



ICAEW REPRESENTATION 03/16 TAX REPRESENTATION

PUBLIC CONSULTATION ON THE RE-LAUNCH OF THE COMMON CONSOLIDATED CORPORATE TAX BASE (CCCTB)

ICAEW commented on the public consultation on the [Re-launch of the Common Consolidated Tax Base \(CCCTB\)](#) published by the European Commission in October 2015.

ICAEW is listed in the EU Transparency Register (ID number: 7719382720-34).

The response of 8 January 2016 was prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

The present document contains a link to the European Commission website and the pdf document based on the ICAEW responses submitted electronically to the Commission questionnaire. For ease of reference we have reproduced in the current document the material responses made to the questions set out in the questionnaire.

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BACKGROUND

1. On 17 June 2015, the Commission published an Action Plan for “A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action” in order to fundamentally reform corporate taxation in the EU. The Action Plan set out a series of initiatives to tackle tax avoidance, secure sustainable revenues and strengthen the Single Market for businesses.
2. At the heart of the action plan was the re-launch of the Common Consolidated Corporate Tax Base (CCCTB). The CCCTB was first published by the Commission back in 2011, with the aim of significantly reducing the administrative burden, compliance costs and legal uncertainties of businesses in the EU.
3. The 2015 Action Plan calls for a renewed approach to the CCCTB. It is proposed that the re-launched CCCTB will be;
 - a mandatory system, which the Commission sees as making it more robust against aggressive tax planning practices.
 - deployed in two stages; Firstly, the Commission will seek agreement on rules for a common tax base. This will then be followed by a coordinated approach on a consolidated base.
 - In October, the Commission launched a public consultation to help identify the key measures for inclusion in the re-launched CCCTB. The Commission invited feedback on the extent to which a CCCTB could function as an effective tool against aggressive tax planning and on the criteria that could determine which companies should be subject to a mandatory CCCTB.

ICAEW RESPONSE

4. You can read the full questionnaire and the ICAEW Tax Faculty responses to the questions posed by [clicking here](#)
5. We have copied in below the major comments we made in response to particular questions.

Can the CCCTB be an effective tool against aggressive tax planning at the same time as being attractive to business?

ICAEW response

6. The proposal is that CCCTB, when the consolidated phase is reached, will be compulsory compared with the previous proposal submitted as a Draft Directive to ECOFIN in 2011. At the behest of the G20 and OECD countries a major recalibration of the international tax regime is underway and the resultant Action Plan was presented to the G20 Summit in Turkey in November 2015 and it was endorsed by the Summit. This is based on the Arms' Length Principle and not formulary apportionment which is the basis of the CCCTB approach.
7. In the earlier discussions on CCCTB, up to 2011, the proposed new regime was to be voluntary for individual groups of companies and we believe that that proposal should remain.

The Commission envisages re-launching the CCCTB in a staged approach which will consist of 2 steps: firstly, agreement on the tax base, secondly, moving on to consolidation. Do you agree?

ICAEW Response

8. We are against the staged approach.
9. We believe the staged approach may merely be postponing the really difficult issues. The really difficult part of CCCTB is consolidation so we can see little point at reaching a relatively straightforward intermediate point when there may be little chance of further progress.

10. We do also have some more general concerns about CCCTB particularly if it is to be made compulsory.

Anti-avoidance elements

The questionnaire put forward various anti avoidance measures which CCCTB might address

ICAEW Response

11. The full CCCTB proposal from 2011 already has strong rules covering limiting interest deductibility, exit taxation, for CFC regimes and for anti-abuse rules based on effective rather than statutory rates.
12. A lot of the potential measures set out above are also dealt with within the OECD BEPS Action Plan proposals that were adopted at the G20 Summit in November 2015. These have set out best practice and minimum standards in the various areas covered by BEPS including interest deductibility and CFCs.

Dealing with hybrid mismatches

ICAEW statement

13. Hybrid mismatches was Action 2 of the OECD BEPS Action Plan and the paper published on 5 October 2015 sets out how it is proposed to deal with the issues identified in the Commission statement above. As an active participant in the OECD work, we believe the European Commission should reflect upon the conclusions arrived at in the context of BEPS before deciding whether there is more that the EU member states need to do (in addition to what they are required to do as active participants in the BEPS project).

Views on the existing framework for R&D

ICAEW statement

14. Innovation is potentially a key driver of the EU economies and R&D has long received preferential treatment. There have also been a plethora of favourable patent box regimes introduced in recent years which have been considered as part of Action 7 of BEPS and which have led to a proposal for a modified nexus approach for current, and future, Patent Box regimes.
15. We believe the EU should build on the G20/OECD consensus in this area rather than take a unilateral approach.

Should the debt-equity bias be addressed as part of the CCCTB proposal?

ICAEW Response

16. We are not convinced that the tax system should seek to address the problem that an over indebted economic system creates systemic risk when there is a downturn. There is a considerable amount that can be done to correct the problems that were demonstrated in the aftermath of the financial crisis in 2007-08, not least via the additional capital requirements placed on the banking sector.
17. The BEPS Action Plan is addressing the incentive towards over indebtedness through its work on Action 4 and the limitation on the deductibility of interest.
18. These “new” arrangements need to be allowed to be put in place and tested before a whole new set of measures is considered.

Should a temporary measure be introduced for cross border loss relief?

19. We believe it is important that there is some appropriate means of cross border loss relief. The Marks & Spencer case, and the CJEU judgment of 2006, clearly demonstrated that it was in step with the single market and its freedoms but from a practical point of view the legal changes introduced as a result of that judgment have been ineffectual.
20. Irrespective of the fate of the CCCTB project it would be appropriate for the Commission to seek to introduce an EU wide regime, to be translated into appropriate domestic legislation, such that businesses that operate cross border will be in a position to “use” losses that they might make in other jurisdictions against the profits they make elsewhere in the EU.

Final remarks - Is there anything else you would like to bring to the attention of the Commission?

21. The majority of the EU member states are also members of OECD and as such are party to the discussions and decisions made in relation to the OECD BEPS Action Plan orchestrated by the G20. The papers published on 5 October as part of this Action Plan were endorsed in the G20 Summit communiqué issued on 16 November 2015.
22. Any actions of the EU need to take account of the wider international tax developments.
23. We are not convinced that the attempt to introduce an EU CCCTB regime is going to play a significant role in improving the effectiveness of the international tax regime for the reasons which we have set out above.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).