



ANDAF CONTRIBUTION TO THE EU CONSULTATION ON THE CCCTB

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On January 8, 2016, ANDAF (Italian CFO Association) submitted its position paper vis-à-vis the EU Public Consultation on the Common Consolidated Corporate Tax Base (CCCTB), launched on October 8, 2015. The main purpose of this consultation was to gather the key elements that should be included in the new CCCTB proposal, which is expected to be released before Summer 2016.

The EU Public Consultation on the CCCTB was part of the initiatives launched within the EU Commission Action Plan for Fair and Efficient Corporate Taxation issued back in June (COM(2015)302).¹

This Action Plan sets forth five targeted areas to tackle tax avoidance and evasion effectively, while ensuring sustainable revenues to Member States and a level playing field for European companies. Among the key areas acknowledged by the Commission, the relaunching of the CCCTB proposed by the Commission back in 2011 was identified as an extremely effective tool for reaching the objectives of fairer and more efficient taxation. The CCCTB was also selected as an effective/valuable instrument to limit aggressive tax planning opportunities.

Through this consultation, and due to the sensitivity of the topic, which did not gather much consensus among Member States over the past few years, the Commission was willing to collect views of different stakeholders, in particular with regard to the following issues:

- a) To what extent the CCCTB could function as an effective tool against aggressive tax planning, without compromising its initial objective of making the Single Market a more business-friendly environment.
- b) Which are the determining criteria for companies that will be subject to the rules of a mandatory CCTB/CCCTB. Whether non-qualifying companies should still be given the possibility to opt for applying the common rules.

¹ http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf

- c) Whether a 'staged' approach, whereby priority will be given to agreeing the tax base before moving to consolidation, would be a preferable way forward.

- d) Whether, in the short-term, it would be useful to agree on common rules for implementing certain international BEPS-related aspects of the common tax base pursuant to the current proposal until the Commission adopts the new (revised) CCTB/CCCTB proposal.

- e) How should the debt bias issue be addressed?

- f) Which types of rules would best foster R&D activity.

- g) Whether a cross-border loss relief mechanism aimed at balancing out the absence of consolidation benefits during the first step (CCTB) could help in keeping the business in the CCCTB ².

As outlined by Piergiorgio Valente, Chairman of ANDAF's (Italian CFO Association) Tax Committee, one of ANDAF's main concerns on the topic is the fact that the CCCTB is not, or shall not be, in and of itself, a tool to counteract base erosion and profit shifting. It is ANDAF's understanding that the CCCTB should revert to its original aim (addressing cross-border tax obstacles): by reducing administrative costs, compliance burdens and legal uncertainties (Transfer Pricing related matters/the off-setting of losses in Member States).

Another point of concern for ANDAF regards the fact that the Commission envisages re-launching the CCCTB in a two-staged approach.

The first stage would not include consolidation but only agreement on the tax base. Under the latter staged approach, consolidation would be available to companies only in a second phase. We would start by having a CCTB followed by a CCCTB.

It is ANDAF's view that, for the sake of ensuring a level playing field within the EU, a specific timeline should be agreed upon preliminarily to limit the possibility that Member States postpone consolidation as they deem con-
² http://ec.europa.eu/taxation_customs/common/consultations/tax/relaunch_ccctb_en.htm

venient. Experience shows that the topic is rather sensitive and does not gather much consensus among Member States.

As far as the consistent implementation of certain OECD anti-BEPS best practice recommendations across the EU, the Italian CFO Association welcomes EU involvement to ensure that BEPS-related measures within the EU be consistently implemented. In the Italian CFO Association's opinion, BEPS-related measures should be implemented through a Directive or through other instrument ("Anti-BEPS Directive"), and should not be included in the CCCTB proposal.

With regard to the CCCTB scope, the EU Commission has been envisaging to set forth a new mandatory CCCTB proposal for all EU companies. ANDAF is of the view that an optional CCCTB would be preferable for companies taking into consideration their compliance burden, SMEs' needs and also because it would serve as a "trial period" to test and assess pros and cons.

Furthermore, ANDAF confirmed its support to the initiative, according to which companies which would not be subject to the mandatory CCCTB - because they do not fulfill the requirements of being part of a group - could still have the possibility to apply the rules of the system, and highlighted that specific instructions/guidelines should be provided in such case.

The Consultation also addressed anti-avoidance elements. The proposal requested specific input from stakeholders as to which of the elements of the CCCTB system they would strengthen so that the system could better settle tax avoidance related issues. ANDAF referred, under this point, that more robust rules on controlled foreign companies' regimes (CFC) would be required.

ANDAF's contribution also brought to the Commission's attention, that it would be essential to improve the existing dispute resolution mechanisms (mandatory binding arbitration), as well as extending Arbitration between EU and Non EU Countries.

Further elements addressed within the consultation, were the topics of Hybrid Mismatches as well as Research and Development.

ANDAF stated that the Association agrees that the risk of such arrangements would be removed in transactions between enterprises applying the common tax base rules within a consolidated group, although the risk might be expected to persist in relations with enterprises operating outside the common rules (as well as during step 1 of the staged approach to a CCCTB), in the absence of tax consolidation amongst the companies applying the common rules.

With regard to R&D provisions, ANDAF confirmed that the

Association supports the existing R&D framework.

The Consultation included also questions on a temporary mechanism for cross-border loss relief, since the Commission envisages proposing a temporary mechanism for cross-border loss relief with tax recapture until the consolidation step (CCCTB) is reached and agreed upon. This would offset the absence of consolidation benefits during the first phase of the (CCTB) proposal. ANDAF stressed that it would prefer starting immediately with the CCCTB and not with the CCTB, taking into consideration business needs. In the event such solution is not feasible, the introduction of this temporary mechanism would contribute to minimize the effects of the absence of the desired consolidation.

Finally, in its contribution, ANDAF emphasized the need to improve current dispute resolution mechanisms, since it is the Association's understanding that the CCCTB can give rise to further disputes and possible interpretative issues for national Courts.

In conclusion, ANDAF used its best endeavors to explain that the strategy put forward by the EU Commission in the proposal to craft a common set of rules to be applied by companies operating within the EU to calculate their taxable profits as expected or outlined, cannot be accepted, as stated by ANDAF's President Fausto Cosi, without further considerations.