

Comments Summary

European Commission: *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)* COM(2011) 121/4 - 2011/0058 (CNS)

20. December 2011

With regard to the rules on the tax base contained in the draft directive, we wish to summarise as follows:

We see as beneficial:

- *the ban on capitalisation of self-generated intangible assets;*
- *the inclusion in the tax base of differences in fair value of financial assets and financial liabilities held for trading; although not neutral in terms of its effect on decision-making, this is practicable in the eyes of banks;*
- *the depreciation rules, which are much simpler than the existing provisions of German tax law;*
- *the arrangements for timetabled depreciation for individually depreciable assets and the assets to be included in an asset pool (so-called pool depreciation).*

We see the need for (further) action concerning:

- *the absence of a reference basis (e.g. EU accounting law), given the existing heterogeneity of concepts for computing profits under national tax law in the EU;*
- *the technical format as reconciliation of book and taxable income versus an accounting-based solution comprising balance sheet and P&L account that is preferable to banks;*
- *the absence of definitions and insufficiently clear legal concepts (e.g. defining the key concept of an asset or inadequate specification of the computation of acquisition or construction costs);*

- *the incompleteness and need for supplementation of the general principles for computing the tax base so as to ensure objective computation of profits, and the absence of a solution to potential target conflicts by means of target hierarchies;*
- *the absence of any explicit rules on write-downs of bad debt; the admissibility of bad debt charges, particularly of general bad debt charges, should not actually be allowed to be questioned;*
- *the absence of any rules on the creation of valuation units in line with the Article 5(1a) sentence 2 of the German Income Tax Act;*
- *a lack of detailed rules for individual sectors, e.g. the treatment of derivatives as financial assets in the financial services sector, or inadequate detailed rules, e.g. for leasing and for definition of the economic owner;*
- *the limited extent to which exceptional subsequent measurement of assets is permitted; the corresponding improved accounting for cross-border losses is not sufficient;*
- *in the case of provisions:*
 - *the fact that these are limited to legal obligations and that (objectively measurable) business obligations are thus not taken into account;*
 - *the granting of mere accumulation provisions rather than full provisions, as should be the case from an economic point of view;*
 - *the absence of rules providing for the deductibility of banks' technical provisions (for general banking risks) with reference to the EC Bank Accounts Directive (OJ L 372, 31.12.1986, p.1; corr. OJ L 316, 23.11.1988, p. 51) and the Bank Branches Directive (OJ L 44, 16.2.1989, p.40) and the depreciation of financial assets in accordance with the Expected Loss Model (based on the IASB's ED/2009/12 on financial instruments).*