



## **Session 3 : European corporate tax convergence**

IFA

Bilateral Meeting France Germany

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# Pannel of the round table

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The debate will focus on the intentions of the French/German Governments, the expectations of the French/German business and as well the views of a non EU State (Switzerland) also able to share its own experience of convergence in a federal State.

# Agenda

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- Introduction : Up-date on the French & German views on the CCTB & CCCTB proposal and on the bilateral discussions
- 1<sup>st</sup> part : CCTB : at the heart of the convergence discussions between FR/DE with a focus on :
  - Scope
  - General principles
  - Incentives : focus on R&D and cross border loss mechanism
  - Anti-abuse measures : focus on Switch-over and interest limitation
- 2<sup>nd</sup> part : Broader political challenges
  - CCTB : governance for interpreting, for amending, for rate setting ?
  - CCCTB : acceptability, adequacy of the 3 or 4 allocation criteria ?

# Introduction

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- Brief background of the 2016 EU proposals (CCTB+CCCTB)
- What is the main objective of the French and German Governments when implementing the EU proposals ?
  - promoting competitiveness of their businesses (**local attractiveness**),
  - increasing the EU integration for more growth (**EU attractiveness**),
  - curbing aggressive tax planning (**increase tax collection**),
  - increasing efficiency of administrations (**efficiency**).
- A single initiative in two steps for the EC
  - Is consolidation likely to be reached at 27 within 10 years ?
  - How can we avoid a long intermediary phase which will jeopardize most of the EU proposals goals ?

# CCTB : Scope

## Content (article 2 + 62)

- Mandatory set of rules for a common tax base for companies (incl EU PE) belonging to a consolidated group (revenue > 750M€)
- Voluntary opt for smaller groups
- Parent + direct and indirect EU subsidiaries > 50% voting rights and 75% of capital or rights to profit
- Specific rules for financial and shipping business
- Transparent entities : taxable basis computed under CCTB rules and included in the shareholder's basis
- PE : new concept from OECD (BEPS 7).

## Main issues

- Two systems to manage : competition issues for Business (level playing field) and efficiency issues for States ? Why not an option for all businesses if the mandatory scope is not extensive ?
- Interactions with domestic tax consolidations system : harmonization of the rules needed (scope and consolidation mechanisms, treatment of minority shareholders) ?
- Functioning with non EU group with EU subsidiaries or EU PE ?

# CCTB : General principles

## Content (article 6 + 16 + 22)

- Tax base independent from accounting base : broadly designed tax base
- Realisation principle (accrual of revenues at realisation except for long term contracts with early recognition when milestones are completed)
- Individual approach
- Yearly principle

## Main issues

- Simplicity difficult to reach if accounting rules not harmonized. Why not first harmonizing the accounting rules and then the tax base relying on the accounting rules ? Particularly important for income recognition/incurred expenses, depreciation pooling concept and « economic ownership » concept, provisions, stocks. Some notions come from IFRS.
- Transfer pricing rules within the EU will remain but probably more harmonized ?

# CCTB : Incentives : R&D super deduction

## Content (article 9)

- R&D uplift deduction of 50% of the costs (excl costs related to movable assets) up to 20 M€ and 25% for exceeding amounts
- SME : 100% uplift up to 20 M€ and 25% for the exceeding amounts

## Main issues

- The main advantage of this regime is its simplicity and visibility for the developer
- Shall the CCTB have R&D incentives and should it be left at the MS discretion ?
- Does this rule prevent MS to have other R&D incentive (like CIR in France) ? Probably not but politically/financially difficult to have additional measures ?

# CCTB : Incentives : loss relief for foreign subsidiaries

## Content (article 42)

- Temporary cross border utilisation of losses until adoption of CCCTB
- Automatic recapture after 5 years

## Main issues

- Why limiting to « immediate » subsidiaries or PE located in other MS of the shareholder only ?
- How will the direct link be implemented in case of a tax group either at the parent's level or at the subsidiary's level (taxpayer might be different from tax subject) ?
- Quid of the final loss ? What is the ECJ case law position (ie territoriality principle) ?



# CCTB : Anti-abuse measures : Switch-over

## Content (article 53)

- Taxation of dividend or capital gain linked to an entity resident in a 3rd country subject to a statutory corporate tax rate lower than half of the statutory tax rate of the shareholder.
- Taxation subject to the content of a tax treaty between both States
- Foreign tax credit creditable (if shareholder not in a loss position)

## Main issues

- This clause was excluded from ATAD, why shall it be included again in the CCTB. Are they not enough anti-abuse measure ?
- Since it is an anti abuse clause why not defining a minimum rate considering the lower rate in the EU or at least take into account the EU average ?
- Could this measure also apply within the EU for low tax MS in absence of minimum rate ?

# CCTB : Anti-abuse measures : Interest limitation

## Content (article 13)

- Same as ATAD except for the safeguard rule concerning group leverage or group EBITDA

## Main issues

- Why is the safeguard clause (ATAD §4.5) not contemplated anymore ? Is it proportional for an anti-abuse measure ?
- ATAD is more flexible since it opens more options to MS. Would MS claim for more flexibility and keep the ATAD wording as it is currently transposed ?

# CCTB : Governance matters (1/2)

## Delegation

- Many powers given to the European Commission
- Few options to MS (ex : article 24 for pensions)

## Interpretation

- By Tax Administrations/legislators when transposing Directive
- By Tax Administrations when implementing (guidelines, ruling process ?)
- By Tax Jurisdictions : local jurisdictions / ECJ

## Pre - entry losses / tax deferral

- article 47 : pre entry losses could be deducted from CCTB
- deferral : which rules will apply for pending deferral regimes ?
- Tax group : what will happen with specific tax consolidation rules ?

## Future modifications

- Need for unanimity. Enhanced cooperation procedure ?
- Role of the European Commission ?

## CCTB : Governance matters (2/2)

### Rates

- Directive does not affect MS right to set their own CIT rates. Some MS want to avoid a race to the bottom : minimum rate ?

### New local taxes ?

- How to avoid that MS multiply local taxes to restore their tax sovereignty which will curb simplification and growth ?
- Deductibility of local tax from CCTB ?

### Impact analysis on competitiveness

- Are France and Germany satisfied/confident with the impact analysis of the Commission ?
- Have they carried out their own analysis ?

# CCTB : Questions from the audience ?

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# CCCTB : a realistic goal in an acceptable delay for businesses ?

## Need to meet the Directive goals

- Only a consolidated system and one stop shop will reduce significantly compliance costs (return, WHT filing, TP doc ...)
- Only a consolidated system will reduce the TP constraints for EU flows or EU business reorganisations or WHT

## Allocation factors

- 3 equally weighted factors :
    - Where labour is performed (payroll + number)
    - Where tangible assets are located.
    - Where sales of goods/services are destined
- Quid data (or intangible) a 4th factor proposed by EP ?

## Governance

- One stop shop approach :
  - the Principal Tax Authority to initiate and coordinate the audits. Other MS can only request an audit
  - The PTA to collect and redistribute levies to other MS
- Reliance on the Tax jurisdiction of the MS of the PTA
- Interaction with third countries : application of tax treaties ? Tax residency ? Trend for a single EU treaty policy ?

# Swiss experience : principle

- Federal Tax harmonization law by Swiss Parliament in 1993 (after a 25 year discussion) to harmonize the 26 cantonal tax laws
- Legal basis for harmonization in Swiss constitution Art. 129:

«Der Bund legt Grundsätze fest über die Harmonisierung der direkten Steuern von Bund, Kantonen und Gemeinden; er berücksichtigt die Harmonisierungsbestrebungen der Kantone.

Die Harmonisierung erstreckt sich auf Steuerpflicht, Gegenstand und zeitliche Bemessung der Steuern, Verfahrensrecht und Steuerstrafrecht. Von der Harmonisierung ausgenommen bleiben insbesondere die Steuertarife, die Steuersätze und die Steuerfreibeträge.»

«La Confédération fixe les principes de l'harmonisation des impôts directs de la Confédération, des cantons et des communes; elle prend en considération les efforts des cantons en matière d'harmonisation.

L'harmonisation s'étend à l'assujettissement, à l'objet et à la période de calcul de l'impôt, à la procédure et au droit pénal en matière fiscale. Les barèmes, les taux et les montants exonérés de l'impôt, notamment, ne sont pas soumis à l'harmonisation fiscale. »

# Swiss experience : partial harmonization

## Harmonized

- Income/ profit/ wealth/ capital/ real estate profit
- Procedures

## Not harmonized

- Inheritance and gift tax
- All tax rates

## Indirect harmonization method

- Legal framework on federal level
- Implementation by cantons in cantonal tax law (indirect harm.)
- Direct application in case of cantonal non-implementation



# The Swiss experience : lessons learned

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- Massive **reduction of administrative burden**, e.g. one tax return in canton of headquarter, cantons with branches to receive copy only
- Procedures **standardized**
- **Simplification** for taxpayer and tax administration
- **Transparency**, e.g. for investors
- Non-harmonization of **tax rates** is crucial
- Ongoing vertical and horizontal harmonization since 1993

# CCCTB : Questions from the audience ?

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# Exhibits : other key CCTB articles

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# CCTB : Incentives : Allowance for Growth and Investment (AGI)

## Content (article 11)

- AGI equity base : equity of taxpayer – tax value in associated companies
- A yield of the AGI equity base increase shall be deductible from taxable basis
- A yield of the AGI equity base decrease shall be taxable
- Computation over the first 10 years based on initial AGI equity vs annual computation afterwards
- Yield : euro area 10y government bond + 2%

## Main issues

- Opportunity of the measure vs less restriction on interest deduction ?
- AGI is procyclical and only temporary
- AGI is drafted as a mandatory regime while it should rather be an optional regime since it can hurt businesses due to the increase of the tax base during economic hardship

# CCTB : Incentives : participation exemption

## Content (article 8 + article 12)

- Full exemption of profit distribution with a minimum holding of 10% in K or voting rights during 12 months
- Full exemption of capital gain on the disposal of shares held for > 10% in K or voting rights during 12 months (excl shares held for trading)
- Expenses incurred for the purpose of deriving income that is exempt are not deductible

## Main issues

- Dividend : shall the 12 month period delay be met before the distribution or commitment to hold 12 month is sufficient
- Disposal : shares held fro trading independant from accounting treatment (financial asset) ?
- What is the scope of the excluded expenses ? Limited to direct costs (cf ECJ Argenta - restrictive application for Parent Sub directive) ? Does it includes interests with an overlap with the interest limitation clause ?

# CCTB : Anti-abuse measures : CFC rules

## Content (article 59)

- CFC : >50% subsidiaries or PE with a tax paid < 50% of the tax that would have been charged in the parent country
- Taxation of the passive income at the parent's level if they exceed 33% of accrued income
- Exception in the EU/EEA : if subsidiary/PE set up for valid commercial reasons that reflect economic reality
- Exception : if < 33% of the income of subsidiary/PE result from transactions with related parties

## Main issues

- Different from ATAD less options for MS
- No substance carve out for non EU/EEA (different from French/German current regime) ?

# CCTB : Anti-abuse measures : GAAR

## Content (article 58)

- Arrangements put in place for the essential purpose of obtaining an advantage that defeats the object of the Directive which are not genuine shall be disregarded by Tax Administrations.
- non genuine = not put in place for valid commercial reasons that reflect economic reality

## Main remarks

- Similar to ATAD
- but less subjectivity and more legal certainty for business (one of the main purposes vs the essential purpose)