MYKOLO ROMERIO UNIVERSITETAS

TEISĖS FAKULTETAS

VERSLO TEISĖS KATEDRA

VAIDA STRAVINSKAITĖ

COMMON CONSOLIDATED CORPORATE TAX BASE: STEP TOWARDS COMPANY TAX HARMONIZATION IN EUROPEAN UNION

Magistro baigiamasis darbas

Vadovas:

Doc. Dr. H. Gabartas

Vilnius, 2013

CONTENTS

INTRODUCTION

The growing economic integration and continuing tax competition in the European Union claims for a common taxation system of EU companies. Whilst the degree of European economic integration achieved, the company taxation is not harmonized. There is a reason justifying this: EU multinationals are required to comply with 27 different corporate tax systems, meaning with 27 different sets of individual rules to determine the tax base. Unfortunately, interaction of these systems often leads towards heavy administrative burdens, over taxation, double taxation and high tax compliance costs.

The relevance of this thesis is caused by the fact that the foundation of new system - Common Consolidated Corporate Tax Base (CCCTB) was suggested by the Commission as a measure to harmonize corporate taxation and eliminate current obstacles arising of different taxation systems throughout the European Union (EU). The European Commission launched proposal to create a common system for calculating the tax base of businesses operating in the EU. The goal of this proposal is to considerably reduce the administrative burden, compliance costs and legal vagueness that businesses in the EU presently face in having to comply with 27 different national systems for determining their taxable profits. The presented CCCTB would mean that companies would benefit from a "one-stop-shop" system for filing their tax returns and would be able to consolidate all the profits and losses they experience across the EU. Also Member States would retain their full independent right to set their own corporate tax rate.

However several Member States such as Ireland, United Kingdom, Czech Republic, Slovakia and others showed their opposition to such a proposal. The proposal is based on Article 115 of Treaty on the Functioning of European Union and it is, consequently, subject to the consultation procedure and unanimity is required amongst Member States. Department of finance of Ireland notices that Ireland is not against objectives pursued by CCCTB, such as one-stop-shop, facilitating cross border loss relief, eliminating double taxation and removing intra-group transfer, but it has doubts whether CCCTB could achieve these goals.[1] Under the draft directive Member States would have to manage two tax schemes: CCCTB and their national corporate income tax, which entails further costs[2]. Compliance costs for governments will increase as European Union countries will have to run these

---

[1] CCCTB – what it really means, 2011 March, p. 2 http://download.pwc.com/ie/pubs/ccctb_what_it_really_means.pdf [2012/06/20]

[2] European Commission official website // Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), 2011, p. 6. http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2012/06/20]

two tax systems at the same time. IBEC, the group representing Irish business, said that proposals published by the European Commission for a CCCTB are implausible to make the EU more attractive as an investment location. Commenting on the Commission's proposals IBEC Director General Danny McCoy said: “There is a real danger that CCCTB will make the EU less attractive as an investment location. The proposal's impact assessment, published by the Commission, has not proven the case that tax compliance costs would be reduced for business. The allocation mechanism will mean that many businesses could actually end up paying higher corporate taxes.”[3] Other countries expressed concern about proposed rule that the EU top holding is leading. If this country is not capable of performing in-depth tax audits, it will have an effect on the entire European taxable income.

It is seen that it will be difficult to reach unanimity. Despite the doubts expressed by Member States the EU Commissioner for Taxation, Algirdas Šemeta, has announced, if a unanimous agreement cannot be reached at the Council, he will present the proposal under “enhanced cooperation.”[4] “Enhanced cooperation” effectively enables, as a measure of last resort where unanimity cannot be achieved, a smaller group of at least nine Member States to implement a particular policy. It indicates that if CCCTB proceeds on this basis, Ireland and other Member States which are against CCCTB, can stay outside of it. In such a case albeit slightly reduced the problem of disparity between Member States taxation systems remains.

The object of investigation is the foundation of Common Consolidated Corporate Tax base as one of the measures to harmonize company taxation and remove obstacles arising from diversification of Member States company taxation rules throughout the European Union.

Problem of investigation. Commission suggested a Common Consolidated Corporate Tax base as a measure to fight with tax obstacles, administrative burden, double taxation and extremely high compliance costs, which arise because of lack of harmonization of tax laws in 27 Member States. However many countries doubts about this mean appropriateness to eliminate mentioned problems and assert that it will cause other impediments.

Hypothesis. Common Consolidated Corporate Tax Base is appropriate way to take a step towards company tax harmonization and removing of obstacles related to lack of harmonization in European Union.

---

[3] Irish Business and Employers Confederation official website, http://www.ibec.ie/IBEC/Press/PressPublicationsDocLib3.nsf/vPages/06876ACB310D636580257855003E9648?OpenDocument [2012/06/20]

[4] Sovereignty Bill // Vasconcelos M. EC takes one more step towards tax harmonization, 2011 March 18 http://www.europeanfoundation.org/my_weblog/2011/03/one-step-towards-tax-harmonisation.html [2012/06/20]

The goal and tasks. The goal of this thesis is to investigate the establishment of the Common Consolidated Corporate Tax Base theoretical and practical aspects, also assess existing and so increasing problems.

Tasks to achieve this goal:

1. To analyze a demand to harmonize company tax system of European Union between Members States and such base compatibility with European Union goals;
2. To work out whether the proposed harmonization of the corporate tax base would be able to achieve the aims and solve the problems arising from the lack of harmonization;
3. To assess the impact to harmonization of the corporate tax base;
4. To work out if there are alternative measures to achieve the same goals as Common Consolidated Corporate Tax Base is trying to reach and give recommendations as to how these goals can be achieved by alternative tools.
5. To compare European Union steps toward tax harmonization with progress in other countries: Canada and USA and evaluate impact for Lithuania.

Methods used in this thesis: a) text analysis, b) logical c) comparative. These methods were used to achieve goals of master thesis. Using these methods we analyzed many sources, scientists and practitioners articles and literature, compared systems in EU, US and Canada and made our insights, conclusions and recommendations related to the topic of master thesis.

Structure of this master thesis is composed of introduction, three main parts with their chapters, subchapters and conclusions. In the final part there are two summaries in Lithuanian and English languages and list of references.

Sources of research: in order to reach the main goals of master thesis we analyzed sources of company taxation specialist, such as George Kopits, Daniela Pirvu, Benjamin Mahr, Gijs Fibbe, Michael Lang, Mogens Rasmussen, Zsofia Danko, Clemens Fuest, Rosa Perna, Luca Cerioni and etc. Moreover, the Commission Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, Summary Report of the Commission's Consultation on Double Taxation Conventions and the Internal Market: Factual Examples of Double Taxation Cases, Working document of Common Consolidated Corporate Tax Base Working Group: The mechanism for sharing the CCCTB were analyzed. The CCCTB system, despite some articles in the media has not been analyzed in Lithuania. This thesis is a first more detailed research of CCCTB in Lithuania.

1. Tax harmonization in the European Union

Tax harmonization is regularly understood as a process of adjusting tax systems of different jurisdictions in the pursuit of common policy objective.[5] Tax harmonization contributes to elimination of tax distortion which affects commodity and movement of goods, persons, services and capital – commonly known as the "four freedoms" in order to bring about a more efficient allocation of resources within an integrated European Union market. To achieve the Internal Market, the Union "shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties".[6] However the consideration that tax harmonization is an essential measure in unifying the European market has been challenged by those who advocate the preservation of the fiscal sovereignty of Member States.[7]

Tax harmonization is supposed to be one of the most challenging field of integration process in EU. Tax harmonization has been the matter of arguments since the very founding of the European Economic Community, which legal basis is laid down in the Treaty of Rome of 1957. The Treaty itself contained only one clause, which explicitly mentioned tax harmonization of indirect taxes in Article 99, which stated: "The Commission shall consider how the legislation of the various Member States concerning turnover taxes, excise duties and other forms of indirect taxation, including countervailing measures applicable to trade between Member States, can be harmonized in the interest of the common market."[8] Although the Rome Treaty does not explicitly mention the harmonization of direct taxes such as income tax and corporation tax but the general clause for this to be done can be found in the Article 100, which states: "The Council shall acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market."[9] As the number of the European Union Member States has grown, the differences in tax policies in the Union have become more significant. Besides, tax rates competition has been strengthened and necessity of corporate tax harmonization intensified after the fifth enlargement of the EU in 2004.[10] Even if from the outset harmonization of tax systems was understood as an absolute matter, it later has come to be considered as an important step towards creating a functional single market.

---

[5] Kopits G. Tax Harmonization in the European Community– Policy Issues and Analysis, 1992 March 15, 3 p.
[6] Consolidated version of the Treaty on the Functioning on European Union, Art. 26(1), 2008 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF [2013/01/12]
[7] Kopits G. Tax Harmonization in the European Community– Policy Issues and Analysis, 1992 March 15, 4 p.
[8] The Treaty of Rome, Art. 99, 1957 http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf
[9] The Treaty of Rome, Art. 100, 1957 http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf
[10] Lenartova G. Tax Harmonization in European Union, Bratislava, 2011, 2 p.

The progress in development of the tax harmonization process in the EU may be divided into two phases. The phase I was described by an initial proposals and efforts at complete harmonization of the national tax systems in Europe. However practical implementation of these proposals revealed a lot of obstacles and problems. Consequently phase II of harmonization was constricted to the tax rules and legislation in order to create and provide the single market and support the competitiveness in EU.[11] The major obstructions to complete full harmonization, that means to create equivalent national tax systems in EU concerned primarily: economic barriers, political obstacles and social reasons.[12] According to Gizela Lenartova, political obstacles arise because EU Member States does not want to surrender a part of their tax and fiscal sovereignty to the European Union; economic barriers mean different levels of economic development and performance of EU Member States' economies, the historically arisen distinctions in national tax systems resulting from disparity of traditions in the field of production and consumption, fiscal reasons and demand for a particular degree of tax competition; social reasons have arisen from different national social systems in the Member States and different social policies.[13] Therefore the different hierarchy of individual states' social preferences can also be seen in their different tax policies.

These obstructions predetermined that instead of creation one uniform taxation system, the European Commission focused on relevant level of tax harmonization. The principles of subsidiarity and proportionality, sincere cooperation and supremacy are high importance for harmonizing taxes in EU. The principles of subsidiarity and proportionality are essential when the EU institutions exercise their power, especially in the legislative process.[14] The principle of subsidiarity determines that measures taken by the EU institutions should be exercised at the lowest level of authority where it can be exercised effectively. The principle is defined in Article 5(3) TFEU, which states that "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level".[15] The principle of proportionality stipulates that the EU shall act only to the scope that is needed to attain the objectives of that action. Article 5(4) TFEU states that "the content and form of Union action shall not exceed what

---

[11] Kaye T. A. European Tax Harmonization and the Implications for U.S Tax Policy, Boston, 1996, 141 p. http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1273&context=iclr [2013/01/12]
[12] Ibid.
[13] Lenartova G. Tax Harmonization in European Union, Bratislava, 2011, Bratislava, 1 p.
[14] Kalberg A. A Common Consolidated Corporate Tax Base through Enhanced Cooperation?- EU Tax Harmonization and Flexible Integration, 2011, Lund, 12 http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=2277548&fileOId=2344498 [2013/01/09]
[15] Consolidated version of the Treaty on the Functioning on European Union, Art. 5(3), 2008 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF [2012/01/13]

is necessary to achieve the objectives of the Treaties"[16] The principle of sincere cooperation obliges the Member States to take all appropriate means to fulfill their obligations arising out of the Treaty and do nothing detrimental to the proper functioning of the EU. Article 4 of the TFEU invites the Member States to respect and support each other in carrying out tasks which flow from the Treaties.[17] According to the principle of supremacy, EU law takes precedence over the conflicting domestic legislation.[18] The principle was established in the case of Costa v Enel. The European ECJ ruled that "by contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply".[19] However principle of supremacy does not annul domestic law, but rather claims national courts to not apply national legislation when they are in conflict with EU law.

Tax systems of Member States can be effected in accordance with mentioned principles by: EU primary legislation (the Treaties of Rome, Maastricht Treaty, Amsterdam Treaty, Nice Treaty, Lisbon Treaty) and secondary legislation (regulations, directives, decisions, recommendations and opinions).[20]Tax harmonization as a process of approximation of national tax systems of Member States has been focused first of all on harmonization of indirect taxes - beginning with 1977, VAT was the first harmonized tax, VAT rates and excise duties have attained a high degree of harmonization, some areas of taxation have been coordinated and some laws have been approximated.[21] Later harmonization was focused on direct taxation. The lack of primary law in the area of corporate taxation has been completed by directives, regulations, decisions and direct tax case law. The most significant are the Mergers Directive and the Parent-Subsidiary Directive adopted in 1990, the 2004 Directive on interest and royalty payments between EU companies, and the 2005 Directive applicable to mergers, divisions, transfers of assets and exchange of shares. The last initiative was on corporate taxes through Common Corporate Consolidated Tax Base.

The political, economic and social factors of separate countries require independence in creating national tax policy. However, the differences in the tax systems of the Member States has created many impediments and therefore incompatibility with the internal market. By eliminating these

---

[16] Consolidated version of the Treaty on the Functioning on European Union, Art. 5(4), 2008
[16] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF [2012/01/13]
[17] Official website of European Union http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l10125_en.htm [2012/01/13]
[18] Zhang A. Supremacy of EU Law: A Comparative Analysis, 2011, Illinois, 14 p.
[19] "Flaminio Costa v. E.N.E.L.", EUR-Lex - 61964J0006 – EN, 1964 July 15 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964CJ0006:EN:HTML [2012/01/14]
[20] Official website of European Union http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14534_en.htm [2013/01/14]
[21] Miklo P., Boghicevici C., The harmonization of the Indirect Taxation in European Union, 2009, Arad, 372 p.

distortions the Community is achieving its aim of a single market by releasing directives. Member States acting in accordance with principles of subsidiarity, proportionality, sincere cooperation and supremacy must implement it in domestic law.

1.1. Development of corporate tax harmonization in European Union

Tax harmonization has long been an intensely debated issue in the EU. Since the European Economic Community was established through the Rome Treaty in 1957, taxation has been considered a major element in achieving the internal market.[22] This has resulted in several studies on harmonization of corporate taxation over the years and 3 major reports was released: Neumark report, Tempel report, Ruding report. The Neumark report involved a few proposals also for the harmonization progress in the field of corporate taxation. Together with the Tempel report, they suggested some initiatives for achievement of a limited degree of harmonization in the area of corporate taxation (base and also rates).[23] The Ruding committee made specific recommendations on tax base and rate harmonization.

The Neumark Report (1962) was one of the first initiatives. Among the ideas discussed in this report the most essential one was diminishing of double taxation by centralized system for computing total taxable income within a single State followed by "an allocation of the bases of assessment among the different interested States".[24] However the idea was refused because the imposition of such system demands from the outset very broad equalization of domestic legislations and a very developed degree of cooperation between the tax authorities of the Member States[25] and that "A proposal recommending centralization of assessment operations would be far too different from traditional methods followed in the field of double taxation".[26] The committee of Neumark Report also proposed replacement of bilateral conventions by one multilateral convention concluded by EEC Member States. However,

[22] Comarniceanu A. Apportionment of Consolidated Tax Base under the Common Consolidated Corporate Tax Base Proposal, 2012, Paris, 7 p. et seq.
[23] Danko Z., Corporate tax harmonization in the European Union, 2012, Szeged, 211 p.
[24] The KPMG guide to CCCTB, 2012, Switzerland, 7 p.
http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/ccctb-part1-v2.pdf [2013/01/16]
[25] The EEC Report on Tax Harmonization, 1963, Amsterdam, 142 p.
http://www.steuerrecht.jku.at/gwk/Dokumentation/Steuerpolitik/Gemeinschaftsdokumente/EN/EEC%20Reports.pdf [2013/01/18]
[26] Iden.

difficulties trying to ensure its uniform application and interpretation would lead to setting up to common tax court for double taxation litigation, which is hardly implementing in EU.[27]

Furthermore, harmonization was the recommendation of a later study led by Dutch economist A.J. Van den Tempel in 1970. However, unlike the Neumark report, the Tempel report made a suggestion for the introduction for dividend tax system. This report determined the non-harmonized tax treatment of cross-border payments of dividends as a major problem within the Common Market. The use of different dividend taxation systems created disadvantages for investments. Professor A. J. van den Tempel proposed the imposition of classical income taxation system, which was simpler and easier to operate than other systems for enterprises in all EEC countries.[28] The classical system is grounded on the idea that shareholders and companies are distinct legal entities, which have taxing capacity separate from each other. Thus, under this system corporate profits are taxed at the corporate tax rate and shareholder's individual income after distributed profits are taxed at the individual income tax rate.[29] The suggested system allowed an obvious separation between the sphere and scope of corporate income tax and personal income tax, however it leads to double taxation.

The Tempel report was followed in 1975 by a proposal by the European Commission on the harmonization of corporate tax systems that dealt with double taxation relief and withholding tax for cross-border dividend payments and proposed a single corporate tax rate.[30] However this proposal did not get the necessary support by member states. The European Commission put forward proposals on loss relief in 1984 and 1985 that were subsequently withdrawn. These propositions were followed in 1988 by a draft proposal for the harmonization of the tax base of enterprises that was never tabled, due to the discrepancies of most Member States.[31]

In 1990 the Commission asked a Committee of independent experts chaired by former Dutch Finance Minister Onno Ruding "determine whether existing differences in corporate taxation and the burden of business taxes among member countries lead to major distortions affecting the functioning of the internal market", "to define the priorities among the different measures that the Committee envisages", and "give its opinion on the legal nature of any envisaged measure in order to determine

[27] The EEC Report on Tax Harmonization, 1963, Amsterdam, 145 p. http://www.steuerrecht.jku.at/gwk/Dokumentation/Steuerpolitik/Gemeinschaftsdokumente/EN/EEC%20Reports.pdf [2013/01/18]
[28] Pirvu D. Corporate Income Tax Harmonization in the European Union, London, 2012, 33 p.
[29] Mahr B. Comparison of US, UK and German corporate income tax systems with respect to dividend relief, Germany, 2004, 4 p
[30] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/gen_overview/index_en.htm [2013/01/19]
[31] The KPMG guide to CCCTB, 2012, Switzerland, 7 p. http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/ccctb-part1-v2.pdf [2013/01/16]

whether the objective is to harmonize certain aspects or to limit it to the establishment of a framework for national tax legislation"[32]. The Committee made specific suggestions. The need to remove double taxation, ensure effective taxation and preclude tax evasion was recognised by the Council, but there was little progression on some of the more specific proposals contained in the Ruding report.[33]

Rather than presenting a detailed harmonization of the corporate tax systems, Ruding Committee made a number of distinct suggestions, including minimum standards for the corporate tax base and rate harmonization. According to KPMG publication Ruding report presented position which "was characterized by a combination of positive and negative integration rather than aiming at exhaustive harmonization".[34] Positive integration covered the alignment of legislation while negative integration meant that there really were "discriminatory and distortionary features of countries' tax arrangements that impede cross-border business investment and shareholding"[35] and that the European Union should focus on removing such obstacles. Accordingly, the proposals, aimed at "setting a minimum level for statutory corporation tax rates and also common rules for a minimum tax base".[36] The findings of the Ruding report concluded that though there was no need for complete harmonization at the time, a common system for corporation tax should be a long-term goal.

In summary, the recommendations of the Neumark, Tempel and Ruding reports did not receive much promotion and working on harmonization was delayed until 1998 when European Commission was requested by Council to set a study on the effects of tax base differences on the tax obstacles of the Member States. The study was published in 2001, advocating further work on means to eliminate particular tax obstacles to the common market as well as the initiation of a common consolidated corporate tax base.

1.2 Main measures for harmonization of company taxation

In 1990, the Commission temporarily ceased to seek the broad purpose of the entire corporate tax harmonization and concentrated on the elimination of double taxation. The main Commission recommendation involved these major areas: eliminating the tax barriers impeding the European Union

[32] Report of the Committee on independent experts on Company Taxation, Brussels, 1992, 9p. http://aei.pitt.edu/8702/1/8702.pdf [2013/01/19]
[33] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/gen_overview/index_en.htm [2013/01/19]
[34] The KPMG guide to CCCTB, 2012, Switzerland, 7 p. http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/ccctb-part1-v2.pdf [2013/01/16]
[35] Report of the Committee on independent experts on Company Taxation, Brussels, 1992, 13 p. http://aei.pitt.edu/8702/1/8702.pdf [2013/01/19]
[36] Iden.

cross border investment and general rules to calculate corporate tax base to avoid excessive tax competition.[37] The EU has taken several initiatives in pursuance to eliminate tax barriers to cross-border cooperation and activity, main of them:

1 Directive 90/435 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (Parent-Subsidiary directive), which main purpose to remove double taxation on cross-border dividend payments between parent and subsidiary companies;
2 Directive 90/434 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (Merger directive), providing for the deferral of capital gains on the process of reorganization;
3 Directive 2003/49 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States;
4 Arbitration Convention 90/436 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, which provides a dispute resolution procedure in the area of transfer pricing between enterprises of different Member States.

Regardless these achievements to resolving the obstacles to cross-border activity they still go behind rapidly growing integration in the Internal Market.[38] Nevertheless it is important to analyze what impact made each of these documents in the area of corporate taxation that it would be possible to determine at what stage currently the harmonization of corporate taxation in European Union is advanced.

1.2.1 Directive 90/435 (Parent-Subsidiary directive)

The main aim of Parent - Subsidiary Directive is removal of tax barriers of profit distributions between parent companies and subsidiaries situated in the European Union. The major methods to implement this objective are:

- "eliminating withholding taxes on payments of dividends between associated companies of separate Member States and
- preventing double taxation of parent companies on the profits of their subsidiaries."[39]

[37] Danko Z., Corporate tax harmonization in the European Union, 2012, Szeged, 212 p.
[38] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 8 p. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/01/25]
[39] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/parents-subsidiary_directive/index_en.htm [2013/01/25]

This directive influenced that the mechanism for the removal of double taxation of dividends gained by a parent company from its subsidiary which are located in different Member States would be more accomplished. Later the Directive 2003/123/EC was adopted to broaden the scope and improve the operation of the Directive 90/435/EEC. "The amending Directive deals with imputing tax paid by subsidiaries of these direct subsidiary companies. Member States must impute against the tax payable by the parent company any tax on profits paid by successive subsidiaries downstream of the direct subsidiary. This ensures that the objective of eliminating double taxation is better achieved."[40]

However, there is a problem that - various mechanisms of dividend integration in different countries cause impediments of comprehension by businessmen and managers. This differentiation could only be solved by more comprehensive harmonization of direct taxation.[41] Moreover, imputation system is more beneficial to domestic investments, because it usually does not apply to non-resident shareholders. The Parent-Subsidiary directive does not solve problem of such discrimination. For instance, according to imputation system a tax credit is provided to resident shareholders for the tax paid on company level that credit is normally not accessible to nonresident shareholders and is not usually granted with regard to foreign dividends.[42]

1.2.2 Directive 90/434 (Merger directive)

The principal aim of the Merger Directive 90/434 (later amended by the Directive 2005/19) is the elimination of fiscal difficulties to cross-border reorganization including companies established in two or more Member States. The situation of mergers and divisions is about the transferring company assets and liabilities to receiving company(ies) and those companies transforming into a single entity. The Merger Directive has been implemented in all EU Members and now enables companies to restructure their groups on a cross-border basis through the EU without negative effect on taxation. The Directive 90/434 was amended by the Directive 2005/19/EC, which essentially expanded the personal scope of the Directive and made some important changes, such as addition of new operations The substance of the Directive is the deferral of the taxes which could be charged in the situation of a qualifying reorganization, it demands the Member States to resist from taxing any capital gains caused by the cross-border mergers or divisions.[43]

---

[40] Iden.
[41] Ashta A. The Parent Subsidiary Directive (90/435/EEC), Burgundy, 2006 October, 3 p.
[42] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 11 p. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/01/27]
[43] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/mergers_directive/index_en.htm [2013/01/27]

However, a number of difficulties and the main reason of it still remain because of limited scope of the Directive. Firstly, the Directive does not encompass all types of tax charge, for example transfer taxes, which may increase in the situation of restructuring. Furthermore, not all kinds of actions which is needed for the restructurization of companies are encompassed by the Directive, for example, the process of centralization of production or other activities. Directive covers itself only cross-border operations, it does not concern about transactions within one Member State, "even though transnational elements like a foreign permanent establishments or shareholders are included".[44] Besides, the implementation of the Directive varies essentially between Member States. Particularly Member States, in the process of implementation of the Directive, have enforced different provisions for the deferral of tax provided for under the Directive seeking to preclude the tax avoidance, which limits the scope of the Directive resulting in problem of double taxation unsolved.[45] Lastly, the benefit of Directive is decreased because there is no EU company law framework for cross-border mergers. Therefore firms are binded "to have recourse to share for share exchanges or transfers of assets".[46]

1.2.3 Directive 2003/49 (Interest and Royalties Directive)

The Interest and Royalties Directive encompass situations arising in cross-border activities and involves payments made to or by permanent establishments of the associated companies. According the Article 1 (1) of Directive:

"Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State."[47] The main purpose of this Directive is removal of withholding tax barriers in the field of cross-border interest and royalty payments within a group of companies by eliminating: withholding taxes on royalty payments and withholding taxes on interest payments arising in a Member States[48]

[44] Terra B., Wattel P. European Tax Law, 2008, 248 p.
[45] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 18 p. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/01/27]
[46] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 9 p. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/01/27]
[47] 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, Article 1(1) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML [2013/04/01]
[48] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/interests_royalties/ [2013/01/28]

The problem is that the scope of the Interest and royalties Directive is limited to direct holding. However, the double taxation, additional compliance costs and other cross-border obstacles arise not only between related parties in different Member States, but also between unrelated companies. Moreover, this Directive applies minimum shareholding requirements of 25% which differs from Parent-Subsidiary Directive, which applies 10%. It means that an association is assumed to be when one company has a direct minimum holding of 25% in the capital of the other company. Therefore Interest and royalties Directive is limited due to its current scope and if it remains unchanged, the inefficiencies affecting the functioning of single market will remain too.[49]

1.2.4 Arbitration Convention 90/436

The other measure adopted at international level for the settlement of transfer-pricing issues is the EU Arbitration Convention No. 90/436/EEC, which was recommended to ratify in Ruding Report. This Convention determines a method to settle disputes when double taxation take place between companies of different Member States “because of an upward adjustment of profits of an enterprise of one Member State”.[50] If a double taxation in transfer pricing appears, the enterprises have a possibility of submission of a case to the competent authority of the Member State in which it resides, irrespective of the remedies determined in the domestic provisions. When the claim is legitimate, the competent authority shall commence a procedure of mutual agreement with the authority of the other Member State to resolve a dispute.[51] If no agreement is reached within two years, according Article 7(1) the controversy shall be submitted to an advisory Commission charged with delivering its opinion on the elimination of the double taxation in question.[52]

Even so, practical implementation of these measures was very diverse in separate Member States. Moreover, in the context of the EU Arbitration Convention there were no cases being rejected, and no Member States reports used the penalty-clause determined in Article 8, which states that “the competent authority of a Contracting State shall not be obliged to initiate the mutual agreement procedure or to set up the advisory commission where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits one of the enterprises

[49] Fibbe G. EC Law Aspects of Hybrid Entities, Amsterdam, 2009, 316 p.
[50] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/arbitration_convention/index_en.htm [2013/01/28]
[51] Valente P. Arbitration Convention 90/436/EEC: Inapplicability in Case of Serious Penalties, Amsterdam, 2012, 220 p.
[52] 90/436/EEC: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, 1990 August 20. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML [2013/01/28]

concerned is liable to a serious penalty".[53] Furthermore, the Convention does not apply to cases of double taxation triggered by a contradictory interpretation of its provisions. For this reason, a competent authority of Member State may reject to initiate procedures foreseen by Arbitration Convention using disagreements in interpretation as a convenient excuse to keep a certain transfer pricing cases under its own jurisdiction. Another deficiency of Convention is that the Commission and the jurisdiction of the ECJ do not have a right to supervise the appropriate application of the EU Arbitration Convention. When the EU Arbitration Convention becomes part of the national law of Member State, the judicial authorities of that Member State acquire absolute authority to adjust their country's attempts to comply with this Convention. The difficulty arises because judicial decisions will diverge from one Member State to the other and the proper uniformity of interpretation will not be attained.[54]

Currently Arbitration Convention is not in force. It was concluded for a period of 5 years and expired in 1999. On 25 May 1995 a Protocol amending Convention 90/436/EEC was adopted, which extended it for further periods of five years at a time. It entered into force on 1 January 2000, though, as not all Member States ratified the Protocol extending the Arbitration Convention, the Convention ceased to have effect. Consequently, companies can presently use the dispute settlement provisions of double taxation conventions which do not impose any binding obligation to eliminate double taxation, unlike the Arbitration Convention.[55]

All these above mentioned measures contributed to harmonization of company taxation in EU and elimination of distortions arising in the internal market. However, the scope of these Directives is very limited and the Arbitration Convention is not in force at all, therefore despite these initiatives, there are many problems left and new measures, which would continue harmonization in the area of company taxation, are welcomed.

1.3 Main problems of corporate taxation

The EU's Members maintain complete control over the formulation and implementation of corporate tax policy. Tax policy generally has been considered as a major prerogative of national

[53] Iden.
[54] Voegele A. The Arbitration of Transfer Prices in Europe: The EU Arbitration Convention in Practice, Paris, 2006 January 15, 4p.
[55] Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/arbitration_convention/ [2013/02/03]

sovereignty and therefore not the object of any Community competence. There are thus 27 separate taxation systems in the EU. All Member States have their own sets of rules, particularly laws and conventions on financial accounting, rules for determining taxable profit, arrangements for collection and administration of tax and its own network of tax treaties. The demand to comply with a diversity of separate laws cause a considerable compliance cost and represents in itself a significant barrier to cross-border economic activity.[56] The costs and risks related to complying with more than one system may in particular impede small and medium-sized companies from pursuing in cross border activity. These major problems interfere cross-border economic activity in the Internal Market and cause a negative effect on the competitiveness of European enterprises, which results in a loss of feasible EU welfare. Besides, the forthcoming broadening of the EU force urgently to find appropriate solutions for this problem.[57]

The major tax barriers in the internal market, which promote the new policy initiatives in the area of company taxation, can be divided into these three categories:

I. Additional compliance costs linked to cross-border activities;

II. International double taxation which may occur as a result of conflicting taxing rights, traditionally divided into: economic double taxation (i.e. the imposition of comparable taxes on the same income in the hands of different taxpayers in two or more states) and juridical double taxation (i.e. the imposition of comparable taxes on the same income in the hands of the same taxpayers in two or more states);

III. Over-taxation in cross border situations, which occurs when cross-border activities create tax liabilities that would not occur in a purely domestic.[58]

1.2.1 High additional compliance costs

The existence of a tax liability means that in time taxpayers will have to bear an overall tax burden containing the certain amount of tax and the costs related to its computing, payment and collection.[59] Compliance costs are defined as costs that are effectively triggered by complying with the corporate tax provisions and other costs. These costs include the costs of labor and time which is used

---

[56] Lannoo K., Levin M. An EU company without an EU tax? A corporate Tax Action Plan for Advancing the Lisbon Process, Brussels, 2002, 2 p.

[57] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 8 p. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/02/02]

[58] Commission Staff Working Document Impact Assessment Accompanying Document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, Brussels, 2011 March 16 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011SC0315:EN:NOT [2013/02/04]

[59] Lang m. et al. Tax Compliance Costs for Companies in an Enlarged European Community, Netherlands, 2008, 311 p.

in the completion of corporate tax activities as well as incidental expenses experienced in the completion of corporate tax activities.[60] Tax compliance costs are also described as the hidden costs of taxation. The major reasons that cause corporate compliance burden for multinational companies are directly or indirectly affected by transfer pricing process, such as: documentation of transfer pricing, clearances and rulings and mutual agreement procedures. The increasing of compliance costs is mostly a consequence of two factors: more demanding documentation requirements from tax authorities related to tax authority reviews; adjustments and variations of the type and scope of business operations in cross-border activities.[61]

The other reason influencing the high compliance costs are the result of the efforts of calculation of transfer prices of the individual transactions at arm's length method. This method claims that prices of transactions between related parties (for example, parent and subsidiary) will be the same as if these parties were independent. In fact, it is expensive for tax administrations and for taxpayers, it creates opportunities for tax avoidance to corporations by adjusting transfer prices within the controlled group, and frequently provides for means which are very hard to apply .[62] Invoking the arm's length pricing method for identifying the tax liability in separate jurisdictions adds complicacies to the working of international businesses. One of the major challenges in implementing the documentation requirements for transfer pricing is the determination of a comparable transaction at arm's length. This problem of finding arm's length comparable for valuing intra group transactions is not simple to settle. The tendency of increasing intra group transactions and reduction of independent transactions has the effect of decreasing of simply applicable obvious comparables available to both business and tax administrations.[63]

The problem of high additional compliance costs is mainly caused by transfer pricing process and arm's length principle which is criticized because of its incapacity of holding the positive effect (e.g. higher profits) due to the economies of scale and scope of large multinational companies. Change and complexity are important reasons influencing the compliance costs of the tax systems. These latter determinations note a significant influence of the current arrangements for company taxation in the internal market upon the compliance burden of companies operating cross-border.

[60] Lang m. et al. Tax Compliance Costs for Companies in an Enlarged European Community, Netherlands, 2008, 19 p.

[61] Commission Staff Working Document Impact Assessment Accompanying Document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, Brussels, 2011 March 16 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011SC0315:EN:NOT [2013/02/04]

[62] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), Brussels, 2011, 7 p. et seq.

[63] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 348 p. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/02/07]

1.2.2 Double Taxation

Double taxation is one of the most difficult impediments to cross-border economic activity, with detrimental impact on efficiency and growth. Double taxation is the levying of tax by two or more jurisdictions on the same declared income, asset, or financial transaction. Double taxation in transfer pricing may arise as a result of conflicting taxing rights when the tax administrator of one Member State unilaterally adjust the price put by a company on a cross-border intra-group transaction, without this adjustment being offset by a corresponding adjustment in the other Member State.[64] Currently, there are still a lot of instances of double taxation which arise from the demand to comply with separate domestic tax systems when operating in the internal market. While researches made by the Commission services amongst Member States indicates that the number of transfer pricing disputes between Member States is rather limited, an investigations of multinational corporations published by the accounting firm Ernst&Young informs about a lot of cases of double taxation which occurs from transfer pricing adjustments.[65] Moreover, representatives of companies complain that the cost and time relating to the current dispute settlement procedures are often too high for enterprises with the result that it is often less costly to accept the double taxation.[66]

Although, as it is noted in the Impact Assessment of the proposal for a Council Directive on a CCCTB by European Commission because of the lack of actual tax data provided by administrations of Member States, it is hardly possible to obtain credible evaluations of the size of costs of double taxation. However, a recent public consultation carried out by Directorate General for Taxation and Customs Union on double taxation approved that double taxation remains to be a significant problem by many EU companies and tax advisors; some of the most significant instances are:

- Cross-border business restructuring operations. Although the Merger Directive have improved the situation, however not all cases of double taxation associated with cross-border business restructuring operations have been removed. For example, the deficiency of explicit obligations in Merger Directive can influence various interpretations by Member States resulting in double taxation of capital gains.
- Tax treatment of transfer pricing. The distribution of tax revenues between Member States according the arm's length method, which lie at the heart of transfer pricing, is a source of

[64] Rasmussen M. International Double Taxation, Netherlands, 2011, 2 p.
[65] Ernst&Young Report, Global Tax Policy and Controversy Briefing, 2012, 34 et seq. http://tmagazine.ey.com/wp-content/uploads/2012/12/TPC_DEC2012_Low_res.pdf [2013/02/08]
[66] Summary Report of the Commission's Consultation on Double Taxation Conventions and the Internal Market: Factual Examples of Double Taxation Cases, 2011 January, 6 p. et seq.

double taxation for intra-group transactions, without this adjustment being offset by a corresponding adjustment in the other Member States concerned. One of the reasons why business considers transfer pricing one of the major tax issue is in fact its relation to double taxation. For instance in 1999, enterprises have reported that 42% of cases of adjustment gave rise to double taxation. This is whereas companies do not usually refer cases to mutual agreement procedures, as they consider the procedures too long and expensive.[67]

Importantly, EU Member States have established a net of bilateral double taxation Treaties; however these Treaties do not cover all cases of double taxation. The Company Tax Study already admitted that the area of double taxation conventions is a possible source of barriers and distortions for cross-border economic activities within the EU.[68] Moreover, even if the network of Member States of double taxation Treaties is mostly completed, nevertheless significant gaps remain:

1. Although many bilateral double taxation Treaties contain provisions for corresponding downward adjustments of profits of the concerned related enterprises, however, they do not impose a binding obligation for the involved Member States to abolish the double taxation. On the basis of double taxation Treaties, mutual agreement procedures may be commenced, even so these mutual agreement procedures are lengthy, costly and do not always result in the avoidance of double taxation, so most enterprises do not start such mutual agreement procedures because of their unpredictable result.[69]

2. The treaties are still significantly heterogeneous. Furthermore, their provisions are often too different, and sometimes it varies in interpretation and application by Member States, which usually consequence in double taxation (e.g. instances of triangular situations or cases of various interpretations of decisive concepts such as "permanent establishment" within a territory) or non-taxation. Enterprises also indicate the increasing complexity of treaty provisions as a reason of compliance costs and instability. Therefore, the application of these treaties often leads to difficulties of interpretation, which result to complicated dispute procedures and finally failure to guarantee avoidance of double taxation.

---

[67] Commission Staff Working Document: Impact Assessment Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, Brussels, 2011 March 22, 11 p. http://register.consilium.europa.eu/pdf/en/11/st07/st07263-ad02.en11.pdf [2013/02/15]

[68] Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23, 11 p. et seq. http://ec.europa.eu/taxation_customs/resources/documents/company_tax_study_en.pdf [2013/02/15]

[69] Voegele A. The Arbitration of Transfer Prices in Europe: The EU Arbitration Convention in Practice, Paris, 2006 January 15, 1 p. et seq.

3. The Company Tax Study also indicated that provisions of tax treaties, particularly non-discrimination articles, are not sufficient to guarantee compliance with the EU law principle of equal treatment.

4. The deficiency of coordination in the practice of treaties of Member States in relation to third countries, for example regarding limitation of treaty benefits, because arising of distortions and division of the internal market.[70]

After the establishment of the single market, enterprises operating in the EU market still confront with tax obstacles. Taxpayers involved in cross-border economic activities, which is subject to more than one tax jurisdiction experience double taxation. It makes EU market less competitive. The existing mutual agreements to avoid double taxation are not enough efficient in eliminating double taxation. Therefore too many lengthy double taxation disputes remain unsolved within the EU. This generates a cost for business in cross border situations. The CCCTB initiative is seeking to propose an appropriate mechanism to eliminate double taxation deriving from unresolved tax disputes within the EU.

1.2.3 Over-taxation of cross-border economic activity

The lack of common corporate tax provisions, the interaction of domestic tax systems frequently leads to over-taxation. Over-taxation may be influenced by due the absence or deficiency of cross-border loss relief. The feasibility to set off losses against profits in calculation the tax liability of taxpayers is a principle feature of company tax systems. Nevertheless, in the present conditions, taxation of corporate profit frequently does not properly reflect the general EU-wide result of the business activities when foreign investments in the EU are involved.

National tax authorities seek to protect their domestic tax base and this attempt is clearly seen in different taxation rules that discriminate against companies operating cross-border. One of the most important cases concerns the limitation of group relief to national groups. In reality, while most Member States allow for domestic relief of losses within a group of companies, only a limited number of Member States give an opportunity for some restricted forms of cross-border loss compensation (these countries are Austria, Italy, Denmark and France), for example, allow relief for the losses of a

[70] Commission Staff Working Document: Impact Assessment Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, Brussels, 2011 March 22, 25 p.

foreign company from the same group of a domestic corporate taxpayer.[71] Other Member States grant group relief only for national companies (eight Member States do not have group relief provisions). "In its 2005 decision in the Marks&Spencer case the ECJ ruled that this practice violates the fundamental freedoms at least in the case of final losses."[72]

The loss offsetting arrangements cause a possibility of over-taxation in cross-border activities when cross-border losses cannot be compensated without delay. Since domestic losses are immediately deductible, thereby lowering the current tax barriers, a group of companies operating cross-border would confront a liquidity cost compared to a domestic group. For the international group, the compensation of losses incurred by foreign subsidiaries will be at best deferred when the source country allows transposition of the losses, which creates high interest cost, and in certain situations, where losses cannot be absorbed locally, they will never be relieved, and will become constant.

1.4 Challenges of corporate tax harmonization

Summing up the analysis of this chapter, it is important to identify main challenges, which should be pursued to overcome by the CCCTB.

The EU companies face tax obstacles when they expand within national borders, it increases costs and therefore results in market-entry restrains. Tax barriers, such as different corporate taxation rules, limits on cross-border loss relief and cause double, additional or over - taxation, depreciate cross-border economic activity and stimulate firms to promote domestic over cross-border operations, thus directly interfering the full achievement of the internal market and the restricting the gain of benefits from market integration. Therefore, the CCCTB should be established in such a way and introduce such rules that not only harmonize but also encourage the companies operation in cross-border and enhance the attractiveness of EU as an investment location.

The network of Double Taxation Treaties does not provide an appropriate decision for the removal of double taxation in the internal market, because it is designed to operate in a bilateral context at the international level, rather than within a closely integrated system as an EU. On the basis of increased internationalization of economic activities, such company tax barriers are now more and more obvious and detrimental. Thus, CCCTB should create more integrated system for the whole EU

[71] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base, Brussels, 2011, 4 p. http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2013/01/06]
[72] Oestreicher A., Koch R. Corporate Average Tax Rates under the CCCTB and Possible Methods for International Loss-Offset, University of Goettingen 2008 October 1. 1 p.

than it is now formed by network of Double Taxation Treaties and remove those distortions which are not covered by these Treaties.

A major barrier in the internal market currently includes the high compliance costs in transfer pricing formalities using the arm’s length method. The mode that closely related groups tend to organize themselves means that transaction-by-transaction pricing based on the ‘arm’s length’ method is not the best choice for profit allocation. In addition, the possibility of cross-border loss offsets is feasible only in a limited number of specific situations within the EU that influences over-taxation for companies operating in cross-border. Therefore, the CCCTB should introduce a new, more efficient profit calculation method, which could contribute to high compliance costs elimination and determination of taxable income without using separate accounting formula.

Taking into account mentioned obstacles in this chapter, the simplification of the corporate taxation setting in the internal market in form of CCCTB system was suggested.

2. Common Consolidated Corporate Tax Base concept and elements

The Common Consolidated Corporate Tax Base - Proposal of March 16th 2011 from the European Commission - is a single set of rules that enterprises functioning within the EU could use to compute their taxable profits**.** This means that a company would only have to deal with one EU system for calculating its taxable income instead of complying with 27 separate sets of rules. Moreover, only one tax return would have to be filed for the group of companies operating within the EU. It would be an obligation of the group's major taxpayer, for example, the parent company forming the group with its subsidiaries or permanent establishments. It is not created to harmonize tax rates, but instead would guarantee consistency between domestic tax systems in the EU.[73]

In pursuance to reveal the main features of CCCTB it is needed to analyze individual elements of it, which involves:

1 Common – means a single set of rules that could be applied across the EU and contribute to the harmonization of corporate taxation across the EU.

2 Consolidated – consolidation means assembling all the profits and losses of a company or group of companies from different Member States, to reach a net profit or loss for the entire of its activities operating in the EU. It would be used to determine the final taxable base of the company or group of companies. Consolidation is an important element of this system, since the main tax barriers confronted by companies in the EU can be solved only in that way. It removes high cost of transfer pricing formalities and intra-group double taxation. Furthermore, losses sustained by taxpayers are automatically offset against profits generated by other members of the same group.

3 Corporate – relating to the taxation of companies and removal of obstacles in this area.

4 Tax Base – the amount of a company's profit that will be taxed. The tax base is computed by this method: the amount that can benefit from tax exemptions and deductions such as wages and depreciation is deducted from the company's revenues. Different Member States has a separate set of rules for calculating this tax base. A single EU tax base would ensure that companies only need to do their calculations according to one common set of rules.[74]

Under the proposal of CCCTB, clear procedural rules are set out on how companies should adapt the CCCTB system, the mode in which their tax returns could be submitted, the harmonization of

[73] Official website of European Commission
http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/ [2013/02/17]
[74] Official website of European Union http://europa.eu/rapid/press-release_MEMO-11-171_en.htm [2013/02/17]

the relevant forms and the coordination of the tax audits that would need to be performed. For each company or group, the tax return for the whole of their activities within the EU would be filed through the tax authorities in their major Member State, and the same Member State would have a responsibility to coordinate the appropriate checks and observe on the return.[75]

As a result of consolidation, a group of companies only would have to deal with one tax administration instead of all the tax administrations of the Member States where companies within the group are located (one-stop-shop). This is intended to reduce compliance costs and administrative burdens for large company groups. Although, one-stop-shop is one of the most essential features of the CCCTB from companies' point of view and that system of single compliance could greatly mitigate compliance costs, but also there is a probability that it would compel Member States to improve collaboration between tax authorities which could be very politically hard to achieve.[76]

The CCCTB would make it available for companies or groups of companies to consolidate all profits and losses across the EU, accordingly admitting their cross-border activity. The single consolidated tax return would be applied to establish the tax base of the company. After the tax base calculation, all Member States in which the company operates would be enabled to tax a particular portion of that base, according to a specific formula based on three equally-weighted factors: assets, labour and sales. Members States could then tax the profits allocated to the multinational enterprise or permanent establishment residing for tax purposes on their respective territory at their own domestic corporate tax rate. The competent authority of the Member State in which the major taxpayer is resident, would administer this process, and would be responsible for coordination the appropriate checks and following up on the return (one-stop-shop system).[77]

The CCCTB pursues to solve main obstacles existing in the internal market. It involves not obligatory scheme to be made accessible to EU cross-border groups of companies for the setting of the tax base in accordance with new common rules so as to enable the consolidation and set-off of profits and losses accordingly earned and incurred in different Member States.[78] Consolidation is in the center of the proposal and represents the main advantage of the CCCTB scheme and the main motive why corporations should support it. In general, CCCTB releasing enterprises from compliance with intra-group transfer pricing rules and enabling an immediate profit and loss consolidation, should contribute

---

[75] Fuest C. The European Commission's Proposal For a Common Consolidated Corporate Tax Base, Oxford, 2008 September, 24p
[76] The KPMG Guide to CCCTB, Switzerland, 2011, 4 p.
http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/ccctb-guide-1.pdf
[77] Perna R., Cerioni L. The new CCCTB proposed scheme: an opportunity for cross-border business, a challenge for the national Judge, Vienna, 2012, 12 p.
[78] Iden. 14 p.

to making an EU more attractive area to do business and also determining a permanent tax base in a competitive global environment.

2.1 Legislative basis for the CCCTB

The form of Directive was chosen to legitimize a proposal of CCCTB. EU directives involve only common features. They are binding, as to the result to be achieved, upon each Member State but leave to the national authorities the choice of form and methods (Art. 288 of Treaty on the Functioning of the European Union, TFEU).[79] This contrasts with a regulation, which is binding in its entirety and directly applicable in all Member States (Article 288 of TFEU). It might have been anticipated that the CCCTB system would be introduced in the form of a regulation, with respect to the goal was to provide a full code for corporation taxing at the EU level. A directive could not generally provide such a code and would leave an option to specify the details by each Member State. The Commission reasoned the choice of Directive, that there was no legal basis for a regulation because the provision is based on Article 115 TFEU, which allows only the issuing of directives for approximation directly affecting the establishment or functioning of the internal market.[80]

Since CCCTB will be implemented in the form of a directive, it will not be possible to lay down every detail of the CCCTB and its administration in this kind of legal act. Therefore the Directive involves two special procedures for assistance with implementation and variation known as the comitology procedure (Art. 131 of the Directive states that the Commission shall be assisted by a Committee composed of representatives of Member States) and the delegated acts procedure (Arts. 127-129 state that Commission has a right to adopt delegated acts). However, the scope under these procedures is related only to specific, limited provisions, and it does not fill gaps which might arise generally from the definition of the tax base.[81]

The proposed Directive is divided into 17 chapters and includes three annexes. It is comprehensive and involves extensive provisions who can opt, how to compute the taxable base and what is the functioning of the consolidation. It also provides for anti-abuse rules, defines how the consolidated base is shared and how the CCCTB should be administered by Member States under a one-stop shop approach. The Directive also complies with principles of Subsidiarity and Proportionality. Since individual actions by the Member States would fail to achieve the intended

[79] Consolidated Version of the Treaty on the Functioning of European Union,2007 December 17, Lisbon, Art. 288.
[80] The KPMG Guide to CCCTB, Switzerland, 2011, 19 p.
http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/ccctb-guide-1.pdf [2013/03/04]
[81] Iden.

consequences (i.e. remove double taxation in EU) the principle of Subsidiarity is justified. Furthermore, the proposal of Directive is designed as an optional/not obligatory system which represents the most proportionate measure to solve the identified problems. It does not compel companies which do not intend to move abroad to bear the redundant administrative cost of implementing the common rules in the absence of any real benefits. However measures laid down in this Directive is not detailed and it provides only a principles-based approach, they contribute to achieving the desired aims. They deal with harmonizing the corporate tax base, which is a necessary to tackle the identified taxation barriers and rectify the elements that distort the internal market.[82]

Regardless the circumstance that the Directive is not a regulation and it sets only the framework but the practical details of implementation are left for the Member States to decide, it does appear to pursue to set out the principal structure of a code for corporation tax. Lack of detail does not, in itself, make such the legislation form inappropriate to harmonize corporate tax system. However, that CCCTB would not be condemned to failure, the proper principles-based legislation needs to set of guiding primary assumptions or fundamental tenets in operation that can act as a default setting in the event that a question arises on how to proceed in any matter, whether this is to be decided by a committee, the national courts or the ECJ. It is essential that the principles are made explicit so they can fill existing gaps and then CCCTB could practically reach its aims of harmonization.

2.2 Flexible integration through enhanced cooperation

The Commission hopes to introduce the CCCTB on the basis of Article 115 TFEU, which states: “Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market”[83]. This regarding to CCCTB means that: any Member State could veto this initiative and the European Parliament is only “consultant” in this process, which means that it does not have the power to approve or reject the proposal, however it can shape final parameters of it. This is the most common mode of integration in the European Union which ensures uniformity, because all Member States are moving towards the same goal. The problem is that the proposal of CCCTB does not attain a unanimous support from companies, but it gets even less support among the EU Member States (table

[82] Perna R., Cerioni L. The new CCCTB proposed scheme: an opportunity for cross-border business, a challenge for the national Judge, Vienna, 2012, 6 p.
[83] Consolidated Version of the Treaty on the Functioning of European Union, 2007 December 17, Lisbon, Art. 115.

no.1). With Member States such as Ireland, which is opposed to the establishment of CCCTB, the current Commission draft seems condemned for a veto in the Council.[84]

Member States are against CCCTB mostly because of proposal's non-compliance with the principles of subsidiarity and proportionality (these countries are: Bulgaria, Ireland, Malta, the Netherlands, Poland, Romania, Slovak Republic, Sweden and the United Kingdom).[85] These countries argue that the Commission did not provide adequate quantitative and qualitative evidence that could prove that Member States were incapable to eliminate fiscal obstacles to cross-border activity on their own and that action at the EU level was really indispensable. Furthermore, they also complain that the proportionality principle has been violated. In their opinion, bilateral and unilateral means, as well as informal coordination are sufficient to solve these cross-border tax problems.[86]

Concerning these claims of Member States and foreseeing the case that procedure according TFEU Art. 115 may be unsuccessful, the alternative way of flexible integration was suggested. The alternative method that was chosen is procedure of enhanced cooperation which requires approval of a group of at least nine Member States. There are, however, a number of administrative and substantive requirements which must be satisfied before enhanced cooperation may be initiated:

- Enhanced cooperation may only be used when other options are exhausted (a veto by one of Member States against the CCCTB proposal would be compatible with this requirement).
- It must not constitute "a barrier to or discrimination in trade between Member States, nor shall it distort competition between them" (Art. 326 of TFEU)[87].
- Enhanced cooperation must be agreed by the Council with the consent of the European Parliament.[88]

[84] Walsh J. Inside Track: CCCTB could work in Ireland's favor//Business&Finance, 2011 March archive. http://www.businessandfinance.ie/bf/2011/3/sectionmarch2011current/insidetrackccctbcouldworkinire [2013/03/02]
[85] Herzik N., Kuhr J. Direct Taxation in the EU: the Common Corporate Tax Base as the next sub-step towards Harmonization, Wroclaw, 2012, 3 p.
[86] Schon W. et al A Common Consolidated Corporate Tax Base for Europe - Eine einheitliche Körperschaftsteuerbemessungsgrundlage für Europa (English and German Edition), Berlin, 2008, 26 p.
[87] Consolidated Version of the Treaty on the Functioning of European Union, 2007 December 17, Lisbon, Art. 326..
[88] Cockfield A. Globalization and its Tax Discontents, Toronto, 2010, 141 p.

Table no.1[89]

For or leaning in favor	Unknown/no position	Against or leaning against
Belgium	Austria	Bulgaria
Czech Republic	Denmark	Cyprus
France	Finland	Estonia
Italy	Greece	Ireland
Luxembourg	Hungary	Latvia
Spain	Lithuania	Malta
	Portugal	Netherlands
	Romania	Poland
	Sweden	Slovakia
		Slovenia
		United Kingdom
		Germany

Concerning the CCCTB, it means that at least nine Member States should be able to accept the CCCTB model. The problem is that it is still not clear how the countries from the table above listed in the ‘unknown/no position’ column would vote. Notwithstanding, enhanced cooperation seems as a new method which gives an opportunity for limited progress in specific areas when the Member States cannot unilaterally agree on the appropriateness of CCCTB. The other requirement, that the enhanced cooperation must not cause barriers on trade or competition in the EU is an important impediment to CCCTB, because Member States which are against the CCCTB may be anticipated to argue strongly that a CCCTB system between a group of countries would infringe this requirement.[90] For instance, a situation when a group of seven companies, located in different Member States, ends up being divided

[89] Aujean M. et al. CCCTB - The essentials and the path ahead, Deloitte Belgium Tax Quarterly, Issue 44, 2011 June. http://www.deloitte.com/view/en_BE/be/insights/newsletters/tax-quarterly/issue44-june-2011/64eb16a6167b0310VgnVCM3000001c56f00aRCRD.htm [2013/04/01]

[90] Munter M. European Commission releases draft CCCTB directive//Dla Piper, 2011 April 19. http://www.dlapiper.com/european-commission-releases-draft-ccctb-directive/ [2013/03/15]

into four companies in the CCCTB zone and three companies outside. Then the company group without enhanced cooperation and CCCTB will have to deal with seven different tax systems. Therefore, it can be concluded, that on the one hand some integration is better than none, on the other hand, it can be argued that enhanced cooperation will create a “zone within the zone”, which undoubtedly will impact on cross-border trade within the internal market.[91]

Hence, assessing these circumstances, it appears that the proposal hardly will get the unanimous approval, which needs to support the adoption of Directive. Rather the strong objections from certain Member States may influence choosing of enhanced cooperation procedure, which requires that substantive and procedural rules are followed, however, it can cause difficulties in process. In order to avoid new distortions or damaging of internal market and ensure proper functioning of CCCTB, it is needed that process would be monitored. The CCCTB will most likely continue achievement of its objectives, but currently enhanced cooperation might be the only realistic way towards that goals.

2.3 Optional character of CCCTB

Article 6(1);(2) of the proposal of CCCTB Directive determines that the application of the CCCTB is optional:

1. “A company to which this Directive applies which is resident for tax purposes in a Member State may opt for the system provided for by this Directive under the conditions provided for therein.
2. A company to which this Directive applies which is not resident for tax purposes in a Member State may opt for the system provided for by this Directive under the conditions laid down therein in respect of a permanent establishment maintained by it in a Member State.” [92]

According Art. 105(1) of the Directive the system has been successfully opted into, it has to be applied for a minimum period of five tax years:

1. “When the notice to opt has been accepted, a single taxpayer or a group, as the case may be, shall apply the system provided for by this Directive for five tax years. Following the expiry of that initial term, the single taxpayer or the group shall continue to apply the system for successive terms of three tax years unless it gives notice of termination. A notice of termination

[91] Kalberg A. A Common Consolidated Corporate Tax Base through Enhanced Cooperation?- EU Tax Harmonization and Flexible Integration, Lund, 2011, 44 p.

[92] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), Brussels, 2011, 21 p. http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2013/03/23]

may be given by a taxpayer to its competent authority or, in the case of a group, by the principal taxpayer to the principal tax authority in the three months preceding the end of the initial term or of a subsequent term."

On closer analysis of optional character of CCCTB proposal plenty advantages and disadvantages can be found. While the CCCTB proposal suggests an optional system, some Member States (i.e. Germany)[93] would prefer to adopt a mandatory system. The list of advantages and disadvantages of optional system can be shared into the positive and negative arguments that hold true for both a CCCTB as optional system and a system with compulsory character.

Optional character reduces the chance of a non-competitive system and it protects from the drifting apart of the domestic tax base. Moreover, changes are not so significant for the national sovereignty which is not as extremely restrained as would be after choosing a mandatory system. Furthermore, small and medium enterprises particularly can avoid complications.[94] Disadvantages of the optional system are the high compliance costs of exercising the option, the administrative burden and opportunities for shopping between the two systems. Besides, an important objection between one of the main aims - to harmonize 27 different corporate taxation systems, which are main source of distortions in the area of corporate taxation - pursued by CCCTB and optional character can be found. The adoption of the directive in its currently proposed form indicates that CCCTB and domestic corporate taxes of the EU Member States will coexist. Therefore, each EU-Member State will no longer only compete, in corporate tax matters, with the other Member States, but also with members of CCCTB system.[95]

The other problem assigned to an optional CCCTB is that the coexistence of the domestic corporate taxation system and CCCTB optional system will cause many uncertainties and complications, which decisions are not foreseen in proposal of Directive. For instance, the question arise how the transition to and from CCCTB will proceed, if a company based in Member State A suffer losses in one year and one year later this company opts for CCCTB. Can the losses of the company - which have been calculated according to Member States A laws be offset against the profits this company makes in later years under the CCCTB profit base without recalculation, or should these domestic losses be recalculated according to CCCTB standards? The coexistence of domestic corporate

[93] Herzik N., Kuhr J. Direct Taxation in the EU: the Common Corporate Tax Base as the next sub-step towards Harmonization, Wroclaw, 2012, 8 p.
[94] Iden.
[95] Boer M. A few comments on the CCCTB-directive, Groningen, 2012 February 29, 5 p.

taxation system and optional CCCTB can therefore lead to difficulties. Also from this perspective an optional CCCTB system would cause problems.[96]

However, on 15 March 2011, the Commission published a draft Directive on CCCTB together with a comprehensive impact assessment paper and this analysis finally led to an optional CCCTB. Although it will be harder to pursue aims of harmonization after choosing optional system, however it is reasonable and appropriate decision because not all companies trade cross-border. The CCCTB will not compel these companies which do not plan to expand beyond their country to bear the cost of shifting to a new taxation system.[97] Member States of course will experience some difficulties while they will have to cope with two separate tax schemes: CCCTB and their domestic corporate taxation. But advantage that the CCCTB will lead to fewer opportunities for tax planning by enterprises using transfer pricing or mismatches between taxation systems will compensate management of two systems. Besides, there will be fewer disputes in the court or the agreement procedures in double tax treaties, than in the case of compulsory CCCTB, which would inevitably cause an increasing resistance from the enterprises.[98]

To summarize it is possible to say that this optional proposal of CCCTB represents the most proportionate decision for the determined taxation problems in EU. It does not compel companies which do not have an intention to expand their business abroad to experience the unnecessary administrative cost of fulfilling new requirements in the absence of any real benefits. Despite the fact that the harmonization would be better ensured by the compulsory system, the optionality is better to establish new system seeking to avoid disputes and disagreements.

2.4 CCCTB: base harmonization versus rate harmonization

The Commission has no plans to harmonize Member States' corporate tax rates. Commission stated, "It is important to note that this approach does not infringe Member States, sovereignty to set corporate tax rates. They would apply their national tax rate to their specific share of the overall tax base as computed according to a commonly agreed allocation mechanism."[99] Member States will maintain their sovereign right to determine their own corporate tax rates, where this does not cause

---

[96] Iden.
[97] The KPMG guide to CCCTB, Part1, 2012, Switzerland, 4p. et seq.
http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/ccctb-part1-v2.pdf
[98] Iden.
[99] Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee Towards an Internal Market without tax obstacles: A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities, Brussels, 2001 October 23, 15 p. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0582:FIN:EN:PDF [2013/03/20]

distortions. Disparities in tax rates permit a particular degree of tax competition to be sustained in the internal market. What the CCCTB seeks is creating of more transparent system concerning the effective corporate tax situation in Member States, therefore creating fairer tax competition within the EU. However here two questions arise: firstly, whether or not the CCCTB will strengthen competitive pressures, particularly the pressure to reduce corporate tax rates. An essential insight that does originate from the discussion on this problem is that different Member States may be affected very differently by tax competition. For example, there are some EU countries with low corporate tax rates which are generally thought to benefit from tax competition under the particular system whereas other Member States with higher tax rates are usually considered as being unfavorably affected.[100] As a consequence the second question arise whether CCCTB is appropriate way to reach harmonization in corporate taxation without harmonizing tax rate or it would be more capable to reach its aims by harmonizing tax rates too. On the following these issues it is needed to analyze possibility of the solely rate harmonization and base with a minimum rate harmonization.

The large diversity in the present tax treatment of European companies is inconsistent with the conception of a single market proposing a level playing field for business competition. Whereas the level of corporation tax is influenced by the situation of investment and not on the place of residence of shareholders, the existing corporate tax disparities indicate that corporate capital may flow to the Member States which propose the lowest tax rates, and not to the states where capital can be most productively used. Therefore situation of increasing distortions in EU after the base harmonization without rate harmonization is still possible.

According to P. B. Sorensen “this is a serious weakness of the Commission's proposal to harmonize the corporate tax base without harmonizing statutory tax rates”[101], because current differences in statutory corporate tax rates and a harmonization of the corporate tax base might cause a larger cross-country variations in effective tax rates. In fact, the Commission's determination that effective tax rate differentials are mainly caused by differences in statutory tax rates would seem to suggest that rate harmonization should be more important and forego over base harmonization. On the other hand, if tax rates are harmonized and base not harmonized, those Member States who are forced to increase their statutory rates may try to reduce the effective tax burden by permitting more generous deductions for depreciation or by introducing special incentive schemes etc. This would imply that the intended harmonization of efficient tax rates could not be attained. Moreover, in the absence of base

[100] Fuest C. The European Commission’s Proposal For a Common Consolidated Corporate Tax Base, Oxford, 2008 September, 8 p.

[101] Sorensen P. To Harmonize or not to harmonize? A comment on The European Commission’s study on company taxation, Munich, 2002, 5 p.

harmonization and existence only of rate harmonization companies will still have to bear the high compliance costs implied by the existing 27 different corporate tax systems in the EU. These are two reasons why corporate tax coordination should not concentrate merely on rate harmonization and that without base harmonization obstacles in corporate taxation would remain.[102]

The other option is harmonization of the tax base with minimum tax rate, which means that both base and rate would be harmonized. In this case Member States would be invited to reduce their tax rates to attract corporate activity. In fact, with a harmonized tax base a decreasing of the statutory tax rate would become a clearer and not so ambiguous signal of a decreasing of the effective tax rate, and this might strengthen tax rate competition.[103] The negative aspects of such a minimum rate is that a Member State which attracts capital from abroad by lowering its corporate tax rate will impose a spillover effect on the other Member States, since the latter will incur a fall in economic activity and tax revenues due to a capital outflow. Under a system with a minimum rate companies doing business in high tax Member States could claim to be at a disadvantage comparing to their competitors in low tax countries. Unless legislators want a systemic transfer of the tax burden away from corporate capital, they should thus initiate the neutralization of the constant corporate tax competition in EU. It could be solved by combining the proposal for tax base harmonization with a binding minimum statutory corporate tax rate. On the other hand, if a Member State chooses to increase its corporate tax rate, it will trigger an outflow of capital which will generate a positive spillover effect on other states. Hence the choice to harmonize only corporate tax rate is considerably weaker than the option for a base harmonization with a minimum rate, however the latter would not have much more significant effect than current suggestion of CCCTB, because countries would still stay free to choose rate.[104]

Concluding we can say, that it may seem too radical to offer a harmonization of the rates, when even corporate tax base harmonization is still issue of disputes between Member States. Complete corporate tax rate and base harmonization may not be politically admissible, thus a proposal of full harmonization may suspend progression towards foreseen partial harmonization according enhanced cooperation procedure of tax base. However, harmonizing only corporate tax base may cause distortions in Member States, when they compete with each other by tax rate. According to P.B. Sorensen, “harmonization of the rate as well as the base of the corporation tax should still be seen as a

[102] Iden.
[103] Kopits G. Tax Harmonization in the European Community– Policy Issues and Analysis, 1992 March 15, 30 p.
[104] Gaetan N. Corporate Tax Competition and Coordination in the European Union: What do we know? Where do we stand?, Brussels, 2006 June, 32 et seq.

legitimate long term goal for the EU"[105], seeking to abolish obstacles which is caused because of different corporate tax systems and EU Member States should be more prepared to refuse autonomy in the field of corporate taxation to remove the distortions to the single market created by the current corporate tax differentials. Besides, harmonization only of tax rate would not be a good choice, because it would cause distortions in competition area. Summing up, all choices could have some negative and positive effect, however it is better partial harmonization of corporate tax base, which is presently proposed by Commission than absence of any harmonization at all.

2.6 Common Consolidated Base and alternatives

The Commission discussed four distinct comprehensive solutions to achieve a single harmonized tax base in EU, excluding Common Consolidated Tax Base, which was chosen to implement, the other proposals were: Home State Taxation, which means that subsidiaries follow the same rules as their parent company wherever they are located; European Union Corporate Income Tax administered at the EU level (with central administration); Compulsory Harmonized Tax Base (a compulsory method to compute the tax base). The only Compulsory Tax Base would be mandatory for all companies operating in the EU, while other systems are optional. It is important to analyze all refused variants in pursuance to reveal if Common Consolidated Tax Base is the most appropriate choice to take a step towards company tax harmonization in EU.[106]

The principal underlying idea of the suggested system of Home State Taxation (HST) indicates that EU companies would be permitted to determine and calculate consolidated profits on their EU-broad activities under the taxation rules of their Home State, that is, the Member State where their headquarters are located (i.e. the parent company).[107] "The HST is based on the mutual recognition, which has been adopted in the EU by the ECJ. Respectively, the tax system of the Member State of the parent company would govern the determination and allocation of profits to subsidiaries and permanent establishments located in other Member States. The group would be treated as a unity and taxed on consolidated profits irrespective of the number or legal forms of secondary establishments (subsidiary or a branch)."[108] For example, German-based multinational groups would compute its EU profits

[105] Sorensen P. To Harmonize or not to harmonize? A comment on The European Commission's study on company taxation, Munich, 2002, 8 p.
[106] Gianini S. Home State Taxation vs. Common Base Taxation, University of Bologna, CESifo Forum, 2002, 24 p.
[107] Plasschaert S. The EU Consolidated Income Tax Revisited, Munich, 2002 February, 5 p.
[108] Lang M. et al. Introduction to European Tax Law: Direct Taxation, Vienna, 2010, 35 p.

according to German taxation laws; a multinationals, which headquarters are situated in France would compute its total taxable EU-wide profits accordingly to French tax legislation, etc.

The positive side of the HST is that it does not claim any harmonization. HST proposal appears simpler than the CCCTB, because it can be implemented “on a current legislation basis”. CCCTB, on the contrary, requires the definition of a new system, with all the complications this may involve not only in defining the items to be included in the tax base, but also in applying a new set of rules by companies and tax administrators too.[109] It is sufficient if participating Member States express mutual recognition about the corporate tax systems of the other states participating in the system. Moreover, the removal of distinct accounting should make the system easier by removing the necessity to impose combined transfer pricing rules for transactions in the EU. One more advantage of HST is that the system is not obligatory: companies, located in participating Member States, would be free to switch to the system or to stay out, but those that would join are obviously to experience lower tax compliance costs, because they will no longer have to deal with the diverse and often conflicting national laws for the determining of transfer prices. Joining a consolidated tax base will also allow firms to compensate losses on operations in one Member State against profits made in another Member State, and corporate restructuring within a consolidated group will experience less taxation barriers.[110]

However, despite the advantages of HST, there are also some problems with this system. The main of them are existing disparities across domestic EU tax systems, which will continue to create obstacles within the EU operating companies. Companies belonging to separate multinational groups, which operate in the EU Member States, will have to deal with various tax base rules if headquarters of their parent companies are situated in different countries. In situation of revision of the foreign affiliates of the domestic parent company, the tax authorities of the Home country will also rely on the assistance of foreign tax administrators who may not be acquainted with the HST laws. Besides, HST would influence the competition between Member States, because they may start to try attract headquarters of companies by suggesting more attractive tax base laws. This competition would cause unfavorable effect on revenue, whereas a more attractive tax base definition in any Home State would apply not only to factor of income from activity in the Home State, though to income earned throughout the EU area.[111]

---

[109] Giannini S. Home State Taxation vs. Common Base Taxation, Bologna, 2002, 27 p.

[110] Sorensen P. To Harmonize or not to harmonize? A comment on The European Commission’s study on company taxation, Munich, 2002, 3 p.

[111] Sorensen P. The future of company taxation in the European Union: Comments on the speech given by EU Tax Commissioner Frits Bolkestein at the conference on 'Tax Policy in the European Union' Rotterdam, 2001 October 18, 4 p.

Unlike the HST, the Common Consolidated Tax Base declares that there is a demand to harmonize the set of rules determining the tax base for those companies, which opt the consolidation of their cross-border profits. This will remove tax base competition for headquarters of companies and will grant a more level playing field for European corporations. However, in order to get this benefit by tax base harmonization, Member States will lose their national autonomy. Furthermore, in circumstances that the harmonized base would be invoked solely to multinationals, the situation of increasing distortions between large and small firms operating within each Member State could be created whereas the small companies without international operations would still be subject to the internal tax rules, while system of HST was intended to be particularly beneficial for small and medium-sized enterprises. Under HST system, small/medium enterprises would be permitted to invoke the home state company tax rules regardless where they were functioning in the EU. It would also be an impediment that national tax administration would have to manage two distinct tax systems, that is, the new Common Consolidated Tax Base applying to companies operating cross-border, and the existing domestic tax rules relevant for enterprises which operates only inside the country.[112]

The European Union Corporate Income Tax system is similar to the Common Consolidated Tax Base, excluding that the latter system is assumed to be administered by national governments, whereas the European Union Income Tax system is assumed to be administered at the EU level, with some or all of the revenue accruing directly to the EU.[113]

The fourth alternative suggested by the Commission in the report is Compulsory Harmonized Tax Base. As opposed to CCTB, the Compulsory Harmonized Tax Base would not be optional, but would be obligatory for all Member States. The Compulsory Harmonized Tax Base entails a single corporate tax base to all EU firms - domestic and also international - in all Member States (they would not be allowed to opt out of this tax) and elimination of national laws defining the corporate tax base. This could bring equality between domestic and multinational companies and remove the necessity for national tax administrations to manage two different taxation systems.

On the other hand, whereas Compulsory Harmonized Tax Base harmonizes the taxation rules for small domestic companies, it also includes a stronger deprivation of national taxation independence. Notwithstanding there would not necessarily be a demand for a centralized administration of taxes, because the consolidated profits would be allocated to the Member States according to a particular mechanism and then separately taxed by the Member States at rates of national taxation.[114] Initially, the

[112] Giannini S. Home State Taxation vs. Common Base Taxation, Bologna, 2002, 28 p.
[113] Pirvu D. Corporate Income Tax Harmonization in the European Union, London, 2012, 94 p. et seq.
[114] Lang M. et al. Tax Compliance Costs for Companies in an Enlarged European Community, The Netherlands, 2008, 38 p.

Commission discussed an opportunity for Compulsory Harmonized Tax Base to be the first step towards a CCTB, but later decided that there is no necessity for transitional means.[115]

Although the demand for corporate tax harmonization in EU is pressing, the implementation of this proposed system will not be easy. As it was earlier mentioned in this theses corporate taxation could be harmonized at maximum degree using Compulsory Harmonized Tax Base, however it will require to give away most autonomy and it is unlikely to receive an approval from Member States. The Home State taxation advantages were mostly discussed, however Home State Taxation does not require that national systems of Member States would be identical, unanimous agreement would not be necessary and the administration of this system would be based only on closer cooperation, mutual assistance and information exchange, therefore this lack of unanimity and absence of clear, mandatory measures is unlikely to ensure appropriate harmonization of corporate taxation in EU. Therefore, it can be assumed, that CCCTB - system which was chosen to implement in reality is the best option of the suggested alternatives.

[115] Lang M. et al. Introduction to European Tax Law: Direct Taxation, Vienna, 2010, 36 p.et seq.

3. Formulary Apportionment method: experience of foreign countries and challenges of implementation

In this part it is important to analyze the essential element – Formulary Apportionment method - of CCCTB, which would bring most changes in corporate taxation in EU. This method would change arm's length principle which is a reason of main corporate taxation obstacles in EU.[116]

The consolidated tax base is suggested to be apportioned by a formula that includes three elements: labor, assets and sale. It is an approach to ascertain the corporate tax base of a sole company or group of related companies attributable to a MS on the basis of a formula that attributes a proportionate share of the company's or related companies' corporate tax base to the country with reference to a factor or factors that reflect or are assumed to reflect the underlying income-producing activities within the Member State. After careful comparison of different methodologies, the simpler apportionment method has been chosen and placed in the proposal for a Directive. This option is also grounded on the circumstance that it has been invoked practically for many years in the US and Canada. A three element method based on company specific data: labor, and assets and sales (giving an equal weight for each) was seen as a promising method for sharing.[117] The appropriateness of this choice will influence practical operation of CCCTB system; therefore it is relevant to discuss each factor separately.

The labor factor: the location where employees (according Art. 90 of Directive definition of an employee shall be determined by the national law of the Member State where the employment is exercised) perform their tasks should be ascribed an appropriate share of taxable income because these employees probably will use a public benefits of that particular country. Whereas these benefits have to be financed, companies are assumed to generate taxable income by combining capital and labor. However, the factor of labor becomes groundless if taxable income is a return on capital, because labor may not be a proper proxy for capital costs.[118]

The asset factor: the European Commission seeking practicality and simplicity choose to involve only fixed tangible assets in this factor. Financial assets were excluded from the formula because of their unstable nature and risk of evading the system. They also excluded intangible assets.

[116] Wolfgan S., Konrad A. Fundamental International Transfer Pricing in Law and Economics, Munich, 2012, 87 p.
[117] Comarniceanu A. Apportionment of Consolidated Tax Base under the Common Consolidated Corporate Tax Base Proposal, Paris, 2012, 12 p.
[118] European Commission Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), Brussels, 2011, 51 p.

Under Article 93, an asset shall be included in the asset factor of its economic owner[119], it means the person who has in principle all the benefits and risks added to the asset or/and is entitled to depreciate under the CCCTB rules. "If the economic owner cannot be identified, the asset shall be included in the asset factor of the legal owner"[120]. If the economic owner does not effectively use the assets, they are allocated to the group member that does, provided the assets represent more than five percent of the value of the latter's fixed tangible assets. So far as valuation is concerned, land and other non-depreciable fixed tangible assets are valued at their original cost. An individually depreciable fixed tangible asset is valued at the average of its tax written down value (value for tax purposes) at the beginning and at the end of a tax year. Since profits consist of a normal return on capital and a risk premium for entrepreneurial activities – at least under perfect competition on the market – assets (or property) are appropriate for reflecting the source of taxable income.[121]

The sales factor is included in order to ensure "fair participation of the Member State destination".[122] Article 95 provides that the sales factor consists of the total sales of a group member divided by the total sales of the group. "Sales" are defined as the proceeds of all sales outside the group of goods and supplies of services after discounts and returns, excluding value added tax, other taxes and duties. Exempt revenues, interest, dividends, and royalties and proceeds from disposing of fixed assets shall not be included in the sales factor unless they are revenues earned in the ordinary course of business.[123] Intragroup sales are not involved since they are accounted by applying arm's length principle, which would cause transfer pricing obstacles and which is aimed to change by Formulary Apportionment. It has to be noticed that practically the significance of sales may vary depending on the company and the type of business. Though, there is a causative relation between sales and profits. This means that in addition to the combination of capital and labour, incorporation of the factor sales in the formula is also reasonable.[124]

---

[119] Iden.
[120] Iden.
[121] Working document of Common Consolidated Corporate Tax Base Working Group: CCCTB: possible elements of the sharing mechanism, Brussels, 2007 November 13, 9 p.
http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/ccctbwp060_en.pdf [2013/03/12]
[122] Comarniceanu A. Apportionment of Consolidated Tax Base under the Common Consolidated Corporate Tax Base Proposal, Paris, 2012, 19 p.
[123] European Commission official website // Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), 2011, 52 p.
http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2013/02/13]
[124] Working document of Common Consolidated Corporate Tax Base Working Group: CCCTB: possible elements of the sharing mechanism, Brussels, 2007 November 13, 12 p.
http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/ccctbwp060_en.pdf [2013/03/12]

The main intention of Formulary Apportionment mechanism is that enterprises should pay taxes in proportion to their economic location in the Member State. The company with the so assigned tax base will be taxed in the country, where the relevant subsidiaries or permanent establishments are resident or located, at the domestic corporation tax rate. Commenting the sharing mechanism in the overall context of the directive, the Commission declared that "the sharing mechanism itself is not the purpose of the comprehensive tax reform, but a necessary and unavoidable consequence of the consolidation"[125]. Consequently, the demand to invoke a sharing formula in pursuance to apportion the common tax base between the companies of a cross-border group comes across as a natural result of the consolidation, which will influence the removal of the transfer pricing barriers from the EU.

The apportionment formula is one of most debatable and politically controversial detail of CCCTB. The selection of the factors in the Formulary Apportionment mechanism is significant as the factors set the distribution of the tax base across jurisdictions of Member States. For instance, a more labor intensive state will receive a larger share of profits from the factor of labor. Thus, the sharing mechanism may be considered as a major factor, highly important to both countries and enterprises.[126] The CCCTB's Formulary Apportionment method is important for the foundation of the position EU countries express about the proposal of Directive. Since the legal basis for the Proposal can be found in article 115 TFEU, the unanimity of Member States is required. However many countries take the apportionment mechanism as main factor in deciding whether they support or not CCCTB, since the proposal was presented, system has met opposition from a number of EU states.

If the apportionment formula seems favorable to a Member State, it may choose to maintain CCCTB. For example, in assessing the CCCTB as a proposition declared as favorable to the European Union countries, France accepts the apportionment mechanism. Tax revenues would increase in France with regard to the fact that the apportionment mechanism itself is rather advantageous for this country. For example, "the element sales, combined to the principle of sales by destination would be stimulated by the French intense consummation. Similarly, due to France's demography and the high salaries, the element labor would probably be more significant compared to other countries"[127]. Contrariwise, if the apportionment formula causes disadvantages, countries disagree to maintain CCCTB system. For instance, Netherlands disagree with Proposal since the apportionment mechanism does not take into account intangibles in the asset factor, which will demolish an important share of the Dutch tax

[125] Iden. 5 p.
[126] Comarniceanu A. Apportionment of Consolidated Tax Base under the Common Consolidated Corporate Tax Base Proposal, 2012, Paris, 13 p..
[127] Iden.

base.[128]The Formulary Apportionment mechanism and consequently CCCTB system itself depend on the foundation of the decision which Member States will accept concerning the proposal of Directive. According to Article 6(1) and (2) of the proposed Directive the optional character of the Directive is affirmed for both Member State resident applicants and third country residents. Therefore, a company which satisfies the requirements and is a tax resident in an EU Member State may choose to opt or not the system.[129]

In summary, the apportionment formula of CCCTB is the ambitious goal of the European Commission which aimed at setting a simple, equitable and difficult to manipulate apportionment mechanism, which at first sight may look as a reliable and rational method. However, at a closer look, it can be seen there is an issue between the ambitious goal of the system and that problems that may appear in practical and conceptual terms. Besides, the aspect relating to the practical implementation of the sharing formula encounters difficulties, because the project is criticized by some Member States, which would experience disadvantages after the adoption of this system. Commission did not innovate the new method applicable only for EU countries, but took the practical experience of Canada and the United States using the Formulary Apportionment. Therefore a brief analysis of these countries experience may provide some information where a Formulary Apportionment in EU might lead after its adoption.

3.1 Lessons worth to learn from the US and Canada experience on Formulary Apportionment

In pursuance to perceive an applicability of apportionment mechanism in EU subject it is needed to analyze the experience of countries which already use this formula in practice. Commission chooses the Formulary Apportionment under the influence of the fact that it has been used for many years in Canada and US and achieved positive results there. The working group explicitly states that as regards formulary apportionment, "it should be noted that it has been applied for many years in the

[128] Ernst&Young Report, Global Tax Policy and Controversy Briefing, 2012, 104 et seq. http://tmagazine.ey.com/wp-content/uploads/2012/12/TPC_DEC2012_Low_res.pdf [2012/12/06]]

[129] European Commission official website // Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), 2011, 21 p. http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2013/02/16]

USA and Canada and both countries appear satisfied by the outcome of the mechanism and are not planning to move to another system."[130]

3.1.1 Formulary Apportionment method in the US

Formulary Apportionment mechanism in the US originates from the 19th century. The main reason was the levy of capital stock and property tax on the expansion of railroad network. Companies evaluated their whole property (e.g. railroad track, rolling stock) as a single unity. The Wisconsin state invoked Formulary Apportionment method on the corporate taxation, grounding its formula on these factors: shares of property, cost of production and sales motivating it by asserting that the computing of separate accounts was not practicable because major part of companies carried out their activities in more than one state. In 1920 the application of Formulary Apportionment method was validated by the Supreme Court. The three equally weighted factors: property, payroll and gross receipts became the standard factors. However since the 1980s the states refused to weigh factors equally and the weight on gross receipts was increased and the weight of the property and payroll factors were decreased. One of the most insistent matters the European Commission had to deliberate in creating the CCCTB was the uniform and equal apportionment method. American tax experts warned EU on this issue to not repeat the same mistakes as the US with regard to the apportionment formula itself as well as to the whole formulary apportionment process in the US.[131]

Today there is no uniform method applied in all states of America. Individual states apply a separate formulas and only nine states now use the original three factor formula. More weight was provided for sales factor: most states nowadays use formulas with a double-weighted sales factor (i.e. Arizona, Minnesota, Pennsylvania) or in fact even apply the sales factor as the sole element in a one-factor formula. The motive to shift towards a sole sales factor may be found in tax policy reasons. The goals of US are similar to EU purposes that are the promotion of production, investment and employment within their borders. This could be achieved by a giving a more weight for the sales factor, which leads to an increasing in production, investment and employment, because it influence lowering

[130] Working document of Common Consolidated Corporate Tax Base Working Group: The mechanism for sharing the CCCTB, Brussels, 2006 November 17, 5 p. http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/ccctbwp47_sharing_mechanism_en.pdf [2013/01/04]

[131] Weiner J. Formulary Apportionment and the Future of Company Taxation in the European Union, CESifo Forum, 2002, 10-20 p.

of tax burden on in-state production and increasing the tax burden on in-state consumption. Thus, a more weight for the sales factor raises investment level in the certain state.[132]

The Formulary Apportionment method based solely on the sales factor cannot ascertain the whole taxable income sufficiently. Increasing the weight of sales factor induces higher investment if other states as well as include sale factor in their apportionment mechanism. However, it is problematic in US whereas states use a combination of few factors and do not have intentions to change it to a factor based solely on the sales or at least a double-weighted sales factor. In addition to economic processes, the judicial criterion made an impact in the formula design too. According to the Supreme Court of US, obstacles with regard to multiple taxation arise concerning the fact that states use the different factors for apportionment formula. However, the Supreme Court also stated that states were not constitutionally obliged to have uniformity due to the apportionment formula. [133]

Summing up the practice of US, this lesson can be applicable in EU: more uniformity should be pursued than can be found in the US system, what Commission already does considering the proposal of CCCTB. The US Formulary Apportionment mechanism experiences difficulties because of differences of application of Formulary Apportionment system and disparities in the formulas themselves which have an influence on higher administrative and compliance costs, greater number of possibilities of tax avoidance, situations of double taxation and lead to an redundant complexities of the system. It should therefore be noted that the uniformity of the apportionment method should have a high priority in pursuance to eliminate obstacles of corporate taxation in EU and decrease tension between taxpayers and tax administrators.

3.1.2 Formulary Apportionment method in Canada

The application of Formulary Apportionment method in Canada differs from the US. The main difference from the US system is making corporation taxes in Canada reasonably uniform. An apportionment formula established in Federal Collection Agreements is based on payroll and gross revenue. This is how uniformity is ensured, because provinces levy their tax on the federal base and use this federal formula. However, the provinces still maintain autonomy whereas they use their own local taxes and tax credits to the tax base that is computed by means of the federal formula. Double taxation is obviated by determining domestic income from foreign income applying the same federal formula. The factor of property has not been included in the Canadian formula. This is, firstly, because of

[132] Iden.
[133] Weninger P., Formulary Apportionment of Corporate Group Income to the EU Member States, Vienna, 2007 March 29, p. 72

valuation problems and, secondly, because the policymakers did not want to ascribe a too large share of the income to provinces mainly focused on export.[134]

The uniform nature of the Canadian system is different from the method of the US. Many of the impediments of the US system can be evaded choosing the uniform model. The European Commission made the decision to opt a uniform apportionment method for the CCCTB. The more significant deficiency of the Canadian method, however, is that apportionment formula is only used to separate legal entities and not to a group of companies, which means that companies still have to deal with arm's length pricing.[135] However, European Commission made the CCCTB applicable to groups of companies, thus such quandaries will be avoided.

The European Commission investigated available international experience on Formulary Apportionment in order to perceive the most applicable mode for EU and concluded that uniformity which is important for simplicity, equity, flexibility, the avoiding of manipulations of the system are the principal element to implement successfully CCCTB. However, this method of apportioning the tax base should pass the test of practice in order that to evaluate whether it really can achieve major purposes ascribe by the Commission.

3.2 CCCTB establishment in Lithuania

Although Lithuania did not express an official opinion about CCCTB system adoption and implementation, there were some discussions about this system and comments from Lithuanian companies. For example, Rimantas Perveneckas Director General of group of companies "Apranga" stated that harmonized corporate tax rules would be advantageous for companies operating in several countries and that it is highly important that all EU Member States would allow consolidating corporate profits of group of companies operating cross-border. Currently, in Lithuania, unlike, for example in Estonia is not possible to cover losses of one group company by profits of another the same group company. Therefore, in this respect, Estonia is much more attractive for investors than Lithuania. Besides, Danguolė Pranckėnienė, the president of Lithuania Accountants and Auditors' Association noted that business in Lithuania currently suffer many problems which arise because of different treatment of the same legislation. The cases when the same rules are interpreted differently by tax inspectors of different cities are very frequent. If such 'traditions' will remain, it will be difficult to

[134] Weiner J., Formulary Apportionment and Group Taxation In the European Union: Insights From the United States and Canada, Brussels, 2005 March, p. 14

[135] Weninger P., Formulary Apportionment of Corporate Group Income to the EU Member States, Vienna, 2007 March 29, p. 108

work for businesses.[136] CCCTB could contribute, even if partly, to clarity of interpretation of taxation rules. Besides, it would give an opportunity to consolidate profits of group of companies operating in several Member States.

However, the Free Market Institute of Lithuania initiated petition against CCCTB and Formulary Apportionment method, which was signed by 27 organizations. The Free Market Institute says that CCCTB is not able to ensure efficient operation of internal market and eliminate distortions which currently exist in EU in the area of corporate taxation, because an optional CCCTB as was proposed it would only increase number of standards within the EU. In addition it would create a high adjustment costs to businesses, especially small and medium-sized enterprises.[137]

The first investigation initiated by Ministry of Finance of Lithuania and what influence CCCTB would cause for Lithuanian companies and Tax Authority was carried out and published on 25 of January 2013. Two scenarios were analyzed: what impact would have optional (which is currently proposed by the Commission) and compulsory CCCTB. Based on the data provided in the Eurostat base, these things were investigated:

- Apportionment factors proposed in the CCCTB Directive: assets, employees and sales by destination and other Formulary Apportionment factors which are not involved in the current version of the apportionment formula indicated in the Directive: intangible fixed assets, research and development (R&D) expenses and turnover (instead of sales by destination);[138]
- Administrative burden of the corporate tax computing and administration.

After analyzing the Formulary Apportionment method which was suggested in the current version of the Directive and comparing it to other apportionment formula methods considered in earlier discussions of CCCTB system, the conclusion can be made that the apportionment of corporate income tax (CIT) base using the formula proposed in the current version of the Directive would be most beneficial for Lithuania. If other factors would be included into the apportionment formula, this system would not be beneficial for Lithuania companies. After investigation of all factors of the formulary Apportionment methods separately, it was determined that:

[136] Pelno mokesčiui – „vieno langelio“ principas 2011 March 16 http://iq.lt/ekonomika/pelno-mokesciui-vieno-langelio-principas/?psl=1 [2013/03/30]
[137] Šimašius R. Mokesčių harmonizavimas ir konkurencija – pelno mokesčio bazės istorija http://www.lrinka.lt/index.php/meniu/spauda/straipsniai%20ir%20konkurencija%20pelno%20mokescio%20bazes%20istorija/3332 [2013/03/13]
[138] Bendros konsoliduotos pelno mokesčio bazės įtakos Lietuvai vertinimas, 2013 January 25, 14 p. http://www.lrv.lt/bylos/LESSED%20projektas/Dokumentai/bkpmb%20tyrimo%20ataskaita%20(fin%20min%20ir%20mpt)%202013%2001%2025%20(galutine).pdf [2013/04/05]

- If compared with other EU Member States, Lithuania is the strongest in terms of the number of employees (0.69% of the total number of employees in the EU) and weakest in terms of payroll (0.13% of the total payroll of the EU). Therefore, if the weight of the number of employees was increased while the weight of payroll was decreased in the proposed apportionment formula, this would produce an even more favorable result of corporate income tax base apportionment for Lithuania
- If compared with other Member States, Lithuania is ranked similarly in terms of sales by destination (0.18% of the total sales by destination of the EU) and fixed tangible assets (0.19% of the total fixed tangible assets of the EU). Therefore, the factors of sales and fixed tangible assets are considered neutral.[139]

Investigation also was performed on the administrative burden for Lithuania Tax Authority. The influence of changing the present domestic corporate income tax regime by the CCCTB system on the administrative burden of the Lithuania Tax Authority was analyzed. To assess the impact on the Tax Authority's administrative burden, first of all, resources available and necessary for corporate income tax administration under the current corporate income tax regime were identified in the survey. Then changes in connected processes and costs necessary to administer CCCTB were evaluated. The analysis of impact on the Tax Authority's administrative burden revealed the following: Introduction of CCCTB would likely increase the Tax Authority's administrative burden, as Tax Authority would have to manage two different systems: national and CCCTB.[140]

In conclusion, after comparing current national corporate taxation system with CCCTB in the first survey initiated by Ministry of Finance we can see that partially this system for Lithuania would be beneficial: more for companies, less for Tax Authority. However, it is needed much more investigations and analyses to carry on to precisely determine the impact of CCCTB for Lithuania, more companies should be invited to express their opinion and involved in the discussion about the demand to adopt CCCTB for Lithuania and country should express their official supporting or opposing position about this system, because the passive observer role is least beneficial for country and companies.

[139] Iden.
[140] Bendros konsoliduotos pelno mokesčio bazės įtakos Lietuvai vertinimas, 2013 January 25, 11 p. http://www.lrv.lt/bylos/LESSED%20projektas/Dokumentai/bkpmb%20tyrimo%20ataskaita%20(fin%20min%20ir%20mpt)%202013%2001%2025%20(galutine).pdf [2013/04/05]

CONCLUSIONS

The foundation of CCCTB system was comprehensively analyzed in this master thesis as a new opportunity to harmonize corporate taxation in EU and a remedy to solve the main problems such as high compliance costs, double taxation and over-taxation, which cause distortions in internal market and discourage companies to operate in cross-border. After investigation of current problems and decisions taken to solve them before proposal of CCCTB as well as after analysis of main characteristics of CCCTB and possibilities to adopt and implement this system in EU, the hypothesis that CCCTB is an appropriate step towards company tax harmonization in EU was approved and such conclusions were made:

1. Proposal of CCCTB presents one-stop shop system which ensures that enterprises only would have to deal with one tax administration instead of 27, thus creating more integrated system than is currently established in network of bilateral Double Taxation Treaties, therefore the obstacles caused by 27 different taxation rules can be removed.
2. The CCCTB is based on consolidation which means that companies of the group operating in different Member States applying CCCTB system would calculate their taxable profit and tax losses together as a one unit, therefore over-taxation of companies operating cross-border could be avoided and EU would become more attractive location for businesses development from domestic to other countries.
3. The main difficulty to establish CCCTB system at the EU level is countries which do not express position and which are against this system reasoning their opinion that CCCTB system is not in compliance with principles of proportionality and subsidiarity. Concerning these claims the enhanced cooperation procedure was suggested as an alternative, which means that CCCTB could be adopted by the group of at least nine countries. The main doubt is that enhanced cooperation will create “zone in zone” and negatively impact cross-border trade within the internal market. However some integration is better than none at all and enhanced cooperation might be the only realistic way towards this goal.
4. CCCTB is an optional system. Optional character indicates that Member States will have to manage two corporate taxation systems: CCCTB and domestic that can lead to higher administrative burdens. Besides, harmonization of corporate taxation could be better achieved by compulsory system. However optionality is a better way to establish a new and different from domestic system in order to avoid disagreements and seeking to ensure that companies operating only in one Member State will not bear unnecessary costs.

5. CCCTB involves only harmonization of base, it does not harmonize tax rate. Base and rate harmonization could ensure better abolishment of tax obstacles in cross-border. Rate harmonization currently would be hardly possible because of Member States wish to save their sovereign right to determine tax rates by themselves. However, rate harmonization should be a long term goal seeking to eliminate barriers caused by differentiation of taxation systems.
6. Three other alternatives excluding CCCTB to reach a single tax base was analyzed by the Commission: Home State Taxation, which was refused as unable to ensure harmonization because of lack of unanimity and clear, mandatory measures; Compulsory Harmonized Tax Base was not approved because it was decided that optional system is better and Corporate Income Tax administered at the EU level rejected as requiring to give away too much autonomy of Member States. CCCTB is optimum choice to seek corporate tax harmonization in EU.
7. Commission introduced a uniform and hard to manipulate Formulary Apportionment method to calculate companies' taxable profits. The main intention of Formulary Apportionment mechanism is that enterprises should pay taxes in proportion to their economic location in the Member State. This method will change arm's length approach and have a lot of potential to eliminate the high additional compliance costs.
8. Although Lithuania did not express official opinion about CCCTB system, but one survey was carried out by the Ministry of Finance, which concluded though CCCTB system itself would cause more administrative burdens for Tax Authority, however Formulary Apportionment method could be beneficial for companies.

PROPOSALS

After analysis of main element of CCCTB and investigation of possibilities to adopt and implement this system, such recommendations may be given:

1. Member States should more clearly express their opinion about CCCTB system and show more courage to adopt it, because despite the scepticism, it can be a solid stimulus towards company tax harmonization in European Union.
2. Even if Member States are not ready to give away their sovereign rights in the area of corporate taxation and determination of tax rate, the idea to harmonize tax rate in the certain form should not be refused as a possibility to ensure a higher level of harmonization in the field of corporate taxation in the future.
3. While there exist many forms of apportionment formula, the experience of foreign countries should be evaluated and the most effective form of Formulary Apportionment mechanism should be adopted in EU.
4. Lithuania should initiate more investigations on the CCCTB system, seeking better evaluation of impact for companies, Tax Authority and whole country and then express officially its consent or objection.

BIBLIOGRAPHY

Books

1. Kopits G. Tax Harmonization in the European Community–Policy Issues and Analysis, 1992 March 15, ISBN 155775-225-7
2. Pirvu D. Corporate Income Tax Harmonization in the European Union, London, 2012, ISBN 978-1-137-00090-3
3. Mahr B. Comparison of US, UK and German corporate income tax systems with respect to dividend relief, Germany, 2004, ISBN 978-3-638-76057-7
4. Terra B., Wattel P. European Tax Law, 2008, ISBN 90-411-23865
5. Fibbe G. EC Law Aspects of Hybrid Entities, Amsterdam, 2009 ISBN 978-90-8722-042-6
6. Lannoo K., Levin M. An EU company without an EU tax? A corporate Tax Action Plan for Advancing the Lisbon Process, Brussels, 2007, ISBN 978-1-84542-774-0
7. Lang m. et al. Tax Compliance Costs for Companies in an Enlarged European Community, Netherlands, 2008, ISBN 978-90-411-2666-5
8. Rasmussen M. International Double Taxation, Netherlands, 2011, ISBN 978-90-411-3410-3
9. Schon W. et al A Common Consolidated Corporate Tax Base for Europe Eine einheitliche Körperschaftsteuerbemessungsgrundlage für Europa (English and German Edition), Munich, 2008, ISBN 978-3-540-79484-4
10. Cockfield A. Globalization and its Tax Discontents, Toronto, 2010, ISBN 978-0-8020-9976-1
11. Lang M. et al. Introduction to European Tax Law: Direct Taxation, Great Britain, 2008, ISBN 978-3-7073-0933-1
12. Weninger P., Formulary Apportionment of Corporate Group Income to the EU Member States, 2009, ISBN 978-9050958912
13. Gamie M. et al Achieving a Common Consolidated Corporate Tax Base in the EU, Brussels: Centre For European Policy Studies, 2005. - ISBN 92-9079-599-9
14. Weiner J. M. Company Tax Reform in the European Union: Guidance from the United States And Canada on Implementing Formulary Apportionment in the EU, New York: Springer, 2006. - ISBN 10: 0-387-29424-4
15. Spengel Ch., Zolkau Y. Common Corporate Tax Base (CC(C)TB) and Determination of Taxable Income: An International Comparison, London: Springer Heidelberg Dordrecht, 2012. - ISBN 978-3-642-28432-8
16. Panayi Ch. Double Taxation, Tax Treaties, Treaty-Shopping And The European Community, Netherlands: Kluwer Law International, 2007. - ISBN 978-90-411-2658-8
17. Wolfgan S., Konrad A. Fundamental International Transfer Pricing in Law and Economics, Munich, 2012. ISBN 978-3-642-25980-7

Articles

1. Lenartova G. Tax Harmonization in European Union, University of Economics in Bratislava, Bratislava, 2011.
2. Kaye T. A. European Tax Harmonization and the Implications for U.S Tax Policy, Boston College International and Comparative Law review, Boston, Volume 19, Issue 1, 1966.
3. Kalberg A. A Common Consolidated Corporate Tax Base through Enhanced Cooperation?- EU Tax Harmonization and Flexible Integration, Faculty of Law, Lund University, 2011.
4. Zhang A. Supremacy of EU Law: A Comparative Analysis, University of Illinois, 2011.
5. Comarniceanu A. Apportionment of Consolidated Tax Base under the Common Consolidated Corporate Tax Base Proposal, Universite Paris I - Panteon Sorbone, Master 2 Professionnel Droit des Affaires et Fiscalité, 2012.
6. Danko Z., Corporate tax harmonization in the European Union, Szeged, 2012.
7. Ashta A. The Parent Subsidiary Directive (90/435/EEC), Burgundy School of Business, Burgundy, 2006.
8. Valente P. Arbitration Convention 90/436/EEC: Inapplicability in Case of Serious Penalties, Wolters Kluwer, Amsterdam, 2012, ISSN 0165-2826
9. Voegele A. The Arbitration of Transfer Prices in Europe: The EU Arbitration Convention in Practice, University Paris I, Sorbonne, Paris, 2006.
10. Fuest C. The European Commission’s Proposal For a Common Consolidated Corporate Tax Base, Oxford University Centre for Business Taxation, 2008.
11. Perna R., Cerioni L. The new CCCTB proposed scheme: an opportunity for cross-border business, a challenge for the national Judge, Workshop “Taxation Law” dell’Associazione dei Giudici amministrativi europei (AEAJ) e di prossima pubblicazione sul sito dell’Associazione, Vienna, 2012.
12. Herzik N., Kuhr J. Direct Taxation in the EU: the Common Corporate Tax Base as the next sub-step towards Harmonization, Wroclaw Review, 2012.
13. Boer M. A few comments on the CCCTB-directive, University of Groningen - Faculty of Law; Max Planck Institute for Tax Law and Public Finance, Groningen, 2012 February 28.
14. Sorensen P. To Harmonize or not to harmonize? A comment on The European Commission’s study on company taxation, Munich, Volume 3, 2002.
15. Gaetan N. Corporate Tax Competition and Coordination in the European Union: What do we know? Where do we stand?, Munich Personal RePEc Archive, 2006 June, ISSN 1725-3187.
16. Plasschaert S. The EU Consolidated Income Tax Revisited, University of Antwerpen, CESifo Working Paper Series No. 670, 2002 February.
17. Giannini S. Home State Taxation vs. Common Base Taxation, CESifo Forum, Vol. 3., Bologna, 2002.
18. Weiner J. Formulary Apportionment and the Future of Company Taxation in the European Union, CESifo Forum, 2002.
19. Gianini S. Home State Taxation vs. Common Base Taxation, University of Bologna, CESifo Forum, 2002
20. Oestreicher A., Koch R. Corporate Average Tax Rates under the CCCTB and Possible Methods for International Loss-Offset, University of Goettingen 2008.

Legal acts

1. Consolidated version of the Treaty on the Functioning on European Union, 2008.
2. The Treaty of Rome, 1957.
3. Directive 90/435 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States
4. Directive 90/434 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States
5. Arbitration Convention 90/436 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

Other documents

1. Miklo P., Boghicevici C., The harmonization of the Indirect Taxation in European Union, Abstract of the 4th edition of the International Scientific Conference, Arad 2009.
2. The KPMG guide to CCCTB, Switzerland, 2012,
3. The EEC Report on Tax Harmonization, International Bureau on Fiscal Documentation, Amsterdam, 1963.
4. Report of the Committee on independent experts on Company Taxation, Executive summary, Brussels, 1992.
5. Commission Staff Working Paper: Company Taxation in the Internal Market, Brussels, 2001 October 23.
6. Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), Brussels, 2011.
7. Ernst&Young Report, Global Tax Policy and Controversy Briefing, 2012.
8. Summary Report of the Commission's Consultation on Double Taxation Conventions and the Internal Market: Factual Examples of Double Taxation Cases, 2011 January.
9. Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee Towards an Internal Market without tax obstacles: A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities, Brussels, 2001 October 23.
10. Working document of Common Consolidated Corporate Tax Base Working Group: The mechanism for sharing the CCCTB, Brussels, 2006 November 17.
11. Bendros konsoliduotos pelno mokesčio bazės įtakos Lietuvai vertinimas, 2013 January 25

Internet sites

1. CCCTB – what it really means, 2011 March, p. 2 http://download.pwc.com/ie/pubs/ccctb_what_it_really_means.pdf [2012/06/20]

2. European Commission official website // Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), 2011

http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2012/06/20]

3. Irish Business and Employers Confederation official website, http://www.ibec.ie/IBEC/Press/PressPublicationsDocLib3.nsf/vPages/06876ACB310D636580257855003E9648?OpenDocument [2012/06/20]

4. Sovereignty Bill // Vasconcelos M. EC takes one more step towards tax harmonization, 2011 March 18 http://www.europeanfoundation.org/my_weblog/2011/03/one-step-towards-tax-harmonisation.html [2012/06/20]

5. Official website of European Union http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l10125_en.htm [2012/01/13]

6. Official website of European Union http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14534_en.htm [2013/01/14]

7. Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/parents-subsidiary_directive/index_en.htm [2013/01/25]

8. Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/mergers_directive/index_en.htm [2013/01/27]

9. Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/arbitration_convention/index_en.htm [2013/01/28]

10. 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, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML [2013/04/01]

11. Official website of European Commission http://ec.europa.eu/taxation_customs/taxation/company_tax/gen_overview/index_en.htm [2013/01/19]

12. “Flaminio Costa v. E.N.E.L.”, EUR-Lex - 61964J0006 – EN, 1964 July 15 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964CJ0006:EN:HTML [2012/01/14]

13. Walsh J. Inside Track: CCCTB could work in Ireland’s favor//Business&Finance 2011 March archive. http://www.businessandfinance.ie/bf/2011/3/sectionmarch2011current/insidetrackccctbcouldworkinire [2013/03/02]

14. Munter M. European Commission releases draft CCCTB directive//Dla Piper, 2011 April 19. http://www.dlapiper.com/european-commission-releases-draft-ccctb-directive/ [2013/03/15]

15. European Commission official website //Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), 2011, 52 p. http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf [2013/02/13]

16. Aujean M. et al. CCCTB - The essentials and the path ahead, Deloitte Belgium Tax Quarterly, Issue 44, 2011 June. http://www.deloitte.com/view/en_BE/be/insights/newsletters/tax-quarterly/issue44-june-2011/64eb16a6167b0310VgnVCM3000001c56f00aRCRD.htm [2013/04/01]

17. Šimašius R. Mokesčių harmonizavimas ir konkurencija – pelno mokesčio bazės istorija http://www.lrinka.lt/index.php/meniu/spauda/straipsniai%20ir%20konkurencija%20pelno%20mokescio%20bazes%20istorija/3332 [2013/03/13]
18. Pelno mokesčiui – „vieno langelio“ principas 2011 March 16 http://iq.lt/ekonomika/pelno-mokesciui-vieno-langelio-principas/?psl=1 [2013/03/30]

SUMMARY

COMMON CONSOLIDATED CORPORATE TAX BASE: STEP TOWARDS COMPANY TAX HARMONIZATION IN EUROPEAN UNION

Vaida Stravinskaitė

The European Commission on 16 March 2011 proposed a harmonized system for the tax base calculation of companies operating in the EU. The proposed Common Consolidated Corporate Tax Base (CCCTB) indicates that businesses would benefit from a "one-stop-shop" system for filing their tax returns and would be able to consolidate all the profits and losses they incur across the EU. Member States would maintain their full sovereign right to set their own corporate tax rate. However, many Member States are against this new system as they think that CCCTB does not meet principles of subsidiarity and proportionality and is not available to reach its goals. Therefore, the hypothesis of this Master Thesis was formulated that CCCTB is an appropriate way to reach company tax harmonization in the EU and abolish obstacles which arise because of 27 different taxation systems in EU.

After comprehensive analysis of major company taxation obstacles in the first chapter, these main barriers were identified: double taxation, additional compliance cost, over-taxation which arise in cross-border activities. The main measures such as Parent-Subsidiary Directive, Merger Directive, Interest and Royalties Directive and Arbitration Convention designed to cope with these barriers were discussed and the main challenges needed to solve by CCCTB were formulated.

Proposed Directive and main elements of CCCTB were investigated in the second chapter. As there is a disagreement between Member States regarding to adoption of CCCTB Directive, procedure of enhanced cooperation was introduced. Different alternatives for CCCTB were discussed. Firstly, as the optional CCCTB system was chosen to implement, the main advantages and disadvantages of optional and compulsory character were analyzed. Secondly, as CCCTB harmonizes only base, the possibilities of rate harmonization were investigated. Besides, the former suggestions by the Commission, such as Home State Taxation, Compulsory Harmonized Tax Base and European Union Corporate Income Tax and the reasons of their refusal were investigated.

The third part of this Master Thesis introduced Formulary Apportionment method for taxable profits calculation which was compared to similar methods used in USA and Canada. Lastly, the impact for Lithuanian companies of this method adoption was evaluated.

After this analysis, hypothesis that CCCTB is an appropriate way to reach company tax harmonization in the EU and abolish obstacles which arise because of 27 different taxation systems in EU was approved.

SANTRAUKA

BENDRA KONSOLIDUOTA PELNO MOKESČIO BAZĖ: ŽINGSNIS LINK ĮMONIŲ APMOKESTINIMO HARMONIZAVIMO EUROPOS SĄJUNGOJE

Vaida Stravinskaitė

Europos Komisija 2011 m. kovo 16 d. pateikė pasiūlymą harmonizuoti pelno mokesčio bazės apskaičiavimą. Pasiūlyta Bendra konsoliduota pelno mokesčio bazė (BKPMB) reiškia, kad būtų taikomas „vieno langelio" principas pildant vieną deklaraciją ir įmonės galėtų konsoliduoti visą pelną ir nuostolius pagal bendras taisykles. Valstybės išlaikytų nepriklausomą teisę nustatyti apmokestinimo tarifus. Tačiau dauguma ES valstybių yra prieš šios sistemos įvedimą, jos savo prieštaravimus grindžia tuo, kad BKPMB pažeidžia subsidiarumo ir proporcingumo principus bei nėra pajėgi pasiekti savo tikslų. Dėl to buvo šiame darbe buvo iškelta hipotezė: BKPMB yra tinkamas būdas siekti įmonių apmokestinimo harmonizavimo ir panaikinti kliūtis, kurios kyla taikant 27 skirtingas apmokestinimo sistemas ES.

Atlikus išsamią analizę pirmojoje dalyje šios pagrindinės kliūtys buvo nustatytos: dvigubas apmokestinimas, didelės mokestinių reikalavimų laikymosi sąnaudos bei tarpvalstybinės nuostolių užskaitos apribojimas. Taip pat buvo nagrinėjami pagrindiniai dokumentai: Direktyva dėl bendrosios mokesčių sistemos, taikomos įvairių valstybių narių patronuojančioms ir dukterinėms bendrovėms; Direktyva dėl bendros mokesčių sistemos, taikomos įvairių valstybių narių įmonių jungimui, skaidymui, turto perleidimui ir keitimuisi akcijomis; Direktyva dėl bendros apmokestinimo sistemos, taikomos palūkanų ir autorinių atlyginimų mokėjimams tarp skirtingų valstybių narių asocijuotų bendrovių; Konvencija dėl dvigubo apmokestinimo, atsirandančio dėl susijusių įmonių pelno koregavimo, panaikinimo, skirti šalinti minėtas kliūtis. Galiausiai apibendrinus šias problemas, buvo nustatyti pagrindiniai iššūkiai tenkantys BKPMB.

Antroje dalyje buvo nagrinėjama BKPMB direktyva, jos priėmimo galimybės ir pagrindiniai BKPMB elementai. Kadangi šalys vieningai nesutaria dėl BKPMB sistemos įvedimo, yra aišku, kad šio dokumento priėmimas pagal tradicinę procedūrą nėra įmanomas. Todėl pasiūlyta alternatyva - tvirtesnio bendradarbiavimo procedūra, kuri analizuojama šiame darbe. Taip pat buvo aptartos BKPMB alternatyvos. Buvo analizuojami tiek pasirenkamos, tiek privalomos BKPMG sistemos pagrindiniai trūkumai bei privalumai. Kadangi buvo nuspręsta harmonizuoti tik bazę, tačiau ne tarifą, buvo aptartos galimybės įvesti bendrą tarifą ES. Be to, buvo analizuojami ankstesnieji Komisijos pasiūlymai, pateikti dar prieš nusprendžiant apsistoti ties BKPMG įdiegimu.

Trečiojoje dalyje pristatytas apmokestinamosios bazės paskirstymo būdas, skirtas apmokestinamosios pelno mokesčio dalies apskaičiavimui, tam siūlantis tris kriterijus: darbuotojų skaičių ir darbo užmokestį, ilgalaikis materialų turtą ir pardavimus. Šis metodas buvo palygintas su panašiais metodais, įtvirtintais JAV bei Kanadoje. Galiausiai buvo įvertintas galimas šio metodo poveikis Lietuvos įmonėms.

Atlikus BKPMB elementų analizę ir įvertinus sistemos privalumus bei trūkumus, šio magistrinio darbo hipotezė, kad BKPMB įvedimas yra tinkamas žingsnis siekti harmonizacijos įmonių apmokestinimo srityje bei panaikinti kliūtis, kurios kyla taikant 27 skirtingas apmokestinimo sistemas Europos Sąjungoje, buvo patvirtinta.