Opinion of the Committee of the Regions on the ‘Common consolidated corporate tax base (CCCTB)’
(2012/C 54/10)

THE COMMITTEE OF THE REGIONS:

— welcomes the fact that, since the creation of the European Union, company taxation has received special attention as a key element in the establishment of the internal market;

— is of the opinion that it would simplify matters for businesses if they only had to deal with a single tax administration for the calculation of their tax base: one which would be responsible, moreover, for all questions and disputes relating to that tax base. It would also enable them to save on administrative costs, with just one and not 27 authorities to deal with in order to establish their tax base;

— would like the Commission to consider the impact of the arrangement whereby tax losses can be carried over indefinitely and to explore possible anti-abuse measures;

— without directly calling into question the principle underpinning the directive, believes that the proposal should be reviewed taking into account the need for (a) sufficient quantitative and qualitative indicators to allow a full assessment of the subsidiarity implications of a cross-border proposal of this nature; (b) more data on the full implications of the CCCTB; and (c) an analysis of the impact of the proposal on local and regional authorities.
I. INTRODUCTION

THE COMMITTEE OF THE REGIONS

1. welcomes the fact that, since the creation of the European Union, company taxation has received special attention as a key element in the establishment of the internal market;

2. believes that development of cross-border economic activities is often hindered by a large number of different rules, especially on taxation, that are a major obstacle for small and medium-sized enterprises in particular and a barrier to the development of the internal market;

3. also draws attention to the 1990 Commission communication on company taxation (SEC(90) 601) which gave rise to several important measures on direct taxation, such as the Merger Directive 90/434/EEC, the Parent-Subsidiary Directive 90/435/EEC and the Arbitration Convention 90/436/EEC. The list of European tax measures was completed one decade later with the directive on interest and royalty payments 2003/49/EC;

4. is pleased to note that since the year 2000 the Commission has returned to a more ambitious tax policy, seeking to ensure that all corporate activities at EU level are covered by a common consolidated corporate tax base. This "new" Commission drive was reaffirmed in communications from 2003 (COM(2003) 726) and 2005 (COM(2005) 702);

5. notes that November 2004 marked a clear turning point in the Commission's declarations, with the setting-up of a working group to look into the creation of a common consolidated corporate tax base (the CCCTB WG);

6. has examined the work of the CCCTB WG and, in particular, the working document entitled "CCCTB: possible elements of a technical outline" (CCCTB/WP/57), which to a large extent provides the technical basis for the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) of 16 March 2011 (COM(2011) 121 final) - the subject of this opinion;

II. ASSESSMENT OF THE PROPOSAL

7. is of the opinion that it would simplify matters for businesses if they only had to deal with a single tax administration for the calculation of their tax base: one which would be responsible, moreover, for all questions and disputes relating to that tax base. It would also enable them to save on administrative costs, with just one and not 27 authorities to deal with in order to establish their tax base;

8. notes that the concept of a "one-stop-shop" (the principal tax authority) must not result in groups of companies being able to choose their tax domicile in Europe freely, as is the case for groups with their parent company in a third country;

9. takes note that, according to the Commission, consolidation of taxable results would be a response to the issue of transfer pricing and also provide substantial savings for businesses in terms of administrative costs, since "pan-European" transactions would no longer be subject to transfer pricing reports. Consolidation would also be a response to the issue of cross-border loss compensation;

10. notes that the proposal also stipulates that it "is not intended to influence the tax revenues and the impact on the distribution of the tax bases between the EU Member States (...)" however, the natural and logical conclusion to a CCCTB is the alignment of corporate tax rates;

11. points out that the proposal is about putting in place common rules to determine the taxable base of businesses operating under the CCCTB system. When businesses form part of a group, the common tax base would also be determined on a consolidated basis;

12. stresses that the current proposal does not cover harmonisation of tax rates, and that Member States will apply their own rates of taxation to their share of the tax base of taxpayers. The introduction of a minimum tax rate should be considered, albeit low enough to leave sufficient margin for healthy tax competition between the Member States;

13. notes that the directive would be applied to businesses established in accordance with the legislation of a Member State which (i) take one of the forms listed in Annex I of the directive and (ii) are subject to one of the corporate taxes listed in Annex II of the directive or to a similar tax subsequently introduced ("resident companies* or "RCs"). The directive would also be
applied to businesses established in accordance with the legislation of a third country if (i) they take a form similar to one of those listed in Annex I (1) and (ii) they are subject to one of the corporate taxes listed in Annex II ("non-resident companies" or "NRCs");

14. wonders whether the CCCTB system should not also cover partnerships;

15. notes that RCs and NRCs will be subject to the rules provided for by the proposal only if they choose to apply them;

16. stresses that where a company operates under the system provided for by this directive it must cease, unless otherwise stated, to be subject to the national corporate tax arrangements in respect of all matters regulated by this directive;

17. is pleased to note that deductible expenses extend to costs of research and development and costs incurred in raising equity or debt for the purposes of the business; is opposed to the immediate deduction of costs related to durable economic assets;

18. proposes that recurrent costs relating to environmental protection and reducing greenhouse gases also be regarded as deductible expenses;

19. would like the Commission to consider the impact of the arrangement whereby tax losses can be carried over indefinitely and to explore possible anti-abuse measures;

20. stresses that the CCCTB system introduces distinct rules for calculating the corporate tax base and not accounting rules. The proposal has no implications for national rules on financial accounting;

21. considers that, if it is to achieve its goal of streamlining red tape, the application of a common consolidated tax base should be accompanied by the implementation of common accounting rules;

22. notes that the current distribution formula would lead to a fall in tax revenue in eleven Member States on the basis of a voluntary CCCTB. A voluntary CCCTB would also result in a fall in GDP and employment in 21 Member States;

23. notes that legislation concerning direct taxation comes under Article 115 of the Treaty on the Functioning of the European Union (TFEU), which states that the Council shall act unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee;

24. notes that some national parliamentary chambers have sent reasoned opinions to the presidents of the European Parliament, the Council and the Commission, expressing their concerns on compliance with the subsidiarity principle;

IV. IMPACT ON REGIONAL AND LOCAL AUTHORITIES

25. notes that the proposal is not geared towards local and regional taxes since it applies only to the "corporate taxes listed in Annex II". The annex includes the main direct national taxes of Member States;

26. believes, however, that the proposal is of major importance for local and regional authorities. A significant proportion of their income comes from (i) local or regional taxes levied on the national tax base or, more often, (ii) a share of national corporate taxes (2);

27. concludes that in the majority of Member States local and regional taxes will be directly affected by the establishment of a CCCTB system even if the proposal is not geared explicitly towards them. Even though the proposal does not make it mandatory, it seems clear that Member States offering the option of the CCCTB to their taxpayers will also use it to determine their local and regional taxes. Deciding otherwise would mean that tax bases would continue to be set at local and regional levels according to the old national rules, which would of course significantly reduce the benefits of the CCCTB system;

28. believes that priority should be given to this aspect of the proposal for a directive, especially as Annexes II and III may give rise to different interpretations. Annex III includes non-deductible taxes which are sometimes taxes of a purely local or regional nature. If tax bases are decided at national level, it would make sense to include local/regional taxes in the scope of application so that their tax base remains similar to the one decided at European level and then applied at national level. On the other hand, if a business opts for a single tax declaration at European level and the tax revenues are then redistributed, local and regional authorities must be able to recoup what they are entitled to;

29. believes that it is therefore important to define clearly the situations where the CCCTB affect the corporate taxation of local or regional authorities;

30. given that any change to corporation tax is likely to have an impact on regional and local authorities, finds it regrettable that there is no precise information concerning the effects of the directive on these;

(1) The Commission shall adopt annually a list of third country company forms which shall be regarded as having a similar form (Article 3 of the proposal).

(2) See study of Center for Strategy & Evaluation Services, "Local and Regional Corporate Taxes across the EU", Briefing Paper, July 2011.
V. CONCLUSIONS

31. is concerned to defend the interests of local and regional authorities and believes that there should be an in-depth analysis of the impact of the proposed CCCTB directive on the budgets of municipalities and regions before it comes into force;

32. is thus in favour of setting up an ad hoc working group comprising members of the CoR, the Commission and local/regional tax administrations to carry out this analysis;

33. believes that all Member States should give more consideration to the impact of the proposed directive and forward their observations and comments, supported by professional and independent studies, to the Commission as soon as possible;

34. believes that greater fiscal harmonisation will only have an impact if the CCCTB is rolled out in all Member States;

35. wonders whether the optional system provided for in the directive might not lead to extra administrative work both for business and for tax administrations and therefore wonders if there should not be a transition period purely for those opting for the CCCTB. The Committee of the Regions also wonders whether, once the text has been reviewed, the CCCTB should not be made mandatory at the end of that transition period, at least for companies of a certain size;

36. calls for the introduction of the CCCTB to be accomplished in one step, as this is the only way to benefit fully from the simplification effects of harmonisation;

37. is in favour of reviewing the apportionment formula in order to take better account of the economic situation of different Member States;

38. wonders whether this is the right time to take such an important step in tax harmonisation given the financial problems currently causing upheaval in Europe as well as the negative impact on tax revenues and on employment, as highlighted by the Commission’s Impact Assessment and other studies;

39. believes that the proposal for a directive should place even greater emphasis on the rules of national jurisdictions as regards legal procedures;

40. takes note of the desire of European businesses to simplify their tax procedures, to offset their intragroup losses and to eliminate the double and excessive taxation of which they are the victims under the current system;

41. is concerned, however, by the directive’s repercussions, which, while varying depending on the country, would in the main be negative, in terms of both tax revenue and growth and jobs;

42. wonders whether the CCCTB system would, as a whole, simplify matters for businesses or, on the contrary, require fiscal planning and thus make matters more complicated. Given the optional nature of the system, businesses will also be obliged to study in detail the 27 current systems and regularly review their decision whether to opt into the system or not (3);

43. asks whether there are not less complicated alternatives, especially for small and medium-sized enterprises, to the CCCTB system as regards the cross-border compensation of losses. On this subject, refers to the Commission communication COM(2006) 824;

44. finally, wonders whether the measure is proportionate given the number of European company groups which would benefit from it;

45. believes in any case that the proposal for a directive is incomplete since it does not cover local and regional taxes. This risks shifting problems at national level to the local and regional level since, as things stand, the disparities in the system and the need to determine the taxable base would remain for local and regional taxes; is therefore in favour of an enabling clause in favour of local and regional taxes so that Member States can adopt the necessary measures;

46. without directly calling into question the principle underpinning the directive, believes that the proposal should be reviewed taking into account the need for (a) sufficient quantitative and qualitative indicators to allow a full assessment of the subsidiarity implications of a cross-border proposal of this nature; (b) more data on the full implications of the CCCTB; and (c) an analysis of the impact of the proposal on local and regional authorities.

(3) See: Leon Bettendorf Michael, P. Devereux, S. Loretz and Albert van der Horst, Corporate tax reform in the EU: Weighing the pros and cons, Vox, 20 March 2011.
VI. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1
COM(2011) 121 final
Article 12
Deductible expenses

Expand as follows:

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>CoR amendment</th>
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<td>Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business.</td>
<td>Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business. Recurring costs relating to environmental protection and reducing greenhouse gases shall also be regarded as deductible expenses.</td>
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Reason
In order to deal effectively with destruction of the natural environment and climate change, it is recommended that corporate taxation should provide incentives for taxpayers to invest more in environmental protection.

Amendment 2
COM(2011) 121 final
Article 133
Review

Expand as follows:

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<td>The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States.</td>
<td>The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States. Furthermore, this report must contain an analysis of the effects of the Directive on local and regional communities.</td>
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Reason
Since it cannot be ruled out that the directive will have a negative effect on regions and local communities, the Commission should also assess the impact on local and regional budgets five years after the directive enters into force.

Brussels, 14 December 2011.

The President
of the Committee of the Regions
Mercedes BRESSO