Achieving a Common Consolidated Corporate Tax Base in the EU: 15

[120] Hodžić, S. (2015), The impacts of the common consolidated corporate tax base in Croatia: 329

[121] Matei, G. & D. Pirvu (2010), Principles and rules for defining of Common Consolidated Tax Base in the European Union, University of Craiova & University of Piteşti: 103-104

[122] Etel, L. & M. Poplawski (2016), Tax Codes Concepts in the Countries of Central and Eastern Europe, Temida 2, Faculty of law University of Bialystok: 261

[123]Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 5

[124] Matei, G. & D. Pirvu (2010), PRINCIPLES AND RULES FOR DEFINING OF COMMON CONSOLIDATED TAX BASE IN THE EUROPEAN UNION, University of Craiova & University of Piteşti: 104

deal with different tax burdens that are contingent on their scruples. In the extreme case, a non-enforceable tax may be considered illegal.[125]

Vertical equity

A taxpayer should be taxed on the taxpayers ability to pay, sometimes addressed as 'the ability to pay' principle. It is not easy to see how this principle (usually applied to personal taxation) could or should be applied to company taxation. However, the 'ability to pay' could be relevant when taking into consideration whether or not unrealized profits should be taxable. The theory that higher rates are taken into account for higher profits not frequently applied to companies other than certain reliefs for small companies in some countries.[126] As mentioned before the CCCTB would harmonize the tax base of companies within the EU, however the profits are then taxed in each Member State with the tax rate from that Member State. The CCCTB doesn’t have anything to do with the tax rates, the tax rate is determined by the Member State in which the company is situated. The CCCTB does not meet the vertical equity principle.

Horizontal equity

Taxpayers that are in the same economic situations should be treated the same. In the context of international company taxation equity relates mainly to the fair allocation of the tax base between states where international companies operate. Traditionally inter-country equity can be pleased by source country entitlement (the source country has the right to tax profits earned within its jurisdiction) and non-discrimination (countries agree not to discriminate against foreign companies). In this way different companies that are operating in different countries are treated alike.[127]

The CCCTB is as a helpful tool for assigning income to where the value is created, by using a formula based on three equally weighted factors (i.e. assets, labor, and sales). The fact that these factors are based on where the value of the company is created, they are more flexible to aggressive tax planning practices than the extensive transfer pricing methods on how to allocate profit.[128]In order to help the operation of the internal market, the corporate tax environment in the Union should be almost similar to the element that companies pay their taxes where the value is created. That is why it is necessary to supply mechanisms that do not give companies the chance to benefit from mismatches amongst national tax systems to decrease the amount of tax they have to pay. It is also very important to support growth and economic development. This can be done by making trade across the border and

[125] Gammie, M., S. Giannini, A. Klemm, A. Oesreicher, P. Parascandolo & C. Spengel (2015), Achieving a Common Consolidated Corporate Tax Base in the EU: 15

[126] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 3

[127] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 4

[128] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 2

business investment less complicated. It is necessary to get rid of double taxation and double non-taxation hazards within the EU by getting rid of inequalities in the interaction of corporate tax systems within different states. Simultaneously, companies need a simple tax and legal framework for developing their commercial activity and also doing this outside the EU. In those circumstances, still existing cases of discrimination should also be removed.[129]

This inter-country equity is in general governed by bi-lateral or multi-lateral treaties between countries, and in the EU by using the EC Treaty and the rulings of the European Court of Justice. An EU CCCTB's goal would be to supply equity between countries as part of the consolidation process and the following sharing of the tax base between countries. However, for countries outside the EU the traditional tools would have to be employed.[130]

The equity principle would indicate that incomes to comparable individuals should be taxed at the same level (horizontal equity) and that individuals that have a higher income should pay tax at a higher rate (vertical equity). It is not likely that this principle is used for corporate income taxes, because profits are usually taxed without taking into consideration who the owners of capital are. In the case of distributions the additional personal income tax can follow such principles. In practice this does not happen frequently because there is a trend towards flat taxes on dividend income. When taking retained earnings into considerations, equity considerations cannot be thought of without a difficult imputation of profits to owners. Therefore the equity principle does not get very far when designing corporate income taxes (unless it is an argument for charging such taxes in the first place).[131] So the CCCTB does not meet both the vertical- and horizontal equity principles.

Efficiency (also described as neutrality, particularly in relation to different types of investment)

Usually taxes should be neutral to make sure that from an economic perspective; investment decisions take into account the 'best' location. This keeps away 'locational inefficiency' by which investments are not placed where the productivity of capital is highest. However, taxation policy may be used to correct 'market failures' by which distortions or inefficiencies in a specific market economy can be 'corrected' by the using particular tax incentives. Deciding whether a tax policy is correcting a market failure, or is inefficient is not easy. Capital Export Neutrality (CEN) and Capital Import Neutrality (CIN) are both ideas which targets are to ensure neutrality. Under CEN investors experience similar tax treatment on home country investments as on investments in another country. This is normally

[129] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB) (2016), Strasbourg: 12

[130] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels : 4

[131] Gammie, M., S. Giannini, A. Klemm, A. Oesreicher, P. Parascandolo & C. Spengel (2015), Achieving a Common Consolidated Corporate Tax Base in the EU: 14

considered to be achieved especially by income only being taxed in the country of residence with no difference between domestic and foreign source income i.e. a residence-based worldwide approach to taxation needs to be adopted by all countries. The source of income is disregarded. Under CIN all investors are treated similarly, regardless of where there place of resident is i.e. a source based or territorial approach to taxation by all countries. That is why; from a company tax perspective realizing both CEN and CIN is difficult as CEN recommends a residence based approach, while CIN recommends a source based approach. Across the EU CEN or CIN for companies is realized, or not realized by a number of different national tax policies across the whole tax system.[132]

An essential concept when analyzing corporate taxes is neutrality. We should bear in mind that there are several definitions of neutrality. The definition that is used often is that investment decisions should not be affected by the presence of tax. As mentioned before there are two tax systems that can achieve such neutrality (CIN and CEN). These neutrality principles involve a broader discussion of the corporate income tax system that goes past the choice of a common corporate tax base. Reaching the neutrality principles not only needs a common tax base, but a full harmonization of the corporate income tax rates is required as well, which is at the moment not accepted in the EC policy initiative. The leading principle of neutrality can still be helpful, even if the neutral tax system is not implemented completely. It includes for example a specific level of symmetry in the tax system, this means that positive and negative elements of the tax base should be treated in a symmetric way when they have a similar nature.[133] In order for the CCCTB to meet the neutrality principle a full harmonization of the corporate tax rates is also required, however the CCCTB does not meet this requirement. This means that the CCCTB does not meet the efficiency principle.

Effectiveness

Effectiveness is essentially the capacity of the tax base to reach its basic objectives. Taken together with the rate these would be to create revenues and set the required economic incentives. Within a single country, or within the EU with a CCCTB such incentives may expand competitiveness but in the international circumstances this depends on interaction with other systems, for example incentives which decrease the effective rate in a source country have no effect if a parent is taxed on the residence basis and the rate in the country of residence is above that of the source country. These incentives just cause for a shift in tax revenue between the source country and the resident country.[134] As mentioned before the CCCTB does not harmonize the tax rate but the tax base. The Proposal

[132] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 4

[133] Gammie, M. S. Giannini, A. Klemm, A. Oesreicher, P. Parascandolo & C. Spengel (2015), Achieving a Common Consolidated Corporate Tax Base in the EU: 13

[134] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels : 5

should from a theoretical point of view have the same meaning and effect in each member-state (which is almost not possible in the present form). From a commercial point of view companies might not be anxious to choose the CCCTB if they have to put up with uncertainties in their tax liability.[135] The CCCTB does not meet the effectiveness principle.

Simplicity, Transparency, and Certainty

The easier a tax base is the lower the administrative or compliance costs should be, for both administrations and business. These costs are not easy to measure so international comparisons, measuring the incentive provided by a tax base which has 'low' costs against a 'high' cost are hard. The rules also need to be certain and clear which links in to the requirement for transparency. Certainty is desired to help business planning, but also to give a level of revenue certainty for administrations, for example if the rules governing loss-offset are unclear then neither business nor government can predict tax payments and revenues. The rules should also give a suitable level of protection against tax evasion and the unacceptable use of purely artificial tax avoidance schemes. Transitional costs of introducing a new tax base also need cautious consideration.[136]

A general principle that seems to miss is the principle of simplicity. On the basis of the simplicity principle companies are in some cases allowed to diverge from the inflexible demands of accrual and realization. It is understandable that the CCCTB WG did not choose to incorporate this principle because the size and difficulty of the company play an important part when applying this principle and CCCTB is for the most part meant for international companies. However in some cases the simplicity principle can be called upon by Tax Authorities. As far as one knows this is not the intention for CCCTB.[137] The Proposal is based on a restricted number of general principles and characteristics and includes detailed regulations on the different subjects. The regulations leave a lot of room for interpretation. Some of the unpredictability's can be set right by adjusting further in Delegated Acts, even though the Proposal seems to restrict the issues for which Delegated Acts are possible. The change of successfully using Delegated Acts will be contingent on how fast the Commission can agree upon and then put them into action. Russo has listed some issues that are unclear and liable to discussion between companies and tax authorities. If a Court is called upon to sort out such a dispute, it only has the text of the Proposal to base its decision upon. The Proposal provides no frame of reference to any set of rules or standards to give the Court some direction to base their decision on. There is no fall back system. The Courts in each Member State will then probably use the frame of

[135] Russo, R. (2012). CCCTB: general principles and characteristics. In D. M. Weber (Ed.), Eucotax series on European Taxation. (pp. 67-79). (Eucotax series on European Taxation). Alphen ad Rijn: Kluwer Law International: 77

[136] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 5

[137] Russo, R. (2012). CCCTB: general principles and characteristics. In D. M. Weber (Ed.), Eucotax series on European Taxation. (pp. 67-79). (Eucotax series on European Taxation). Alphen ad Rijn: Kluwer Law International: 71

reference they normally use. There is a possibility that Courts in different Member States will come to completely different decisions on the basis of the same facts because the all the tax systems differ (the European Court of Justice will in the end coordinate, but this will take a long time). This is an unpleasant effect, not only from a theoretical point of view (the law should be the same for every one), but also from a commercial point of view. Companies will be unsure as to the extent of their tax liability and may favor domestic tax law. The CCCTB should have a fall back system for problems that are not regulated in the Proposal. The Courts could use this system (as an alternative for using their domestic system) as they sort out disputes. The amount of disputes will be significantly go down because companies and tax authorities will not have to go to Court for problems that are mentioned in the fall back system. Creating a fall back system is difficult so it would be best to make use of what is already there. Commercial Standards (such as IAS/IFRS) already exist which could be used for the creation of CCCTB Standards. The Commission (or a council of all relevant stakeholders: companies and tax authorities) could filter or alter the standards for CCCTB use (an endorsement committee is already in place to assess the IAS/IFRS for the commercial accounts).[138] The general objective of the CCCTB proposal was to make the simplicity of the corporate income tax systems better in the EU and therefore contribute to the better functioning of its internal market.[139] The CCCTB does not meet the simplicity principle.

Consistency & coherence

Two transactions that have the same commercial result should have the same tax result i.e. commercial decisions on the structuring of transactions should not be distorted by taxation considerations, for example the finance leasing of plant should arguably produce the same post-tax profits as the purchase of plant.[140]

The CCCTB proposal would make consistency certain in the national tax systems however this proposal would not harmonize tax rates. Fair competition on tax rates is to be encouraged. Dissimilarities in rates lets a particular level of tax competition be retained in the internal market and fair tax competition based on rates provides more transparency and allows Member States to take into consideration both their market competitiveness and budgetary needs in fixing their tax rates.[141] The CCCTB does meet the consistency & coherence principle.

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[138] Russo, R. (2012). CCCTB: general principles and characteristics. In D. M. Weber (Ed.), Eucotax series on European Taxation. (pp. 67-79). (Eucotax series on European Taxation). Alphen ad Rijn: Kluwer Law International: 76 & 77

[139] International Cooperative in collaboration with KPMG's EU Tax Centre (2012), The KPMG Guide to CCCTB: 3

[140] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels : 5

[141] International Cooperative in collaboration with KPMG's EU Tax Centre (2012), The KPMG Guide to CCCTB: 24

Flexibility

The tax base should be able to react to changes because markets and business practices change over time. This is especially applicable for a CCCTB which might be harder to 'change' than the national tax bases now available. Nonetheless, too much flexibility is not good from a business perspective.[142] The calculation of the Tax Base must be consistent unless exceptional circumstances justify a change. According to Russo it will be interesting to see how Courts will use this rule in practice. In the domestic tax law rules of the Netherlands, an almost identical rule applies. The Supreme Court (HR 14 June 1978, BNB 1979/181) has decided that a system may be changed at any time as long as the principle reason for that change is not to acquire an incidental tax advantage. According to Russo it is not unlikely that the Supreme Court would decide the same for the CCCTB. Russo wonders rather the CCCTB WG took this into account when drafting the Proposal.[143] The CCCTB would be less able to deal with fast changes, but when it comes to business being really flexible can harm certainty.[144] The CCCTB does not meet the flexibility principle.

Enforceability

The rules of a tax base must be easy to enforce as an unenforceable system is unlikely to be either equitable or neutral. This has specific relevance for the launch of a CCCTB considering the legal arrangements and the possible lack of precedent in the form of decided tax cases.[145] The CCCTB is not that easy to enforce because the proposals can only be adopted if the ECOFIN Council (which consists of Ministers of Finance from 28 Member States) reaches unanimity.[146] The CCCTB does not meet the enforceability principle.

4.3 Conclusion

There are two types of principles: 'General Principles' and 'Specific Tax Accounting Principles'. The General Principles depends on the 2001 Company Tax Study and Specific Tax Accounting Principles however are not mentioned in this thesis. Even though the general principles supply some general ideas about the CCCTB they appear to be of restricted help in practice and relevance when it comes to

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[142] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 5

[143] Russo, R. (2012). CCCTB: general principles and characteristics. In D. M. Weber (Ed.), Eucotax series on European Taxation. (pp. 67-79). (Eucotax series on European Taxation). Alphen ad Rijn: Kluwer Law International: 72

[144] Matei, G. & D. Pirvu (2010), PRINCIPLES AND RULES FOR DEFINING OF COMMON CONSOLIDATED TAX BASE IN THE EUROPEAN UNION, University of Craiova & University of Piteşti: 104

[145] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 5

[146] Mandatory Common Corporate Tax Base ('CCTB') and the Consolidated Common Corporate Tax Base ('CCCTB')(2016): https://www.banning.nl/publicaties/mandatory-common-corporate-tax-base-cctb-and-the-consolidated-common-corporate-tax-base-ccctb/

explaining a CCCTB.[147] The European Commission identified some general principles for the design of a company tax system. These general principles are: Vertical equity; Horizontal equity; Efficiency; Effectiveness; Simplicity, Transparency and Certainty; Consistency and Coherence; Flexibility and Enforceability.[148]

In this chapter it is seen that the CCCTB does not meet all the general tax principles designed by the European Commission except for the consistency & coherence principle.

[147] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 9

[148] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 3-5

Chapter 5
Conclusion

5.1 Introduction

As explained before aggressive tax planning is a problem that needs to be avoided. Globalization causes mismatches and aggressive tax planning, and in order to solve this problem there needs to be one harmonized tax system. According to the European Commission the CCCTB is a way to avoid this problem. The aim of this proposal is to make it easier for businesses that are established in the EU by having a harmonized tax system for all taxpayers and make it harder for taxpayers to perform aggressive tax planning.[149] The European Commission identified some general principles for the design of a company tax system. These general principles are: vertical equity, horizontal equity, efficiency, effectiveness, simplicity, transparency and certainty, consistency and coherence, flexibility and enforceability.[150] In order to verify whether the CCCTB is a positive improvement for Member States, this system is tested by looking if the CCCTB meets these general principles. In the fourth chapter it is seen that the CCCTB does not meet all the general tax principles designed by the European Commission except for the consistency & coherence principle.

5.2 Conclusion on sub-question 1

- What has already been done against aggressive tax planning?

On international level aggressive tax planning is avoided by the report "Addressing Base Erosion and Profit Shifting" that was released by the OECD on February 2013 followed by an action on July 2013. On October 5, 2015 the final proposals for the 15 BEPS Actions was made public. The BEPS results give the conclusions of the work that has been done the last two years, also including a plan for the upcoming work and a timetable for implementation.[151] It set the stage for the implementation of the different proposals at a local country level as well.[152] This action contains 15 actions that fight Base Erosion and Profit Shifting, this action also contains deadlines on when to implement these actions.[153] The members of the ad hoc Group on the Multilateral Instrument concluded the discussions on the text of the Convention on 24 November 2016. Ministers and also other high-level representatives of more

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[149] Mandatory Common Corporate Tax Base ('CCTB') and the Consolidated Common Corporate Tax Base ('CCCTB')(2016): https://www.banning.nl/publicaties/mandatory-common-corporate-tax-base-cctb-and-the-consolidated-common-corporate-tax-base-ccctb/

[150] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 3-5

[151] Kamerbrief (2015), Betreft Appreciatie uitkomst BEPS-project en vooruitblik Nederlands fiscaal vestigingsklimaat: 3

[152] Global Tax Alert (2015), OECD releases final reports on BEPS Action Plan: 1

[153] Fuest, C. & C. Spengel, K. Finke, J. H. Heckemeyer & Hannah Nusse (2013), Profit Shifting and "Aggressive" Tax Planning by Multinational Firms: Issues and Options for Reform: 1

than 70 jurisdictions were part of the signing ceremony of the MLI in Paris on June 7th 2017. 67 countries and jurisdictions, covering 68 jurisdictions from all continents and levels of development signed the MLI. The US however did not sign the MLI.[154]

On EU-level the anti-tax avoidance directive was introduced. The anti-avoidance measures in the Anti-Tax Avoidance Directive other than the rule on hybrid mismatches, are:

1. Controlled foreign company rules are designed to make sure that taxpayers do not shift their profit to the CFC country where the tax rate is significantly lower.[155]
2. The switchover rule. The reason why a switchover rule is proposed by the Directive is to prevent double non-taxation of certain income. The switchover rule implies that companies would have to inform the EU tax authorities that it had received dividend and if it had or had not paid tax on the dividend in another country.[156]
3. Exit taxation must secure taxation for unrealized income accrual (tax deferrals) that can otherwise evade taxation in the jurisdiction where is accrued as an outcome of the taxpayer leaving that jurisdiction.[157]
4. Interest limitation rules. In order to demotivate companies from developing artificial debt arrangements designed to decrease taxes, the Directive suggested to limit the amount of net interest that a company can extract from its taxable income, based on a fixed ratio of its earnings before interest, tax depreciation and amortization (EBITDA). The purpose of the suggestion of the Directive is to make it less attractive for companies to use debt artificially in order to decrease their taxes.[158]
5. General Anti Abuse Rule (GAAR).
   The Directive suggested a General Anti-Abuse Rule (GAAR) to prevent aggressive tax planning when other rules are not applicable. The GAAR would tackle artificial tax arrangements if there is no anti-avoidance rule that only covers such an arrangement.[159]

All Member States have their own ways of tackling aggressive tax planning. In chapter 2, two examples were given of how the Netherlands and Belgium deal with this issue on national level. In that chapter is seen that these Member States are busy implementing BEPS and other EU measures.

[154] Gurría, A. (2017), Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
[155] OECD (2015), Designing Effective Controlled Foreign Company Rules, Action 3 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris
[156] European Commission presents Anti Tax Avoidance Package (2016): http://www.aldersound.fi/news/european-commission-presents-anti-tax-avoidance-package/
[157] Terra, B.J.M. & P.J. Wattel (2012), European Tax Law, FED Fiscale Studieserie, 6th edition
[158] European Commission presents Anti Tax Avoidance Package (2016): http://www.aldersound.fi/news/european-commission-presents-anti-tax-avoidance-package/
[159]European Commission presents Anti Tax Avoidance Package (2016): http://www.aldersound.fi/news/european-commission-presents-anti-tax-avoidance-package/

5.3 Conclusion on sub-question 2

- What is the CCCTB and what are the aims?

The European Commission recognized that corporate taxation in the European Union is a big hindrance to achieve a common market. There are 28 Member States which means 28 different corporate tax systems which results in European companies facing administrative issues and very high compliance costs.[160] In order to combat this problem, the EC launched a Draft Council Directive on a Common Consolidated Corporate Tax Base, on March 16 2011 together with a broad and detailed impact assessment.[161] In European Commission tries to achieve a kind of common tax base, not for all taxpayers but for multinational companies for example if you have a multinational company with subsidiaries all over the world, in every country you find an independent national tax system and in every country the subsidiaries have to declare what their profit is. They have to face all different tax inspectors. In order to have a harmonized tax base of companies active within the European Union, the Common Consolidated Corporate Tax Base (CCCTB) was designed.[162]

Companies only have to file one tax return for all their activities performed in the EU and they can offset losses in one Member State against profits in another Member State. By making use of an apportionment formula, the consolidated taxable profits are shared between the Member States in which the group is active. The profits are then taxed in each Member State with the tax rate from that Member State.[163] According to the European Commission the CCCTB is an effective tool that can be used against tax avoidance. They claim that the regulations for taxing businesses that are used frequently will get rid of alternatives and imbalances in the current corporate tax structure which allows aggressive tax planning. These regulations will increase transparency and decrease adverse tax competition.[164]

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[160] Lang, M., P. Pistone, J. Schuch & C. Staringer (2008), Common Consolidated Corporate Tax Base, volume 5, Linde Verslag: 5

[161] Spengel, C. & Y. Zölkau (eds.), Common Corporate Tax Base (CC(C)TB) and Determination of taxable Income: An International Comparison, Springer-Verslag Berlin Heidelberg 2012: 1

[162] Common Consolidated Corporate Tax Base (CCCTB): http://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

[163] Common Consolidated Corporate Tax Base (CCCTB): http://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

[164] European Commission - Fact Sheet (2016), Questions and Answers on the package of corporate tax reforms, Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

5.4 Conclusion on sub-question 3

- Does the Common Consolidated Corporate Tax Base (CCCTB) meet the general principles of the European Commission?

When explaining a common consolidated tax base for corporations it is important to start with some general principles in mind. These may be helpful as a sort of evaluation framework, or to recognize some issues which will need to be dealt with when discussing individual structural elements of the tax base. As a matter of fact, it is hard to see how Member States which at the moment have different tax bases could agree on one common tax base without the explicit or implicit broad agreement on some underlying tax principles.[165] The European Commission identified some general principles for the design of a company tax system. These general principles are:

- Vertical equity;
- Horizontal equity;
- Efficiency;
- Effectiveness;
- Simplicity, Transparency and Certainty;
- Consistency and Coherence;
- Flexibility and
- Enforceability.[166]

Even though the general principles supply some general ideas about the CCCTB they appear to be of restricted help in practice and relevance when it comes to explaining a CCCTB.[167] In the fourth chapter it is seen that the CCCTB does not meet all the general tax principles designed by the European Commission except for the consistency & coherence principle.

5.5 Conclusion on research question

- Does the Common Consolidated Corporate Tax Base (CCCTB) meet the general principles that the European Commission identified for the design of a company tax system in order for the CCCTB to avoid aggressive tax planning?

Aggressive tax planning is a way for multi-national companies to pay little and sometimes almost no tax. As mentioned before there have already been taken steps on international, EU and nation-level to minimize aggressive tax planning. According to the EC the CCCTB which was introduced on 17 March, 2011 is a solution for this problem.

[165] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 2

[166] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 3-5

[167] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 9

The CCCTB is a harmonized system used to determine the taxable profits of businesses in the EU. CCCTB gives one set of regulations that are used for businesses to calculate their tax base, instead of different national regulations. CCCTB will give businesses the opportunity to file a single tax return for all of their EU actions. Businesses that use the CCCTB system will be able to compensate their losses in one Member State with the profits in another. In that way these companies will get the same treatment as domestic businesses. According to the EC the CCCTB will make it simpler, will cost less and make it more appealing for businesses to perform across the Single Market.[168]

The Commission Services Study 'Company Taxation in the Internal Market' recognized some general principles for designing a company tax system. [169]There are two types of principles: 'General Principles' and 'Specific Tax Accounting Principles'. The General Principles which was mentioned in this thesis in the last paragraph depends on the 2001 Company Tax Study. Even though the general principles supply some general ideas about the CCCTB they appear to be of restricted help in practice and relevance when it comes to explaining a CCCTB. The specific tax accounting principles should be of more straightforward assistance.[170] In chapter 4 we have seen that the CCCTB does not meet the general tax principles except for the consistency & coherence principle, designed by the European Commission.

I think that aggressive tax planning would be much more difficult to be avoided on national level but much easier to avoid on EU level. So in order to avoid aggressive tax planning something needs to be done on EU level. However I do not think that the CCCTB would be the right way to do this. Not only is it important that all Member States need to agree on the CCCTB in order for the draft proposal to become a Directive but also a lot of work needs to be done first. As we saw in the last chapter, the CCCTB does not meet all the general principles the EC identified for the design of a company tax. However I think that there has already been done so much to avoid aggressive tax planning as explained in chapter 2 and I think we should see how that works out instead of focusing on making the CCCTB proposal a Directive. The CCCTB is not a positive improvement for Member States, because it does not meet the general principles identified by the EC. An ideal way to fight aggressive tax planning is to introduce a harmonized tax system worldwide because if there was one harmonized tax system it would be difficult for companies to avoid paying taxes and create all sorts of loopholes.

[168] European Commission - Fact Sheet (2016), Questions and Answers on the package of corporate tax reforms, Strasbourg: http://europa.eu/rapid/press-release_MEMO-16-3488_en.htm

[169] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels: 2

[170] Common Consolidated Corporate Tax Base Working Group (CCCTB WG) (2004), General Tax Principles, Brussels : 9

Appendix

Appendix 1

All actions are further explained in this appendix.

In action 1 of the base erosion and profit shifting Action Plan, the tax challenges of the Digital Economy are dealt with. The digital economy is the outcome of a changing process brought by information and communication technology (ICT). This resulted in cheaper technologies, stronger, and broadly standardized making business processes better and supporting innovation throughout all sectors of the economy. The digital economy is growing to a point that it is very hard and almost impossible to enclose digital economy from the rest of the economy for tax purposes.[171]

Action 2 is about neutralizing the effects of hybrid mismatch arrangement. These arrangements cause differences on how an entity or instrument is treated for tax purposes in two or more tax jurisdictions in order to reach double non-taxation, including lengthy deferral. These hybrid mismatch arrangements are extensive and lead to erosion of the taxable bases of the countries that are involved. The hybrid mismatch arrangements affect competition, efficiency, transparency and fairness in a negative way.[172]

Action 3 is about strengthening Controlled Foreign Company rules. Controlled Foreign rules are designed to make sure that taxpayers do not shift their profit to the CFC country where the tax rate is significantly lower. The CFC rules were designed in 1962 since then a lot of jurisdictions have implemented these rules. For the design of effective CFC rules this report sets out the following building blocks[173]:

1. Definition of a CFC;
2. CFC exemptions and threshold requirements;
3. Definition of income;
4. Computation of income;
5. Attribution of income and
6. Prevention and elimination of double tax.

Action 4 is focused on limiting base erosion via interest deductions and other financial payments. The fact that money is so mobile and fungible makes it easier for multinational groups to get advantageous

[171] OECD (2015), Addressing the Tax Challenges of the Digital Economy, Action 1- 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Projects, OECD Publishing, Paris: 11

[172] OECD (2015), Neutralizing the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 11

[173] OECD (2015), Designing Effective Controlled Foreign Company Rules, Action 3 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

tax results by changing the amount of debt in a multinational group. The advised approach makes sure that the net interest deductions of an entity are connected to its level of economic activity, considering the earnings before deducting net interest expense, depreciation and amortization (EBITDA). This approach covers three parts:

1. A fixed ratio rule based on a benchmark net interest/EBITDA ratio;
2. A group ratio rule that permits an entity to subtract more interest expense in some situations based on the position of its worldwide group and
3. Targeted rules to address specific risks.

A country has the option not to propose the group ratio rule. If a country decides to do so the country had to apply the fixed ratio rule to multinational and domestic groups without any discrimination.[174]

In action 5 there is described how to fight harmful tax practices more successfully, by looking at transparency and substance. These harmful tax practices include[175]:

1. Double taxation;
2. Double non-taxation and
3. Foreign tax credit developers.

Action 6 covers modifications to the OECD Model Tax Convention to keep treaty abuse from happening. In this action the first thing that is mentioned is treaty shopping through possible provisions that are part of a minimum norm which all countries that take part in the BEPS Project have approved to implement. There are also particular treaty rules to address other possibilities of treaty abuse and make sure that tax treaties do not accidentally prevent the application of domestic anti-abuse rules. The report also covers the modifications to the OECD Model Tax Convention which make clear that tax treaties are not planned to make possibilities for non-taxation or decrease taxation with tax evasion or avoidance and that recognize the tax policy considerations that countries have to take into account before making a decision rather or not they want to enter into a tax treaty with another country.[176]

Action 7 is about preventing the artificial avoidance of permanent establishment (PE) status. Tax treaties make sure that business profits of a foreign company are only taxable in a state if the company has a permanent establishment in that state to which the profits are referable. That is why the definition of a permanent establishment covered in the tax treaty is very important, because it decides

[174] OCED (2015), Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4-2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 11

[175] OECD (2015), Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

[176] OECD (2015), Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

whether a company that is not resident in a state has to pay income tax in another state. Here the meaning of PE in article 5 of the OECD Model Tax Convention is explained. This is mainly used as the basis when debating about tax treaties, as an outcome of action 7 of the BEPS Action Plan. The changes in action 6 and 7 with regard to tax treaties will recover taxation in a lot of situations where cross-border income would not be taxed or taxed at a very low rate.[177]

Actions 8, 9 and 10 focuses on transfer pricing outcomes that should be in line with value creation. World-wide intra-group trade has increased really fast. The transfer pricing rules that are used for tax purposes are engaged with deciding the conditions, also containing the price, for transactions inside an MNE group which results in the allocation of profits to group companies in various countries. The influence that these rules have becomes more meaningful to business and tax administrations with the increase of intra-group trade. According to the Action Plan on Base Erosion and Profit Shifting the international standards that are available now for transfer pricing rules can be used in the wrong way resulting in outcomes where the allocation of profits is not coordinated with the economic activity created the profits. Actions 8, 9 and 10 of the BEPS Action Plan are dealing with these issues, to make sure that transfer pricing outcomes are in line with value creation.[178]

Action 11 is about establishing methodologies to gather and examine data about BEPS and also the actions to address it. Since the beginning the negative fiscal and economic influences of base erosion and profit shifting (BEPS) have been the center of attention OECD/G20 BEPS project. A lot of empirical studies discover evidence of tax-motivated profit shifting, making use of various data sources and approximation strategies. It is hard to calculate the scope of BEPS because it is very complex and hard to find data. However several studies have shown that BEPS liable for global corporate income tax (CIT) revenue losses. This report evaluates data that is now available and determines that important restrictions strictly limit economic analyses of the extent and economic effects of BEPS and updated data and methodologies are necessary. Because of these data limitations there are six BEPS measures made making use of various data sources and evaluating different BEPS channels. These indicators show that BEPS really happens and that it is increasing. New empirical analyses have guessed that the worldwide CIT revenue losses could have been approximately USD 100-240 billion in 2014. In this report there is also a set of tools to help countries estimate the fiscal consequences of BEPS countermeasures. The research also shows that non-fiscal economic distortions

[177] OECD (2015), Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9
[178] OECD (2015), Aligning Transfer Pricing Outcomes with Value Creation, Action8-10- 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

occur because of BEPS. The report ends by giving advice with regard to data and monitoring tools to make the analysis of BEPS better.[179]

Action 12 focuses on requiring taxpayers to disclose their aggressive tax planning arrangements. This report gives an overview of the regimes that are obliged. These regimes are based on countries that already have experiences with these regimes and it gives advice to countries that want to apply or modify mandatory disclosure rules so they can have the information about aggressive tax planning and the users from an early time. The advice that is given, allows the necessary flexibility to balance a state's need for improved information with the compliance burdens for the persons liable to pay tax. This report also gives particular advice for rules aiming at international tax schemes, and also the progress and implementation of more helpful information exchange and collaboration between tax administrations.[180]

Action 13 needs the development of regulations concerning transfer pricing documentation to increase transparency for tax administration, taking into account the compliance costs for business. The regulations that need to be generated will involve that MNEs have to supply all applicable governments with the necessary information.[181]
Multi-National Enterprises are required to set up the following three standardized approaches to transfer pricing documentation[182]:

1. Master file;
2. Local file and
3. Country by Country Report (CbCR).

With master file there is meant that the instructions on transfer pricing documentation wants Multi-national Enterprises (MNEs) to give tax administrations very important information concerning the MNEs business operations all around the world and transfer pricing policies which is accessible to all applicable tax administrations.
The second required documentation is the local file which demands that comprehensive transactional transfer pricing documentation are supplied specifically to every country which recognizes party transactions that are material related, the measures connected with those transactions, and the analysis that the company made about the transfer pricing determinations considering those transactions. The

[179] OECD (2015), Measuring and Monitoring BEPS, Action 11 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 15
[180] OECD (2015), Mandatory Disclosure Rules, Action 12 – 2015 Final Report , OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9
[181] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9
[182] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

third requirement is that big MNEs need to present a CbCR that will once a year and for every tax jurisdiction where they do business the amount of income, profit before income tax and income tax paid and accrued. Besides this it further requires MNEs to announce the amount of employees, stated capital, the earnings that are kept and the tangible assets in every single tax jurisdiction. Lastly, MNEs are required to recognize every entity that is inside the group doing business in a certain tax jurisdiction and to give instructions on the business activities every entity is occupied with.[183]

Having in mind the above mentioned documents (master file, local file and CbCR) will demand taxpayers to express consistent transfer pricing situations and will supply tax administrations with helpful information to evaluate the risks that are involved with transfer pricing, determine where the best place is to install audit resources and, in the event audits are called for, give information to start and pick out audit research. This data is a way to make it less complicated for tax administrations to recognize if companies take part in transfer pricing and other practices that result in artificially shifting an essential sum of income into countries where the tax rate is lower in order to have a tax benefit. The countries that take part in the BEPS project have the same opinion that requesting these documents, and the business transparency, will help to better understand, control and tackle BEPS behaviors.[184]

The particular capacity of the different documents makes it look like an effort to balance out the information needed for tax administration, worrying about the improper way of using information, and the compliance costs and burdens that are imposed on business. A few countries would handle that balance in another way by needing reporting in the CbCR of extra transactional information (except the information that is available in the master file and local file for transactions of entities working in their jurisdictions) concerning party interest payments, royalty payments and mainly connected party service fees. Countries expressing this view are essentially those countries from arising markets (Argentina, Brazil, Republic of China, Colombia, India, Mexico, South Africa, and Turkey) who declared that they want information like that carry out risk assessment and who find it hard to get information on the global operations of an MNE group with is headquarter somewhere else. When taking these views into account, it is required that countries that take part in the BEPS project will very carefully analyze the implementation of these new standards and will reassess before the end the year 2020 whether changes to the content of these reports should be made to require reporting of extra or other data.[185]

Steady and effective implementation of the transfer pricing documentation standards and especially the CbCR is important. That is why countries that are part of the OECD/G20 BEPS Project agreed on

[183] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris:9

[184] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

[185] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 10

the center elements when it comes to applying transfer pricing documentation and CbCR. This arrangement ensures the master file and the local file to be applied by MNEs straightaway to local tax administrations. CbCR needs to be classified in the country where the parent entity is resident for tax purposes and shared between countries by trading information automatically, pursuant to government-to-government mechanisms like. In restricted situations, secondary mechanisms and also local filing can be used as support.[186]

These recently developed CbCR mandatory requirements are to be applied for fiscal years starting on or past 1 January 2016 and are implemented, subject to the 2020 analysis, to MNEs with yearly merger company revenue of EUR 750 million or exceeding this amount. It is accepted that a few jurisdictions might need some time to follow their specific national legislative procedure to make obligatory adjustments to the law.[187]

Action 14 focuses on making dispute resolution mechanisms more effective. An essential part of the work on BEPS is making dispute resolution mechanisms better. The purpose of Action 14 of the BEPS Project is to reduce the risks of unpredictability and unplanned double taxation. This is done by making the regular and actual implementation of tax treaties certain, taking in the effective and timely resolution of disputes concerning their explanation or implementation through the mutual agreement procedure. Countries have approved on some important changes in their method to debate decisions like a minimum standard taking into account the resolution of discussions which are related to treaty. They have committed to its quick application and agreed to make its successful application through the establishment of a robust peer-based controlled mechanism certain. Also a lot of countries have committed to supply for obligatory binding arbitration in their bilateral tax treaties as a technique to assure that disputes which are related to treaty will be resolved within specific a period of time.[188]

Action 15 focuses on developing a multilateral instrument in order to change tax treaties to effectively put the tax treaty-related BEPS measures into action. The report decides that an instrument like that is helpful and achievable and that discussions for the multilateral instrument should be brought together as soon as possible. According to this analysis, a directive evolved for an ad-hoc group, open to the involvement of all countries in an identical way, to evolve the multilateral instrument and open it for signature in 2016.[189]

[186] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 10

[187] OECD (2015), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 10

[188] OECD (2015), Making Dispute Resolution Mechanisms more Effective , Action 14 -2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

[189] OECD (2015), Developing a Multilateral Instrument to Modify Bilateral Tax Treaties, Action 15 -2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris: 9

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