Brussels, 8 January 2016

EBF submission on the European Commission's public consultation on the Re-launch of the Common Consolidated Corporate Tax Base (CCCTB)

EXECUTIVE SUMMARY

Key messages

- The idea of a common corporate tax base (CCCTB) across the EU would be difficult to achieve absent a minimum level of harmonization of the accounting rules among EU Member States beforehand. A number of technical challenges arise from the diversity of local generally accepted accounting principles applicable at solo level. **Computing the tax base should be as simple as possible and should therefore entail as little departures as possible from the underlying accounting treatment. This prerequisite is not met in the current stand**, considering the initial proposal of the Commission of 16 March 2011.

- **The CCCTB should remain optional for all EU companies**, irrespective of their status.

- **A phased-in approach would facilitate an agreement on the tax base, which could be carried out as a stand-alone project, independent from the consolidation project**.

- If no compromise can be realistically reached on consolidation among Member States, the appropriateness of the CCCTB as a holistic solution to profit shifting should be perhaps reassessed in the first instance and instead more targeted alternatives could be considered on the basis of the relevant OECD recommendations. **A common approach regarding the implementation of the BEPS action plan at EU level would certainly help creating a common level playing field among Member States against base erosion and profit shifting, but allowing for differences in the established national tax systems when considering the options provided for under some of the BEPS recommendations**.

- A priority should be given to elements that would **foster a genuine level playing field on base erosion and profit shifting globally** so as to avoid the relocation of business activities outside the EU.

- In addition, **the principle of a cross-border loss relief would be welcomed**.

- When implementing BEPS, EU policy-makers should **take into consideration the specificities of the banking sector which is highly regulated**, with banks subject to challenging capital, leverage and liquidity rules and standards in order to reduce the probability of their failing. Supervisory authorities have sought to ensure that the regulatory framework promotes financial stability, protects deposits holders and ensures the continuity of services to customers and businesses, in particular lending throughout the business cycle. This means that banks and other financial institutions are required to hold increased capital reserves against their assets and face limits on their ability to leverage. Critically, this also limits the ability of banks and other financial institutions to engage in activity, which may cause concern in relation to base erosion and profit shifting.

- **Specific rules should apply for the banking industry as regards the treatment of debt.** Interest is the primary raw material upon which is built the banking activity: banks borrow from depositors or in the wholesale market to provide lending to individuals, SMEs, corporates and governments at a margin over cost of funds to the bank. The interest expense is a cost of sales for the bank, a key resource involved in a bank's products. Banks are required to issue equity (in the form of issued capital and hybrid instruments) to maintain minimum levels of capital. They are also required to hold a certain proportion of their balance sheet in high quality liquid assets which can be turned to cash at short notice. The banking sector thus has very specific issues with respect to interest deduction, which cannot be dealt with as for any other non-financial business.

- We believe that **a different legal, accounting and tax treatment of debt and equity is justified**. Debt and equity are of different nature: while equity represents an investment in a company, a cash loan is a service remunerated with a pre-agreed interest. Over the recent years, there has been a tendency to strengthen anti-abuse measures limiting the tax allowance for interest payments under certain conditions. "Thin capitalization rules" and BEPS Action 4 constitute examples of the latter. In our view, these measures render the financing of companies more costly and are inconsistent with the aim to enhance long term financing. In order to strengthen the equity structure of companies, some countries (e.g. Italy, Belgium) have opted for the tax concept of "allowance for corporate equity", which basically allows tax deductibility of a portion of the increase of capital. This kind of measure responds to our view more appropriately to the current need to strengthen capital markets and should therefore be encouraged. In the same vein, it would be advisable to consider introducing harmonized tax incentives for investment in project finance instruments. It would be distortive if bank's interest income was taxed in full, but the corresponding interest expense was not given tax relief on the same basis. That indicates in particular that neither the "Comprehensive Business Income Tax" nor the "Cost Of Capital Allowance" (as described in section 7.1 of the consultation) are likely to be appropriate for the banking sector.

Public consultation on the Re-launch of the **Common Consolidated Corporate Tax Base** (CCCTB)

Fields marked with * are mandatory.

1 Introduction

Please note:
In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account and included in the report summarising the responses.

Should you have a problem completing this questionnaire or if you require particular assistance, please contact:

TAXUD-CCCTB@ec.europa.eu.

For more information on the Common Consolidated Corporate Tax Base please follow this link.

The general rules on personal data protection on the EUROPA website are accessible here. On the protection of personal data for this consultation, please follow this link.

1.1 Background

Europe's priorities today are to restore growth and promote investment and job creation within a fairer and deeper Single Market. Europe needs a framework for fair and efficient taxation of corporate profits, in order to distribute the tax burden equitably, to contribute to the sustainability of public finances, to promote sustainable growth and investment, to diversify funding sources of the European economy, and to strengthen the competitiveness of Europe's economy.

Corporate taxation is an essential element of a fair and efficient tax system. It is an important source of revenue for Member States and an important factor in influencing companies' business decisions, for example on investments and research & development (R&D) activities.

Recent developments have shed light on the widely shared view that the current rules for corporate taxation no longer fit the modern context. Corporate income is taxed at national level, but the economic environment has become more globalised, mobile and digital. Business models and corporate structures have become more complex, making it easier to shift profits.

For instance, corporate tax rules which are conceived to exclusively function in a domestic framework may increasingly run the risk of leading to market distortions if taxpayers can easily circumvent them when they operate internationally. These distortions often derive from differences in tax laws and take the shape of aggressive tax planning practices whereby taxpayers can take advantage of disparities between national tax systems to derive tax benefits against the spirit of the law. Such a playing field no longer contributes to 'healthy' tax competition.

Given that Europe's priority today is to promote sustainable growth and investment within a fairer and better integrated Single Market, a new framework is needed for a fair and efficient taxation of corporate profits.

1.2
The Action Plan for a Fairer and Efficient Corporate Tax System

On 17th June 2015, the Commission published an Action Plan for a Fairer and Efficient Corporate Tax System and proposed 5 key areas for action in the coming months (COM (2015) 302). The Action Plan, which takes the form of a Communication, contributes to the aim of establishing a system of corporate taxation whereby business profits are taxed in the jurisdiction where value is actually created. The re-launch of the CCCTB lies at the heart of the Action Plan. It is presented as an overarching objective which could be an extremely effective tool for meeting the objectives of fairer and more efficient taxation. It features as the main tool for fighting against aggressive tax planning, incorporating recent international developments, attributing income where the value is created. Specifically:

1. A set of common EU rules for the calculation of the corporate tax base would in practice decrease significantly aggressive tax planning opportunities within the EU dimension of the group.
2. Considering that the current transfer pricing rules have not proved very effective in tackling profit shifting over the last decades, a system of cross-border tax consolidation, as provided for in the CCCTB, would remove the benefits of profit shifting within the consolidated group across the Single Market.
3. The possibilities of shifting income towards the Member States with the lowest tax rates would be more limited under the CCCTB than the current national principles for allocating and computing profits through methods largely based on transfer pricing. This is mainly due to the fact that the apportionment factors have been devised to reflect the real economy. On the same note, within a consolidated group, there is no risk of double taxation or double non-taxation caused by mismatches amongst national rules and through the interaction of tax treaties.
4. The existence of common rules for computing the tax base would render tax competition more transparent in the EU because this would inevitably focus on the levels of (statutory) tax rates. As a result, there would be less room for tax planning.
5. The CCCTB would contain its own defence against tax abuse (e.g. Controlled Foreign Company (CFC) legislation, General Anti-Avoidance Rule (GAAR), etc.). This is particularly important when it comes to protecting the group's tax base against erosion in dealings with entities outside the consolidated group.

6. In defending the Single Market against aggressive tax planning, the CCCTB would allow Member States to implement a common approach vis-à-vis third countries.
7. While removing distortions caused by aggressive tax planning, the CCCTB would also improve the environment for businesses in the EU, as it would allow companies operating in the EU to deal with a single set of common corporate tax rules within the EU. This would represent a significant simplification and would reduce compliance costs as a whole.

The Action Plan calls for a renewed approach to the pending proposal whereby the main amendments will be the following:

- Firstly, the re-launched CCCTB will be a mandatory system, which should make it more robust against aggressive tax planning practices.
- Secondly, it will be deployed in 2 steps because the current proposal is too vast to agree in one go; efforts will first concentrate on agreeing the rules for a common tax base, and consolidation will be left to be adopted at a later stage.

In practical terms, the Commission is planning to table two new Proposals: the first instrument will lay down the provisions for a Common Corporate Tax Base (CCTB) whilst the second will add the elements related to consolidation (i.e. CCCTB). Once this new legislative framework (henceforth referred to as CCTB/CCCTB) has been adopted by the Commission, the currently pending proposal will be repealed.

There is no doubt that a fully-fledged CCCTB would make a major difference in reinforcing the link between taxation and the jurisdiction where profits are generated. Yet, it is clear that it would take time to reach agreement on such an extensive piece of legislation. Bearing this in mind, the Action Plan suggests that Member States continue working on some international aspects of the common base which are linked to the OECD project on Base Erosion and Profit Shifting (BEPS) while the 're-launch' proposals are under preparation. According to the Action Plan, agreement to convert these BEPS-related elements into legally binding provisions should be achieved within 12 months.

The fully-fledged CCCTB would offer cross-border loss relief within the group as an automatic outcome of consolidating the tax bases of two or more group members. To compensate for the absence of consolidation in the first step (CCTB), the announced initiative to re-launch the CCCTB is planned to include enacting a facility for giving temporary cross-border loss relief. According to this, groups would be able to set off their profits in a Member State against losses incurred in another Member State until the loss-making group member goes back into making profits. This would remove a major tax obstacle for businesses.

A new impact assessment is being prepared to assess the impacts of the CCCTB; it is envisaged to build on and refine the previous economic analysis. The impact assessment will, in particular, analyse separately the CCTB and CCCTB, i.e. a corporate tax system without and with consolidation. In addition, the analysis will be expanded to take into account the effects anticipated through certain new developments, such as addressing debt bias in corporate taxation and further promoting R&D.

1.3
Objectives of this consultation

The Commission has shown its strong commitment for fairer corporate taxation in its Action Plan of 17th June 2015. Consulting the public is one of the major steps in the process of proposing legislation in the EU. This consultati n will help the Commission gather information and analyse the necessary evidence, in order to determine possible options for attaining the objectives of the re-launch of the CCCTB.

This consultation seeks to gather views in particular on the following:

- To what extent the CCCTB could function as an effective tool against aggressive tax planning, while contributing to a favourable investment climate.
- Which criteria should determine the companies subject to the rules of a mandatory CCTB/CCCTB.
- Whether companies not subject to the mandatory CCTB/CCCTB (i.e. those which do not fulfil the conditions on which the CCTB/CCCTB becomes mandatory) should be given the possibility to opt for applying the common rules.
- Whether the staged approach, as announced in the Action Plan, whereby priority will be given to agreeing the tax base before moving to consolidation, would be preferable, especially if one considered that the currently pending CCCTB proposal is an extensive piece of legislation on which progress has been very slow.
- Whether, in the short-term, it would be useful to agree common rules for implementing certain international BEPS-related aspects of the common tax base based on the current proposal until the Commission adopts the new (revised) CCTB/CCCTB proposal.
- Which more detailed parts of the common tax base should be reviewed.
- Whether and how the issue of debt-equity tax bias should be addressed. Corporate tax systems usually favour debt over equity by allowing the deductibility of the cost of debt only. Such debt bias could be addressed either through tax deductions for costs of both equity and debt financing or neither source of financing could benefit from tax deductions (Details about solutions are discussed in this Taxation Working Paper).
- Which types of rules would best foster R&D activity. The vast majority of Member States and other advanced economies offer fiscal incentives for expenses on R&D. Their design differs across countries, for example in how the incentive is applied and what type of expenditure is covered, e.g. salaries of researchers, R&D quipment and other costs (A recent study on R&D tax incentives commissioned by DGs TAXUD and GROW compares design of R&D tax incentives across countries).
- Whether a cross-border loss relief mechanism aimed to balance out the absence of the benefits of consolidation during the first step (CCTB) would promote business interest and support for the CCCTB.

Respondents are encouraged to propose additional relevant items if they wish

1.4 Glossary

- **Aggressive tax planning** (see also: Tax planning):
  In the Commission Recommendation on aggressive tax planning (C(2012) 8806 final), aggressive tax planning is defined as “taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence)”.

- **Allowance for Corporate Equity (ACE)**:
  The term refers to a corporate tax system where interest payments and the return on equity can both be deducted from the corporate income tax base (taxable profits). It equalises the tax treatment of debt and equity finance at the corporate level.
- **Base Erosion and Profit Shifting (BEPS Project)**:
  Tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The OECD has developed specific actions to give countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time giving enterprises greater certainty by reducing disputes over the application of international tax rules, and standardising requirements.
- **Common Consolidated Corporate Tax Base (CCCTB)**:
  The term refers to the corporate tax system that the Commission put forward in the form of a Proposal for a Council Directive (COM(2011) 121) on 16th March 2011. The system consists of corporate tax rules designed to apply across the EU and allow companies and corporate groups to use one set of common rules for computing their tax bases in the Member States where they maintain a taxable presence. Tax consolidation is only relevant to corporate groups and it means that the tax results of all group members are pooled together, which results in the automatic offset of cross-border losses within the group. In addition, each group member's taxable share is determined by applying a formula which apportions the consolidated base to the eligible group members on the basis of three equally weighted factors, i.e. labour, assets and sales (by destination).
- **Common Corporate Tax Base (CCTB)**:
  The terms refers to step 1 of the CCCTB, according to the Commission's Action Plan of 17th June 2015, which comprises the common corporate tax rules for computing the tax base but does not include the element of tax consolidation.
- **Comprehensive Business Income Tax (CBIT)**:
  The term refers to a corporate tax system where neither interest payments nor the return on equity can be deducted from corporate profits, and are thus both fully subject to corporate income tax. It equalises the tax treatment of debt and equity finance at the corporate level.
- **Cost of Capital Allowance (COCA)**:
  The term refers to a corporate tax system where the cost for both debt and equity finance is captured by a notional allowance which is deductible from the corporate tax base; similarly, at the investor's level, the income tax base increases by a notional return on the investments, which corresponds to the notional allowance and can be taxable. The amount of the notional allowance/return is computed as the product of the relevant assets/investments multiplied by a COCA rate. This system equalises the tax treatment of debt and equity finance at the corporate and investor level.
- **Debt-Equity Tax Bias/Debt Bias**:
  It is the result of operating a corporate tax system which favours financing by debt, rather than by equity. This is achieved by treating interest payments as a tax deductible expense whilst no equivalent deduction is granted for the return on equity (mainly, dividends).
- **Hybrid Mismatches**:
  This refers to the situation where, as a result of disparities amongst national laws, the same entity or financial instrument is characterized differently, as far as its tax treatment is concerned, in two or more States (e.g. an entity is treated as a partnership in one jurisdiction and as a corporation in another; a financial instrument qualifies as deductible interest in one jurisdiction and as tax

exempt dividend in the other). Taxpayers often set up arrangements to exploit such mismatches for the purpose of lowering their overall tax burden.

- **Research & Development:**
  Research: all original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding.
  Development: the application of research findings or other knowledge to a plan or design for the production of new or substantially improved materials, products, devices, processes, systems or services before the start of commercial production or use.
- **Tax avoidance**:
  According to the OECD glossary of tax terms, tax avoidance is defined as the arrangement of a taxpayer's affairs in a way that is intended to reduce his or her tax liability and that - although the arrangement may be strictly legal - is usually in contradiction with the intent of the law it purports to follow.
- **Tax evasion**:
  According to the OECD glossary of tax terms, tax evasion is defined as illegal arrangements where the liability to tax is hidden or ignored. This implies that the taxpayer pays less tax than he or she is legally obligated to pay by hiding income or information from the tax authorities.
- **Tax planning** (see also: Aggressive tax planning):
  According to the OECD glossary of tax terms, tax planning is an arrangement of a person's business and/or private affairs in order to minimize tax liability.

2
Information about you

The information you provide on this page is for administrative purposes only and will not be published.

*Are you replying as

- ( ) Private individual
- ( ) Enterprise, company
- ( ) Public authority
- ( ) Non-governmental organisation (NGO)
- ( ) Other
- ( ) Consumer organisation
- (●) Trade/Business/Professional association, consultancy, law firm
- ( ) Academic institution, Think Tank
- ( ) International organisation (other than NGO)

*If other, please specify

not applicable

*Name of your organisation

European Banking Federation

* Contact email address

roger.kaiser@ebf-fbe.eu

* Is your organisation or your enterprise included in the Transparency Register?

- (x) Yes
- ( ) No

* Please indicate your Register ID number:

4722660838.23

* Do you carry out or do you represent activities at:

- [ ] National level (your country only)
- [x] EU level
- [ ] International level (beyond EU)
- [ ] Other

* Where are your headquarters?

Belgium

* Please indicate the field(s) of economic activity of your enterprise, or the field(s) of economic activity your organisation represents.

- [ ] Manufacturing
- [ ] Construction
- [x] Financial and Insurance Activities (incl. fund management activities)
- [ ] Other
- [ ] Electricty, Gas, Water Supply, ...
- [ ] Wholesale and Retail Trade
- [ ] Professional, scientific and technical activities (incl. accounting, bookkeeping and auditing activities)

3
Important notice on the publication of responses

* Please note: In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account. Furthermore, the European Commission will prepare a report summarising the responses. Contributions received are thus intended for publication on the Commission's website.

Do you agree to your contribution being published?

- (x) **Yes**, I consent to all of my answers being published **under my name**.
- ( ) **Yes**, I consent to all of my answers/personal data being published **anonymously**.

No, I do not want my response to be published.

* I declare that **none of the information I provide in this consultation is subject to copyright restrictions**.

Yes (selected)
No

4
Policy directions

* The Commission believes that the CCCTB system can be an effective tool against aggressive tax planning and at the same time retain its attractiveness to the business.

What are your views?

I agree
Neutral
I don't agree
Other (selected)

Comments (optional):

2000 character(s) maximum

All in all, there could be some benefit attached to a common corporate tax base within the EU, depending upon the extent of transitional costs and how different that common tax base is to a given business's current tax base. Countries outside the EU will presumably still follow the arm's length standard in allocating profits, and therefore there is a risk of double taxation arising on business activity that takes place between an EU country and a third country. In order to be an efficient tool against aggressive tax planning, harmonisation of legislation or international coordination, is needed on a global basis. We believe that the idea of a common corporate tax base across the EU would be difficult to achieve absent a minimum level of harmonization of the accounting rules among EU Member States beforehand. A number of technical challenges arise from the diversity of local generally accepted accounting principles applicable at solo level. Computing the tax base should be as simple as possible and should therefore entail as little departures as possible from the underlying accounting treatment. This prerequisite is not met in the current stand, considering the initial proposal of the Commission of 16 March 2011. Equally important is to coordinate the anti-BEPS measures within the EU to avoid divergent implementation in different EU MS, but allowing for differences in the established national tax systems when considering the options provided for under some of the BEPS recommendations, as well as coordination vis à vis peers outside the EU.

*

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.

What are your views on the staged approach?

- ( ) I'm **in favour** of the staged approach
- ( ) Neutral
- ( ) I'm **against** the staged approach
- (x) Other

Comments (optional):

2000 character(s) maximum

Bearing the foregoing considerations in mind, postponing consolidation would constitute the preferred outcome over the approach initially envisaged in the Commission's proposal of 16 March 2011. We agree with the Commission that a phased-in approach would facilitate an agreement on the tax base, which could be carried out as a stand-alone project, independent from the consolidation project. Regarding the principle of consolidation, it may be, however, doubted that Member States may ever agree on a formula for the apportionment of tax revenues, as arguably there would be in any event winners and losers among them, whatever the selected formula. If no compromise can be realistically reached on consolidation among Member States, the appropriateness of the CCCTB as a holistic solution to profit shifting should be perhaps reassessed in the first instance and instead more targeted alternatives could be considered on the basis of the relevant OECD recommendations.

*It is a priority of the Commission to promote discussion in Council of certain BEPS-related international aspects of the common base before the re-launched CCCTB is proposed. The aim will be to arrive at consensus on how to implement certain OECD anti-BEPS best practice recommendations in a uniform fashion across the EU. The intention would be to create a common playing field in defending the Single Market against base erosion and profit shifting.

What are your views on agreeing on such a common approach?

- (x) I'm **in favour** of such a common approach
- ( ) Neutral
- ( ) I'm **against** such a common approach
- ( ) Don't know
- ( ) Other

Comments (optional):

2000 character(s) maximum

A common approach regarding the implementation of the BEPS action plan at EU level would certainly help creating a common level playing field among Member States against base erosion and profit shifting. Now, this approach needs to be on par with the measures implemented by the EU's major trading partners regarding base erosion and profit shifting so as to ensure that there is a level playing field on these issues not only at the EU level but globally. It is, however, important to note that some of the BEPS recommendations provide a range of options for countries to implement, and that therefore there may need to be flexibility to allow EU member states to select the options appropriate to their existing national tax system.

5
Scope, Anti-avoidance

5.1
Scope of the CCTB/CCCTB proposal

* The Commission considers making the new proposal for a CCCTB obligatory for all EU companies which are part of a group. A group can be formed:
- Between parent and subsidiary companies where there is a holding of more than 50% of the voting rights; and direct or indirect holding amounting to more than 75% of capital or more than 75% of the profit rights); or
- Between a Head Office and its permanent establishment where a company has one or more permanent establishment in other Member States.

What are your views on making the proposal for a CCCTB obligatory for all EU companies which are part of a group?

- ○ I'm **in favour** of this obligation
- ○ Neutral
- ○ I'm **against** this obligation
- ○ Don't know
- ● Other

Would you suggest a different approach to defining who should be required to use the CCCTB? If yes, please explain your suggestion briefly.

2000 character(s) maximum

We believe that the CCCTB should remain optional for all EU companies, irrespective of their status.

* The Commission envisages providing the following option:
Companies which would not be subject to the mandatory CCCTB - because they do not fulfil the requirements of being part of a group - could still have the possibility to apply the rules of the system.

What are your views on offering non-qualifying companies the option to apply the rules?

- ● I'm **in favour** of this option
- ○ Neutral
- ○ I'm **against** this option
- ○ Don't know
- ○ Other

Comments (optional):

2000 character(s) maximum

We believe that the CCCTB should remain optional for all EU companies, irrespective of their status.

5.2
Anti-avoidance elements

* In view of recent developments, the CCCTB system should include more robust rules to defend itself against aggressive tax planning.

Which of the elements of the CCCTB system would you reinforce so that the system can better respond to tax avoidance?
(Multiple answers possible)

- [ ] Rules for limiting interest deductibility
- [ ] Disallowance of tax exemption for portfolio participations
- [ ] Exit taxation rules
- [ ] More robust rules on controlled foreign companies regimes (CFC)
- [ ] Anti-abuse rules based on effective rather than statutory rates
- [ ] Addressing distortions caused by debt/equity bias
- [x] Other suggestion
- [ ] None of the above

* Please specify your other suggestions

2000 character(s) maximum

Bearing the foregoing considerations in mind, we believe that priority should be given to elements that would foster a genuine level playing field on base erosion and profit shifting globally so as to avoid the relocation of business activities outside the EU. In addition, care will need to be taken in relation to the position of the banking sector if there are any potential changes to the tax relief for interest expense. This of course reflects the fact that interest expense is a direct trading expense of a banking business, in contrast to businesses outside the financial sector, and therefore there is a close link to the cost of finance provided by banks to the wider economy. It would be distortive if a bank’s interest income was taxed in full, but the corresponding interest expense was not given tax relief on the same basis. That indicates in particular that neither the “Comprehensive Business Income Tax” nor the “Cost Of Capital Allowance” (as described in section 7.1 of the consultation) are likely to be appropriate for the banking sector.

6
Hybrid Mismatches, Research and Development

6.1
Hybrid mismatches

* Hybrid mismatches are the result of disparities in the tax treatment of an entity or financial instrument under the laws of two or more States. Currently, arrangements can be set up to exploit such mismatches for the purpose of lowering their overall tax burden. The risk of such arrangements would be removed in transactions between enterprises applying the common tax base rules within a consolidated group. It would however persist in relations with enterprises outside the common rules as well as during step 1 of the staged approach to a CCCTB, in the absence of tax consolidation amongst the companies applying the common rules.

One option to address hybrid mismatches would be to require enterprises to follow in a Member State the classification of entities and/or of financial instruments adopted in the other Member State or the third country which is party to the transaction.

In your view, can hybrid mismatches be effectively addressed through any other measures than the one suggested above?

- ○ Yes
- ○ No
- ○ Don't know
- ◉ Other

Please explain your response and/or provide further comments:

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We note that requiring a re-characterization of the arrangement at hand
according to the classification adopted in the other jurisdiction which is
party to such arrangement may diverge with the OECD's recommendations
regarding BEPS Action 2, whereby the primary response to mismatches therein
consists of denying the tax benefit otherwise applicable to the payment at
hand.
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6.2
Treatment of costs for Research and Development

* In the currently pending CCCTB proposal, the Commission has proposed a favourable treatment of costs for Research and Development (R&D) by making these costs fully deductible in the tax year they are incurred, with the exception of costs relating to immovable property.

What are your views on the existing framework for R&D?

- ◉ I **support** the existing framework for R&D
- ○ Neutral
- ○ I **don't support** the existing framework for R&D
- ○ Don't know
- ○ Other

Comments (optional):

2000 character(s) maximum

We believe that this approach helps providing immediate liquidity facilities for start-up companies in relation to their initial investments and should therefore be encouraged.

* One option for rendering the CCCTB more favourable to promoting R&D could be to introduce more generous provisions for deducting R&D costs, such as super deductions which are currently applied by a number of Member States (e.g. Croatia, the Netherlands and the UK)?

What are your views on making the existing framework for R&D more favourable?

- (x) I'm **in favour** of making the existing framework more favourable for R&D
- ( ) Neutral
- ( ) I'm **against** making the existing framework more favourable for R&D
- ( ) Don't know
- ( ) Other

Would you suggest an alternative scheme? If so, please explain in your response and/or provide further comments

2000 character(s) maximum

Same reasons as stated above regarding the preceding question.

7
Debt-Equity Tax Bias, Cross-Border Loss Relief

7.1
Debt-Equity Tax Bias

* Corporate tax systems usually favour debt-financing over equity-financing by treating interest payments as a tax deductible expense with no equivalent deduction for the return paid to equity.

Should the aspect of debt-equity tax bias be addressed in the proposal?

- ( ) Yes
- (x) Neutral
- ( ) No
- ( ) Don't know
- ( ) Other

Comments (optional):

2000 character(s) maximum

Specific rules should apply for the banking industry as regards the treatment of debt. Interest is the primary raw material upon which the banking activity is built: banks borrow from depositors or in the wholesale market to provide lending to individuals, SMEs, corporates and governments at a margin over cost of funds to the bank. The interest expense is a cost of sales for the bank, a key resource involved in a bank’s products. Banks are required to issue equity (issued capital and hybrid instruments) to maintain minimum levels of capital. They are also required to hold a certain proportion of their balance sheet in high quality liquid assets which can be turned to cash at short notice. The banking sector thus has very specific issues with respect to interest deduction. More generally, we believe that a different legal, accounting and tax treatment of debt and equity is justified. Debt and equity are of different nature: while equity represents an investment in a company, a cash loan is a service remunerated with a pre-agreed interest. Over the recent years, there has been a tendency to strengthen anti-abuse measures limiting the tax allowance for interest payments under certain conditions. “Thin capitalization rules” and BEPS Action 4 constitute examples of the latter. In our view, these measures render the financing of companies more costly and are inconsistent with the aim to enhance long term financing. In order to strengthen the equity structure of companies, some countries (e.g. Italy, Belgium) have opted for the tax concept of “allowance for corporate equity”, which basically allows tax deductibility of a portion of the increase of capital. This kind of measure responds in our view more appropriately to the current need to strengthen capital markets and should therefore be encouraged. In the same vein, it would be advisable to consider introducing harmonized tax incentives investment in project finance instruments.

The corporate tax debt-equity bias could be addressed via three possible policy options.
- Option 1 is the Comprehensive Business Income Tax (CBIT) that disallows any financing costs as deductible expense.
- Option 2 is the Allowance for Corporate Equity (ACE) that allows the deductibility of actual interest payments and of a notional interest on equity.
- Option 3 is the Cost of Capital Allowance (COCA) that allows the deductibility of a notional interest on capital (equity and debt).

In your view, which option would be best suited to address the debt-equity tax bias?

- ○ Comprehensive Business Income Tax (CBIT)
- ○ Allowance for Corporate Equity (ACE)
- ○ Cost of Capital Allowance (COCA)
- ○ None of the above
- ○ Don't know
- ◉ Other

If you suggest that another option would be better suited to address the debt-equity tax bias, what design would you suggest? Please explain your response and/or provide further comments:

Comments (optional):

2000 character(s) maximum

Please note our comments in response to question 6.

7.2
Temporary mechanism for cross-border loss relief

* The Commission envisages proposing a temporary mechanism for cross-border loss relief with recapture until the consolidation step (CCCTB) is agreed. The aim will be to balance out the absence of the benefits of consolidation during the first step (CCTB) of the proposal.

What are your views on such a temporary mechanism for cross-border loss relief?

- (x) I'm **in favour** of such a temporary mechanism
- ( ) Neutral
- ( ) I'm **against** such a temporary mechanism
- ( ) Don't know
- ( ) Other

Which other measures could temporarily substitute the absence of consolidation?
Please explain your response and/or provide further comments.

To the extent that Member States do agree on the necessity of implementing a common corporate tax base as a mean for implementing the anti-BEPS measures at EU level, we would welcome the principle of a cross-border loss relief. In any case, as stated above, we believe that the principle of benefits consolidation does not constitute the most appropriate solution to profit shifting and we would recommend instead focusing on more targeted - and perhaps more pragmatic - alternatives on the basis of the relevant BEPS actions. This would put EU companies on par with their peers outside the EU.

Comments (optional):

2000 character(s) maximum

8
Final remarks, additional information

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

The banking sector is highly regulated, with banks subject to challenging capital, leverage and liquidity rules and standards in order to reduce the probability of their failing. Supervisory authorities have sought to ensure that the regulatory framework promotes financial stability, protects deposit holders and ensures the continuity of services to customers and businesses, in particular lending throughout the business cycle. This means that banks and other financial institutions are required to hold increased capital reserves against their assets and face limits on their ability to leverage. Critically, this also limits the ability of banks and other financial institutions to engage in activity, which may cause concern in relation to base erosion and profit shifting. More detailed explanations can be found in the paper attached hereto.

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here.

- **0e490060-2ed1-4559-985f-7f57ccd9d7cf/BBA01-450719-v1-IBFed_BEPS_policy_paper_-_Aug_15.docx**
- **5596f38c-447c-4d07-b911-785498fe5442/EBF_018941 - EBF Response_CCCTB consult_Key messages.docx**

Useful links

Press release on this public consultation (http://europa.eu/rapid/press-release_IP-15-5796_en.htm)

Europa site on CCCTB (http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm)

Action Plan for Fair and Efficient Corporate Taxation in the EU (http://europa.eu/rapid/press-release_IP-15-5188_en.htm)

Questions and Answers on the CCCTB re-launch (http://europa.eu/rapid/press-release_MEMO-15-5174_en.htm)

Taxation Working Paper 33: "The Debt-Equity Tax Bias" (http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/tax

Taxation Working Paper 52: "A Study on R and D Tax Incentives" (http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/tax

Privacy statement for this public consultation (http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/relaunch_ccctb/privacy_s

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International Banking Federation

IBFed Policy Paper

In relation to

BASE EROSION and PROFIT SHIFTING (BEPS)

"WHY INTERNATIONAL BANKS ARE DIFFERENT"

1. Introduction

The regulation of international banks and their unique characteristics distinguishes them from multinationals operating in other industries, and means that they are not the natural focus of the OECD BEPS agenda.

2. Banks are Different – Nature of Activities and Operating Structure

International banks' business model relies significantly on the prudent management of debt and leverage. Banks borrow from depositors or in the wholesale market to provide lending to individuals, SMEs, corporates and the government at a margin over the cost of funds to the bank. The interest expense is a cost of sales for the bank, a key resource involved in a bank's products.

International banks are required to issue equity (in the form of issued capital and hybrid instruments) to maintain minimum levels of capital. They are also required to hold a certain proportion of their balance sheet in high quality liquid assets which can be turned to cash at short notice.

International banks operate in a number of jurisdictions. Many are structured through a head office in the place of their incorporation, and then operate through branches in offshore jurisdictions. Others are structured through separate subsidiary or affiliate companies (often which are themselves authorised banks), supporting their offshore operations.

Generally, international banks organise their offshore operations according to lines of business, and require the necessary staff, capital and funding in each jurisdiction to support the business operations in that jurisdiction.

An international bank's offshore branch/subsidiary may raise its own funding in its local markets, or may borrow from other offshore branches/subsidiaries within its group at market rates. A bank's capital raisings may be managed centrally to optimise funding costs and then disbursed to offshore branches and/or subsidiaries to support different products being offered, the risk profile of the customers and/or the regulatory needs in those jurisdictions. Lumpy allocations of that capital are not abnormal.

3. Banks are Subject to Stringent Regulation

Banking Regulations

Banks are subject to banking regulations at both an international and domestic level. The international banking sector is highly regulated with continuously evolving standards. The Basel Committee, which is located at the Bank for International Settlements, plays a major role in developing recommendations for global standards for the prudential regulation of banks and develops standards and guidelines commonly known as the "Basel" standards.

The national banking sector is highly regulated by the domestic banking regulators, applying the Basel standards in accordance with domestic laws and processes, including adjustments to address national specific issues, structures, and conditions.

For example, Basel recommended that a bank hold a minimum total regulatory capital of 8% of its risk weighted assets. The vast majority of the domestic regulators adopted a threshold well in excess of the minimum 8% requirement.

The standards set by Basel and the domestic banking regulators lead to international banks meeting minimum standards and thresholds, and that global systemically important banks hold buffers in excess of the minimum requirements.

International banks are also required to disclose information beyond that normally expected from other public companies, and are closely monitored by the domestic regulators.

Tax Regulations

The OECD provides guidance on the appropriate tax treatment for international issues, and the treatment for banks has been a feature of its reports. For example, in 2010 the OECD produced its landmark report on Attribution of Profits to Permanent Establishments, which contained particular guidance to banks on the treatment of their branches and on global trading activities.

Double Tax Agreements also prescribe the tax treatment of certain international activities undertaken by banks.

Local tax authorities also closely regulate banks. There are often specific tax rules in the domestic law dealing with certain banking activities, and [some/many] international banks have entered into co-operative compliance arrangements and/or codes of practice with tax authorities. These provide for greater disclosure to the authorities by the banks of its operations.

Impact of the Regulatory Environment for Banks

There has long been a recognition that the nature of business undertaken by banks warrants special consideration when developing both domestic and international tax rules. This is reflected in decades of work undertaken by the OECD (including in its current BEPS proposals).

The regulatory environment which surrounds the banking industry already constrains the behaviour of banks in ways which obviate many of the BEPS risks.

A combination of the regulatory requirements, business needs and clear transfer pricing rules mean that there are limits on the deductions that international banks are able to claim for their funding and regulatory capital. Similarly, international banks are not able to [merely] shift profits to low tax jurisdictions. Rather, income attributed to a particular jurisdiction needs to be supported by a robust and independent analysis.

4. Summary

The above features for international banks result in taxable profits for banks arising where the real economic activity is undertaken. Accordingly, international banks are not a natural focus for the BEPS agenda.

Furthermore, care needs to be taken in developing the BEPS rules and their application to international banks to ensure that:

- the rules do not thwart commercial banking business and the intermediation benefits that banks provide to the economy;
- inconsistencies do not arise between the new tax rules and the banks' regulatory environment ; and
- an excessive compliance burden is not placed on the banking sector (or its clients).

6th August 2015
International Banking Federation