

GERMAN-FRENCH COMMON POSITION PAPER ON CCTB PROPOSAL

In October 2016, the European Commission proposed to re-launch the Common Consolidated Corporate Tax Base (CCCTB) through a two-step process consisting of two legislative proposals:

- proposal for a directive establishing a common corporate tax base (the **CCTB Directive**)¹;
- proposal for a directive establishing a common consolidated corporate tax base (the **CCCTB Directive**)².

France and Germany very much support those two proposals in order to foster tax harmonisation in Europe. They are deeply committed to adopting quickly the CCTB Directive.

France and Germany fully share the general objective and substance of the CCTB Directive as proposed by the European Commission. They have thus finalised a common position in this paper that focuses on modifications aimed at completing or amending the CCTB Directive on certain specific points. All other aspects of the CCTB Directive as proposed by the European Commission are fully supported by France and Germany.

This common position aims at fostering the current discussions on the CCTB Directive at EU level and rally the other Member States to the objective of adopting the CCTB Directive as soon as possible, before considering possible adoption of the CCCTB Directive.

I. SCOPE AND GENERAL PRINCIPLES

1. The main outcome of harmonising the tax base should be to improve transparency and boost EU competitiveness as a whole. This can only be attained if the harmonisation applies to all corporate taxpayers. France and Germany therefore consider that it would be appropriate to extend the **scope of the CCTB Directive** to make it compulsory for all companies subject to corporate tax, irrespective of their legal form or their size.
2. France and Germany agree on the general principles for **profit and loss recognition**, as proposed by the CCTB Directive. Nevertheless, they consider that these principles should be supplemented with a general rule providing that the tax base is determined on the basis of **accounting principles** and calculated by applying the business asset comparison method, in order to apply a simple and comparable method and keep bureaucratic effort at a minimum.
3. Both countries consider that a harmonised corporate tax base should not feature any **tax incentives**, as the purpose of the CCTB Directive is about harmonising the corporate tax base. Thus France and Germany are not in favour of provisions regarding tax incentives for research and development (article 9 of the CCTB Directive) and equity financing (article 11). To ensure an effective tax harmonisation of the corporate tax base, further discussions will be necessary as to the possibility for Member States to provide other tax policy measures “outside” the scope of the CCTB Directive (e.g. tax credits) and regarding the approximation of corporate tax rates.
4. Both countries do not support introducing provisions on **cross-border loss relief** (article 42 of the CCTB Directive), as they should be discussed at a second stage, as part of the negotiation on the CCCTB Directive.

¹ Proposal for a Council Directive on a Common Corporate Tax Base (COM/2016/0685 final).

² Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (COM/2016/0683 final).

5. The CCTB Directive presupposes that **national group taxation systems** are to remain in force until implementation of the CCCTB Directive. For the reason of clarity, however, this should be expressly stated in the CCTB Directive.
6. France and Germany are not in favour of the adoption of **delegated acts**, as the Council should define all material legal rules directly in the Directive.
7. Considering the need for technical adaptation involved by the CCTB Directive, both countries support a **reasonable transitional period** of at least 4 years. Transition rules must be substantiated in the directive.

II. DEFINITION OF THE TAX BASE

8. Concerning **revenues and expenses**, France and Germany suggest the following four amendments:
 - they agree on the **deduction of all taxes and duties** other than corporate tax and similar taxes on profits (article 12 of the CCTB Directive), but consider that special purpose levies (e.g. bank levies) should not be deductible;
 - the tax exemption of distributions (parent-subsidiary regime) and capital gains (disposal of equity interests) under the **participation-exemption rule** (article 8 of the CCTB Directive) should provide for a flat-rate deduction of non-deductible operating expenses representing 5 % of the exempt income. It could also be helpful to consider the impact on venture capital and start-ups;
 - **entertainment costs** (article 12 of the CCTB Directive) should be deductible when incurred as a business expense subject, to the extent that the costs are reasonable, and 25% of meal and drink expenses should be non-deductible; France and Germany are in favour of making a list of non-deductible costs;
 - the CCTB Directive should also define **hidden profit distributions** to capture cases where a taxpayer has waived appropriate payment for goods or services, and provide for their inclusion in the tax base.
9. Both countries support the optional **deduction for gifts and donations** to charitable bodies (article 9 of the CCTB Directive), but Member States should be free to use other tax policy measures (e.g. tax credits) for the same goal.
10. When it comes to **asset depreciation**, both countries support the principle of:
 - immediate deduction of minor value assets and the grouping mechanism to determine the useful life of assets. But they do not support **pool depreciation** because this goes against administrative simplification;
 - tax depreciation of an **acquired goodwill** (article 32 the CCTB Directive). But they consider that Member States should be allowed to introduce this measure gradually, through depreciation of the goodwill recorded after the implementation date of the CCTB Directive;
 - **entitlement to depreciate** for the asset's economic owner (article 32 of the CCTB Directive), while ensuring that, for leasing contracts, the lessor is regarded as the economic owner.

11. Concerning **provisions** (article 23 of the CCTB Directive), France and Germany consider that:
- the CCTB Directive's exclusive focus on legal obligations should better match the **economic reality**;
 - **valuation of provisions** should rely on a fixed discount rate in accordance with the principles of predictability;

The possibility for limited restrictions on the recognition of certain provisions should be further discussed.

12. As for **tax losses** (article 41 of the CCTB Directive), France and Germany consider that the CCTB Directive should:
- include a **minimum taxation of profits**, whereby loss carry-forwards are limited to a certain percentage (between 50 and 60%) of the taxable profit after deduction of a basic amount of € 1 million;
 - provide for the possibility of a one-year **loss carry-back** in an amount of up to € 1 million.

They support the provisions on **shell company acquisitions** based on a qualified change of ownership and a change in a quantitative criterion (article 41 of the CCTB Directive), although those criteria must be substantiated.

13. France and Germany are in favour of the proposed provisions on **hedging instruments** (article 26 of the CCTB Directive) and consider that unjustified reclassification must be prevented. Provisions on financial instruments held for trading (article 21 of the CCTB Directive) should be restricted to financial undertakings and applicable to other companies in certain cases only (when it comes to UCITS and financial futures).
14. Both countries share the opinion that **special provisions for insurance undertakings** (article 28 (a), (b) and (c) of the CCTB Directive) must be clarified as the directive addresses only life insurance undertakings. France and Germany also consider that all technical provisions provided under Council Directive 91/674/EEC should be deductible. Calculation rules of such deductible technical provisions should be determined by domestic law.

III. ANTI-BEPS MEASURES

15. France and Germany support the inclusion of **anti-BEPS measures** subject to certain amendments:
- in some cases (**general anti-abuse rule, hybrid mismatches, exit taxation**) the Directive should be more consistent with the Anti-Tax-Avoidance Directive (ATAD)³ which incorporates similar provisions;
 - concerning the **interest limitation rule** (article 13 of the CCTB Directive), France and Germany are in favour of the inclusion of, notably, the group escape clause, the carry-forward of unused interest deduction volumes (“EBITDA-carry forward”), and the deletion of exceptions for long-term public infrastructure projects and financial undertakings;
 - France and Germany support the **switch-over rule** (article 53 of the CCTB Directive), provided that the benchmark rate is a single rate for all Member States and the scope also

³ Council Directive (EU) 2016/1164 as amended by Council Directive (EU) 2017/952.

covers the income of EU-based entities.

16. Regarding transfer pricing (article 56 of the CCTB Directive), both countries consider that such specific provisions should remain in the competence of the member states until the implementation of Directive on a Common Consolidated Corporate Tax Base (CCCTB-Directive).
17. Concerning **controlled foreign company** (article 59 of the CCTB Directive) France and Germany support at this stage the application of a minimum standard provided by the ATAD on CFC rules. Nevertheless, France and Germany consider that the proposed provision in the CCTB Directive draft is not sufficient. France and Germany support the idea of an effective minimum taxation. Therefore an effective tool preventing unjustified exploitation of differing tax rates should be developed. The CFC-rules in that context provide a starting-point for further reflections on that objective.
18. In order to secure the tax base and create fair tax competition, France and Germany support the introduction in the CCTB Directive of a limitation rule on deduction of interests, royalties and other remunerations paid in a country with a **favourable tax regime** (i.e. a tax regime leading to a tax rate below a certain percentage).