

---

# Bringing transparency, coordination and convergence to corporate tax policies in the European Union

---

II - Evaluation of the European Added Value  
of the recommendations in the ECON  
legislative own-initiative draft report

---

STUDY

---

EPRS | European Parliamentary Research Service



# **Bringing transparency, coordination and convergence to corporate tax policies in the European Union**

**Part II: Evaluation of the European Added Value of the  
recommendations in the ECON legislative own-initiative draft  
report on bringing transparency, coordination and convergence to  
corporate tax policies in the European Union**

**Research paper  
by Dr Robert Dover, Dr Benjamin Ferrett, Professor Erik  
Jones and Silvia Merler**

This study has been written at the request of the **European Added Value Unit** of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (DG EPRS) for the European Parliament's Committee on Economic and Monetary Affairs (ECON) in relation with the legislative own-initiative Report of Co-Rapporteurs Luděk Niedermayer and Anneliese Dodds, Members of the European Parliament.

## **Abstract**

This Study evaluates the European Added value of the recommendation in the draft report of the European Parliament on bringing transparency, coordination and convergence to corporation tax policies in the Union. This study finds that the single most effective contribution to mitigating aggressive tax planning strategies and therefore lost revenues to Member States, which are estimated to be in the region of 50-70 billion euro per annum to 160-190 billion euro per annum on an assumption of no base from sources other than profit shifting, would be enacting a common consolidated corporate tax base (CCCTB), across the entire Union. Moreover, this is a conservative estimate. The cost-effective regulations proposed the Rapporteur's draft proposals can be expected to add 0.6 per cent - 1.1 per cent to Member States potential public investment spending power, according to research assessments. Based on OECD methodology, the enactment of these proposals are capable of improving corporation tax receipts by between 13.4 billion euro and 33.5 billion euro per annum.

The Study finds that transparency and uneven implementation is one of the most serious challenges faced by the EU in the field of business taxes. This applies to methodologies, what information is made available by Member States, enforcement practices adopted by Member States and the recent innovation of 'free-ports' which has created a parallel trading system.

## **AUTHORS**

This study has been written by Dr Robert Dover, Dr Benjamin Ferrett, Professor Erik Jones and Silvia Merler, at the request of the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (DG EPRS) of the General Secretariat of the European Parliament.

## **RESPONSIBLE ADMINISTRATORS**

Risto Nieminen, Stanislas de Finance, European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services of the Secretariat of the European Parliament.

To contact the Unit, please email [EPRS-EuropeanAddedValue@ep.europa.eu](mailto:EPRS-EuropeanAddedValue@ep.europa.eu)

## **LANGUAGE VERSIONS**

Original: EN

This document is available on the internet at: [www.europarl.eu/thinktank](http://www.europarl.eu/thinktank)

## **DISCLAIMER**

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

Manuscript completed in October 2015. Brussels © European Union, 2015.

PE: 558.776

ISBN 978-92-823-8349-0

doi:10.2861/847568

QA-02-15-881-EN-N

## Table of Contents

Executive summary .....	5
1. Policy findings and recommendations.....	9
1.1. Policy findings .....	9
1.2. Recommendations.....	9
1.3. Study objectives.....	10
1.4. Methods & approach .....	10
1.5. Conclusions.....	11
2. Assessment of the Components of the Motion and Draft Proposal.....	11
2.1. Transparency .....	11
2.2. Coordination .....	23
2.3. Convergence .....	38
2.4. Other Measures .....	46
Conclusions.....	54
References.....	56

## Executive summary

Since the financial crisis of 2008 - the effects of which are still being felt today - the issue of aggressive tax planning and tax avoidance (the ostensibly legal practices of working within a tax code, but using often sophisticated business and accountancy practices to minimize a company's tax liability) have undermined the confidence of the European electorate in tax systems across the Union. Member State governments have been seen (fairly or unfairly) to have colluded with businesses to avoid their tax responsibilities. There is - however - an important gap between official and public understanding of how tax is assessed and collected. The public perception is that tax assessment and collection is a binary process: there are right and wrong answers, and there is a number that is 'correct'. In reality aggressive tax planning is frequently prosecuted by tax authorities and it becomes for courts to decide whether the practices were merely aggressive or in breach of the legal code. Similarly, it is for tax authorities and legislators to work together to refine their systems and dispositions towards prosecution. At its stands at the time of writing the complexity and inconsistency of national tax codes are providing the space for tax avoidance, but for those businesses who wish to remain in compliance this complexity is driving up business costs. The unilateral action of some Member States to close off these gaps is undermining the stability of conditions for businesses which we note is an important element in economic development and growth. Paradoxically such efforts have also given rise to new gaps that are being exploited by aggressive tax planners.

The objectives of the draft proposals - based on the Draft Report of the Rapporteurs' and Part One of this study - are focused on unfair tax competition and the general abuse that is made possible by the absence of coordination, convergence and transparency in this area, across the Union. A further objective was to provide a solid empirical baseline both for the scale of the problem, and also for the impact of the possible mitigating remedies for these problems. In searching for measures which add value to this area, both the Study that underpins this area, and the Draft Proposals have examined a wide spread of proposals and initiatives: these include the OECD's Action Plan on Base Erosion and Profit Shifting, the CCCTB and other initiatives, such as country-by-country reporting. The Draft Proposals are clear on the efficacy and utility of the CCCTB, and as will be clear from this Study, the Research Team judge that the weight of academic and expert analysis that can be applied to this set of facts offers overwhelming support for this view. Finally, it is important to note that the objectives of these legislative proposals come from the perspective of attempting to balance the need and desire to close the corporation tax gap in Member States and across the Union, with a desire to introduce only cost-effective regulation which does not damage economic growth within the Union. This perspective - which is understandable from the position of the Parliament - might not find traction and agreement with those - for example - who advise multinational enterprises on how to plan their tax.

We have evaluated the draft recommendations brought forward by Rapporteurs Luděk Niedermayer and Anneliese Dodds, Members of the European Parliament and we find it to be a robust answer to the problems presented by issues that essentially arise because of the absence of transparency and coordination across the Union by Member States.

Specifically, we estimated in Part One that the revenue losses for the EU due to tax avoidance from corporate taxation could amount to around **50-70 billion euro** per annum, this figure representing the sum lost to profit shifting. This is a conservative estimate. If we include other tax regime issues such as special tax arrangements, inefficiencies in collection and so on, we estimate that revenue losses for the EU due to tax avoidance from corporate taxation could amount to around **160-190 billion euro per annum**. We have assessed the Corporate Income Tax Efficiency to sit at 75 per cent. This contrasts with the IMF's assessment of 86 per cent. The data and calculations are provided in the annexes of Part One. We do note, however, that we have produced what we believe to be robust estimates based upon the available data. We note that others – in universities, research institutes, trades unions, and governments – have generated occasionally very different figures. What this tells us is that having a plurality of methodologies to answer the same question (essentially, 'what is the tax gap?') is unhelpful and often political. The figures covering the amounts that could reasonably be expected to be recovered by Member States are subject to the same vagaries. Establishing a single, agreed point of reference methodology for Member States is an essential first step to understanding the magnitude of the issue.

It is our assessment that the cost-effective regulatory framework proposed in the Draft Proposal would generate an additional (at the lowest estimate) €11.136 billion of revenue across the Union.<sup>1</sup> The proposed measures relating to where economic activity occurs, and thus where it should be booked, which relates in part to Value Added Tax, would raise considerably more revenue across the Union (as a totality, and on the assumption of stable activity levels), and for individual Member States, who are adversely affected by the booking of activity into other jurisdictions. Modelling the precise uplift from the CCCTB and the other recommendations is subject to a large number of variables, including the economic growth that could be expected from enactment of the measures, but we would reasonably expect the increase to be considerably more than the €11 billion. Using the OECD's projected positive impact from their BEPS Action Plan of between 4 per cent and 10 per cent of corporation tax receipts globally, we can suggest that the impact on the EU might be in the range of **€13.4 billion to €33.5 billion**, if that trend was followed.<sup>2</sup>

---

<sup>1</sup> Based on an extrapolation from the EU's GDP figure of €13.6 trillion and the projected uplift of 0.08% from option 3 of the CCCTB proposal, on a projected European average.

<sup>2</sup> This is based on the EU's own figure of corporation tax receipts in 2013 (the last year for which figures are known) as €335,322million. (<http://ec.europa.eu/eurostat/en/web/products-statistical-books/-/KS-EK-13-002>)



Sum	To what the sum refers	How the figure was reached
€50-70 billion	Amount lost to profit shifting	Research Team calculation- see Part I.
€160-190 billion	Amount lost to aggressive tax planning	Research Team calculation – see Part I
€13.4 – 33.5 billion	Amount of corporation tax that could be recovered from cost-effective regulation	OECD methodology applied to EUROSTAT figures.

Based on the weight of academic and expert assessment concerning the CCCTB, we believe the draft proposal is correct to press the European Commission to conclude the negotiations regarding this consolidation as soon as is practically possible. All the evidence points to the CCCTB being the single most effective measure than can be implemented in this policy area in the immediate term. We note that the CCCTB must cover the entire Union, and that this measure is unsuitable for any ‘twin-speed’ provision that might appear in other public policy areas. The effect of multiple tax-codes is to create exploitable disparities between systems that can be manipulated by tax-planners, therefore the most robust EU-level response is a Union-wide consolidation.

We assess that the measures designed to improve the levels of transparency in this area between Member States and between Members and the EU’s institutions are strong. Based on the available evidence we think that an emphasis of information sharing and publication should be placed at the core of this policy area, and should become principles through which Member States and the institutions of the Union deal with corporate taxation. Whilst there is considerable empirical evidence for a strategic competition between member states – with negative consequences for Member States and the operation and development of the single market – in tax setting (essentially the effective rate), and also in recovery practices (the latitude afforded to businesses in complying with the tax code), the measures compelling Member States to publish to all Member States and the European Parliament and Commission, their proposed and enacted amendments to corporate tax codes, and the tax agreements they reach with individual businesses (within 24 months of the agreement), will significantly reduce the incidence of destabilising tax practices between Member States. We note, however, that the historical pattern in corporate tax policy has been to find new avenues for competitive behaviour, and so we would urge monitoring of compliance and enforcement measures as the most obvious area in which competitive behaviours might emerge.

That the proposal concerning Member States agreeing to publish to all Member States and the European Parliament and Commission, their proposed and enacted amendments to corporate tax codes as well as their tax agreements they reach with individual businesses (within 24 months of the agreement) are cost effective and proportionate measures designed to reduce the incidence of tax competition between Member States. As we noted in Part One the individualised tax arrangements between major multinational enterprises and tax authorities have led to four types of inefficiencies. These inefficiencies are the result of both nominal and real effects of tax deals. They arise from aggressive tax strategies based on transfer pricing and profit shifting but they also

arise from the impact of tax deals on the location and pattern of investment. A controlled transparency around such arrangements – that does not compromise a business' competitive information – should serve to reduce the amount of competition that is seen in this area across the Union.

There are limited measures in the draft proposal to tackle the emerging abuses from the use of so-called 'Free-Ports'. Evidence that the research team has collected – which are necessarily fragmentary due to the covert nature of these ports – strongly suggests that free-ports should be subject to transparency regulations to limit their use as means by which to avoid business and sales taxes. Furthermore, the evidence suggests that all Member States should sign up to a general principle that such free-ports should be returned to their original use as a temporary, secure accommodation for items genuinely in transit. One area that strongly emerged from the emerging expert commentary about free-ports were that their use as a means by which to stockpile rare-metals for market price manipulation. As a result the research team concluded that the proposal should press for regulatory control of free-ports as it relates to the holding of rare-metals.

Finally, the research team found that the recommendations concerning protection for whistle-blowers should be adopted and strengthened. The evidence – not only from the financial services sector – is that whistle-blowers have provided a great deal of the intelligence and information that has spurred the political motivation to review and reform. However, based on the experience and observations from the security sphere, that the proposals concerning protection for whistle-blowers could be strengthened to include protection for whistleblowers who provide information about activities that they hold a reasonable belief breaches the spirit of the regulatory framework and that consideration is given to how to coordinate whistleblown information from Member States at the EU level.

## 1. Policy findings and recommendations

This Study has focused on the following two tasks.

- To evaluate the draft legislative proposals with recommendations to the Commission on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union (2015/2010(INL)).
- To assess how these proposals could impact on reducing the incidence of aggressive corporate tax planning and consequential tax avoidance, and therefore corporate tax losses in the EU area.

### 1.1. Policy findings

The main policy findings of the Study are as follows:

- That cost effective regulations will serve to reduce the incidence of aggressive tax planning and tax avoidance amongst businesses in the EU area.

It is estimated that the impact of significantly reducing the incidence of corporate tax avoidance, through aggressive tax planning could lead to a net gain within the EU of some €50-70bn per annum (to €160-190bn per annum on an assumption of no base from sources other than profit shifting). This finding is a conservative estimate.

### 1.2. Recommendations

The main recommendations that can be drawn from the Study are as follows:

- That the European Commission should re-double its efforts to conclude the negotiations concerning a common consolidated corporate tax base (CCCTB) and begin to implement the measures in the consolidated tax base as soon as is practical. This is the single strongest measure the EU can implement to mitigate the effects of tax avoidance and aggressive tax planning. To note that the CCCTB has to be Union-wide to avoid creating further gaps (or tax-lacunae) from code comparisons.
- Transparency and an emphasis of information sharing and publication should be placed at the core of this policy area, and should become principles through which Member States and the institutions of the Union deal with corporate taxation.
- An agreed methodology that covers how to assess tax gaps, and similarly an agreed methodology to that covers how to estimate the proportion of the gap that is reasonably retrievable by Member States would be a significant advance and should be formulated.

- That Member States agree to publish to all Member States and the European Parliament and Commission, their proposed and enacted amendments to corporate tax codes, the tax agreements they reach with individual businesses (within 24 months of the agreement), as part of measures designed to reduce the incidence of tax competition between Member States.
- That the proposals concerning protection for whistle-blowers be adopted and strengthened. That the wording of the proposal be strengthened to include protection for whistleblowers who provide information about activities that they hold a reasonable belief breaches the spirit of the regulatory framework and that consideration is given to how to coordinate whistleblown information from Member States at the EU level.
- That so-called 'Free-Ports' are subject to transparency regulations to limit their use as means by which to avoid business and sales taxes. That all Member States should sign up to a general principle that such free-ports should be returned to their original use as a temporary, secure accommodation for items genuinely in transit. Furthermore, the EU should press for regulatory control of free-ports as they relate to the stock-piling of rare metals.
- Further work should also be undertaken to understand the interdependence (and interconnections) between EU and Member State policies and practice and so maximise overall policy impact.

### **1.3. Study objectives**

This Study looks at the European Added Value of bringing transparency, coordination and convergence to corporate tax policies in the European Union. There are three broad research questions. To evaluate:

- The draft proposal, in the light of available evidence;
- The impact the draft proposal is likely to have on the area of corporate tax policies in the European Union;
- Whether the proposal can be strengthened or amended to improve its impact.

### **1.4. Methods & approach**

The Research Team evaluated the draft proposals from Rapporteurs Luděk Niedermayer and Anneliese Dodds, Members of the European Parliament, in the light of Part One of this Study, which was undertaken via literature search of extant peer-reviewed academic literature, as well as relevant research papers from international organisations, and research institutes. The Research Team made their own calculations about the tax gap, based on available data.

## 1.5. Conclusions

The corporation tax gap, generated largely through the exploitation in mis-matches and gaps between national tax codes is significant enough to warrant cost-effective regulation. There is robust evidence to sustain the calculations made around this gap that at the lowest estimate there are €11.5 billion in revenue to be collected per year through cost effective regulation. This study evaluates the draft proposals, in the light of available evidence and posits that the implementation of these measures would have a significant impact on the corporate tax gap, which in turn could positively impact on European GDP growth.

## 2. Assessment of the Components of the Motion and Draft Proposal

The Rapporteurs' draft proposal is divided into two sections, the first contains the components of the motion, and the second contains the wording of the legislative proposal. The Research Team have conducted a line-by-line analysis of the entire draft proposal and what is presented in an amalgamated section is where there is value-added to be derived from adding evidence and analysis to the draft proposal's commentary. This amalgamated section is itself divided into several sub-sections where the Sections and Recommendations are clustered under the four thematic headings: Coordination, Transparency, Cooperation and Other Measures corresponding with the structure of the draft legislative own initiative report. Where a Section or Recommendation does not have commentary, this is because the Research Team deemed it to be a stand-alone point that required no additional commentary.

### 2.1. Transparency

#### 2.1.1. Context

The contemporary origins of the renewed public and media attention on aggressive tax planning by multinational enterprises arose from the so-called *Lux Leaks* revelations about the tax arrangements of MNEs and the Luxembourg tax authorities. That such arrangements emerged from concerted investigative journalism and leaked information is emblematic of the absence of transparency in the corporate tax arena. But *Lux Leaks* presents one kind of crisis of transparency in tax affairs, and the draft recommendations are correct to offer whistle-blowers additional and harmonized protections, to enable abuse in the tax system to be illuminated, where appropriate. At the less publicly illuminated end, there are measures which will have the result of reducing the extent and incidence of competition between Member States on corporation tax. These measures include a positive duty to inform fellow Member States of changes to tax codes, and a duty to report tax arrangements (within some confined circumstances). Obliqueness, secrecy and obscurity of details result in competitive behaviours between Member States,

which in turn results in a tax gap emerging for individual Member States, and on a Union-wide analysis. Greater transparency offers the potential to reduce the tax gap across the Union, reduce the unproductive competition between Member States, and will also offer greater certainty for businesses and their tax advisers.

### **2.1.2. Increased Transparency and Country-by-Country Reporting**

- T. *whereas increased transparency in the area of corporate taxation can improve tax collection, make work of tax authorities more efficient or can increase public confidence in tax systems and governments;*
- (i) *whereas increased transparency regarding the activities of large multinational companies, and in particular regarding profits made, taxes on profit paid, subsidies received and tax returns, is essential for ensuring that tax administrations tackle BEPS efficiently; whereas one vital form for this transparency to take is country-by-country reporting; whereas any Union proposals for country-by-country reporting should in the first instance be based on the OECD guidelines; whereas it is possible for the Union to go further than the OECD guidelines, and the European Parliament voted in favour of full public country-by-country reporting in its amendments adopted on 8 July 2015<sup>3</sup> on the proposal for a revised Shareholder Rights Directive; whereas the European Commission conducted a consultation on this subject between 17 June and 9 September 2015 in order to explore different options for the implementation of country-by-country reporting<sup>4</sup>;*

&

#### **Recommendation A.1**

#### ***Country-by-country reporting for all sectors by multinational companies***

This element of the motion is noticeably aligned with the OECD's positioning. The OECD has action to increase transparency at the centre of its BEPS initiative, which would constitute the background guideline for EC action, as is noted in T(i). The OECD notes and stresses that enhanced transparency at different levels is key for ensuring certainty and predictability for businesses, whilst also being essential for the proposed BEPS actions to succeed.

The OECD notes that whilst audits remain a key source of relevant information, they suffer from a number of legal constraints and, of course, from a lack of relevant tools for the early detection of aggressive tax planning. As a result, timely, comprehensive and

---

<sup>3</sup> Texts adopted of 8.7.2015, P8\_TA(2015)0257.

<sup>4</sup> [http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/further-corporate-tax-transparency/index_en.htm).

relevant information on tax planning strategies is often unavailable to tax administrations, and so they conclude that new mechanisms to obtain that information must be developed. This ties in with our analysis of T(vii) around whistle-blowing that suggests that EU level clearing house of their information and intelligence would be very useful in filling in the hole identified by the OECD and others.

There has been some progress made in respect of transparency, and notably by the Global Forum on Transparency and Exchange of Information for Tax Purposes, but wider measures are required to mitigate the effect of BEPS. Suggestions for these wider measures include improving data collection on BEPS (calling among other things for taxpayers to disclose “more targeted information about their tax planning strategies”, and for transfer pricing documentation requirements to be “less burdensome and more targeted”). Such an approach would allow for more information to be gathered about preferential tax regimes that exist outside of the OECD area, and which would allow for a more holistic approach to evaluating the frameworks in place currently. The OECD also reinforces the notion that harmonized transfer pricing documentation would significantly lower costs to business and improve certainty. Again, these views echo with the spirit of the draft proposal and our analysis of it that standardization and harmonization are key pieces of work to be done in this public policy area, and moreover that without significant progress in these areas the corporate tax-gap will remain a significant challenge.

In terms of EU actions, the EP voted in July 2015 to have large firms and listed companies disclose information, country by country, on profits made, tax paid on profits and the public subsidies they have received. This is a significant move towards improving transparency in line with how we have thought – in Part One – that common methods of reporting will assist in understanding the scale and precise nature of these challenges. It should be noted that these measures were part of the general review of the European Commission’s Shareholder Rights Directive, and they did not receive much media attention which instead focussed on other aspects like the so-called ‘say on pay’ measures.

The previous Accounting Directive had included an obligation for large extractive (and logging) businesses to report their payments to governments, while Article 89 of EU Directive 2013/36/EU (CRD IV) required qualifying financial institutions to provide country-by-country reporting of taxes paid and other financial data. The newly amended directive effectively extends these requirements to all ‘large undertakings’ (which means qualifying undertakings that on an in year balance sheet exceed at least two of the three following criteria: (a) balance sheet total of €20 million; (b) net turnover of €40 million; (c) average number of employees during the financial year of 250 or more, so companies that no longer qualify as SMEs).

Another key development is the proposal for changes to be made to both Directive 2013/34/EU (the Accounting Directive) and Directive 2004/109/EC (Transparency Directive) introducing public disclosure of tax rulings, also organized on a country-by-country basis, covering both Member States and third countries. This obligation would be imposed on large undertakings, public-interest entities and security issuers. The report

would be audited in compliance with EU auditing rules. The new transparency requirements introduced in this directive have generally been received as a significant development in the tax transparency debate, and we have analysed them to be a significant contribution to the transparency agenda, and similarly a significant measure in mitigating tax competition in the EU. Ernst & Young (EY) issued a detailed analysis in July 2015, in which they echo the analysis that this represents a growing demand in many countries for this information to be made public and that “the wide spectrum of recommendations set out in the EP resolution demonstrates that strong political volatility continues to play out around the topic of taxes. The calls for further engagement with developing countries on tax matters, coupled with calls for further engagement with the United Nations demonstrate that many underlying tax concepts related to base erosion and profit shifting will likely continue to play out long after the OECD’s BEPS recommendations are issued later this year”. We think that Ernst & Young’s analysis is broadly correct. We would note, however, from a different standpoint from EY that public confidence in the tax system is politically important and contributes to the resilience of these systems. Such transparency measures are – therefore – an important part of the evolution of the European corporate tax system.

### 2.1.3. Fair Tax Payer Label

*T (ii) whereas some companies within the Union have already begun to demonstrate that they are fully tax compliant by applying for and promoting their ownership of a 'Fair Tax Payer' label<sup>5</sup>; whereas firms and citizens alike across the Union would benefit from wider take-up of such labels by companies who are fully tax compliant in order to set a high standard for others to emulate;*

&

#### **Recommendation A2.**

***A new "Fair Tax Payer" label for companies who engage in good tax practices***

We are struck by the similarities in this observation to those that can be made about the concept of Corporate Social Responsibility (CSR), which is the corporate contribution to social welfare that is beyond what is required by the business to maximise profits. This concept arrived in common parlance as the result of a report published in 2000, by the World Business Council for Sustainable Development (WBCSD) entitled "Corporate Social Responsibility: making good business sense." There have been some critics of CSR, who have criticised it as simply a means to make what they see as ‘corporate excesses’ socially acceptable, and who have also focused on economic analyses that suggest that CSR as applied in the developing world has actually reduced the number of

---

<sup>5</sup> Such as the Fair Tax Mark: <http://www.fairtaxmark.net/>.



opportunities for local workers, since CSR adds to business costs and reduces business opportunity<sup>6</sup>. In the main, however, CSR has been seen a positive development that seeks to maximise the positive gains of corporate activity in a wider context. The relevance to the 'Fair Tax Payer' proposal is that businesses have been keen to identify themselves with CSR, and to promote the impact they are having through CSR initiatives: CSR has taken on its own momentum beyond any central organising wrapper, in other words it has become mainstreamed. Given the current electoral focus across the Union on economic policy, and tax as a particular tool of economic and fiscal policy, and of how these relate to political fairness, we think that the label of 'Fair Tax Payer' should carry some political resonance, and with it be a positive reason for consumers to engage with those businesses who are able to carry the label. By contrast, the absence of such a label is clearly intended to convey another kind of message about that individual business, and may lead to shareholder and consumer activism about why that business in question is unable to make a claim for that label. We think that the 'Fair Tax Payer' label will develop from an initial phase where it is used as a tool for businesses to signal ethical compliance partly to attract a customer base, but also to retain one, developing in time to a quasi-standard where businesses view the label as part of their minimum annual compliance, and one that – therefore – carries less immediate weighting.

The difficult cases that are covered in this section are those in which we can observe legal compliance (but not necessarily a public test of ethical compliance) with the tax code, but in which the business structure is seen to be at odds with a public and political understanding of 'what is right'. Consider, for example, a fictional multinational enterprise (MNE) with an online trading presence (a dot fr address) selling an item from this dot fr address to a consumer in France. The goods as part of this transaction are located in a warehouse in France, dispatched through the French postal system, and arriving at the buyer's house in France, but the economic activity being booked by the MNE in Luxembourg. There are often-used circumstances in which this activity is legal, and indeed is practised commonly across the Union, but such practices have been highlighted by the European media outlets negatively, and we assume reflects a cleavage of public opinion as a result. A system under which the 'Fair Tax Payer' label can be applied to a business who engages in this sort of activity would quickly lose the trust of the European citizenry. The gap between what is legal, and what the electorate consider to be ethical and acceptable needs to be closely monitored if taxation systems (be they those of Member States or the CCCTB) are to retain the confidence of the public.

---

<sup>6</sup> David Henderson, *Misguided Virtue: False Notions of Corporate Social Responsibility* London: The Institute of Economic Affairs. 2001.

#### 2.1.4. Duty to inform other Member States

- (iii) *whereas increased transparency would be achieved if Member States inform each other and the Commission of any new allowance, relief, exception, incentive or similar measure that could have a material impact on their effective tax rate; whereas such notification would help Member States in identifying harmful tax practices;*
- (iv) *whereas there is evidence that Member States do not communicate sufficiently between themselves about the possible impact that their tax arrangements with certain companies might have on tax collection in other Member States; whereas national tax authorities should automatically exchange all tax rulings without delay after they have been issued; whereas tax rulings signed up to by tax authorities should be subject to greater transparency, providing that confidential information and business sensitive information is preserved;*

&

#### **Recommendation A.3:**

#### ***Mandatory notification of new tax measures***

This measure in effect requires the positive disclosure of competitive tax practices. There are a variety of sources of aggregate data that already exist in the private sector and from – for example – the Directorate General for Economic and Financial Affairs (ECFIN) and Directorate General for Taxation and Customs Union (TAXUD), European Commission that cover tax policy movements within the Member States.<sup>7</sup>

The positive disclosure of tax amendments will help to mitigate the use of amendments as a means by which to attract additional foreign direct investment (FDI) -- although as noted in our research study, this is a heavily contested observation. Disclosure of tax policy amendments is likely to result in other kinds of attendant competitive behaviour within a 5-7 year time horizon, and these may focus on enforcement and monitoring practices. We have observed patterns of government behaviour that we think are akin to an ‘arms race’ when it comes to mirroring tax policy and rates. Whilst the need to make a positive notification of tax changes will not obviate all of these competitive behaviours, we believe that it will serve to add political transaction costs to doing so, and so might mitigate some of the effects of competition.

Regarding T(iv), the information that this observation relates to is held and analysed within national finance departments already, but there is very limited sharing between Member States precisely because of the issues around business confidentiality. The key gain from this proposed measure is in bringing the issue out into public political sphere

---

<sup>7</sup> The most recent version of this is: European Commission (2015), Tax reforms in EU Member States 2015 – Tax policy challenges for economic growth and fiscal sustainability, Brussels.

and thus circumventing the diplomatic consequences that might exist currently for one Member State highlighting the tax rulings of a fellow Member State for political reasons. This is a key transparency measure that will help to illuminate tax-rulings across the Union which may lay the platform for a public debate about such treatments, which in turn should add to public confidence in the tax systems across the Union.

### 2.1.5. Customs-free ports

*T(v) whereas customs-free ports are reported to be used to hide transactions from tax authorities;*

&

**Recommendation A5:**  
***Transparency of customs-free ports***

Free-ports, originally known as bonded-areas and then as ‘customs free ports’ are increasingly prevalent holding areas for high-value items, but more normally the items of high-value individuals. Free-ports are located at transit hubs and they attract tax advantages due to the items they hold being still technically in transit, even though they are often used as semi-permanent homes for these items. The value of items that are held in European free-ports are currently unknowable – precisely because the key attraction of free-ports to those using them is that they are both secure and confidential, without any intrusive scrutiny. Estimates of the value held in free-ports runs into the hundreds of billions of euros, but these estimates are speculative and loose. Furthermore, the true beneficiaries or owners of items in free-ports can be shielded behind nominees and thus are also open to a large number of additional tax advantages.

Legitimate and illegitimate wealth is known to be held in free-ports, and even large amounts of cash are said to be stored in free-ports as a result of government tax-evasion measures in the developed world. Goods entering free-ports are not subject to customs duties, because the goods in free-ports are technically in transit. In this sense, free-ports are something of a fiscal no-man’s-land. The suspension of customs duties and taxes was originally intended as a temporary measure, while goods were in transit, but for much of the stored wealth it is, in effect, permanent, as there is no time limit for moving them on. Goods sold (but not moved) are also not subject to value added tax and no withholding tax is collected on capital gains: these are technically payable in the destination country when an item leaves this parallel fiscal universe, but by then it may have changed hands several times.

Luxembourg inaugurated a Freeport in January 2015, Le Freeport, which is a 20,000m<sup>2</sup> building equipped to store similar items to the free-ports at Singapore and Geneva. Le Freeport offers no customs duty payable when depositing the item and no VAT payable

when selling it from the free-port. From January 2015 only 8 per cent VAT is applicable on the physical departure of an item, which rises to 17 per cent if it departs to a location within the EU. The (stated) aim is to establish this building in Luxembourg as one of the world's most prominent free-ports.<sup>8</sup> Importantly, though, such facilities allow the multiple trading of items (so long as they do not physically relocate) without any tax duty to be paid, allowing a parallel trade in high-value items to exist.

The issues surrounding free-ports has been known for at least ten years. Some of the users of free-ports now seem to have manipulated the concept by aggressively avoiding tax by establishing a parallel trading system that is immune from national tax laws. There are multiple challenges with free-ports, the most obvious of which is transparency and there are beginning to be signs that commodity regulation is now pressing as stockpiles of rare metals are having an impact on market pricing. Additionally, it is apparent that EU customs officials do not have the resources to acquire sufficient intelligence about the actual routes and itineraries of goods bound for Europe and this has made it harder to detect customs fraud. In September 2015 it was announced that regulations had been signed by the European Parliament and Council that allowed for access to carrier-held data on the details of the goods being transported (Container Status Messages or CSMs).<sup>9</sup> This was an anti-fraud (OLAF) issue.

In terms of confidentiality, EU customs-free ports have confidentiality rights (though technically fewer than private bank accounts), and currently seem to be used largely for high value art sales (The Economist estimated that art valued at 100 billion euro was stored in the Geneva Freeport in 2013), although the stockpiling of rare metals, and collecting vintage wines are becoming more prevalent. The fees for storage are relatively low (estimated at between \$5-12000 for a 'small room' per year). At present items can be stored in free-ports indefinitely and there is no duty to be paid on transferring title whilst the item remains in the facility. The international Financial Action Task Force issued a report in 2010 arguing that free-trade zones (customs-free ports) are hubs for illicit transactions.<sup>10</sup> In 2010 and for the world as a whole, it reported that 3000 such zones in 135 countries had a total turnover in the 'billions of US dollars', but noted that it was impossible to make an accurate estimate because of the absence of transparency. We would similarly note that making an attempt at accurately calculating the tax revenues lost to member states through the diversion of goods and sales through free-ports is similarly impossible at this time, but we are able to note that the number and popularity of these facilities appears to be on the rise and whilst they do have legitimate uses, the key to their popularity is that they exist as a parallel fiscal environment.

---

<sup>8</sup>Alex Matchett (5 January 2015) Luxembourg's new freeport unlikely to dispel tax haven image <http://www.spearswms.com/blog/luxembourgs-new-freeport-unlikely-to-dispel-tax-haven-image/#.VgLzLSBVikr>

<sup>9</sup> European Commission (8 September 2015) *Fighting customs fraud: JRC research leads to new legislation* <https://ec.europa.eu/jrc/en/news/fighting-customs-fraud-new-legislation>

<sup>10</sup> Financial Action Task Force (March 2010), *Money Laundering vulnerabilities of Free Trade Zones*, Paris: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>

Transparency around free-ports needs to involve accurate inventories, and also accurate notes around end or true beneficiaries of the holdings and the sale of items. Currently users of free-ports are able to disguise beneficiaries through special purpose vehicles and so on. However there are the usual dangers of unilateral action in the financial sector for the EU, which is that this activity would be pushed outside of the EU in its entirety. It may well be desirable for it to be so, and it is unlikely that there will be a joined-up global response to the challenges presented by free-ports.

The original concept of the Freeport – to facilitate the movement of high-value items that are genuinely in transit – seems to have been partly co-opted for the purposes of tax avoidance. There are very few justifications – in terms of revenue raising or the operation of the single market – that support the presence of free-ports in the European Union.

### 2.1.6. Harmonization of Methodologies

*T(vi) whereas progress in the fight against tax avoidance and aggressive tax planning can only be monitored with a harmonised methodology that can be used to estimate the size of the direct and indirect tax gaps in all Member States, and across the Union as a whole;*

&

#### **Recommendation A6:**

#### ***Commission estimate of the corporate tax gap***

*The European Parliament calls on the European Commission to:*

- *Create, on the basis of best practices currently used by Member States, a harmonised methodology that can be used to estimate the size of the direct and indirect corporate tax gaps - the difference between corporate taxes owed and corporate taxes paid - in all Member States, and across the Union as a whole.*
- *Work with Member States to ensure the provision of necessary data to be analysed using the methodology in order to produce the most accurate figures possible.*
- *Use the agreed methodology and necessary data in order to produce and publish, biannually, an estimate of the direct and indirect corporate tax gaps in all Member States and across the Union.*

We note that in Part One and throughout this part we have provided evidence that strongly supports this proposal (A6). The differences in the various estimates of the tax gap are wide, but as previously stated we believe that the conservative figure of €50-70billions per annum is a safe starting assumption.

In terms of the proposal (A6), on the final bullet point, we think that proposal could safely have placed an obligation on Member States to publish this information – as per an agreed and Union wide methodology – as part of their annual budgetary statements, to

provide a better flow of information that could lead to improved public policy and tax efficiency numbers.

The harmonization of various international standards, be they covering accountancy or the regulation of standards in electronic goods, are a key way of ensuring smooth trading relations between the EU and important non-EU trading partners like China and the US, as well as to protect consumers and producers of consumer goods from less-safe products from cheap manufacturers. The formulation of these rules and international standards is also highly contested between these significant trading interests. As Tim Buthe and Walter Mattli note in their research on this topic the regulation of standards in the global economy has been increasingly delegated to internationalized private sector organisations (they cite the International Accounting Standards Board, which develops financial reporting rules used by corporations in more than a hundred countries; and the International Organization for Standardization and the International Electrotechnical Commission, which account for 85 per cent of all international product standards). Buthe and Mattli note that the formulation of international standards is often a product of how effectively domestic level stakeholders can formulate and communicate their preferences to standards-creating bodies at the international level. This is instead of the perhaps more intuitive idea that international standards should simply mirror the preferences of the most influential or economically strongest member state.<sup>11</sup> These insights are instructive here, because they tell us that the harmonized standards and methodology being proposed not only will be highly contested but will be subject to attempts at influence from organized domestic and transnational stakeholder interest groups as well as Member States who will try to upload their normative preferences to it.<sup>12</sup>

The key difference between the standards that Buthe and Mattli discuss and the ones being proposed under T(vi) are that the common methodology is to be owned by the European Commission who does have the expertise to formulate such a methodology. The main risk to a heavily contested methodology is in Member States issuing individual, parallel methodologies with which to appeal to any particular domestic agenda they might have. This outcome would make consistently estimating the size and impacts of Member State and Union tax gaps increasingly difficult, while politicising the issue needlessly. Whilst finding an uncontested methodology might strike at only the lowest common denominator (and therefore be of limited use), it is still necessary to find sufficient support for it to become mainstreamed.

---

<sup>11</sup> Tim Buthe & Walter Mattli (2011), *The New Global Rulers: The Privatization of Regulation in the World Economy*, Princeton University Press.

<sup>12</sup> There is a very rich and detailed European studies literature concerning the phenomena of 'uploading preferences' to European public policy, and the ingredients for success in doing so.

### 2.1.7. Whistleblowers

*T(vii) whereas the current Union-wide legal framework to protect whistleblowers is insufficient, and there exists significant variation between the ways in which different Member States provide protection for whistleblowers; whereas in the absence of such protection, those employees who hold vital information will understandably be reluctant to come forward and therefore that information will not be made available; whereas since whistleblowers helped to mobilise public attention on the issue of unfair taxation, Member States should consider measures that will protect such activity; whereas it would therefore be appropriate to offer Union-wide protection for whistleblowers who report suspected misconduct, wrongdoing, fraud or illegal activity to national regulators or, in cases of persistently unaddressed illegal activity that could affect the public interest, to the public as a whole; whereas such protection should be coherent with the overall legal system;*

&

#### **Recommendation A7:**

#### ***Protection of Whistleblowers***

*(see also: Section A. whereas a consortium of journalists, the International Consortium of Investigative Journalists (ICIJ), on tax rulings and other harmful practices in Luxembourg (LuxLeaks) revealed in November 2014 that nearly 340 multinational companies secured secret deals from Luxembourg that allowed many of them to slash their global tax bills, while creating little or no economic activity within Luxembourg;)*

Some of the issues around aggressive tax planning have emerged from the various forms of testimony from whistleblowers – be they institutional level whistleblowers or wider investigative practices that are typified by the so-called Lux-Leak release of Luxembourg tax agreements. Up to this point, then, significant advances in our knowledge of and responses to aggressive tax planning measures have been more akin to regulation by revelation than to analysis of transparent information. Whilst the transparency measures in the draft proposal are rightly the mainstay of the responses, there is clearly still a place for the whistleblower. Consequently, measures to protect whistleblowers do need to be wider and also to be harmonized across the Union.

It should be recognised that even with strong protection for whistleblowers the act of blowing the whistle is very often career limiting for the individual doing it, irrespective of how justified their actions were. In the financial sector, whistleblowers have found themselves to be effectively unemployable, whilst in the security sphere notable whistleblowers have had to seek refuge in treaty-free locations. We think there is a case to be made for there to be a European level body to receive reports of “suspected misconduct, wrongdoing, fraud or illegal activity to national regulators or, in cases of persistently unaddressed illegal activity that could affect the public interest”, rather than

simply providing a Union-wide protection. The advantages of hosting such a body centrally (e.g. within OLAF) is not only in providing a harmonized protection of whistleblowers at the point of engagement (rather than for whistleblowers to then have to seek recourse to the universal protection post-hoc), but also in building up Union wide intelligence around what attempts are being made to circumvent the laws and regulatory frameworks, which in turn will assist future legislators to re-frame codes.

The Research Team believe that T(vii) is a strong measure that goes to the heart of fighting illegal or unethical aggressive tax planning. The recommendation in A7 could be usefully tightened further to include a phrasing that incorporated breaches of the code, a reasonable belief in breaches that run against the spirit or original drafting intention of the code, so as to provide the widest protection possible to whistleblowers. There is a strong counter-argument to be had here as well that allowing such strong protections encourages vexatious complaints: the balance here is as much a matter of taste as it is judgement.

Based on the available evidence concerning other incidence of whistleblowing, and what has happened to individuals who have 'blown the whistle' we think there would be merit in an exploration for both the Parliament and the Commission to consider establishing a small unit (e.g. within OLAF) to which individuals could blow the whistle on illegal or unethical behaviour in this regard. This would remove the uneven topography of outcomes for those blowing the whistle across the Union, would remove the need for individuals to need to seek post-hoc remedy for infringements to their rights, and would furthermore provide useful intelligence for at the EU level about the strategies being deployed by those seeking to aggressively avoid their tax responsibilities.

#### **2.1.8. Summary**

Bringing meaningful and productive transparency to the area of corporation tax will provide greater certainty to businesses and tax authorities which in turn will reduce the amount of unproductive competition between Member States. Harmonizing the methodologies through which the tax gap is assessed, and recoverable tax is estimated will allow for a stronger platform from which Member States and the EU's institutions can coordinate their activities. Measures such as the Fair Tax Payer label are likely to produce a long-term and enduring set of impacts that change business (and political) culture over time. The misalignment between the expectations of political and economic elites and the majority of the European public are eroding confidence and thus resilience in the tax system: the transparency measures established here are an essential part of the response to this crisis in confidence.



## 2.2. Coordination

### 2.2.1. Context

Proposals in the area of coordination are the most controversial element of the draft proposals. Controversy will exist because Member States consider the area of corporation tax, and attendant areas, to be sat within their areas of competencies. We have made our data-driven estimate of that gap in Part One of this study, and others have made their assessments in other studies available in the open source literature. Finding a suitable mix of measures that allows for appropriate levels of coordination across the Union that mitigates some of the effects of aggressive tax planning, but which are likely to find agreement across the stakeholders too is the complex task of the draft proposal. Coordination is the most challenging aspect of the proposal, because it necessarily impinges upon Member States' freedom of action, in an area that we can observe has generated competitive behaviours between Member States. For individual tax payers and businesses, the prospect of a European Tax Identification Number (ETIN) might be greeted with some concerns around information sharing and privacy. The ETIN will allow for closer levels of coordination between Member States and consequently a reduction in possible avenues of general abuse. The Research Team noted in Part One and below that the CCCTB is the single strongest contribution that the European Union and its Member States can take to mitigate the impact of the corporation tax gap but we know – from a multitude of public statements – that there are some notably sceptical Member States who oppose the CCCTB in its current form because either it limits what they see to be their competitive position (e.g. the UK) or because they fear that the logical consequence of the CCCTB is the eventual harmonization of the effective tax rate (e.g. Republic of Ireland). In addition to the CCCTB, the draft recommendations also address one of the tensions generated by globalisation, which is the attribution of where economic value is created. Reform to this area has been in part led by the digital economy, and in part by notable incidents that have been considered by media commentators to be abuses of the tax system, whilst being declared to be technically legal.

### 2.2.2. Unilateral National Measures

M. *whereas the fight against aggressive tax planning cannot be tackled by Member States individually; whereas the lack of coordinated action is causing many Member States to adopt unilateral national measures<sup>13</sup> ; whereas such measures have often proven ineffective, insufficient and in some cases even detrimental to the cause; whereas what is needed is therefore a coordinated and multi-pronged approach at national, Union and international level;*

We find a great deal of supportive evidence that reinforces the analysis of the Rapporteurs in this regard. One of the most commonly used aggressive tax planning tools is to exploit the gaps that exist between any two or more tax codes. On this basis the

<sup>13</sup> Such as the UK's 'diverted profits tax'.

Rapporteurs are correct in asserting that individual Member States will not be able to tackle these problems through unilateral measures and will – instead – need to produce a coordinated response to provide effective remedies. We are further of the view that the coordination has to be Union-wide, because any Member State who does not fall within the coordinated area in effect offers up the sort of opportunity for aggressive tax planners to exploit the gaps that would potentially exist between two uncoordinated codes. A coordinated system will also need to embrace synergies that are wider than just the formal and written parts of the tax code. Coordinated systems will need to include data collection, data sharing and enforcement strands so that gaps in these competencies do not also give rise to opportunity for aggressive tax planners to exploit uneven reporting and enforcement practices.

In terms of unilateral measures taken by Member States which are already in place, we can see in Germany, a number of anti-avoidance measures already exist.<sup>14</sup> The Bundestag has requested some additional changes that are related to the OECD's Base Erosion and Profit Shifting (BEPS) project: pursuing a track that is only tangentially related to the EU's current efforts. This is, most notably, (i) "a comprehensive anti-arbitrage rule for hybrids, disallowing a deduction of expenses in direct or indirect non-inclusion and double deduction cases without limiting the application to related party or controlled group transactions or to structured arrangements"; and (ii) "rules on the disclosure of tax planning schemes". These proposed changes were not included in recent tax legislation. A working group of the Bundestag was established in early 2015 to discuss the implementation of the results of the BEPS project and to draft a bill on the basis of the outcome of this working group, which in particular encompasses the topic "hybrid structures". The Federal Ministry of Finance is currently working through a process of deliberations on the implementation of the OECD guidance regarding transfer pricing documentation and country-by-country reporting. A first draft of the bill is expected during the latter half of 2015 or early 2016. Whilst the German parliament is clearly keen to tackle a good part of this problem, and to do so in a way that resonates with German concerns, it amounts to a unilateral approach within a multilateral framework. Clearly this position could be optimised through a European level approach.

Belgium provides another such example of a unilateral action towards mitigating the problems of aggressive tax planning. The Belgian government – much like its German counterpart – is also very supportive of the OECD BEPS project and it actively participates in it. The Belgian government stresses – within its position – the need to coordinate BEPS with related EU actions, in anticipation of EU coordination such as we can see in the Rapporteur's recommendations. On 31 March 2015, the minister responsible for the fight against tax fraud announced that although many of the BEPS deliverables still are draft form and hence subject to change, the Belgian tax administration is verifying the need to amend certain domestic tax provisions with a view to neutralizing the effects of 'legal constructions'. For information, the Belgian minister also said that Belgium is proposing the following amendments to its tax treaty partners:

---

<sup>14</sup> For further information see: <https://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/european-union-tax-centre/Documents/eu-country-profiles/2013-germany.pdf>

- the recommendation of Action 2 (hybrids) that no tax treaty benefits should be available for items of income where neither of the Contracting States allocates such items of income to one of its residents;
- the (amended) title and preamble proposed under Action 6 (treaty abuse) that the common intention of the Contracting States is to prevent double taxation without creating opportunities for double non-taxation or reduced taxation due to, inter alia, treaty shopping and abuse; and
- the principal purpose test to prevent treaty abuse, as recommended in the Action 6 report.

There is considerable alignment with the OECD initiatives and a greater willingness to remain within them, which marks something of a different in emphasis with Member States such as Germany and the UK.

### 2.2.3. Lack of Coordination

*P. whereas the lack of coordinated tax policies in the Union leads to significant cost and administrative burden for citizens and businesses operating cross-border within the Union, and results in unintended non-taxation or facilitates aggressive tax planning;*

As noted in Part One of our study the absence of coordination of tax policies across the Union leads to opportunities for tax planners to effectively ‘mis-match’ tax codes to generate gaps that then allow companies to avoid a proportion of their corporate tax liabilities. This activity is very rarely illegal, but might be viewed as unethical due to the deliberate nature of the avoidance strategy.

### 2.2.4. Establishment of international norms

*R. whereas the European Commission and the Member States should continue to play a very active role in the international arena in order to work for the establishment of international standards based at least on principles of transparency, exchange of information and abolition of harmful tax measures;*

&

#### ***Recommendation C1.***

#### ***A new approach to international tax arrangements***

We note under this Section and also Section P, as well as in Part One of our study how the existing system of unconsolidated national tax codes systemically helps to create the opportunity for tax planning and profit shifting. A new coordinated approach, particularly as represented by the CCCTB, would help to mitigate these effects.

We note that the Union has had a positive impact on the establishment international norms and standards in other related areas, presaging a strong likelihood of generating a positive change in the area of tax harmonisation. These areas include:

- **EU rules on State Aid competition:** Application of EU state aid rules on member state tax rulings to ensure international compliance and level playing field, based on principles of transparency and information sharing.
  - o Source authority in TFEU:  
[http://ec.europa.eu/competition/state\\_aid/legislation/provisions.html](http://ec.europa.eu/competition/state_aid/legislation/provisions.html)
  - o Cf: Joachim Englisch, 'EU State Aid Rules Applied to Indirect Tax Measures' (2013) 22 *EC Tax Review*, Issue 1, pp. 9-18 at  
<http://www.kluwerlawonline.com/abstract.php?area=Journals&id=ECTA2013002>
- **Double taxation agreements:** EU double taxation convention is based on the model treaties provided by OECD (actual double taxation agreements are still bilateral between states and not Union-wide). Attempt to create a fair international tax system, based on regulatory cooperation and information sharing.
  - o European Commission explanation:  
[http://ec.europa.eu/taxation\\_customs/taxation/individuals/double\\_taxation\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/individuals/double_taxation_en.htm)
  - o Cf: Tom O'Shea, 'Double Tax Conventions and the European Union', *The EC Tax Journal*, Volume 10, Issue 3, 2010 at  
<http://www.law.qmul.ac.uk/docs/staff/ccls/oshea/52131.pdf>
- **Digital VAT collection:** implemented 1 January 2015. Part of an OECD and 'E6' international drive to move tax collection back to area of economic activity, with a specific focus on e-commerce. There is early evidence that these measures are proving difficult to implement, with a far wider footprint of affected businesses than was originally envisaged.
  - o EU measures to be found at:  
[http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/telecom/index\\_en.htm#national\\_rules](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#national_rules)
  - o International approach at:  
<https://www.gov.uk/government/news/government-ramps-up-efforts-to-tackle-digital-multinational-tax-risks>)<sup>15</sup>

---

<sup>15</sup> For background information: <https://ec.europa.eu/digital-agenda/en/pillar-i-digital-single-market/action-106-vat-reform-align-tax-rates-digital-content-and-similar>

## 2.2.5. Coordination of National Policies and the CCCTB

- U. *whereas the power to legislate on corporate taxation is vested in the Member States, yet the vast majority of problems linked to aggressive tax planning are of a multinational nature; whereas more coordination of national tax policies therefore represents the only feasible way to address the problems of BEPS and aggressive tax planning;*
- (i) *whereas a mandatory Union-wide Common Consolidated Corporate Tax Base (CCCTB) would be a major step towards solving those problems associated with aggressive tax planning within the Union; whereas the ultimate goal should remain a full, mandatory CCCTB with possible exemptions for small- and medium-sized enterprises and companies with no cross-border activity; whereas until a full CCCTB is in place, the Commission is considering temporary measures to counteract profit shifting opportunities; whereas it is necessary to ensure that those measures, including the offsetting of cross-border losses, do not increase the risk of BEPS;*

&

### **Recommendation B1:**

#### ***Introduction of a Common Corporate Tax Base***

*The European Parliament calls on the European Commission to bring forward as soon as possible a legislative proposal for the introduction of a common corporate tax base:*

*As a first step, by June 2016, a mandatory Common Corporate Tax Base (CCTB) in the Union, with an exemption for small- and medium-sized enterprises and companies with no cross-border activity, in order to have only one set of rules for companies operating in several Member States to calculate their taxable profits.*

*As a second step, as soon as possible and certainly no later than the end of 2017, a mandatory CCCTB, taking into due consideration the range of different options (factoring in the costs, for example, of incorporating small and medium enterprises and companies with no cross-border activity);*

*During the interim period between the introduction of mandatory CCTB and that of full CCCTB, a set of measures to reduce profit shifting (mainly via transfer pricing) including a Union anti-BEPS legislative proposal. These measures should include a temporary cross-border loss offset regime only if the Commission can guarantee that it will be transparent and will not create the possibility of misuse for aggressive tax planning.*

*The Commission should consider to what extent it would be necessary to harmonise accounting principles in order to prepare the underlying accounting data to be used for CCCTB purposes.*

&

### **Recommendation B2.**

#### ***Strengthen the mandate and improve transparency of the Council's Code of Conduct on Business Taxation Group***

There is a clear consensus amongst academics and the expert communities that a CCCTB is the most effective way to tackle the various means of offsetting to avoid corporate taxes. From examining the recommendations - and from our own research into various industrial sectors, including the defence equipment sector - we were left with a view that the recommendations potentially maintained a gap whereby a central holding company (in a lower tax country) can derive income from licensing arrangements (which may be a tax-planning conceit) with nationally bounded subsidiaries, thereby creating the same effect as other forms of offsetting. This view relates to research we have done on the defence industries where the main contractor (known as the 'prime') disperses its risks by establishing many wholly owned, and geographically bounded SME offshoots.<sup>16</sup> In defence this is mostly about dispersing risk, but it could also be used to generate tax planning advantages. From the literature, then, evidence of a positive impact of cross-border loss offsetting is hard to come by, but it is seen at least as a way of undoing the negative impact of unharmonised tax regimes. The debate on its role in tax competition seems to be ongoing (hence the proviso in the draft proposal), and it is seen very much as a second best (in the literature and the proposal) to a CCCTB.

A Working Paper for the Oxford University Centre for Business Taxation of 2013 found that cross-border loss offsetting can intensify tax competition under current international practice, though tax competition can be mitigated when the home country bases its loss relief on the tax rate in the subsidiary's host country (opposite to current practice, which bases it on the home country).<sup>17</sup> The absence of cross-border reliefs in the EU can also be seen to create obstacle in completing the single market project. As explained by Sol Schwarz and associates, the cross-border loss offsets as envisaged in the Commission's Action Plan for Corporate Taxation of June this year is capable of generating a smoothing of tax receipts across Member States.<sup>18</sup> It asserts that: "With cross-border loss offsets, a parent company in one EU country would be able to receive temporary tax relief for the losses of a subsidiary in another EU nation. Once that subsidiary became profitable, the country where the parent company is established would "recapture" the taxes that it relieved. As such, no EU member state would have to carry the long-term burden of an unprofitable company in another EU jurisdiction." Meanwhile research by Violeta Ruiz Almendral concluded that cross-border loss reliefs are the only option, except the implementation of the CCCTB, to create an integrated single-market in the EU from a tax law perspective.<sup>19</sup>

B2 would strengthen the existing provisions in the Code of Conduct that already contain the political equivalent of a general abuse clause for Member States. Contained within the code are general obligations not to place measures that assist tax avoidance, to identify existing areas of national tax code that do assist avoidance, and to positively roll back

---

<sup>16</sup> Dover, R (2011) 'Britain, Europe and Defence in the Post-Industrial Age', *Defence and Security Analysis*, Vol.27, No.1, pp.19-30.

<sup>17</sup> Haufler and Mardan, 'Cross-border loss offset can fuel tax competition', *OUCBT*, WP 13/10, October 2013

<sup>18</sup> Sol Schwarz and Partners (7 July 2015) *EC Proposes Plan for Corporate Tax Reform*, Texas, <http://www.ssacpa.com/ec-proposes-plan-for-corporate-tax-reform/>

<sup>19</sup> Violeta Ruiz Almendral (2010) An ever distant union: the cross-border loss relief conundrum in EU law, *INTERTAX*, Vol 38, Issue 10

those measures. All the available evidence suggests that there is an uneven political compliance with these measures by Member States and as such a tightening of the code would seem sensible. The negotiation and implementation of the CCCTB would also greatly assist in meeting the aims implied within this recommendation.

By its very nature a CCCTB is a universal measure that captures all Member States and all MNEs within the EU area. For the first phase of implementation smaller firms, with no cross-border trade, would likely be exempt. The first iteration of the CCCTB mooted in 2011 placed obligations on Member States but contained opt-outs for businesses. This was – we think – correctly interpreted as offering companies that the EU would likely have wanted to have captured with these measures a means by which to continue to avoid some of their obligations. The 2015 iteration of the CCCTB removed these opt outs for these reasons. So there is no practical reason for this measure to work at differential speeds (the so-called twin-speed approach) and any such multiple speed approach would essentially be no improvement over the current situation: companies would have an incentive within the Single Market to find the least onerous place to report their taxes (assuming there would be no barriers to moving, as part of the logic of the single market). Even with a unitary CCCTB, we can reasonably expect there to be some kind of ‘flight’ to a favourable tax locations outside of the core, although the transaction costs of doing should provide some deterrent effect. Some Member States – and notably those with a competitive corporation tax stance – are nervous that the CCCTB implies a harmonization of the effective tax rate for corporation tax. Harmonization of the effective rate is not part of the CCCTB proposals, however. De Wilde (writing about the 2011 iteration of CCCTB) noted that the option for firms present in the 2011 iteration would create tax competition between Member States. With there being no opt out present in the 2015 iteration, but no harmonized effective tax rates, there still remains an incentive for MNEs to locate in jurisdictions with a lower effective tax rate (which normally correlates also to a lower cost base).<sup>20</sup>

In the light of stated UK government opposition to a CCCTB, there is a prospect for a multi-speed CCCTB to emerge, as the UK government does not – apparently – object to other EU Member States adopting the provision.<sup>21</sup> The UK’s opposition to a CCCTB would open up the potential for an ‘enhanced cooperation’ procedure (requiring at least 9 Member States (MS) to opt out of the proposals – and would be considered as a final resort if MS cannot find agreement on an EU-wide proposal), which would leave a CCCTB for the remaining states. Such a proposal would result in a core-periphery style CCCTB, for political rather than economic reasons. The challenges that arose around the enhanced cooperation *Financial Transaction Tax* (2013) demonstrated the problem with this approach: there is basically no way to have effective enhanced cooperation on a Single Market tax issue without creating barriers within the Single Market to stop regulatory arbitrage. However, a doctoral dissertation written by Tiiu Albin Pereira (defended in December 2014) concluded (on the basis of the 2011 iteration) that there is

---

<sup>20</sup> Maarten De Wilde, *Tax Competition within the European Union – Is the CCCTB Directive a Solution?* *Erasmus Law Review*, 1, 2014.

<sup>21</sup> Simon Bowers (18 June 2015), *UK to reject EU plans to combat multinational tax avoidance*, *The Guardian*: London.

no conflict between an enhanced cooperation-CCCTB and the *acquis communautaire* and indeed that this is the most likely way of introducing it, given certain Member State hostility.<sup>22</sup>

### 2.2.6. Location of Economic Activity

*U (iii) whereas the overall principle of corporate taxation in the Union should be that taxes are paid in the countries where a company's actual economic activity and value creation takes place; whereas criteria should be developed to ensure that this occurs; whereas any use of 'patent box' or other preferential tax regimes must also ensure that taxes are paid in the place where value is generated;*

&

#### **Recommendation B3:**

***Patent box and other preferential regimes: Linking preferential regimes to where value is generated***

In terms of so-called Patent Boxes, a piece of research commissioned by the European Commission titled 'Patent Boxes Design, Patents Location and Local R&D' is currently the main literature on this topic.<sup>23</sup> This research paper examined firm-level data from 2000-2011 for the top 2000 corporate R&D investors worldwide and found that patent boxes "have a strong effect on attracting patents mostly due to their favourable tax treatment." The study found that tax advantages given by these regimes are "slightly larger than optimal from a local R&D impact perspective." They argue that tax competition – rather than R&D stimulation – is the principal dimension of patent boxes, and this can be mitigated through a modified nexus approach: "The existence of development conditions in some patent boxes may shed light on the potential effect of the nexus condition developed by the OECD and the EU, notably with regards to its effect on patent location, tax revenues and local R&D. Our results that the tax-sensitivity of patent location is reduced when such specific conditionality is imposed would suggest that the nexus approach could (at least partly) inhibit the still dominant tax competition dimension of patent boxes." This reinforces our analysis that focusing on the effective tax rate as an indicator of tax competition is myopic: competition has arisen and will continue to arise from a plethora of sources. Whilst – on balance – the main use of patent box schemes seems to be for tax planning it should also be remembered that a key part of the rationale for these schemes is in spurring additional research and development activity that helps to spur economic growth in Member States economies.

---

<sup>22</sup> Tiitu Albin Pereira (December 2014), *International Aspects of the CCCTB in Europe*, Maastricht University.

<sup>23</sup> Annette Alstadsæter, Salvador Barrios, Gaetan Nicodeme, Agnieszka Maria Skonieczna, and Antonio Vezzani (June 2015), *Patent Boxes Design, Patents Location and Local R&D*, European Commission: Brussels.



Action 5 of OECD's Base Erosion and Profit Shifting (BEPS) Action Plan supports the need for the modified nexus approach to patent boxes and provides a roadmap for implementation, following the UK-German agreement.<sup>24</sup> This roadmap could reasonably be the basis for any EU action in the area. MNEs are more likely beneficiaries of patent boxes and thus there should be a regulatory role to ensure they are not used for the avoidance of tax. The advice international tax consultants have begun to issue their clients indicates that they expect the new UK modified nexus regime to be less favourable or permissive as a way of reducing tax liabilities.<sup>25</sup> According to the research service *Tax Notes International* there are broadly three solutions to BEPS through patent boxes:

- Value creation (tax benefits apply only if specific criteria for development activities taking place in the jurisdiction are met);
- Transfer pricing (the UK's preferred approach, requiring the assessment of functions, assets and risks); and

Nexus (the OECD's preference, limiting 'tax benefits to the fraction of IP income equal to the ratio of qualifying research expenditures to aggregate expenditures incurred to develop the IP asset').<sup>26</sup>

The OECD and the European Parliament have opted for an approach known as the Nexus approach. A 'modified' Nexus allows for 'uplift' which in essence allows taxpayers to increase their qualifying expenditures to those related also to outsourcing some of their R&D and not just find qualifying amounts in their own research expenditure. This makes the system slightly more generous to MNEs, and thus more acceptable to the patent-box hosting Member States. There is initial evidence and analysis that the nexus approach would make a positive contribution to mitigating the effects of aggressive tax planning.

On the principle of EU legislation for value creation, the EU has legislated - at least in terms of Value Added Tax for digital products and services - where the value is legally seen to have been created. In the case of the digital economy the value is created (and

<sup>24</sup> UK Government (11 November 2014) *GERMANY-UK JOINT STATEMENT Proposals for New Rules for Preferential IP Regimes*, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373135/GERMANY-UK\\_STATEMENT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/373135/GERMANY-UK_STATEMENT.pdf)

<sup>25</sup> E.g. Ernst and Young (2014), *Update on UK Patent Box and other preferential intellectual property regimes*, London, ([http://www.ey.com/Publication/vwLUAssets/EY-update-on-UK-patent-box-and-other-preferential-intellectual-property-regimes/\\$FILE/EY-patent-box.pdf](http://www.ey.com/Publication/vwLUAssets/EY-update-on-UK-patent-box-and-other-preferential-intellectual-property-regimes/$FILE/EY-patent-box.pdf)); Baker McKenzie (2014), *Green light for new approach to patent boxes*, London: [http://www.bakermckenzie.com/files/Publication/04d9b738-aa4c-4eb9-a2dc-6ba68e636351/Presentation/PublicationAttachment/73e539f9-c2ff-44bc-962a-6e70e1c7e014/al\\_london\\_patentboxes\\_mar15.pdf](http://www.bakermckenzie.com/files/Publication/04d9b738-aa4c-4eb9-a2dc-6ba68e636351/Presentation/PublicationAttachment/73e539f9-c2ff-44bc-962a-6e70e1c7e014/al_london_patentboxes_mar15.pdf); Haseltine-Lake (February 2015), *Patent Box: Round Two Making the most of the regime before and after planned restrictions*, London: [http://www.haseltinelake.com/media/358212/patent\\_box\\_briefing\\_note\\_-\\_round\\_two\\_-\\_changes\\_to\\_the\\_scheme\\_-\\_february\\_2015.pdf](http://www.haseltinelake.com/media/358212/patent_box_briefing_note_-_round_two_-_changes_to_the_scheme_-_february_2015.pdf)

<sup>26</sup> Tax Notes International (20 July 2015), *The Patent Box: A Bad Idea Crosses the Atlantic*, <http://www.taxnotes.com/tax-notes-today/intangible-assets/news-analysis-patent-box-bad-idea-crosses-atlantic/2015/07/20/14938061>

thus VAT paid) where the buyer is located.<sup>27</sup> This is akin to where we believe the evidence sits for our commentary on T(ii) in the draft recommendations above, and would remove some of the opportunities for carousel VAT schemes that have been prevalent across the Union.

The digital goods VAT interpretation, which we include to demonstrate the need to be flexible and pragmatic in the definition of permanent establishment, has incurred some negative analysis from companies based outside the EU, who were now liable for EU VAT, regardless of their own residency and what their local tax authority considered to be the location of their economic activity. Such a move by the EU is in line with similar steps taken by US authorities in this and other trade spheres. In the technology sphere (particularly those offering 'Software as Service', so-called SAS firms) there has been a small amount of political activism and opposition to this move. There has been very little credible work done on the economic impact of these developments. However, a 2014 European Commission paper on the subject estimated the VAT gap, prior to buyer-based location as 177 billion euro, hence the political pressure for the change.<sup>28</sup>

The change to these rules will – the European Commission estimates – affect some 34,000 small businesses in Europe, but as yet there is very little in the academic literature on what impacts these measures may have. We might note, however, that this figure of 34,000 is likely to be a very low estimate and the early problems that have been experienced trying to implement these measures reinforce the idea that this figure is a very low estimate. The original Commission paper on this change estimates a positive impact without an extensive presentation of data.<sup>29</sup> A public consultancy on these changes has been launched in September 2015 and it is likely that impact figures will emerge from this process, which could then be taken as base-line indications for other harmonization processes, such as the CCCTB. The example of VAT and location shows an emerging principle of EU legislative competence over definition of value creation and economic activity, and one that the Research Team believes will assist in mitigating some of the aggressive corporation tax planning that currently persists.

---

<sup>27</sup> European Commission (2013), *Guide to the VAT mini one-stop-shop*, Brussels:  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/how\\_vat\\_works/telecom/one-stop-shop\\_guidelines\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop-shop_guidelines_en.pdf)

<sup>28</sup> European Commission (2014), *Commission Staff Working Document on the implementation of the definitive VAT regime for intra-EU trade*, European Commission: Brussels.

<sup>29</sup> European Commission (July 2015), *DSM - Modernising VAT for cross-border e-commerce*, TAXUD-European Commission: Brussels.

The base-line impact assessment for CCCTB can be found in the European Commission's original impact assessment, published in 2011.<sup>30</sup> The core findings are captured by the table below:

**Table 8: Macroeconomic effects: change compared to baseline scenario (in percentage)**

	Option 2: Optional CCTB			Option 3: Compulsory CCTB			Option 4: Optional CCCTB			Option 5: Compulsory CCCTB		
	EUav	WG-20	WG-25	EUav	WG-20	WG-25	EUav	WG-20	WG-25	EUav	WG-20	WG-25
Investment	0.02	-0.54	-0.44	0.14	-1.25	-0.97	-0.11	-0.88	-0.74	-0.04	-1.55	-1.25
Employment	0.00	-0.05	-0.04	0.00	-0.13	-0.10	0.09	-0.01	0.00	0.09	-0.08	-0.05
GDP	0.01	-0.04	-0.03	0.08	-0.25	-0.18	-0.04	-0.17	-0.15	0.04	-0.32	-0.25
Welfare (% of GDP)	0.00	0.01	0.01	0.03	-0.01	0.00	0.03	0.02	0.02	0.06	0.00	0.02

Source: Simulations with CGE CORTAX model

In the 2011 iteration of CCCTB option 4 (below) prevailed. The most recent iteration divides between Options 3 and 5. Currently these assessments have not modelled the change in the taxable base that would arise from the change in regimes, and nor do they model or extrapolate any distributive impacts, which might be seen between consumers versus buyers. But if we take the EU's most recent GDP numbers as €13,920,541 million we can extrapolate that on Option 3 the uplift will be €11.136 billion, whereas Option 5 would generate an estimated €5.568 billion per annum. Using the OECD's methodology, a 4 per cent-10 per cent uplift in corporation tax receipts from the measures suggested both by their Action Plan and by these draft recommendations would result in a gain of between €13.4-33.5 billion per annum. A survey in the Commission's Impact Assessment has policy impact options ranked thus:

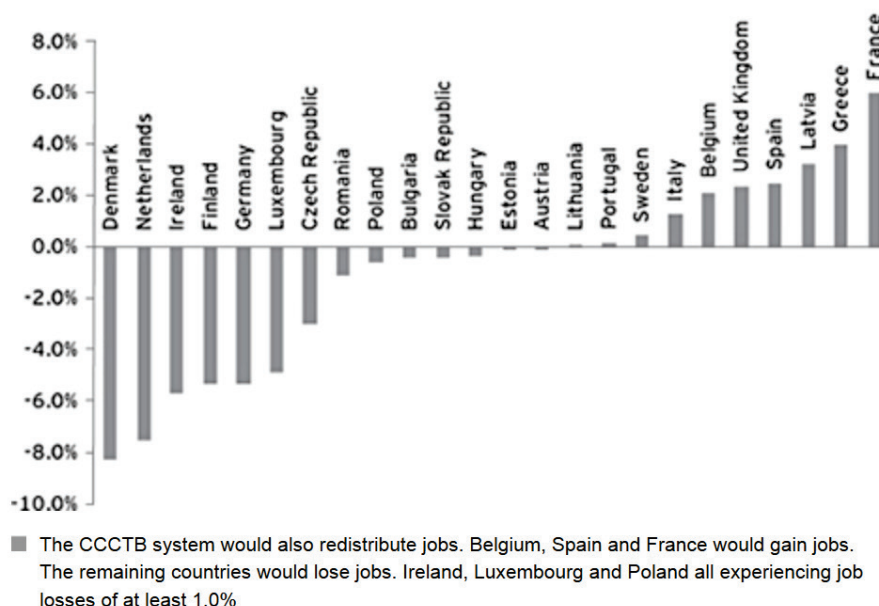
**Table 10: Ranking of policy-options (1 = best option)**

	Option 1: status-quo	Option 2: Optional CCTB	Option 3: Compulsory CCTB	Option 4: Optional CCCTB	Option 5: Compulsory CCCTB
PWC study (compliance costs)	2	3		1	
Deloitte study (compliance costs)	3	2		1	
CORTAX study (macroeconomic variables)	4	3	5	1(2)	2(1)

From this various international accountancy and tax companies have pulled out some expected impacts. It should be noted that these are still for the 2011 firm-optional iteration of the CCCTB, as the most recent iteration is still to be modelled. What should be noted from the table is that some of the Member States who are project to have reduced incomes from the introduction of CCCTB are currently benefitting from the current (absence) of coordinated rules around permanent establishment. Thus we can observe that those Members benefitting from CCCTB are seeing the proceeds of economic activity occurring in their jurisdiction being repatriated to them:

<sup>30</sup> European Commission (March 2011), *IMPACT ASSESSMENT Accompanying document to the Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB)*, European Commission: Brussels:  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/common\\_tax\\_base/com\\_sec\\_2011\\_315\\_impact\\_assessment\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_sec_2011_315_impact_assessment_en.pdf)

### Changes in corporate income taxes from adopting CCCTB



The Ernst and Young findings show<sup>31</sup>:

- Almost 24,000 groups of taxpayers would face higher corporate income taxes under the CCCTB.
- The increase would be an estimated €2.5 billion in tax revenue.
- The percentage increase in tax liabilities would be the greatest for agriculture and mining, financial services, and real estate. Conversely, tax liabilities would reduce for manufacturers and more substantially for transportation companies.

*U (iv) whereas some Member States have unilaterally introduced Controlled Foreign Corporation (CFC) rules, in order to adequately ensure that profits parked in low or no tax countries are effectively taxed; whereas those rules need to be coordinated in order to prevent the diversity of national CFC rules within the Union from distorting the functioning of the internal market;*

There are currently 9 Member States that operate CFCs: Germany, UK, Italy, France, Spain, Denmark, Finland, Sweden, and Portugal.<sup>32</sup> If we focus on Germany, just an example, we can see that the research suggests that German CFCs have been effective in stopping investments in low-tax jurisdictions.<sup>33</sup> Based on micro-econometric evidence it

<sup>31</sup> Ernst and Young (February 2011), *The European Commission and the CCCTB*, Ernst and Young: London: <http://www.ey.com/GL/en/Services/Tax/Tax-Policy-and-Controversy-Briefing--February-2011---European-Commission-and-the-CCCTB>

<sup>32</sup> For a background presentation see: [http://www.m-i-tax.de/content/Wichtige\\_Links/Alumni\\_Netzwerk/documents/cfcrules\\_000.pdf](http://www.m-i-tax.de/content/Wichtige_Links/Alumni_Netzwerk/documents/cfcrules_000.pdf)

<sup>33</sup> Ruf, M and Weichenreider, A (2009), *The Taxation of Passive Foreign Investment: Lessons from German Experience*, Working Paper Series: <http://www3.nd.edu/~tgresik/EER/Weichenrieder.pdf>

concludes: “Overall, the German past experience suggests that CFC rules seem to enable even a high-tax country to largely prevent the migration of passive assets into low-tax jurisdiction.” More recent evidence from Haufler, Mardan and Schindler concurs and further finds that there is a “significant and economically large impact of anti-tax-avoidance legislation on multinational firms’ real activity abroad.” suggesting that national CFCs can be an effective part of a tax mix in certain circumstances and if they are binding.<sup>34</sup> It should be remembered that the OECD – in its BEPS Action Plan – is also supportive of CFCs and calls for the introduction and strengthening of them in Action 3. There are some concerns, however, that the introduction of CFCs in the EU might undermine the operation of the single market and there is some academic commentary suggesting that the German CFC law is incompatible with international double taxation agreements and more widely with EU law.<sup>35</sup>

The CJEU found in a case against the UK’s CFC regime (*Cadbury Schweppes*) that they are only justified to prevent wholly artificial attempts to escape national taxation. According to Lampert et al., “the error rate of tax assessments within German CFC legislation is estimated around 90 per cent.” They conclude that this regime is ineffective, but also unconstitutional in Germany. They did not find that it was incompatible with Community law, however. The section is correct to note that it will require considerable coordination to ensure that there is no distortion of the single market from these measures, nor abuse from their operation.

### 2.2.7. Common Approaches to Auditing & the ETIN

U(v) *whereas Council Directive 2011/16/EU of 15 February 2011<sup>36</sup> provides for cooperation between Member States on tax inspections and audits and encourages the exchange of best practices between tax authorities; whereas, however, the instruments provided for in that Directive are not effective enough and divergent national approaches to auditing companies contrast with the highly organised tax planning techniques of certain companies;*

&

#### **Recommendation B6:**

***The introduction of a common European Tax Identification Number***

<sup>34</sup> Haufler, Mardan, and Schindler (2014), ‘An Economic Rationale for Controlled-Foreign-Corporation Rules’, *CESifo Area Conference on Public Sector Economics*.

<sup>35</sup> Lampert, S., Bittermann, J.N., Harms, B., The CFC Regime in Germany, *European Tax Studies*, 2013, No. 1, pp. 20

<sup>36</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC(OJ L 64, 11.3.2011, p. 1).

As stated in Part One and throughout this part of the study, it is the gaps and contours in contrasting tax codes that allow a great deal of the aggressive tax planning that does occur, to occur. With corporation tax being organised along national boundaries currently, the multinational tax planning services being accessed by MNEs are at an advantage because they can see across territorial jurisdictions whilst remaining inside their firm. This is a classic tension within modern globalisation. However, enforcement of national rules (even in investigatory terms) illuminates extraterritorialism and the rules of extraterritoriality. These problems are best resolved through reciprocal arrangements between Member States, and indeed may require EU institutional level arrangements, in addition to the introduction of a system of European Tax Identification Numbers (ETIN).

The ETIN proposal goes some way to assisting and addressing the issues of transparency and information sharing. A parallel system of European Tax Identification Numbers (a business would retain their national 'unique tax reference' but also have an ETIN) would help to avoid the obfuscation currently possible with myriad tax identification systems. We note from our previous research for the European Parliament in the softly-related area of Passenger Name Records (PNR) sharing that there is a great deal of concern (and sometimes hostility) within Member States, and also from public advocacy groups to the collection and sharing across borders of personalised (be they individual or corporate personalities) information. The safeguarding of individual (and sensitive) information will need to be very carefully drawn out at the legislative stage, and further safeguards will be required to define closely and clearly how – if at all – the information collected using these numbers could be potentially passed on to external agencies (the Research Team have in mind the potential for such classes of information to be part of the information that is shared with US authorities, such as the Department of Homeland Security).

## 2.2.8. OECD Base Erosion and Project Shifting Action Plan

(ix) *whereas, in addition to the issues mentioned in this report, the Commission should clearly set out how it will implement all 15 of the OECD/G20 BEPS project deliverables, and consider in which areas the Union should go further than the minimum standards which the OECD recommends;*

The specific measures referenced in this section can be found in the OECD's Action Plan on Base Erosion and Profit Shifting, 2013 (Chapter 3):<sup>37</sup>

1. Address the tax challenges of the digital economy
2. Neutralise the effects of hybrid mismatch arrangements
3. Strengthen CFC rules
4. Limit base erosion via interest deductions and other financial payments

---

<sup>37</sup> OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, (can be located at: <http://www.oecd.org/ctp/BEPSActionPlan.pdf>)

5. Counter harmful tax practices more effectively, taking into account transparency and substance
6. Prevent treaty abuse
7. Prevent the artificial avoidance of PE status
8. Assure that transfer pricing outcomes are in line with value creation: Intangibles
9. Assure that transfer pricing outcomes are in line with value creation: Risks and Capital
10. Assure that transfer pricing outcomes are in line with value creation: Other high-risk transactions
11. Establish methodologies to collect and analyse data on BEPS and the actions to address it
12. Require taxpayers to disclose their aggressive tax planning arrangements
13. Re-examine transfer pricing documentation
14. Make dispute resolution mechanisms more effective
15. Develop a multilateral instrument

Taken together these Actions aim to help governments gain the benefits of globalisation (namely to increase tax receipts through economic growth – in terms of income taxes, value-added taxes and corporation taxes) while minimising the risk that companies will use globalisation to shop around for the cheapest jurisdiction in which nominally to locate their operations, or to book their economic activity.

The Action Plan tries to argue that these steps will also benefit companies due to a minimisation of the reputational risk they are exposed to when they have been found to attempt to minimise their tax obligations aggressively in this way. The experience of three large multinational players who have been cited in this regard – Amazon, Vodafone and Starbucks – have seen no obvious impact on their through-put figures, nor their end-of-year results as a consequence of adverse media coverage. Of the three, Starbucks is the only one to have received activist attention at their premises, which is a little misguided as many are operated as franchises. As noted elsewhere in this critique the ‘fair tax payer’ label is likely to have two types of impact on European businesses, and may result in some business performance issues.

The overall drive of the OECD’s tax action plan is to make sure that tax rights are aligned as well as possible with a firm’s economic activity. This position is one that aligns with the majority of the European electorate’s ‘common sense’ understanding of how tax codes should operate and the Draft Proposals this study has been tasked to explore. The OECD’s Action Plan could be divided into the same taxonomy as has been used here: cooperation, convergence, transparency and other measures and so provides a joined-up parallel response.

The major change through globalisation has been the move away from the initial impulse for international tax agreements - to counter double taxation – towards a new one, to counter double non-taxation. Hence the approach to realign the location of economic



activity with taxable income. This requires a multilateral approach, rather than the current multi-bilateral framework, as well as greater transparency and information sharing between firms and governments, and governments themselves. This issues around BEPS has become more urgent in the context of the digital economy, because it makes it easier for firms to be located in one jurisdiction but sell in another. As a consequence, the recommendations of the European Parliament contained in the draft are important in the context of reducing corporate tax competition between Member States.

### **2.2.9. Summary**

Coordination (or more precisely the absence of coordination) has been a key element in allowing the corporation tax gap to emerge, and in creating exploitable gaps between Member State tax codes. Thus, coordination is the most challenging aspect of the proposal, because it necessarily impinges upon Member States' freedom of action, in an area that we can observe has generated competitive behaviours between Member States. The draft recommendations avoids some of the starker possibilities on cooperation, including on harmonization of effective tax rates (something that several Member States fear is the ultimate aim of CCCTB), and therefore represents a realistic approach to solving some of the problems of coordination and collective action that exist in this public policy realm. There are – however – good intellectual reasons to support the harmonization of minimum effective tax rates (as well as maximum ones). With CCCTB those Member States who opt for low tax regimes will merely reduce their own revenues (particularly with the introduction of new rules around permanent establishments) and thus the dangers that they perceive from the CCCTB proposals are partially mitigated by how it would operate in practice.

Coordination in this public policy area is not being solely developed by the European Union. The OECD's contribution via their Base Erosion and Profit Shifting Action Plan we have assessed to be strong. There are a good number of positive synergies between the Draft Proposal and the OECD's Action Plan which has been generally warmly welcomed by analysts. Within the Draft Proposal, there is much to be welcomed in improvements to coordination between Member States and across the Union, in terms of common auditing practices and a proposal for a European Tax Identification Number (ETIN). Ultimately, however, the single biggest contribution to this public policy area will emerge if the CCCTB can be concluded and implemented.

## **2.3. Convergence**

### **2.3.1. Context**

The draft recommendations make clear, and the research evidence reinforces fact that corporation tax policy would strongly benefit from being more convergent as it adds value to Member States and to the Union. The key convergences that add value in this space are tax treaty convergences – it is the mismatch between national codes that has allowed for much of the aggressive tax planning to take place, which in turn has reduced



business costs but added to the corporation tax gap across the Union. The binding definition around permanent establishment is also a significant contribution to mitigating the impact of shifting and of being able to effectively book double non-taxation. The argument of convergence in is supported by academic and expert analysis.

### 2.3.2. Tax Treaty Convergence

- V. *whereas improved coordination alone will not solve fundamental problems arising from the fact that different rules regarding corporate taxation exist in different Member States; whereas part of the overall response to aggressive tax planning must involve the convergence of a limited number of national tax practices; whereas this can be achieved while still preserving the sovereignty of Member States in relation to other elements of their corporate tax systems;*
- (i) *whereas aggressive tax planning practices may sometimes arise from the cumulative benefits of double taxation treaties concluded by different Member States, perversely resulting in double non-taxation instead; whereas the proliferation of double tax treaties signed up to by individual Member States with third countries may lead to opportunities for new loopholes; whereas, in line with Action 15 of the OECD/G20 BEPS project, there is a need to develop a multilateral instrument for amending bilateral tax treaties;*

The definitional precision of which measures are left to Member State discretion and which are harmonized at the Union level will be left to future negotiation. However, it is clear from our research, and that of the prevailing view in the academic field, that from the perspective of aiming to reduce the corporate tax gap and minimising the number of variables across the Union that the higher the proportion of harmonized measures the greater the opportunity to mitigate the effects of aggressive corporate tax planning. In terms of V(i) and for the operation of the single market, we would suggest that there be – in effect – a trifurcated system of 1) EU Member States, 2) EU+ e.g. those with prospective treaty arrangements like Comprehensive Economic and Trade Agreement (CETA), Transatlantic Trade and Investment Partnership (TTIP) and 3) those with non-preferential treaty arrangements (non-EU).

### 2.3.3. List of Tax Havens

- V(ii) *whereas the Union should have its own up to date list of 'tax havens';*

Aligned with the principles as established by the Harmful Tax Practices Code<sup>38</sup> all Member States should be committed to mitigating the effects of tax havens on their tax revenues. This proposal could be strengthened to include specific reference to those EU Member States who have strong links (or tax haven dependencies), where those links and

<sup>38</sup> See: [http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/harmful\\_tax\\_practices/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm)

dependencies create tax competition within the individual Member State and then between Member States.

#### **2.3.4. Recommendation C3. Counter-measures towards companies who make use of tax havens**

*The European Parliament calls on the European Commission to bring forward a proposal for a catalogue of counter-measures the Union and Member States should apply as shareholders and financiers of public bodies, banks and funding programmes, to be applied to companies which use tax havens in order to put in place aggressive tax planning schemes and therefore do not comply with Union tax good governance standards.*

This measure could reasonably be paired with the proposal to create a Fair Tax Payer label, in which this block of measures would form part of the antithetical position to the Fair Tax Payer. There are three possible extensions to strengthen this particular proposal: 1) connecting these measures to the proposed general anti-abuse measure, 2) extend the provision to include reference to other areas where there is evidence that they are exploited for tax avoidance purposes, such as the obscure beneficial ownership arrangement in land-holdings across the EU. There is strong emerging evidence that land and residential property (the sale price of which is obviously unregulated) is being used to shield money for the purposes of avoiding tax, and therefore represents an area that will eventually require regulation. And finally, 3), the measure should be extended to include companies that have wholly or partly owned dependencies or subsidiaries in tax havens. Accurate records concerning beneficial ownership is a pre-requisite to these measures, which in turn requires effect rules to be established around retention and communication.

#### **2.3.5. Union wide countermeasures**

*V(iii) whereas the Union should apply counter measures towards companies who make use of such tax havens; whereas this has already been called for in the European Parliament's Report on the Annual Tax Report 2014<sup>39</sup>, which asked for the 'introduction of strong sanctions to prevent companies breaching or dodging tax standards, by refraining from granting EU funding and access to state aid or to public procurement to fraudulent companies or companies located in tax havens or countries distorting competition with favourable tax conditions; urges MSs to recover all types of public support given to companies if they are involved in breaching EU tax standards';*

---

<sup>39</sup> Please see European Parliament (4 March 2015) *Annual Tax Report* (2014/2144(INI): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0040+0+DOC+XML+V0//EN>

The counter-measures proposed by the draft recommendations are listed under C3 and are:

- " - *Those counter-measures should include:*
  - *Being banned from accessing state aid or public procurement opportunities at Union or national level*
  - *Being banned from accessing certain Union funds*
- *This should be achieved via, amongst other measures:*
  - *Amending the European Investment Bank (EIB) Statute (Protocol No. 5 annexed to the treaties) to ensure that no EIB funding can go to ultimate beneficiaries or financial intermediaries which make use of tax havens or harmful tax practices*
  - *Amending the European Fund for Strategic Investment (EFSI) Regulation to ensure that no EFSI funds can go to such companies*
  - *Amending the four Common Agricultural Policy (CAP) Regulations to ensure that no CAP funding can go to such companies*
  - *Continuing the process of State Aid Modernisation to ensure that Member States do not provide State Aid to any such companies*
  - *Amending the Common Provisions Regulation to ensure that no money from the five European Structural and Investment Funds (European Regional Development Fund, European Social Fund, Cohesion Fund, European Agricultural Fund for Rural Development, European Maritime and Fisheries Fund) can go to any such companies*
  - *Amending the Agreement Establishing the European Bank for Reconstruction and Development (EBRD) to ensure no EBRD funding can go to any such companies*
  - *Forbidding the conclusion of trade agreements by the EU with jurisdictions defined by the Commission as 'tax havens'.* "

This list represents a comprehensive first pass at appropriate countermeasures. There is further work to be done in terms of how these measures can be levied in parallel or in addition to those that might be levied by Member States.

### 2.3.6. Binding definition of permanent establishment

V(iv) *whereas a new binding definition of 'permanent establishment' is needed to ensure that taxation takes place where economic value is created; whereas this should be accompanied by minimum binding criteria to determine whether economic activity has sufficient substance to be taxed in a Member State in order to avoid the problem of 'letterbox companies';*

As we commented in the sections referencing T(ii) above, the issue of where economic value is created is crucial to Member State recovery of corporation taxes of activity and surplus in their jurisdiction. We noted in T(ii) an alternative approach to booking

economic activity in a jurisdiction and the public perception of circumstances that are current legally compliant. Where economic value is created (for example) when client and customer are ostensibly based in the same jurisdiction then this the economic value should be booked in that jurisdiction. This is reflected in Recommendation C4 of the draft proposals, which goes on to assert that these measures should lead to a ban on so-called 'letter box companies', which have been the cause of commentary about Luxembourg, and British dependencies that double as tax-havens. The plain understanding of economic activity and bookable income (shared by the majority of the European electorate) offers the greatest confidence and therefore resilience in the tax system.

### 2.3.7. Hybrid Mismatches

*V(vi) whereas hybrid mismatch arrangements can be used to achieve double non-taxation, be it through a financial instrument being classified as debt in one Member State and equity in another, through Member States having different rules for the treatment of transparent and opaque legal entities, through assets and liabilities being attributed differently, or through costs and profits being allocated differently in different Member States;*

The measures under Section T, above, and Recommendation C6, and the evidence that sits behind the measures apply to the harmonization proposed under this Section go towards ameliorating the possibility of aggressive tax planning from definitional differences across the Union.

### 2.3.8. Tax-related State Aid

*V(vii) whereas the Commission's ongoing investigations into alleged breaches of the Union state aid rules have revealed a degree of uncertainty regarding the way in which those rules should be applied; whereas to rectify this, the Commission should publish binding guidelines to clarify how it will determine instances of tax-related state aid, thereby providing more legal certainty for companies and Member States alike;*

A reality of tax law and all tax systems is that binding guidance (as per Recommendation C7) will still be subject to judicial interpretation in the relevant courts. Such interpretation will be requested (in effect) by both prosecuting authorities and businesses seeking further clarity or to shift the interpretation of the code. The issuance of clear and comprehensive guidance is to be welcomed from two main perspectives: 1) it provides as much certainty as is possible to businesses, tax authorities and the courts, and 2) it will hopefully reduce the number of cases going through the relevant courts, which again provides more certainty to businesses and also to governments regarding their revenue streams.

### 2.3.9. Anti-Abuse Rule

*V(viii) whereas one of the unintended effects of the Council Directive 2003/49/EC<sup>40</sup> is that cross-border interest and royalties income may be untaxed (or taxed at a very low level); whereas a general anti-abuse rule should be introduced in that Directive as well as in the Council Directive 2005/19/EC<sup>41</sup> and other relevant Union legislation;*

Article 8 of Council Directive 2003/49/EC requires the Commission to report to the Council on the operation of this Directive, which the Commission last did in 2009. The Commission asked the International Bureau of Fiscal Documentation (IBFD) to carry out a survey of the implementation of the Directive, which covered 20 Member States (those MS that at the time were benefiting from transitional derogations were excluded). The report concluded that the survey indicated satisfactory overall implementation, but it also highlighted a number of cases of questionable transposition and interpretation, in particular with respect to the minimum holding period, tax residence of the beneficial owner, holding threshold, reclassification of hidden profits, the interrelation between the *Interest and Royalties Directive* and the *Parent – Subsidiary Directive* and the fraud and abuse clause.

The Interest and Royalty Directive addressed the problem of double taxation in the context of cross-border interest and royalty payments between associated companies, with at least 25 per cent beneficial ownership. The objective is to ensure that intra-EU intragroup (meaning for MNEs) cross-border interest and royalty payments are subject to as beneficial tax treatment as applies to similar payments in one Member State. This is to avoid an incentive to shape businesses in a way to avoid tax through using royalties payments as a means to reduce profits in one jurisdiction and effectively move the proceeds of business activity to another jurisdiction. The Directive provided for cross-border payments not leading to international double taxation and they must not be subject to more burdensome administrative formalities than payments in one Member State. A source state is precluded from charging withholding tax on royalty and interest payments provided that the beneficial owner of the interest or royalties is a company or permanent establishment situated in another Member State, as a means to disincentivise or punish those businesses who accrue royalties and interest outside of tax-planning. It should be noted that these arrangements have actually given rise to double non-taxation and has therefore given rise to a very different kind of challenge than was originally foreseen.

However, critics argue that the Interest and Royalties Directive and the Savings Directive have been constrained by difficulties in obtaining wide agreement to detailed terms and

<sup>40</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

<sup>41</sup> Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ L 58, 4.3.2005, p. 19).

are consequently affected by problems of practical application. Johannesen – informed by a tax competition theory – showed that under the EU Interest and Royalties Directive individual EU countries have incentives to levy low or no withholding taxes at all on payments to third countries,<sup>42</sup> allowing them to attract economic activity, with the consequence that other EU Member States cannot protect themselves against profit shifting to lower tax jurisdictions or tax havens. This would suggest that common rules regarding source taxes on payments to third countries would be needed to complement the Directive (see also Finke et al 2014). Johannesen notes that many countries have rules applying to controlled foreign companies (CFC) under which income earned by a finance subsidiary established in a tax haven could be subject to domestic corporate tax. But he stresses that such CFC-rules may be circumvented in a number of relatively simple ways: (i) “De-controlling”: the finance company issues preferred shares to a third party whereby the ownership share of the parent company is diluted making the finance company fall outside the scope of the CFC-rules whereas effective control is retained; (ii) “Swamping”: profits from the real activities of the firm are channelled through the finance company whereby the fraction of passive income in the finance company is reduced so it does not fall under the CFC-rules; (iii) “Migration”: the ultimate parent company of the firm is established in a tax haven and this parent directly owns the finance company in which case the CFC-rules of the countries where the firm operates do not apply.

Finke et al. (2014) show a very high value of royalties and license fee payments flowing from the Netherlands and Switzerland to other countries and suggest this could be due to the fact that these countries did not levy withholding taxes on royalties in any of the years in which they observed activity. They point out that the lack of withholding taxes on royalties makes it attractive to channel royalty payments from EU member states, to which the EU Interest and Royalties Directive applies, via those countries to third countries with lower effective tax rates and tax havens in particular. Anecdotal evidence suggests U.S.-based multinationals are channelling royalties free of withholding tax from Ireland via the Netherlands to Bermuda using a tax model called “Double Irish Dutch Sandwich” as per Fuest’s research. The issue of royalties as a means by which to lower tax responsibilities is clearly enduring and having an effective system whereby beneficial ownership is mapped would help alleviate this situation, as the draft proposal notes.

---

<sup>42</sup> Johannesen, N. (2012), Optimal Fiscal Barriers to International Economic Integration in the Presence of Tax Havens, *Journal of Public Economics*, pp. 400-416.

### 2.3.10. Double-Taxation Rule Clarity

V(ix) *whereas the current Union framework on double taxation dispute resolution between Member States does not work effectively and would benefit from clearer rules and more stringent timelines;*

Double taxation remains a bilateral issue for Member States. Currently there are more than 300 double taxation agreements between member states. In 2013 the European Commission proposed a framework approach to double taxation arbitration.<sup>43</sup> The proposal built on a 2011 consultation by the EC which found that: <sup>44</sup>

- only 6 per cent of corporate lawyers said they had never seen a double taxation dispute
- Participants from France and Germany outnumber those from all other MS
- In 47 cases a non-EU Member State was also registered in the dispute
- The existence of a double taxation convention does not stop disputes from arising
- Transfer pricing is the most frequent reason for disputes (98 out of 290 cases, 38 per cent)
- By average, more than 20 per cent of cases are above 1mil euros for corporate tax lawyers, and more than 35 per cent are above 100,000 euros for individuals.
- A total number of 388 cases were referred to in the consultation (self-selecting not exhaustive).

### 2.3.11. Summary

Convergence on the rules on permanent establishment, and clarity around the double non-taxation rules helps to mitigate the effects of two significant routes to aggressive tax planning that have been deployed by MNEs in the last ten years. The general abuse rule – as per Recommendation C8 – is also a necessary measure to produce an umbrella provision to mitigate away from aggressive tax planning. More generally, Union-wide convergence – where it adds value and can find traction – is the most appropriate European-level response to the challenge of aggressive tax planning.

<sup>43</sup> European Commission (October 2011) *Initiative to address double taxation within the EU, including an arbitration on mechanism for double taxation disputes*, European Commission: Brussels ([http://ec.europa.eu/smart-regulation/impact/planned\\_ia/docs/2013\\_taxud\\_001\\_arbitration\\_for\\_double\\_taxation\\_disputes\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2013_taxud_001_arbitration_for_double_taxation_disputes_en.pdf))

<sup>44</sup> DG Taxation and Customs Union (January 2011) *COMMISSION'S CONSULTATION ON DOUBLE TAXATION CONVENTIONS AND THE INTERNAL MARKET: FACTUAL EXAMPLES OF DOUBLE TAXATION CASES*, Brussels: ([http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/summary\\_report\\_consultation\\_double\\_tax\\_conventions\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/summary_report_consultation_double_tax_conventions_en.pdf))



## 2.4. Other Measures

### 2.4.1. Context

This final sub-section of measures wraps up extraneous measures that add value to the mitigation of the corporation tax gap. The responsibility for tax collection right remains with Member States, and consequently the only appropriate role for the EU in terms of collection is to coordinate knowledge and best practice across the Union. To this end, one of the recommendations to compile registers of beneficial ownership is a valuable and beneficial task to be undertaken, and can be cross-referred to the analysis under 3.2.5, for free-ports where the absence of transparency about beneficial ownership has helped to create a parallel fiscal system. Some Member States – and indeed non-EU states – have used tax amnesties as a way of improving the collection rate on taxes which have low compliance rates: the Research Team have conducted an analysis of these schemes and note that better designed tax codes and enforcement systems are a more appropriate response to improving compliance rates.

### 2.4.2. Efficiency of Tax Collection

*W. whereas the overall efficiency of tax collection, the notion of tax fairness and the credibility of national tax administrations are not undermined only by aggressive tax planning and BEPS activities; whereas the Union should take similarly decisive action to address the problems of tax evasion and tax fraud within both corporate and individual taxation as well as problems relating to the collection of taxes other than corporate taxes; whereas those other elements of tax collection and administration represent a substantial part of the existing tax gap;*

The Research Team felt that this proposal would benefit from some additional clarity. Whilst the EU does have a legitimate meta-level interest in ensuring that all the revenues owed to Member States are collected it is not currently in a position to assume a Member State-like role in enforcement practice, particularly as it relates to the micro-level picture.

If this section was construed as the EU assisting Member States in improving the “efficiency of tax collection, the notion of tax fairness and the credibility of national tax administrations” then there are some precedents which make this a sensible development. In addition to the CCCTB recommendations, and proposed reform of the Code Of Conduct for Business Taxation (also referred to in these draft recommendations) there are the European Commission’s March 2015 paper, titled the ‘Tax Transparency Package 2.0’, which as one of its measures aims to reduce the amount of Member State auditing coordination to achieve lower Member State tax gaps.<sup>45</sup> The package also seeks to re-establishing the link between taxation and where economic activity takes place; this

---

<sup>45</sup> See: European Commission (March 2015), *Transparency and the fight against tax avoidance*, European Commission: Brussels:  
[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/transparency/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/transparency/index_en.htm)



and other measures to ensure that Member States can correctly value corporate activity in their respective jurisdictions; to place an emphasis on economic growth through the corporate taxation system, to protect the single market, and to provide a strong European voice on corporate tax affairs. The Package also restates the support for the OECD BEPS Action Plan and pledges to seek its implementation. The Tax Transparency Package has a direct echo in the draft recommendations, appearing as Recommendation B5 (p.15), and thus has a direct synergy with the Commission's work in this policy space.

There is a measure of support within the European Parliament for an increased use of EU-wide codes of conduct to ensure that tax advisors are obliged to disclose any avoidance measures they take, which echo the measures employed in some Member States.<sup>46</sup> Similarly, the European Commission has proposed automatic information sharing procedures, with enhancements to allow for further details to be shared as part of its proposals coming forward in 2015.<sup>47</sup> One point to note here is that many of these measures are focused around the framing of tax-codes, and very little work seems to have been done to identify improvements that can be made in enforcement (and if necessary, prosecution), which the Research Team has assumed would involve the EU helping Member States to coordinate learning and sharing best practice, rather than a direct involvement in this area of tax. This type of coordination and information sharing role is likely to best discharged through the establishment of something akin to a College of Tax Authorities, following the precedent established by the banking regulators.

### 2.4.3. Wider Tax Issues and Forgiveness Schemes

X. *whereas the Commission should therefore also consider how it will address those wider issues, including difficulties in the collection of VAT (which in some Member States constitutes a major source of national income) and the negative consequences of some tax amnesties or non-transparent 'tax forgiveness' schemes; whereas any such new measures should involve consideration of the balance of costs and benefits.*

Our comments regarding Section X are divided into two sub-sections, the first dealing with the issue of VAT collection and the second dealing with tax forgiveness schemes.

#### VAT collection

<sup>46</sup> Richard Murphy (2012) *Closing the European Tax Gap A report for Group of the Progressive Alliance of Socialists & Democrats in the European Parliament*, [http://www.socialistsanddemocrats.eu/sites/default/files/120229\\_richard\\_murphy\\_eu\\_tax\\_gap\\_en.pdf](http://www.socialistsanddemocrats.eu/sites/default/files/120229_richard_murphy_eu_tax_gap_en.pdf)

<sup>47</sup> European Commission (2015) *Proposal for a Council Directive: amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation*, European Commission: Brussels: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transparency/com\\_2015\\_135\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transparency/com_2015_135_en.pdf)

There are many advocates of VAT as being a particularly effective way for governments to raise tax revenue. Advocates make the claim that VAT has some distinctive features that may make it less vulnerable to evasion than other forms of taxation. Even before the financial crisis of 2008 there was a marked increase in concern about the losses of VAT revenue through evasion and fraud, with marked concern about the European Union. The estimates of the extent of these losses are not especially current and it would be updated estimates would be useful for all concerned.

The European Commission reported in 2004 that losses from fraud—most famously, “carousel fraud”—amounted to 10 percent of net VAT receipts in some member states (see more recent figures below). The noted that carousel fraud, in essence, exploits the zero-rating of exports combined with the “deferred payment” mechanism for collecting VAT on imported goods. Under the latter, adopted in the EU with the removal of fiscal frontier formalities in 1992, VAT on imports from another member state is collected not at the border but at the time of the next periodic return, opening the possibility of a double-negative. Research by Keen and Smith in 2007 provides a strong overview of the vulnerability of VAT in Europe to revenue losses through noncompliance, with a particular focus on fraud and evasion.<sup>48</sup> Gebauer and Parsche, writing in 2003<sup>49</sup> estimated VAT evasion rates for 10 EU countries (see below), and we include these for background and for being indicative of a trend:

Table 3. Estimates of the VAT Gap for Ten EU Countries  
(Three-year averages)

	VAT Gap (Evasion) as Percentage of Hypothetical Revenue	Estimate Based on Years
Netherlands	2.4	1994–96
Great Britain	3.8	1991–93
Denmark	4.2	1994–96
Germany	4.8	1994–96
France	8.8	1991–93
Portugal	14.2	1994–96
Belgium	19.3	1994–96
Greece	20.2	1994–96
Spain	22.6	1994–96
Italy	34.5	1991–93

Source: Calculated from data in Gebauer and Parsche (2003), Table 1.

<sup>48</sup> Keen, M. and Smith, S. (2007), ‘VAT Fraud and Evasion: What do we know and what can be done?’, *IMF Working Paper*, WP/07/31, February 2007

<sup>49</sup> Gebauer, A and Parsche, R (2003), ‘Evasion of value-added taxes in Europe: IFO approach to estimating the evasion of value-added taxes on the basis of national accounts data (NAD), CES-IFO: Munich.

TAXUD issued their report in 2014<sup>50</sup> that attempted to quantify and analyse the VAT gap in 27 EU member states that were current to 2011 (table below).

**Table 3.1.1 – Estimates of the VAT Gap, 2011 and avg. 2000-2011 (EUR million)**

Member State	VAT receipts	VTTL	VAT Gap	VAT Gap as a share of VTTL (%)		VAT Gap as a share of GDP (%)	
	2011	2011	2011	2011	2000-2011	2011	2000-2011
Austria	23 447	26 915	3 468	13	11	1.2	1.0
Belgium	26 021	30 991	4 970	16	13	1.3	1.1
Bulgaria	3 352	3 956	604	15	16	1.6	1.8
Czech Republic	10 994	15 235	4 241	28	23	2.7	2.1
Denmark	23 869	26 436	2 566	10	10	1.1	1.1
Estonia	1 363	1 664	301	18	15	1.9	1.6
Finland	16 915	19 746	2 831	14	13	1.5	1.3
France	140 506	172 739	32 233	19	16	1.6	1.3
Germany	189 920	216 830	26 910	12	13	1.0	1.0
Greece	15 027	24 790	9 763	39	30	4.7	3.0
Hungary	8 516	12 216	3 700	30	26	3.7	3.0
Ireland	9 782	10 890	1 108	10	8	0.7	0.6
Italy	98 557	134 691	36 134	27	26	2.3	2.1
Latvia	1 368	2 322	954	41	24	4.7	2.3
Lithuania	2 444	3 795	1 352	36	35	4.4	3.9
Luxembourg	2 690	3 242	551	17	12	1.3	0.8
Malta	520	541	21	4	13	0.3	1.0
Netherlands	41 610	45 622	4 012	9	5	0.7	0.4
Poland	29 843	35 253	5 410	15	13	1.5	1.1
Portugal	14 235	16 999	2 764	16	9	1.6	0.8
Romania	11 412	21 760	10 348	48	42	7.9	5.4
Slovakia	4 711	7 484	2 773	37	29	4.0	2.9
Slovenia	3 049	3 375	326	10	7	0.9	0.6
Spain	56 547	71 744	15 197	21	12	1.4	0.8
Sweden	36 610	37 542	932	2	4	0.2	0.4
United Kingdom	130 577	150 064	19 487	13	12	1.1	1.0
EU-26, total <sup>a</sup>	903 884	1 096 841	192 957	18	15	1.5	1.2
EU-26, average	..	..	..	20	17	2.1	1.6

Source: EUROSTAT; Own Calculations. a/: EU-26 treated as one unit.

The analysis of VAT Gaps for the period 2000-2011 in the report shows that:

- (i) prior to 2008 a moderate declining trend was present in the data, and that in many cases this was quite evident in post-accession countries;
- (ii) there continue however to be great disparities in the performance of countries, and most “worse performers” have been unable to improve their situation substantially over time. The reasons for this should be of interest more widely in considering other forms of taxation policy;
- (iii) the post-2008 crisis economic difficulties have strained VAT systems across the Union, but particularly in those Member States which were particularly adversely affected by the financial crisis. Some of these Member States saw their VAT tax-gaps increasing, even as they raised the marginal rate of tax.

<sup>50</sup> European Commission (2013), Study to quantify and analyse the VAT Gap in the EU-27 Member States, Warsaw.

The TAXUD report estimates that across the Union the total VAT Gap amounted to approximately 193 billion euro in 2011, or about 1.5 percent of the EU's GDP in that fiscal year, which is an increase from the 1.1 percent of EU GDP estimated for 2006, indicating a worsening trend. Italy, France, Germany and the United Kingdom contributed over half of the total VAT Gap in absolute terms, although in terms of their own GDP the countries with the largest gaps were judged to be Romania, Latvia, Greece and Lithuania. Econometric estimates of the determinants of the VAT Gap show that VAT compliance appears to fall when tax rates are increased, at least in countries with weaker tax enforcement. In addition, VAT compliance appears to fall during recessions. These results are consistent with predictions from the theory of tax avoidance, and consistent with some previous estimates and across a variety of taxes collected.

### **Tax amnesties and Tax forgiveness**

Tax amnesties are often used by governments as a means by which to secure a small amount of notional revenue from a tax that has proved to be difficult or impossible to collect. The revenue produced has often cost more to secure than it has raised (and the costs are rarely made public), but does log a rise in the revenues secured from a particular class of taxpayer. The OECD's 2001 World Economic Outlook noted that some governments had used amnesties as means to remove a backlog of appeals, but that the revenue raised from these were less than 0.5 per cent of total revenues, with voluntary compliance rarely increasing, presumably due to the expectation that there would be future amnesties and so the rational calculation would be to wait for the next amnesty (if it arrived) than to enter the tax system properly. In their research Jensen and Wöhlbier in their paper produced for the European Commission in 2012 support this general view, and argue that it is also a means by which governments formally forgo the difficult-to-collect tax revenue.<sup>51</sup> They go on to state that tax amnesties are only effective if:

- (i) the amnesty is a one-off and does not create expectations of repeated amnesties in the future and
- (ii) that there is an existence of a real and credible threat of detection and punishment.

If these two conditions are not in place (and particularly the second) there is unlikely to be any utility from the amnesty. Jensen and Wohlbiel also note that there are some considerable costs (some ethical) from initiating a tax amnesty programme:

- (i) tax amnesties lead to a form of vertical inequality as dishonest taxpayers are perceived to receive preferential treatment to honest taxpayers,
- (ii) the reduction in the perception of fairness in the system may adversely affect the compliance rates of otherwise honest taxpayers and

---

<sup>51</sup> Jensen, J & Wohlbiel, F (2012), *Improving tax governance in EU Member States: Criteria for successful policies: Occasional Paper 114*, European Commission: Brussels.

- (iii) the initiation of a single incidence of a tax amnesty programme and especially repetitions are likely to create expectations of future programmes. This leads to the moral hazard that for some taxpayers it might seem rational to evade taxes on the off-chance that an amnesty is established at some point in the future, but even more profitably that it is not. This view is reinforced by Luitel and Sobel who looked at twenty-seven nations who had offered repeated amnesties, to discover that the repeated amnesties produce diminished yields and that non-compliance could be seen to increase, magnifying the tax-gap.<sup>52</sup>

Most importantly, Jensen and Wöhlbier stress that from the evidence they were able to collect, and from the review of the literature available at the time, that tax amnesties generate little additional tax revenues and also seem to have relatively little positive effect on post-amnesty compliance. It is also their view that the stated positive effects of past tax amnesties are likely to have been overestimated. The optimum use of tax amnesties is – therefore – to signal the end of a failed element of a tax code, with a marginal gain of a small element of the lost revenues.

#### **2.4.4. Recommendation D1. Additional measures to address the tax gap**

*The European Parliament calls on the European Commission to also focus on other factors beyond aggressive tax planning and BEPS activity which contribute to the existing tax gap, including:*

*Investigating sources of low efficiency regarding tax collection, including VAT collection;*

*Investigating sources of tax unfairness or weak credibility of tax administrations in the areas other than corporate taxation;*

*Setting principles for tax amnesties, in order to eliminate the negative consequences of these policies on future tax collection;*

*Proposing a minimum level of transparency for 'tax forgiveness' schemes run by national governments;*

*Ensuring that tax authorities have full and meaningful access to central registers of beneficial ownership for both companies and trusts, and that those registers are properly maintained and verified.*

---

<sup>52</sup> Luitel, H & Sobel, R (2007), The Revenue Impact of Repeated Tax Amnesties, *Public Budgeting and Finance*, 27/3, pp.19-38.

- *Investigating sources of low efficiency regarding tax collection, including VAT collection:*

We note in Section X, above, that there is evidence available for the estimated cost of VAT collection issues. From the evidence of the quantum of this problem and the emerging evidence of how avoidance occurs in this area recommendations should be possible in the medium term to mitigate these challenges.

- *Investigating sources of tax unfairness or weak credibility of tax administrations in the areas other than corporate taxation:*

This is a positive development that ties into the OECD advice that we referenced in our response to T(i), that strongly recommends a holistic approach to taxation and transparency. The issue of VAT collection (as mentioned above) serves an illustration that corporation tax is merely one issue amongst many in this area.

- *Setting principles for tax amnesties, in order to eliminate the negative consequences of these policies on future tax collection;*

The Research Team see this as a core element of the harmonization work that is required as part of the more convergent response to corporation tax and the corporation tax gap. Such measures also lessen the tax competition between Member States that some academic researchers believe contributes to the reduction in the effective tax rate and therefore in the potential revenues available to governments to invest. Many of these problems are generated by the unilateral actions of governments in codifying overly complex tax codes that places an undue additional burden upon themselves, and also on businesses operating in their jurisdiction.

- *Proposing a minimum level of transparency for 'tax forgiveness' schemes run by national governments:*

This relates to the discussion around transparency that can be found under T(i). It can also be related to the points made above relating to forgiveness schemes. Harmonization of this area should have the effect of reducing tax competition between Member States in this area.

- *Ensuring that tax authorities have full and meaningful access to central registers of beneficial ownership for both companies and trusts, and that those registers are properly maintained and verified.*

Again, we would like to note the discussion under T(i). This measures makes a core contribution to the transparency agenda and also highlights the central importance of having contemporaneous, accurate and detailed tax data for enforcement authorities. At

the end of 2014, negotiators for EU Member States and the EP reached preliminary agreement on the fourth EU Anti-Money Laundering directive. If formally adopted, the directive will oblige the EU's Member States to maintain central registers listing information on the ultimate beneficial owners of corporate and other legal entities, as well as for trusts. The incorporation of this directive will help to make the opaque system of offshore accounts more transparent, which in turn will improve the authorities' ability to combat money laundering, evasion and other types of tax abuse. The proposed Directive does not make the registers of beneficial ownership publicly accessible, which some campaigners have argued would undermine confidence in the regulatory system, but there is a generally accepted principle of tax law across the EU that individuals are entitled to a measure of privacy around their tax affairs, save for that which they are legally obliged to disclose to the relevant tax authorities.

#### **2.4.5. Summary**

The additional measures in the draft proposal aim to add value added to the extraneous gaps that remain even in the light of the prospective enactment of the CCCTB. Some of the gaps implicitly identified by the additional measures are capable of being captured by general abuse rules. However it is notable that this public policy area is typified by a general rule that the greater the precision of rules the better, in terms of finding and encouraging compliance. Some of the measures in this section could equally apply under the sections covering convergence, cooperation and transparency, and the most notable of these is the proposed maintenance of registers of beneficial ownership. The Research Team have refracted this proposal through the issues created by so-called free-ports, where the opaqueness of beneficial ownership has created a parallel fiscal system of growing magnitude. The other proposed items, for example to harmonize tax forgiveness schemes, are soft measures to reduce the potential for competitive behaviours between Member States that have contributed to the creation of a corporation tax gap.

## Conclusions

This Study has critically examined the draft recommendations on bringing transparency, coordination and convergence to Corporate Tax policies in the Union. It has found that the introduction of cost effective regulations will assist in breaching the corporation tax gap that currently exists across the Union.

In this second part of our study we have noted that there is a requirement to shift corporate culture around tax planning. European businesses have viewed their tax planning as legitimate because they use legal arrangements to reduce their tax liabilities. Tax planning has – however – become increasingly elaborate in recent years, and particularly since the financial crisis of 2008, and now stands across jurisdictions, shifting taxable profits towards states with beneficial tax regimes. Such planning is known by the prefix ‘aggressive’ and takes a multitude of forms including exploiting the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing or avoiding tax liabilities. The consequences of this approach to tax planning has been to see some businesses able to deduct their expenses in two jurisdictions (resulting in a gain) and tax avoided in two jurisdictions (so-called ‘double non-taxation’). These practices have been seen as being at the very margins of legality by tax authorities and politicians (but who have on occasion assisted these structures by issuing favourable rulings) and as being completely unacceptable and unethical by the majority of European electorates.

The key issues that have emerged from the draft recommendations are: transparency, coordination, commonality, and the need for effective general anti-abuse mechanisms. Whilst Member States are legally obliged to ensure, for example, that they issue tax rulings in compliance with existing EU and their own national laws, the marked absence of transparency around these rulings (based on the argument of business confidentiality) has strong impacts on other EU Member States who have financial ties with those in receipt of beneficial rulings. Opening up these areas to transparency measures, and placing the obligation on Member States to pro-actively push information on tax code changes and rulings, places the emphasis on transparency and similarly provides a platform from which public scrutiny about the corporation tax system can occur: something which is vital for the continued confidence and robustness of these systems.

Globalisation and the increasing mobility of businesses and individual taxpayers has placed additional burdens on national tax-authorities to keep track of its tax-paying base and in making accurate assessments. This is an inevitability of the economic changes being experienced across the Union. Currently these changes are resulting in exciting economic opportunities but also in tax avoidance and evasion. Member States can only effectively capture the advantages and avoid these disadvantages if they adopt common methodologies and coordinate their activities effectively, as are contained in these draft recommendations. The re-establishment of the link between taxation and where economic activity takes place, which ensures that Member States can correctly value corporate activity in their respective jurisdictions has been partly spurred by the arrival



of mass-market digital trading, but is increasingly applicable to the analogue economy also.

The formalisation of the CCCTB is the single most effective measure that the EU will be able to take in respect of closing the corporation tax gap. Similarly, the commitment to adopting the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS) is a strong answer to the problem of aggressive tax planning. We have noted where there are concerns about the erosion of national sovereignty and incompatibility of unilateral national measures with a Union-wide perspective, but currently the EU is faced with a plurality of tax-codes that allow for aggressive tax planning precisely because the codes can be exploited through aggressive contrast. Moreover, the current and prevailing system has allowed for tax competition between member states that has not resulted in higher-compliance rates, nor in a closing of the tax-gap, merely a shifting of inefficiencies around the Union. Reaching a common understanding on framing, assessment and enforcement methodologies will make a serious contribution to bridging a corporation tax gap that we conservatively estimate to be 50-70 billion euro per annum.

The draft recommendations focused in on unfair tax competition and the general abuse that is made possible by the absence of coordination, convergence and transparency in this area, across the Union. The recommendations sought to stick tightly to the measures that could be delivered through legislative practice, rather than in those informal areas that might be brokered across Member States. Furthermore, it sought to do so from an empirically rigorous platform in terms of establishing the baseline scale of the problem and the mitigating regulatory responses that might be put in place. In these particular objectives the draft recommendations met their ambitions, whilst offering supportive measures to supplement and enhance any informal arrangements Member States might strike. The draft recommendations sought to consider only cost-effective regulatory measures that would help to close the corporation tax gap within Member States and across the Union and are capable of improving the corporation tax take across the Union by between 13.4 and 33.5 billion euro per annum. The most far-reaching of these recommendations and the one with the greatest potential for added value impact is the CCCTB. The draft recommendations have systemically aimed at resolving the key issues with corporation tax policy across Member States – convergence, cooperation and transparency (or the lack thereof) has allowed for aggressive tax planning and thus a lower compliance rate with individual Member States' tax codes than would otherwise be the case with a more convergent set of responses. This is necessary because the result of the current competitive practices between Member States is the higher cost for businesses in terms of compliance, a higher cost of tax administration, and the ever emerging possibilities for tax avoidance through aggressive planning.

## References

- Alstadsæter, A., Barrios, S., Nicodeme, G., Skonieczna, A. M., Vezzani, A. (2015), *Patent Boxes Design, Patents Location and Local R&D*, European Commission: Brussels, June 2015
- Baker McKenzie (2014), 'Green light for new approach to patent boxes', London, located at [http://www.bakermckenzie.com/files/Publication/04d9b738-aa4c-4eb9-a2dc-6ba68e636351/Presentation/PublicationAttachment/73e539f9-c2ff-44bc-962a-6e70e1c7e014/al\\_london\\_patentboxes\\_mar15.pdf](http://www.bakermckenzie.com/files/Publication/04d9b738-aa4c-4eb9-a2dc-6ba68e636351/Presentation/PublicationAttachment/73e539f9-c2ff-44bc-962a-6e70e1c7e014/al_london_patentboxes_mar15.pdf)
- Bowers, S. (2015), 'UK to reject EU plans to combat multinational tax avoidance', *The Guardian*, London, 18 June 2015
- Buthe, T. and Mattli, W. (2011), *The New Global Rulers: The Privatization of Regulation in the World Economy*, Princeton University Press.
- Centre for Social and Economic Research (2013), *Study to quantify and analyse the VAT Gap in the EU-27 Member States Final Report*, Commissioned by the European Commission DG TAXUD, Wasaw, July 2013
- De Wilde, M. (2014), 'Tax Competition within the European Union – Is the CCCTB Directive a Solution?', *Erasmus Law Review*, Issue 1.
- Egger, P. and Wamser, G. (2011), 'The Impact of Controlled Foreign Company Legislation on Real Investments Abroad: A Two-dimensional Regression Discontinuity Design', CEPR Discussion Paper 8460, June 2011
- Englisch, J. (2013), 'EU State Aid Rules Applied to Indirect Tax Measures', *EC Tax Review*, vol. 22(1).
- Ernst & Young (2015), 'European-Parliament calls for expansion of country-by-country reporting to large groups, self-publication of data by multinational companies and suggests an additional range of new tax measures', *Global Tax Alert*, 15 July 2015.
- Ernst and Young (2011), 'Tax Policy and Controversy Briefing: European Commission and CCCTB', February 2011
- Ernst and Young (2014), 'Update on UK Patent Box and other preferential intellectual property regimes', London, located at [http://www.ey.com/Publication/vwLUAssets/EY-update-on-UK-patent-box-and-other-preferential-intellectual-property-regimes/\\$FILE/EY-patent-box.pdf](http://www.ey.com/Publication/vwLUAssets/EY-update-on-UK-patent-box-and-other-preferential-intellectual-property-regimes/$FILE/EY-patent-box.pdf)
- European Commission (2011), *Roadmap for an Initiative to address double taxation within the EU, including an arbitration on mechanism for double taxation disputes*, DG TAXUD, October 2011
- European Commission (2011), *Summary Report of the responses received on the Commission's consultation on double taxation conventions and the internal market: factual examples of double taxation cases*, DG TAXUD, January 2011
- European Commission (2011), *Commission's Consultation On Double Taxation Conventions And The Internal Market: Factual Examples Of Double Taxation Cases*, DG Taxation and Customs Union, January 2011.
- European Commission (2011), *Impact Assessment on a proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, Commission Staff Working Document, 16 March 2011

European Commission (2013), *Study to quantify and analyse the VAT Gap in the EU-27 Member States*, TAXUD: Warsaw.

European Commission (2014), *Commission Staff Working Document on the implementation of the definitive VAT regime for intra-EU trade*, Brussels, 29 October 2014

European Commission (2015) Press Release, 'Combatting corporate tax avoidance: Commission presents Tax Transparency Package', 18 March 2015

European Commission (2015) Press Release, 'Fighting customs fraud: JRC research leads to new legislation', 8 September 2015, located at <https://ec.europa.eu/jrc/en/news/fighting-customs-fraud-new-legislation>

European Commission (2015), 'Public consultation on further corporate tax transparency'.

European Commission (2015), *Inception Impact Assessment: DSM Modernising VAT for cross-border e-commerce*, DG TAXUD, 8 July 2015

European Commission (2015), *Tax reforms in EU Member States 2015 – Tax policy challenges for economic growth and fiscal sustainability*, Brussels.

European Council (2003), *Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States* (OJ L 157, 26.6.2003, p. 49).

European Council (2005), *Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States* (OJ L 58, 4.3.2005, p. 19).

European Parliament (2015), *Amendments adopted by the European Parliament on 8 July 2015 on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement* (COM(2014)0213 – C7-0147/2014 – 2014/0121(COD)), P8\_TA(2015)0257, 8 July 2015.

European Parliament (2015), *Draft Report with recommendations to the Commission on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union* (2015/2010(INL)).

European Parliament (2015), *Report on the Annual Tax Report*, Committee on Economic and Monetary Affairs, Eva Kaili MEP, 4 March 2015.

Financial Action Task Force (2010), 'Money Laundering vulnerabilities of Free Trade Zones', Paris, March 2010, located at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>

Fuest C., Spengel C., Finke K., Heckemeyer J., Nusser H. (2013), 'Profit Shifting and 'Aggressive' Tax Planning by Multinational Firms: Issues and Options for Reform', Discussion Paper No. 13-044, *Centre for European Economic Research*, July 2013

Gebauer, A and Parsche, R (2003), 'Evasion of value-added taxes in Europe: IFO approach to estimating the evasion of value-added taxes on the basis of national accounts data (NAD)', CES-IFO: Munich.

- Haseltine-Lake (2015), 'Patent Box: Round Two Making the most of the regime before and after planned restrictions, London, February 2015, located at [http://www.haseltinelake.com/media/358212/patent\\_box\\_briefing\\_note\\_-\\_round\\_two\\_-\\_changes\\_to\\_the\\_scheme\\_-\\_february\\_2015.pdf](http://www.haseltinelake.com/media/358212/patent_box_briefing_note_-_round_two_-_changes_to_the_scheme_-_february_2015.pdf)
- Haufler, A. and Mardan M. (2013), 'Cross-border loss offset can fuel tax competition', OUCBT, Working Paper 13/10, October 2013
- Haufler, A., Mardan, M., Schindler (2014), 'An Economic Rationale for Controlled-Foreign-Corporation Rules', CESifo Area Conference on Public Sector Economics, 24-26 April 2014
- Henderson, D. (2001), *Misguided Virtue: False Notions of Corporate Social Responsibility*, London: The Institute of Economic Affairs.
- HM Government (2014), GERMANY-UK JOINT STATEMENT: Proposals for New Rules for Preferential IP Regimes, 11 November 2014, located at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373135/GERMANY\\_UK\\_STATEMENT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/373135/GERMANY_UK_STATEMENT.pdf)
- HM Revenue and Customs (2015): Press Release, 'Government ramps up efforts to tackle digital multinational tax risks', 25 March 2015, located at: <https://www.gov.uk/government/news/government-ramps-up-efforts-to-tackle-digital-multinational-tax-risks>
- Holme, R. and Watts, P. (2000), *Corporate Social Responsibility: making good business sense*, World Business Council for Sustainable Development, January 2000.
- Jensen, J & Wohlbier, F (2012), *Improving tax governance in EU Member States: Criteria for successful policies*: Occasional Paper 114, European Commission: Brussels.
- Johannessen, N. (2012), Optimal Fiscal Barriers to International Economic Integration in the Presence of Tax Havens, *Journal of Public Economics*, pp. 400-416.
- Keen, M. and Smith, S. (2007), 'VAT Fraud and Evasion: What do we know and what can be done?', IMF Working Paper, WP/07/31, February 2007
- KPMG (2011), 'The KPMG guide to CCCTB', KPMG International Cooperative
- KPMG (2013), 'Germany Country Profile', EU Tax Centre, March 2013, located at: <https://www.kpmg.com/Global/en/services/Tax/regional-tax-centers/european-union-tax-centre/Documents/eu-country-profiles/2013-germany.pdf>
- Lampert, S., Bittermann, J.N., Harms, B. (2013), 'The CFC Regime in Germany', European Tax Studies, 2013.
- Luitel, H & Sobel, R (2007), The Revenue Impact of Repeated Tax Amnesties, *Public Budgeting and Finance*, vol. 27(3), pp.19-38.
- Matchett, A. (2015), 'Luxembourg's new freeport unlikely to dispel tax haven', Spears Wealth Management, 5 January 2015.
- Murphy, R. (2012), 'Closing the European Tax Gap', Report for the Group of the Progressive Alliance of Socialists & Democrats in the European Parliament, 29 February 2012.
- O'Shea, T. (2010), 'Double Tax Conventions and the European Union', *The EC Tax Journal*, vol.10(3).

OECD (2013), Action Plan on Base Erosion and Profit Shifting, located at: <http://www.oecd.org/ctp/BEPSActionPlan.pdf>)

Pereira T. (2014), International Aspects of the CCCTB in Europe, Doctoral Dissertation, Maastricht University, defended 10 December 2014, located at <http://digitalarchive.maastrichtuniversity.nl/fedora/get/guid:a64ea355-e7ad-4393-acb9-6010980cd6eb/ASSET1>

PWC (2015), 'European Commission presents Tax Transparency Package 2.0 outlining EU business tax reforms', *International Tax Services*, 18 June 2015

Ruf, M. and Weichenrieder A. (2009), 'The Taxation of Passive Foreign Investment: Lessons from German Experience', CESifo Working Paper Series 2624, 2009

Sinn, H.-W., Gebauer, A., Parsche, R (2004), 'The Ifo Institute's Model for Reducing VAT Fraud: Payment First, Refund Late', CESifo Forum, vol.5(2), pp.30 - 34.

Sol Schwarz and Partners (2015), 'EC Proposes Plan for Corporate Tax Reform', Texas, 7 July 2015, located at <http://www.ssacpa.com/ec-proposes-plan-for-corporate-tax-reform/>

Tax Notes International (2015), 'The Patent Box: A Bad Idea Crosses the Atlantic', 20 July 2015, located at <http://www.taxnotes.com/tax-notes-today/intangible-assets/news-analysis-patent-box-bad-idea-crosses-atlantic/2015/07/20/14938061>

The Economist (2013), 'Uber-warehouses for the ultra-rich', 23 November 2013.

Violeta Ruiz Almendral (2010), 'An ever distant union: the cross-border loss relief conundrum in EU law', *INTERTAX*, vol.38(10).





---

This Study evaluates the European Added value of the recommendation in the draft report of the European Parliament on bringing transparency, coordination and convergence to corporation tax policies in the Union. This study finds that the single most effective contribution to mitigating aggressive tax planning strategies and therefore lost revenues to Member States, which are estimated to be in the region of 50-70 billion euro per annum to 160-190 billion euro per annum on an assumption of no base from sources other than profit shifting, would be enacting a common consolidated corporate tax base (CCCTB), across the entire Union. Moreover, this is a conservative estimate. The cost-effective regulations proposed the Rapporteur's draft proposals can be expected to add 0.6 per cent - 1.1 per cent to Member States potential public investment spending power, according to research assessments. Based on OECD methodology, the enactment of these proposals are capable of improving corporation tax receipts by between 13.4 billion euro and 33.5 billion euro per annum.

The Study finds that transparency and uneven implementation is one of the most serious challenges faced by the EU in the field of business taxes. This applies to methodologies, what information is made available by Member States, enforcement practices adopted by Member States and the recent innovation of 'free-ports' which has created a parallel trading system.

---

This is a publication of the European Added Value Unit  
EPRS | European Parliamentary Research Service  
European Parliament

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work



PE: 558.776  
ISBN 978-92-823-8349-0  
doi:10.2861/847568  
QA-02-15-881-EN-N