



Corporate Tax Harmonisation: CCCTB 2.0 ?

Katarina Köszeghy, Ph.D.

Background for the work of the LU PRES on CCCTB

- 2011 - Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)
- 2013 - IE PRES: division of the work on the CCCTB into 2 blocks: (1) tax base and (2) tax consolidation
- 2013 - OECD Action plan on BEPS and welcome of the BEPS work by the European Council
- 2014 – LT PRES road map on EU-BEPS
- 2014-2015 - OECD-BEPS recommendations: the deliverables
- 2014 - Joint letter for a “**comprehensive anti-BEPS directive**”
- 2014 – IT PRES compromise text on the CCCTB
- 2014 - ECOFIN Council: green light for work on **international anti-BEPS aspects of the CCCTB**
- 2015 - **Commission June 2015 Action plan** (Fair and efficient corporate tax system in Europe)
- 2015 - **Commission work programme for 2016** (Corporate Tax Package)

Previous work in Council on the international anti-BEPS aspects of the CCCTB

- First approach on BEPS in an EU context (IT PRES compromise text)
- Joint letter by the DE, FR and IT Ministers of Finance pleading for a “**comprehensive anti-BEPS directive**” (28.11.2014)
 - Context: OECD/G20's final adoption of the BEPS conclusions
 - Content: *"a set of common, binding rules on corporate taxation to curb tax competition and fight aggressive tax planning"*
- Focusing discussions on selected **international anti-BEPS aspects** of the CCCTB (LV PRES):
 - Definition of **permanent establishment** (PE)
 - **CFC** rules
 - **Switch-over**
 - General anti-abuse rule (**GAAR**)
 - **Exit taxation**
 - **Interest limitation**
 - (possibly) **hybrid mismatches**

Commission June 2015

Action plan: CCCTB

- CCCTB as such: re-launch of the CCCTB file adopting a staged approach
- International aspects of the CCCTB linked to BEPS (p. 9):

“[...] While the new proposal is being prepared, **work must continue** in the framework of the proposal currently on the table of the Council on **some international aspects of the common base which are linked to the BEPS project.** For example, [...] definition of "permanent establishment" [...] and improving the Controlled Foreign Corporation rules [...].

Consensus on these elements should be achieved in the Council **within 12 months**, and should be made **legally binding before an agreement is reached on the revised CCCTB.**

This will ensure a coherent EU approach to implementing the new international standards arising from the OECD BEPS project, providing consistency for businesses and preventing a fragmented approach in the Single Market.”

From CCCTB to anti-BEPS: The work programme of the LU PRES

LU PRES **EU-BEPS Road map** on CCCTB (following-up on previous work and Commission June 2015 Action plan):

- First step: continue work on the international anti-BEPS aspects and if considered useful envisage a **split of the CCCTB**
- Second step: ensure a **consistent implementation** of the **OECD (BEPS)** recommendations in the EU context
 - Finalise the **technical examination** of the international anti-BEPS aspects
 - Take into account the final results of the **OECD work on BEPS** to the extent the recommendations are **compatible with the EU legal framework**
- Final step: PRES LU **compromise text** and possibly enshrined into **EU legislation** (or any other EU instrument)

From CCCTB to anti-BEPS: Fulfilling the commitments (1)

Stage 1 – Carry on **technical work** on the 7 aspects of the CCCTB identified as international **anti-BEPS aspects** and taking account of the progress of the work on BEPS

■ Objectives: Work on the substance of the 7 anti-BEPS elements:

- General anti-abuse rule (**GAAR**)
- **Exit taxation**
- (possibly) **hybrid mismatches**

- Definition of **permanent establishment** (PE)
- **CFC** rules
- **Switch-over**
- **Interest limitation**

■ Challenges:

- OECD-BEPS work
- Context of a possible prospective stand-alone legislative instrument on BEPS

From CCCTB to anti-BEPS: Fulfilling the commitments (2)

Stage 2 – Take account of the underlying **objectives of the road map**

■ Objectives of the LU PRES:

- Achieve a **swift, consistent** and **coherent** approach on BEPS in the EU and
- Ensure an **efficient** implementation of BEPS recommendations in the EU context and a **consistent** application of the BEPS recommendations by the Member States
- Nota bene: no reference to “**harmonisation**”
- Preference for a hard law approach

■ Challenges:

- Different degrees of binding force of the BEPS recommendations
- Implementation process started by some Member States
- Compliance with the EU legal framework

From CCCTB to anti-BEPS: Fulfilling the commitments (3)

Stage 3 – Discuss the legal framework of the technical work: a possible **stand-alone anti-BEPS directive (split of the CCCTB)**

■ Objectives:

- In the absence of an appropriate legal basis, conducting work on the basis of the current proposal for the CCCTB
- Launching a discussion on the possibility of agreeing on a split off from the CCCTB of the international anti-BEPS aspects

■ Challenges:

- EU directive to contain only anti-abuse provisions on the basis of the CCCTB (legal issues)
- The objective and the scope (geographic and material) for the prospective autonomous anti-BEPS directive

From CCCTB to anti-BEPS

Fulfilling the commitments (4)

Stage 4 - Conclusion of the technical examination of the anti-BEPS aspects: **consolidated text** on the content of a possible future **stand-alone anti-BEPS directive**

- Consolidated text and explanatory note:
 - Fruit of negotiations in Council working group on the CCCTB
 - State of play in December 2015 ECOFIN (no political agreement sought)
 - Significant efforts on provisions to implement BEPS in the EU but further work is essential
- Solutions to the existing challenges:
 - “Minimum standards” (de minimis application of the provisions)
 - Broad scope of application (EU and third-countries, all corporate entities not only MNC)
 - Taking account of the work on the Multilateral Instrument to be elaborated in OECD

From CCCTB to anti-BEPS

Fulfilling the commitments (5)

Stage 4 (continued)

- External solutions to the issues encountered during LU PRES
 - Solution to the issue regarding the legal basis:
 - Commission work programme for 2016 (Corporate Tax Package, annex I, point 12)
 - Implementation of international standards on BEPS
 - No withdrawal of the current CCCTB proposal until the first half of 2016 (April)
 - Commission announcement for a proposal on an anti-avoidance directive

The LU PRES consolidated text: The content of a possible future anti- BEPS directive

- 12 articles, final provisions, **no recitals, no annexes, title to be determined**
- **Scope** (EU and third countries)
- Provision ensuring a **de minimis application** of the provisions
- **Eligible corporate entities**
- **Definitions**
- **GAAR** (Art. 80 CCCTB): GAAR in the PSD with slight amendments
- **Artificial avoidance of the PE status** (Art. 5 CCCTB): BEPS Action 7
- **Interest limitation** (Art. 14a CCCTB): BEPS Action 4
- **Switch-over clause** (Art. 73 CCCTB)
- **CFC** (Art. 82 CCCTB): BEPS Action 3
- **Exit taxation** (Art. 31 CCCTB): recovery of taxes / CJEU case law (tax deferral / installments)
- **Hybrid mismatches** (Arts 83a and 85 CCCTB): work of the Code of conduct sub-group (hybrid entities and hybrid PE)

The way forward on BEPS in the EU: Commission initiatives for 2016

- Commission Tax-Avoidance-Package: **An autonomous proposal for an anti-avoidance directive** (January 2016)
 - References:
 - Indication in the Commission June 2015 Action plan and
 - Announcement in December 2015 ECOFIN
 - LU PRES consolidated text – a source of inspiration?
- A new proposal on the CCCTB
 - Step 1: mandatory tax base and
 - Step 2: consolidation

- **Joint letter:**
http://www.economie.gouv.fr/files/files/PDF/letter-to-p_moscovici-11282014.pdf
- **IT PRES compromise text on CCCTB:**
<http://data.consilium.europa.eu/doc/document/ST-15756-2014-INIT/en/pdf>
- **Commission June 2015 Action plan:**
http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf
- **IE PRES road map:**
<http://data.consilium.europa.eu/doc/document/ST-11507-2013-INIT/en/pdf>
- **LT PRES road map on EU-BEPS:**
<http://data.consilium.europa.eu/doc/document/ST-5968-2015-INIT/en/pdf>
- **LU PRES EU-BEPS road map:**
<http://data.consilium.europa.eu/doc/document/ST-10649-2015-INIT/en/pdf>
- **ECOFIN report to the European Council on tax issues:**
<http://data.consilium.europa.eu/doc/document/ST-16034-2014-INIT/en/pdf> and
<http://data.consilium.europa.eu/doc/document/ST-15187-2015-INIT/en/pdf>
- **Council conclusions on BEPS:**
<http://data.consilium.europa.eu/doc/document/ST-15150-2015-INIT/en/pdf>
- **Commission working programme 2016 (annex I):**
http://ec.europa.eu/atwork/pdf/cwp_2016_annex_i_en.pdf
- **Documents on CCCTB (anti-BEPS) from LU PRES**
 - <http://data.consilium.europa.eu/doc/document/ST-14509-2015-INIT/en/pdf>
 - <http://data.consilium.europa.eu/doc/document/ST-14544-2015-INIT/en/pdf>
 - <http://data.consilium.europa.eu/doc/document/ST-14544-2015-ADD-1/en/pdf>

Thank you for
your attention!