
CCCTB – Commission finalising proposal, targets September 2008 publication

Key Points

- *The European Commission is putting the final touches to its proposal for a ‘Common Consolidated Corporate Tax Base’ (CCCTB) – the new common criteria for calculating corporate tax for companies with operations in multiple EU Member States*
- *The proposal will be ready for publication in September 2008, taking advantage of a supportive French Presidency of the European Union, while side-stepping Ireland’s Lisbon Treaty referendum*
- *The Commission remains committed to calculating ‘sales by destination’ and will only agree to limited sector-specific formulae*
- *The Irish government remains strongly opposed to the CCCTB proposal, but the proposal is backed by others – including larger Member States like France and Germany*
- *CCCTB is bad news for Ireland and Irish business – Irish businesses face higher taxes, Ireland will likely be forced to change its bilateral tax treaties with CCCTB participating countries, while CCCTB wholly undermines Ireland’s fiscal competitiveness*
- *An Irish veto will not stop CCCTB – the Commission has again made clear that it will push the proposal through via ‘enhanced cooperation’*
- *Safeguarding Irish business and Ireland’s competitive tax regime will require Irish businesses to ally with like-minded partners in other EU Member States, to target the Council’s approval of the CCCTB proposal and to lever out the proposal’s more controversial provisions*

CCCTB’s Great Leap Forward

Recent weeks have seen significant developments on CCCTB.

Officials from the 27 Member States, the Commission, industry representatives and taxation experts met in Brussels from 10 to 12 December for lengthy discussions on the proposal. This latest and last scheduled CCCTB ‘Working Group’ meeting saw the Commission firmly back calculating sales ‘by destination’ for the sharing mechanism. The Commission also made clear that while it would accept some sector-specific formulae under CCCTB, these would be limited to the financial services, transport and broadcasting sectors and must not stray far from the core provisions of the proposal.

On 11 December, Commissioner for Taxation and Customs Union László Kovács discussed CCCTB with the leadership of the European Parliament’s Economic and Monetary Affairs committee in Strasbourg. At this meeting, Kovács confirmed that the CCCTB proposal is in final preparatory stages and that the Commission will be ready to publish the proposal next September under the French Presidency.

Meanwhile, committee chairwoman Pervenche Berès strongly criticised the Commission and its president Jose Manuel Barroso for removing CCCTB from a list of Commission priorities for 2008. Berès last week accused the President and the Commission of bowing to pressure from Ireland on CCCTB, and holding the proposal hostage to Ireland's referendum on the new Lisbon treaty.

CCCTB – The Political State of Play

The latest CCCTB Working Group meeting has shed further light on the positions of EU Member State governments on the proposal.

Finland, France, Poland and Sweden all submitted formal responses to the Commission on structuring CCCTB. Poland again said that it does not support CCCTB but signalled that it will not stand in the way of the Commission completing the proposal and bringing it before the Council next year. Finland and Sweden were more equivocal. Finland stated that more work should be done to assess alternative options within the sharing mechanism before launching the proposal. Sweden proposed leaving 'sales' out of the sharing mechanism, citing the difficulties with calculating this factor by either 'origin' or 'destination'. France reiterated its support for CCCTB and calculating sales 'by destination'.

The Irish government remains strongly opposed to any EU role affecting corporation tax. The government has made clear its opposition to the CCCTB proposal and has already ruled out Ireland participating in CCCTB with any other EU Member States. Joining Ireland and Poland are Latvia, Lithuania, Cyprus, Malta and Slovakia, which have all declared their opposition to the CCCTB proposal.

On the other side, Germany joins France in actively supporting CCCTB. Both the French and German governments have both declared the harmonisation of corporate tax rates across Europe as their ultimate political aim with CCCTB. Both governments have also been openly hostile to the more competitive corporate tax rates of their EU partners. Other EU Member States with relatively high corporate tax rates like Italy and Belgium also support CCCTB, as do larger markets such as Spain, Austria and Greece. CCCTB has also garnered support from Luxembourg, in spite of reservations by the country's financial services sector.

In the middle is a large group of Member States undecided on CCCTB. These include The Netherlands, which has stated that it will support CCCTB but only if it encompassed all Member States. Sweden remains undecided on CCCTB overall, notwithstanding its position on a sales factor. Other Member States with low corporate tax rates and little to gain from CCCTB like Bulgaria and Romania remain quiet on the proposal.

Questions remain on the UK position on CCCTB. In public, the UK government states that it does not support CCCTB. CCCTB as a Brussels-led tax plan would be a hard sell for any British government. However, in private the UK has a more considered position. The UK government has identified differing corporate tax rates as a fiscal 'problem' in Europe. It has challenged businesses that have established in other EU Member States to avail of more competitive rates. As a large consumer market, the UK stands to gain from CCCTB as the proposal stands. All mitigate in favour of the proposal.

Next Steps

From early 2008, work on CCCTB will intensify. The Commission is awaiting responses to its impact assessment, which is required for any CCCTB proposal to be approved internally. This was sent to Member State tax authorities on 28 September and final responses are expected by mid to late March of next year.

Once the Commission receives the final impact assessments, it will draft a proposal and begin a mandatory inter-service consultation. This typically takes six to eight weeks, during which time the proposal is reviewed and assessed by other Commission departments and the 27 Commissioners.

A final CCCTB Working Group meeting may be called in the early summer for the Commission to present its proposal to Member States. Some Member States, however, believe that the Working Group process is over and will not participate in further meetings.

Commissioner Kovács plans to push out a finalised CCCTB proposal next September.

This timing is unsurprising. This would see the proposal approved by the Commission and sent to the Council under the French Presidency. France strongly supports CCCTB and will help place this quickly on the Council's agenda. With this timing, the Commission also hopes to avoid making CCCTB an issue affecting Ireland's referendum on the new Treaty of Lisbon, which replaces the failed European Constitution. Given Ireland's hostility to CCCTB, the referendum has been viewed as leverage to be used against the proposal.

The European Parliament's own-initiative report on CCCTB, to be drafted by Economic and Monetary Affairs committee chairwoman Pervenche Berès, is expected in early July.

CCCTB Timeline	
2008	
▪	CCCTB Impact Assessment – TBD March National tax administrations to report on prospective impact of CCCTB to the Commission
▪	Inter-service consultation – TBD June Select Commission departments will review and comment on the draft proposal
▪	Berès Report – TBD July ECON chairwoman, Pervenche Berès is expected to finalise an own initiative report on CCCTB next summer.
▪	CCCTB Proposal – TBD September Commission expected to publish CCCTB proposal during the French Presidency of the EU

Background

What is CCCTB?

The CCCTB proposal is designed to set a Europe-wide tax base, allowing companies to consolidate their profits and losses from operations in different Member States and 'more efficiently' calculate their overall corporate tax payments. CCCTB, as proposed, is optional; companies with operations in multiple Member State will be able to choose to use a mix of existing national taxation systems or the new CCCTB system.

CCCTB is however more than a tax simplification measure. It is a political initiative and a first step towards corporate tax harmonisation across the EU.

The Commission first mooted CCCTB in 2001. Two years later, it consulted industry stakeholders on using International Accounting Standards (IAS) as an initial basis for harmonising corporate tax calculations. This was followed by a discussion paper for Member State governments in 2004 and the establishment of a Council 'working group' made up of Member State representatives and charged with examining the technical requirements of a set of common criteria for calculating EU-wide taxable profits. This CCCTB Working Group has met quarterly since 2004.

- Key Aspects

The CCCTB Working Group has largely agreed a technical outline for CCCTB (scope, calculations, thresholds etc). The tax base will be divided under a formulary approach (FA). This approach includes

three 'factors': labour, assets and sales. The 'labour' factor will account for payroll and the contribution of employees, while the 'asset' factor will include fixed assets with the exclusion of intangibles and capital gains.

The third factor covers applicable sales and is proving a most controversial issue. The Commission supports calculating sales by destination but prominent Member States and stakeholders support an alternative approach, calculating sales by origin. Under a 'sales by destination' rule, companies applying the CCCTB would calculate the tax proportion of sales based on the prevailing tax rates where the buyer is based.

According to the Commission, sales by destination will be based on three criteria: *scope*, *value* and *location*. The *scope* of sales by destination will include 'core business' returns (e.g. net turnover on the profit and loss account). The *value* of sales will be defined as the price of the transaction. *Location* will be defined as the final place of delivery.

In addition, the Commission has agreed in principle to a limited number of sector-specific formulae for the financial services, transport and broadcasting sectors. The Commission also supports including a so-called 'safeguard clause' that would allow companies opting into CCCTB but unhappy with the procedure to opt out of CCCTB at a later date. However, extraordinary grounds would be required to activate this clause.

CCCTB, Irish Business and Irish Competitiveness

CCCTB will favour larger Member States, with Ireland losing out on three fronts. The 'labour' factor, covering payroll, will benefit countries with large working populations. The 'property' factor, covering fixed assets, will favour countries with large manufacturing bases at the expense of Member States such as Ireland more reliant on financial services, pharmaceuticals and information technology. Crucially, the inclusion of a 'sales' factor calculated by 'destination' will be to the advantage of Member States with large consumer markets.

CCCTB will not directly change Ireland's corporate tax rate. Yet the proposal has serious implications for Irish business and Irish competitiveness.

1. Higher Tax for Irish Subsidiaries

If CCCTB is introduced, many Irish-based subsidiaries will be compelled to pay significantly higher corporate tax. This will undermine the rationale for locating operations in Ireland for many of these and other companies.

2. Increased Taxation Overall

Ireland stands to lose substantial tax revenues upon the full or partial introduction of CCCTB. A new tax base including a sales factor 'by destination' will divert corporation tax revenues away from the Irish exchequer to larger Member States. The government will be forced to make up the deficit by increasing taxes, therefore raising the cost of doing business in Ireland.

3. Ireland's Bilateral Tax Treaties and Corporate Tax

If CCCTB is approved it is highly likely Ireland will have to re-negotiate its bilateral tax treaties with EU Member States taking part in the initiative. The European Court of Justice (ECJ) is charged with deciding whether national tax systems comply with the requirements of the EC Treaty. It will make the final decision on Ireland's bilateral treaties following the full or partial introduction of CCCTB.

4. CCCTB and Fiscal Competitiveness

Ireland's low corporate tax rate (12.5%) is a key policy instrument in attracting foreign direct investment (FDI). It will be at risk if CCCTB goes ahead. CCCTB will create uncertainty in the minds of both potential investors and investors already located in Ireland. CCCTB will also reduce the flexibility of the Irish tax system without delivering any substantive savings for Irish business.

CCCTB, National Vetoes and *Enhanced Cooperation*

The Commission will publish a proposal for a Directive on CCCTB in September 2008. Under policymaking rules, the proposal will require the unanimous support of the EU's 27 Member State governments (Article 94 TEC [common market]).

- National Vetoes

The unanimity requirement will stop the CCCTB proposal in its tracks in the Council. Already a significant number of Member States have expressed clear opposition to the proposal, regardless of its final form. These Member States will vote against the proposal in Council and thereby block any approval of the proposal.

- Enhanced Co-operation

However, this is not the end of the road for CCCTB. The Commission knows that the CCCTB proposal will not get the unanimous backing of the Council in anything like its current form. It has already concluded that to make CCCTB a reality, it must use an untried and untested route to law known as 'enhanced cooperation'.

Enhanced cooperation allows those EU Member States that wish to work more closely together to do so, as long as the initiative they wish to cooperate on is in line with the objectives of the EU's treaties. Enhanced cooperation was first introduced for judicial and criminal matters under the Treaty of Amsterdam. The Nice Treaty further simplified this procedure.

Under the rules set out in the Nice Treaty, at least 8 Member States must wish to work together and the initiative must be open to all other Member States. To go ahead, the minimum of 8 must secure the authorisation of the Council by a qualified majority decision (255/345 votes under present voting rules) and, in certain cases, the assent of the European Parliament.

Once the CCCTB proposal is vetoed in Council, the French presidency and the Commission will conclude that, having explored all options and with no possibility of a Council agreement, those Member States that wish to proceed with CCCTB should do so under 'enhanced cooperation'.

The Way Forward for Irish Business

Irrespective of how it comes to pass, CCCTB is bad news for Irish business and Irish competitiveness. CCCTB will increase the corporate taxes paid by Irish subsidiaries while undermining the rationale for locating subsidiary operations in Ireland. CCCTB will force the re-negotiation of bilateral tax treaties and lead to reduced receipts for the Irish exchequer, compelling the government to raise taxes. CCCTB will scare off major multinationals looking at investing in Ireland as a gateway to Europe.

Irish business can still affect the outcome on CCCTB. The Commission's proposal is incomplete, many technical questions remain and the approval process has not yet begun.

Irish parties opposing CCCTB and the government are natural partners and have a mutual need for support from the other to boost their positions against CCCTB proponents. Parties need to further engage with the Irish government to secure its active support. Many other stakeholders in other Member States oppose CCCTB. Parties opposing CCCTB need to build alliances with both Member State governments opposing the proposal and strong business groups in those Member States. This is critical to locking in opposition to the proposal in the Council.

Influential Member State governments have yet to express a clear position on CCCTB, reflecting in part divided opinions on the proposal and in part a desire to keep quiet until viable opposition emerges. Parties opposing CCCTB will need to engage these governments, particularly the governments of the United Kingdom, Sweden and Portugal and newer EU Member States like the Czech Republic and Romania. Converting these governments to vocal CCCTB opponents is vital and will affect the planning of the Commission and those governments supporting the proposal.

Parties must pressure Member State governments to block the proposal in Council next year and *again* under 'enhanced cooperation'. This second approval process is likely to be where the real fight on CCCTB will occur. As few as 5 Member States acting together on CCCTB could block the proposal's approval under enhanced cooperation.

Finally, the European Parliament may not be in a position to block CCCTB, but it provides parties opposing the proposal with a well of political support and means to pressure the Commission on the proposal. Parties opposing CCCTB need to engage influential MEPs from different Member States and across political group lines and mobilise these Members to voice clear opposition to CCCTB on a variety of economic and political grounds.

Contact Hume Brophy

To learn more about CCCTB, its implications for Irish business and Irish competitiveness, contact our senior staff in Dublin or Brussels.

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About Hume Brophy

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