A Common Consolidated Corporate Tax Base
– a beauty or a beast in the quest for tax simplicity? –

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1 Introduction

1.1 Background
In the footsteps of globalization, tax systems are getting more and more complex as they try to adapt to the increasing mobility of both tax objects and tax subjects. From a business perspective, the level of complexity is further amplified by the fact that businesses are often operating in a cross-border environment, facing not only one, but often multiple complex tax regimes. As a very immediate example, companies operating within the European Union (EU) have to deal with up to 27 different and often overlapping tax jurisdictions. For Europe at large, the number is almost the double.

The complexities brought by this patchwork of national tax systems within the EU not only bring tax uncertainty and double taxation, but also enormous compliance costs. As a result of these obstacles, the EU is experiencing a huge tap in economic efficiency. To mitigate this problem and to reach the goals set out in the Lisbon Strategy (below), the European Commission (the Commission) has embarked on the ambitious and commendable quest of creating a single Common Consolidated Corporate Tax Base (CCCTB) for the entire EU.

The creation of a completely new and harmonized tax system is a golden opportunity to rethink fundamentals and to provide for much needed simplicity. It does, however, also involve huge challenges in getting the designers to think “outside the box” and to look beyond existing complex schemes.

1.2 Purpose and structure
The purpose of the paper is to analyze the scope for simplicity within the context of a CCCTB. What are the opportunities and what are the challenges? This paper will deal with the prospects of simplifying or removing complex rules currently dealing with e.g. transfer pricing, double taxation and asset depreciation. It will also focus on the possibilities of reducing compliance burdens for companies operating within the EU.

In addition, the paper will address the risk of new complexities. For example, could the CCCTB prove to become only an additional compliance layer on top of existing ones? What are the effects of having a supranational tax system without common accounting rules? What complexities could arise with respect to the implementation and interpretation of the CCCTB?
The paper is divided into four main parts. First, a brief introduction to the background of the CCCTB and some related tax developments within the EU will be given. This is to give a basic understanding of the CCCTB and the current process. Second, the paper will seek to locate and analyze the possible areas of simplification. That is, in what respect could the CCCTB bring simplicity within the EU in comparison to the current situation. Third, the challenges of ensuring simplicity, or perhaps more correctly, the risk of added complexity, will be examined. Finally, some conclusions will be drawn.

It should be emphasized that the paper does not claim to be exhaustive in locating and analyzing possible simplifications or pitfalls giving rise to added complexity. It merely aims at highlighting some of the most immediate effects on simplicity that can be anticipated already at this early stage in the process. A large number of other pros and cons can most likely be found, which would deserve further scrutiny.

For the purpose of this paper, the concepts of simplicity is understood in its broadest term, comprising any case of reduction of compliance burden, risk for litigation, incompatible treatment etc. Considering the purpose of the CCCTB, simplification is mainly addressed from the perspective of the taxpayer. By reducing the complexity of the tax system, however, many of the simplifications would also apply to tax administrations.

Finally, apart from the very impressive materials written by the Commission, there are not much materials scrutinizing the pros and cons of a CCCTB from the perspective of simplicity. Therefore, the article does in large parts take its point of departure in the many and extensive discussions held between the business community, the Commission and the Member States in the various working groups and meetings conducted since the launce of the first Commission Working Paper in 2004.¹

2 The CCCTB and the Lisbon Strategy

2.1 Background and process

In March 2000, the European Council launched the so called Lisbon Strategy, which sets out the ambitious objective for the EU of becoming, by 2010, the most dynamic and competitive knowledge-based economy in the world.² The Lisbon Strategy has been signed by the Member States and is intended to have a significant influence on the political and legislative agenda of the entire EU.

¹ The author is the secretary of the UNICE Task Force on CCCTB and has actively participated in the policy formulation presented by the Task Force. The papers are available on the Commission’s web page: http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm. All views expressed in this paper are personal and do not necessarily reflect he view of The Confederation of Swedish Enterprise or the UNICE Task Force on CCCTB.

The importance of improving taxation policies throughout the EU as a mean to achieve the Lisbon goals has been highlighted several times. At present, the existence of 27 different and often incompatible tax systems constitutes a significant obstacle against economic efficiency and the functioning of the internal market. Double taxation, the lack of tax consolidation, tax-related hindrance of business restructuring and immense compliance costs are just some barriers against a more competitive and open European market. As pointed out by the Commission, removing these obstacles would significantly help create new market entrants, spur investment and innovation and contribute to enhancing the competitiveness of the EU economy.

For this reason, in October 2001, the Commission presented a new plan for an internal market without tax obstacles, acknowledging that the issue of reforming EU company taxation is crucial for achieving the Lisbon-objectives. While observing the need also of short term measures (such as cross-border loss relief and improved transfer pricing rules), the introduction of a CCCTB for EU-wide activities of companies has attained top priority as the most instrumental long term solution to current problems, leading to greater efficiency, transparency and simplicity of corporate taxation.

Dating back to 2001, the Commission policy of working towards a CCCTB was confirmed in 2003. The technical work on a CCCTB, however, first commenced in 2004 through the creation of a Commission Working Group to progress work on the common tax base. Since then, the process of creating a CCCTB has been carried out in an impressive pace, resulting so far in some 50 working papers and involving all Member States as well as members of business community and academia. The work largely focuses on the technical design of a CCCTB and is structured using an ‘issue-by-issue’ approach, where each individual tax area (such as assets and tax depreciation, definition of taxable income, capital gains etc.) are examined one at a time. As been stated repeatedly by Commissioner László Kovács, it is the firm intention of the Commission to present a legislative proposal during the year of 2008.

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8 Commission, COM(2001)582, p??.


10 After the presentation of the Commission Non-Paper to informal Ecofin Council. See note 2.

11 Reference
2.2 Purpose and key features of the CCCTB

The core purpose of the CCCTB is to enable a single consolidated computation of taxable corporate income for businesses operating within the EU. That is, the objective is to implement a common tax base, which will make it possible for business to opt for taxation according to a new consolidated corporate tax base instead of the current national tax bases.

In this context, it is important to emphasize that the objective is not to harmonize tax rates among the Member States. On the contrary, tax sovereignty with respect to tax rates has been regarded as instrumental in order to ensure a sound tax competition among Member States and thus to ensure efficiency. The objective is rather to create a more efficient tax system for companies operating within the EU by providing for a common and competitive tax base.

Although the work follows the caveat of ‘nothing is decided until everything is decided’, it is likely and/or desirable that the CCCTB features at least some fundamental characteristics. First, it has been discussed whether the CCCTB should be developed around a two-step approach where the initial goal is to establish a common (or harmonized) tax base and only as a second step ensure consolidation. This has, however, rightfully been rejected by the Commission. Without consolidation, the core objective of ensuring net taxation and to remove the obstacles to cross-border transactions (such as transfer pricing and exit taxation) would be lost.

This would in essence deprive the project from its chances to contribute to the much needed growth in the EU economy. Thus, the second ‘C’ is likely to stand, at least with respect to the upcoming legislative proposal from the Commission.

Furthermore, it is the view of the Commission that the CCCTB should be optional for businesses. This is important for several reasons. Regardless of how competitive the CCCTB will be, a change from domestic treatment to CCCTB taxation will impose significant costs. Especially for small and medium sized, these costs can be very burdensome and outweigh the benefits of the CCCTB. A compulsory CCCTB could prove to be detrimental in this respect. Also, if the CCCTB does not prove to be a competitive system relative to the current domestic regimes, it is important that business can stick with current tax rules, despite their transfer pricing problems, lack of consolidation etc. In a case where the CCCTB would apply only to cross-border businesses, a compulsory CCCTB could in fact discourage companies from operating cross-border as they then might have to apply worse system than they currently have. This would obviously counteract the very objective of the regime. In addition, optionality would apply much needed pressure on the political process to ensure that the CCCTB is truly competitive.

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13 Reference


15 For a similar argument see European Commission, Non-Paper to informal Ecofin Council, p. 2.

At present, domestic tax bases are often linked with accounting rules in that it constitutes the basis for the tax base calculation. As been pointed out by the Commission, the continuation of this dependency is most likely impossible under a CCCTB.\(^{17}\) Currently, each Member States have its own accounting rules, and even though IAS/IFRS can be used by some companies in some Member States, complete EU wide harmonization is a long way off.\(^{18}\) As the CCCTB is to be a single and identical tax system, it cannot be directly linked with the domestic accounting rules in each Member State. Thus, the CCCTB process is conducted from the basis that the CCCTB will not be directly linked either to domestic accounting rules or the IAS/IFRS.\(^{19}\)

Finally, it should be noted that the primary objective is to implement the CCCTB through a common agreement by all 27 Member States. It is also under this presumption that the current paper is written. However, although there seems to be reasonable political support for a CCCTB, some Member States have expressively rejected the idea of such a common tax regime, referring to each country’s tax sovereignty and the risk for a subsequent process of tax rate harmonization. Faced with this, the Commission has stated that it is willing to push forward through an *enhance cooperation procedure*.\(^{20}\) This legislative tool enables a limited number of Member States to introduce the CCCTB among themselves. Other Member States can then join the regime at a later stage.

In addition to these characteristics, the CCCTB needs to provide for a number of other fundamental features if it is to be successful and advocate simplicity. Some of these characteristics will be scrutinized further below.

### 3 The scope for a simple and competitive CCCTB

#### 3.1 General remarks

To contribute to the Lisbon objectives, the CCCTB must prove be competitive and provide for a substantial reduction of current complexities. If this is not achieved, the CCCTB will presumably have little impact on the economic efficiency within the EU. Simplicity is thus a key objective.

Correctly designed and implemented, the CCCTB appears to have significant potential to enable simplification in at least three different areas. First, by replacing current 27 domestic systems with one common regime, the CCCTB could allow for a significant reduction in compliance burden. Second, as the CCCTB will provide for consolidation, the many and complex rules that are currently in place to regulate

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17 European Commission, Progress to date and future plans for the CCCTB, CCCTB/WP/020 (2005), p. 4.

18 European Commission, Progress to date and future plans for the CCCTB, CCCTB/WP/020 (2005), p. 4.

19 It has however been highlighted that IAS/IFRS should be used as a *tool* to guide and inform the discussion on how to design the CCCTB. See European Commission, Progress to date and future plans for the CCCTB (2005), p. 4.

20 NOTE
cross-border transactions could potentially be removed or significantly simplified. Third, as the tax systems of many Member States have been developed not step-by-step through fundamental reforms, but by adding new rules on top of old ones, there is often an inherent complexity in current domestic tax systems. By designing a completely new tax system, there is at least some room for simplification though a “best practice approach” where the good examples of the various tax systems are chosen for CCCTB-purposes.

Each of these three perspectives will be examined in more detail below. In addition, a few comments will be given on possible benefits of having a common EU system which presumably would give rise to better EC-law compliance.

3.2 A single system with single compliance

The fundamental purpose of the CCCTB is to allow businesses operating within the EU to comply only with one common tax system. No doubt, this would potentially entail a significant simplification from current practices, radically reducing compliance costs for companies operating in more than one Member State. Whether this is accomplished, however, much depend on the actual design of the CCCTB.

First, if any simplicity is to be achieved, it is essential that the CCCTB becomes a truly comprehensive and independent tax regime standing completely separate from the domestic systems. Although this approach seems to be generally recognized and accepted, the Commission has occasionally indicated that certain issues still could follow from national law also for CCCTB purposes. The Commission has, for example, suggested that certain income, such as foreign passive income, potentially could be left outside the CCCTB and be taxed according to domestic rules. 21

Such a ‘split approach’ would be detrimental to simplicity as it would lead to a situation where company groups no longer have to comply with up to 27 but rather 28 tax systems. That is, it would rather add an extra ‘layer’ of rules on top of current domestic regimes than replacing them. This would obviously thwart the very purpose of achieving a competitive and simple tax base. It would also lead to great demarcation problems, adding to the complexity.

With this in mind, a key factor for simplicity is that the CCCTB becomes a comprehensive system which is “exclusive” and not “supplementary” to the domestic tax regimes. Where a company has opted for the CCCTB treatment, its income should be taxed solely under this system and Member States must not impose any additional taxation by reference to their domestic rules (e.g. on income exempt under the CCCTB).

Second, to truly promote simplicity, the CCCTB needs to allow for a single compliance in a single location. This would mean that a group operating in several Member States only would need to file one consolidated tax return in one single location (presumably in the state where the head office is located). Such an approach would no doubt radically reduce compliance costs.

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From the business sector, this has been highlighted as one of the most important features of the CCCTB. A CCCTB which would still require domestic compliance would continuously impose large compliance costs. It also seems incompatible with the objective of ensuring a common tax treatment. A system based on domestic compliance would inevitably lead to numerous cases of inconsistent interpretation and application giving rise to double taxation, litigations and other complexities.

Indeed, such a ‘one-stop-shop’ approach would possibly require a better collaboration and exchange of information between tax administrations than today. Initially this could post an increased burden to ensure a better interaction between the national tax administrations. In an open market featuring the many current tax obstacles, however, this objective appears essential whether imposed through the process of a CCCTB or otherwise. It must also be remembered that the core purpose of the CCCTB is to improve the competitiveness of European businesses. A well functioning collaboration between authorities is no doubt a crucial criterion to fulfil this objective. The political difficulties to achieve this should, however, not be underestimated.

Third, the way the CCCTB is implemented also appears to have bearing on simplicity. The CCCTB could potentially be implemented either through a regulation or a directive. Unlike a regulation, which in itself is directly applicable as domestic legislation, a directive requires the Member States to make such changes to their domestic legislation as necessary to satisfy the requirements established in the directive. That is, the directive is binding but leaves it free to the Member States to determine how the directive shall be implemented.

Considering the fact that the CCCTB will comprise a completely new and comprehensive tax base, which has to be implemented and adopted in the same way in all Member States, it is hard to see that an introduction by mean of a directive would be satisfactory. If the CCCTB is not implemented in the same way, the fundamental objective of having a common tax base will fail. It would also lead to complexities due to inconsistencies in the implementation of the tax base.

Indeed, provided the directive is sufficiently detailed to remove any room for domestic deviations, it would at least in theory give the same result as a regulation. In practice, however, this seems questionable. Considering the experience in the VAT-area, where a common tax system have been adopted through the use of directives, it is clear that even a very detailed directive opens up for domestic divergences and large complexities. It should also be noted that an implementation through a directive would mean that the process of changing the CCCTB would be very lengthy and complex as it does not only involve the change of the ‘statues’ at the EU-level, but also of each and every domestic legislation. For these reasons, it seems very desirable that the CCCTB is developed as a regulation.

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23 NOTE regarding possible formal difficulties to impose a regulation in the area of taxation.

24 NOTE
3.3 Consolidation and elimination of intra-group transactions

As been established above, one of the core features of the CCCTB is to ensure net taxation by allowing for cross-border consolidation of the profits and losses of the various CCCTB-group members. As a consequence, it would not matter where the profits or losses of a CCCTB-group are arising as it is the result of the entire group seen as a single unit that constitutes the taxable base. As been recognized both by the Commission as well as the Member States, this implies that intra-group transactions would be eliminated for CCCTB-purposes.25

Perhaps most importantly, by allowing for the elimination of intra-group transactions, this approach would help removing the very burdensome transfer pricing requirements, which are currently imposing monumental compliance costs on cross-border activities. Only in relation to related parties in third countries would transfer pricing still be an issue.

If this were to be achieved, the CCCTB would be a huge success in the quest for simplicity. Currently, there is a rapid development towards more comprehensive documentation requirements and other complex, time consuming and costly transfer pricing procedures (such as Advance Pricing Arrangements, Mutual Agreement Procedures etc.). Also, due to the failure by the Member States to agree on a common market price concept and thus to provide for appropriate adjustments, the taxpayer frequently suffers a final double taxation after costly and time consuming litigations. Both these effects are to the detriment of an efficient and competitive internal market and could be prevented under a consolidated CCCTB. Thus, only in this limited perspective, the CCCTB features great potential.

As will be discussed further below, however, this approach will put tremendous pressure on the Member States’ determination to achieve a truly competitive system. Although the CCCTB would disregard intra-group transactions, the transfer pricing problems could be reintroduced if the allocation key, for disbursing tax revenues among participating Member States, were to be based on the result (i.e. the taxable income) of the individual entity (or PE) of a CCCTB-group.26 The approach of attributing decisive importance to the profits or losses of an entity (or PE) is, however, rather firmly rooted in the Member States and the determination of the profit distribution in another way would be a totally new and (at least from a European perspective) unconventional scheme. On the other hand, the need of unconventional methods to solve current problems is precisely why the CCCTB is discussed in the first place. Furthermore, the division of taxable income using apportionment mechanisms based on other criteria than profits and losses (such as turnover, total payroll, assets etc.) is not novel in an international context. It has for example been applied for many years in the USA and Canada with satisfactory results.27

Furthermore, consolidation and the elimination of intra-group transactions would also have instrumental effects on current problems related to international double taxation.


26 As there in such case still would be incentives to shift profits and losses between entities and Member States.

Apart from resolving the international *economic* double taxation\(^{28}\) which often arises due to transfer pricing adjustments, the CCCTB would also help to remove international *juridical* double taxation within the EU.\(^{29}\) International juridical double taxation typically occurs due to the parallel or dual imposition of residence and/or source taxation in more than one state.\(^{30}\) Under a common and consolidated tax base, however, an income (or loss) would only be accounted for once, ensuring net taxation within the system itself. Also, the problem of dual residency would presumably be resolved rather easily through common tie-breaker rules.

Indeed, international juridical double taxation is frequently mitigated through bilateral tax treaties. The application of these treaties are, however, complex and frequently lead to difficult interpretations resulting in unresolved tax conflicts between the states and the taxpayer. By preventing double taxation at the level of calculation of the overall taxable income for the entire CCCTB-jurisdiction, these complexities would largely be removed. It would no longer be necessary to consult double tax treaties to ensure net taxation. This in turn would reduce the number of costly and time consuming litigations and mutual agreement procedures currently taking place. No doubt, this would be a very large step towards increased simplicity.

In addition, economically driven reorganizations are often faced with considerable tax obstacles. Apart from transfer pricing difficulties, much of these problems refer to *exit taxation* upon the transfer of a tax object or a tax subject from one Member State to the other. Indeed, within the Union some of these problems are mitigated through the Merger Directive.\(^{31}\) However, these rules are far from comprehensive and leave several exit tax cases unresolved.\(^{32}\)

In recent case law, the ECJ has established that exit taxation upon transfer is prohibited, but that a deferral system can be justified provided it is strictly proportionate and account for later value decreases.\(^{33}\) In addition, the Commission has recently issued a Communication where it confirms this interpretation\(^{34}\) and where it encourages Member States to make current exit tax regimes compatible with EC law through better co-ordination.\(^{35}\) Unfortunately, there is so far no legislative proposal on how to solve these problems.

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28 I.e. the imposition of comparable taxes on the same income in the hands of different taxpayers in two or more states. For a similar definition see Vogel, Double Tax Conventions (1997), p. 10.

29 I.e. the imposition of comparable taxes on the same income in the hands of the same taxpayer in two or more states. For a similar definition see para. 1 of the Introduction to the OECD Model Tax Convention.

30 See Barenfeld, Taxation of Cross-Border Partnerships, pp. 84, 85 with further references.

31 90/434/EEG, 23 July 1990.

32 For example the move of a subsidiary or an asset from one country to another.

33 See Case C-9/02 (*Lasteyrie du Saillant*) and Case C-470/04 (*N*).


No doubt, these actions are important steps towards a better functioning internal market. However, current case law does only address a limited number of situations directly. It is therefore still room for interpretation and uncertainty. Thus, as long as there is no directive or similar legislative measure which provides for a comprehensive solution to all potential exit cases, there will still be a considerable risk for exit taxation in many cases. Also, even if all Member States were to comply with the ECJ-case law, there is sizable scope for complex deferral systems, which inevitably will give rise to administrative difficulties. The fact that Member States in lack of a common directive can impose deviating approaches to comply with the EC-law adds to the complexity.

Also under a CCCTB, some exit tax problems would remain. This would presumably be the case in relation to entities and countries outside the CCCTB-area. For intra-CCCTB transfers and reorganizations, however, there is considerable room for simplification. Provided the concept of consolidation and thus the elimination of all intra group transactions for tax purposes is upheld, reorganizations within the CCCTB-group should not trigger any tax consequences. Also, provided the Member States manages to agree on an allocation key which is not based on the location of the actual profit or loss (which is a precondition for the competitiveness of the CCCTB as transfer pricing problems otherwise still would remain), there seem to be little room/need for a deferral system. Hidden profits (or losses) would automatically be deferred until they are realized outside the CCCTB and then allocated according to the key like any other profit (or loss).

Even though this puts a lot of pressure on the design of the allocation key, and thus on the political process to reach an agreements, this is at least conceptually a natural consequence of a common and consolidated tax system. Such an approach would no doubt provide for considerable simplicity in comparison with current exit tax regimes.

Finally, by introducing a common and consolidated tax base, there seem to be some scope for reducing the number of the complex anti-avoidance rules currently in force. Indeed, under any tax system there are opportunities for unacceptable abuse which should be prevented. This would presumably be the case also under a CCCTB, in particular since there will still be differences in the tax rates among the CCCTB-members.

However, several of the existing restrictions and anti-abuse rules would no longer be relevant under a CCCTB. This particularly refers to CFC-provisions, which are currently adopted in most Member States. The purpose of a CFC-rule is to stretch out a country’s tax jurisdiction to include foreign income which is considered to be subject to an ‘unacceptably low level’ of corporate taxation into the domestic tax base. Since the new regime would only provide for one common tax base, there would be no room for this kind of regulation under the CCCTB. Under a CCCTB, any rule

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38 The abolition of CFC-rules within the EU is also in line with recent case law from the European Court of Justice (ECJ). See Case C-196/04, Cadbury Schweppes.
which aims at preventing the shift of profits or losses to another member state in order to ensure consolidation would go against the very objective of ensuring net taxation through consolidation. Thus, any such regulation should, at least conceptually, be removed. As anti avoidance rules by nature often are vague and imprecise and aims at tackling complex situations, the removal of such regulation would typically be a more towards simplicity.  

3.4 CCCTB as a best practice

3.4.1 General

Complexities often arise as a result of inconsistent tax treatment of incomes/profits or costs/losses of different kinds. As an example, tax incentives and other targeted rules typically involves difficult delimitation provisions to ensure the desired tax result and to prevent misuse. From a simplicity perspective, it therefore seems appropriate if the CCCTB, to the extent possible, treat all income and losses the same way regardless of how they have materialized. Also, tax incentives and other targeted regimes should be kept to a minimum. Considering the focus of the Lisbon agenda, however, it could perhaps be considered whether the CCCTB, as an exception, should provide for sort of R&D-incentive.

Apart from adhering to this principle of equality, there seem to be some scope for simplicity by introducing in the CCCTB tax measures which are difficult to implement unilaterally or that simply constitutes a better approach than current practices in many Member States. Below, a couple of such potential “best practices” will be discussed. Admittedly, not all of them are easy to implement even under a CCCTB. From the perspective of simplicity, they are nevertheless most desirable.

3.4.2 Tax depreciation

Tax depreciation of assets constitutes one of the most essential elements of a tax base as it has a direct impact on the broadness of the tax base. The rules regulating this matter is therefore of utmost importance for the design of the CCCTB.

In an income tax system, assets may be depreciated either on an individual or on a pool basis. Under the former approach, assets are depreciated separately on an individual basis. This method is used in a significant number of Member States, including Belgium, Germany, Italy and Spain. The latter and more uncommon approach, which is used by countries like Sweden and the UK, basically allows for

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39 As will be discussed below, however, there is equally a risk for new anti-avoidance rules. See sec. 4.1.6.


the addition of the depreciable bases of all assets in a pool and the calculation of the depreciation charge as an overall figure.

Whether the CCCTB should allow for a pooling method or require an individual depreciation has been subject to extensive discussion in the process of designing the CCCTB.\textsuperscript{44} From the perspective of simplicity, a pooling method is undoubtedly more preferential both for the business community and for the tax authorities. Most notably, under this approach it is not necessary to keep records of the economic value of each individual asset, something that may be required to be kept for many years under an individualized approach. Also, tax authorities would not need to audit the depreciation on an individual asset basis, something that requires large administrative resources in countries currently using this approach.

To the detriment of the pooling method, however, it has been argued that it would not allow for a sufficiently accurate forecast or assumption with respect to the economic lifetime of different types on assets.\textsuperscript{45}

Indeed, a pure pooling system might not allow for a fully satisfactory reflection of the economic lifetime of an individual asset, although it likewise must be recognized that it is not possible to achieve a precise forecast of the economic lifetime of an individual asset even under the alternative regime. Both approaches are based on a forecast of the expected economical lifetime \textit{ex ante}. The \textit{ex post} outcome might be very different. Thus, no system will provide for an ‘accurate’ result. It shall also be noted that there is an offsetting mechanism inherent in a pooling approach where some assets inevitably will be depreciated quicker and some slower than their ‘actual’ economical life. Whether a pooling approach provides for sufficient accuracy from an overall perspective, therefore largely depends on the depreciation rate chosen.\textsuperscript{46}

Furthermore, as long as price stability is ensured in the European economy, a minor deferral or acceleration of tax payment should be less of a concern than when the inflation rate is high.

With this in mind, the choice between an individualized depreciation scheme and a pooling approach is not one of objective accuracy versus rough estimates. The perceived additional precision offered by a differentiated system based on an individualized scheme must be carefully weighed against the cost of managing such a system. From a business point of view, the administrative burden of a detailed and complex individualized system is obvious and will inevitably take resources away from actual business activity. From the perspective of the tax authorities, the cost of monitoring taxpayers’ compliance is equally high.

Additionally, it should be noted that an individualized approach appears increasingly difficult when adopted within the context of a CCCTB (compared to when used within a domestic context of one single country). First, companies running businesses in countries already using a pooling approach do not generally have any records of the depreciated value of each individual asset. It would therefore be very difficult for such companies to switch to an individual depreciation scheme. The same is not true in the reverse situation. This would obviously act as a disincentive for businesses

\textsuperscript{44} Ev. reference!
\textsuperscript{45} Reference?
\textsuperscript{46} Reference to TF?
predominantly operating in ‘pooling countries’ to opt for a CCCTB that is founded on an individualized depreciation method.

Second, the more depreciation groups that are created (or in the extreme case, a single depreciation assessment for each individual asset) the more room there is for countries to apply the depreciation regime differently with respect to individual assets. That is, it becomes increasingly difficult to ensure that each individual asset is depreciated in an equal way by all Member States.

Nevertheless, even though a pure pooling method would provide for much needed simplicity, it might occasionally fail to provide for an acceptable level of ‘economic reality’. As concluded by the European Commission a “good balance between reflecting as closely as possible economic reality in the tax base and creating a system which can work effectively and efficiently across the EU has to be found”. If a pure pooling approach is not found acceptable, some sort of intermediate system is conceivable in order to ensure such a balance. Such a scheme could be based on the concept of pooling but allow for a more individualized depreciation method with respect to a limited number of assets, such as immovable property and intangibles.

To ensure a clear and appropriate demarcation of different assets, a possible approach could be to seek suitable criteria based on the distinction between assets typically characterized by large volumes and relative low values (such as inventories), and assets generally characterized by low volumes and high values (such as buildings). The rationale behind such an approach would be that assets of the latter group are not excessively burdensome to document (sufficient information is often already available for non-tax reasons) but at the same time, due to their relatively higher values, essential to depreciate at a ‘correct’ economic rate. Therefore, a more individualized depreciation scheme is conceivable for these assets. With respect to the former group, the circumstance is the reverse. Thus, here pooling appears more appropriate. In any case, however, the number of pools must be kept to a minimum to ensure a sufficient level of simplicity. Such intermediate systems have been proven successful in some of the member states currently using pooling as main methods.

Finally, it should be recognized that a large number of assets (e.g. computers, mobile phones etc.) only have a marginal value and/or a very short economical lifetime. Under a simple and cost effective CCCTB, such assets should be expensed.

3.4.3 Capital Import Neutrality

International double taxation is one of the most hampering obstacles against economic efficiency and growth. Under current tax systems, it frequently occurs because of two countries adopting source and/or residence taxation simultaneously on the same income. To be competitive, it is essential that the CCCTB ensures that businesses are only taxed on their net income and that double taxation is appropriately avoided.

In addition, to achieve economic efficiency, taxes should distort investment decisions as little as possible. Modes of financing, ownership and legal form of the business

47 CCCTB/WP/012, p. 4.
48 E.g. Sweden. [NOTE]
49 NOTE
entity should preferably not influence an investment decision. Countries have therefore tried to treat businesses on an equal footing within their legal systems. In an ever more global market, however, European business needs to be increasingly competitive on markets outside the European Union if it is to reach the economical objectives established in the Lisbon Agenda. For this reason, the CCCTB should preferably allow European business to compete on an equal footing with domestic business on large and/or developing markets outside the European arena.

On this basis, it appears as if the CCCTB best would serve the ambitious efficiency objective agreed on in the Lisbon agenda if it were to be based on the principle of Capital Import Neutrality (CIN). Such an approach would provide for a level playing field with respect to business located in third countries. It could also work to attract and strengthen the position of head offices within Europe.

A CCCTB based on CIN would, however, also be advantageous from the perspective of simplicity. With a risk of oversimplification, CIN could be achieved in either of two ways. First it could be reached by founding the CCCTB on the principle of territoriality. Under this approach, taxation would only be levied on income attributable to sources located within the CCCTB-area. This would apply to CCCTB-residents as well as tax subjects residing outside the CCCTB-jurisdiction. Alternatively, the CCCTB could provide for a worldwide taxation combined with a double tax relief mechanism allowing for exemption of foreign income.

A CCCTB based on territoriality would resolve many of the complex double tax problems currently arising. Indeed, countries are often allowing for double tax relief by means of bilateral tax treaties. However, with increasingly complex group structures and cross-border transactions, the application of these treaties often give rise to difficult interpretation situations leading to complex dispute procedures and failure to ensure double tax relief. These problems would be further amplified by the fact that the common tax base would have to work parallel to the current network of bilateral double tax treaties. This would e.g. open up for complexities related to unwanted tax planning through treaty shopping within the CCCTB. It would also mean that the CCCTB would not feature a common approach for double tax relief.

By limiting the tax jurisdiction to the CCCTB area, the CCCTB would at the very outset circumvent many cases of double taxation and the difficulties associated with that. This would in particular apply to outbound investments. Regrettably, as long as the rest of the world does not equally implement territorial systems, double taxation on inbound investments would frequently remain. For inbound investment, however, double taxation relief would typically be the responsibility of the third state since countries, in the light of the OECD Model Tax Convention, generally resolve double taxation by attributing the taxing right to the source state. Indeed, this principle does not apply universally. To prevent double taxation, the CCCTB would need to recognize this also under a territorial approach. If the merits of CIN are to be recognized, this should be done by allowing for an exemption.

NOTE to credit systems.

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52 I.e. world-wide taxation of residents and source taxation of non-residents.
Although territoriality appears to promote simplicity, most Member States are currently taxing on a world wide basis. As pointed out by the Commission, the choice between territoriality and worldwide taxation often represents a fundamental element of a country's fiscal policy. Member States might therefore hesitate to make such a shift for the CCCTB relative to their existing national systems. Should this be the case, a CCCTB featuring worldwide taxation combined with exemption does equally seem to promote simplicity compared to a credit approach. This would be true in at least two aspects. First, a CCCTB based on a credit method (Capital Export Neutrality, CEN) would frequently lead to complexities triggered by the parallel application of the CCCTB and the current network of double tax treaties. As the CCCTB does not involve the renegotiation of current double tax treaties, taxpayers would presumably be entitled to request treaty benefits where the treaty gives more preferable tax relief than the CCCTB (i.e. typically in relation to exemption treaties). This would in turn require some rules to monitor the allocation of foreign income (or loss) and to ensure that the “right treaty” is applicable on the relevant income. How this should be achieved is hard to foresee. It does, however, seem to require that the foreign income is earmarked so that it can be tracked and allocated to the Member State which is to apply its double tax treaty with the relevant third country. Apart from the administrative burden this would impose, it appears very difficult to combine such a scheme with a system where all income and losses are to be consolidated in a single location.

The allocation would also trigger other difficulties. In allocating foreign income for treaty purposes, one alternative would be the use of the normal allocation key applicable intra CCCTB income. This would, however, mean that the foreign income would be spread out among all the CCCTB-members (even where the foreign income is only held by one company situated in one of the Member States under “traditional” rules), requiring the application of each individual double tax treaty for each part of the income so attributed. No doubt, this would be detrimental from a perspective of simplicity. In addition, cases could come up where the third state would not accept a Member State which has been allocated a part of the foreign income as the right counterpart for treaty purposes as the third state might not accept the allocation key as a basis for treaty application. This would presumably impose very complex interpretation cases and ultimately a risk for final double taxation.

If the Member States conversely would not follow the normal allocation key for foreign income, this would require a separate treatment of foreign income, which equally would bring added complexity. The income would need to be allocated for treaty purposes and then reallocated for consolidation purposes. Also, to resolve the problems above, such an approach would need to allocate the foreign income or loss to the country in relation to which it has occurred. This could reintroduce transfer pricing predicaments. It would also counteract the objective of having a common consolidated calculation of a single tax base.

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55 For a similar conclusion see European Commission, Territorial Scope of the CCCTB, CCCTB/WP/026, p. 5.
These difficulties would be considerably simplified under an exemption method. As double tax treaties typically only can reduce the tax liability (and not impose a tax liability that was not there in the first place), their applicability is limited to situations where the underlying tax legislation (i.e. the CCCTB) provides for a less favorable relief than the treaty. Thus, where the CCCTB provides for a comprehensive relief by means of exemption, the problems of having to apply and/or renegotiate existing treaties are kept to a minimum. Although some problems would still remain, by exempting foreign income, the need of tracking or allocating such income according to special rules would be minimal.

The second simplification refers to the fact that the exemption method relieves the double taxation at the level of the tax base, whereas the credit method applies to the tax liability. As an effect, the tax rate is reflected in the latter approach but not the first. As been pointed out by the Commission, the future CCCTB intends to provide for rules on how the tax base is calculated and shared among MS. There is, however, no ambition to say how the tax liability should be calculated. Therefore the application of a method reflecting actual tax rates, such as a credit approach, would be difficult. Also in this respect, it would e.g. be necessary to allocate the foreign income to a specific Member State to know what tax rate to apply for credit purposes. This would give rise to much the same problems as described above. As the tax rate is not relevant under the exemption approach, these problems would not occur if this were to be the preferred method.

Regardless of which method that is eventually adopted, double tax relief should be provided for through clear rules within the CCCTB-regime itself. This is essential to ensure net taxation without having to rely on domestic tax treaties or internal relief rules. A CCCTB resting solely on current treaties or domestic rules would not be satisfactory. Apart from leading to complexities in the application, it would counteract the objective of having one single pan-European tax base which is identical for the entire CCCTB-jurisdiction. Also, the current treaty network between EU Member States and third countries are yet not complete, thus leaving many situations unresolved.

### 3.4.4 Symmetrical tax treatment of foreign entities

Currently, tax complexities occasionally arise due to inconsistencies in the tax treatment of entities between two (or more) different states. These situations are commonly known as hybrids and reverse hybrids. A hybrid refers to the situations where an entity is recognized as opaque for tax purposes according to its home country but is classified as transparent in the country of the owner or source. A

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56 P 5 territorial scope
57 Commission, Territorial Scope of the CCCTB, CCCTB\WP\026, p. 5.
58 European Commission, International aspects in the CCCTB, CCCTB\WP\019 (2005), pp. 5, 6.
59 For a similar conclusion see European Commission, International aspects in the CCCTB, CCCTB\WP\019 (2005), p. 7.
reverse hybrid features the opposite characteristics. The outcome of these inconsistencies is sometimes referred to as *asymmetrical taxation*.

The inconsistent tax treatment in such situations imposes difficulties in relation to either of two adverse tax results – *double taxation* or *double non-taxation*. This follows from the fact that one country recognizes the entity as the relevant taxpayer whereas the other regards the owner as the person liable to tax. In a hybrid situation, both countries are of the opinion that the person liable to tax is a resident of *that country*. In contrast, in a reverse hybrid situation, the two states consider the relevant taxpayer to be a resident of *the other country*. Thus, the states involved differ in the view on who is the person liable to tax on the taxable income.

In cases of double taxation, this often results in situations where the states involved disagrees on who should provide for double tax relief. As double tax treaties are ill equipped to deal with these situations, double taxation often remain since neither state find themselves liable to allow for a double tax relief. Conversely, it occasionally results in situations where both countries find themselves obligated to allow for a credit or an exemption with respect to the same income – resulting in a double non-tax situation. Both cases are obviously undesirable and trigger very complex interpretation situations giving rise to costly and time consuming litigations.

As been indicated above, under a CCCTB, much of these complexities would disappear as double taxation generally would be eliminated through the single and consolidated tax base calculation. However, as the problems related to asymmetrical taxation refers to the allocation of the tax liability rather than the calculation of the tax base (which is the objective of the CCCTB), problems similar to the ones mentioned above could potentially occur also under a CCCTB. Even though the CCCTB would allocate the consolidated taxable income to the Member States involved, there will still be a question on who should pay the tax on the income so allocated (the entity or its owner). If the Member States do no agree on this, difficulties could still occur.

In addition to this, if the Member States fail to ensure a common application of the CCCTB (e.g. through an authoritative one-stop-shop), there is a risk that countries will not make the same allocation or assessment of the tax base, which in turn could lead to double taxation. The same applies if the member states fail to introduce full consolidation (e.g. just a harmonized tax base with no or limited consolidation). In such cases, the ‘traditional’ double tax problems relating to hybrids would arise.

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60 I.e. an entity is recognised as **transparent** for tax purposes according to its home country but is classified as **opaque** in the country of the owner or source


63 Even though the OECD has tried to address some of these problems by making changes in the Commentaries to the OECD Model Tax Convention following the so called Partnership Report of 1999. See OECD, The application of the OECD Model Tax Convention to Partnerships, Issues in International Taxation no. 6 (1999).

64 For an in depth analysis see Barenfeld, Taxation of Cross-Border Partnerships (2005), p. 147 ff.

65 For a similar conclusion see European Commission, Personal scope of the CCCTB, CCCTB:WP'040 (2006), p. 5.
Furthermore, the problems with hybrids and reverse hybrids would under any circumstance still exist with respect to third countries.

Considering the fundamental objectives of consolidation and net taxation, it is obviously essential that these adverse tax consequences are prevented by ensuring symmetry. Under a “best practice approach” this should be done both internally (i.e. within the CCCTB-group) and in relation to third countries.

At present, hybrids and reverse hybrids occur because countries fail to recognize the tax law characteristics of foreign entities (i.e. whether they are transparent or opaque) for domestic tax purposes. Instead countries typically classify foreign entities based on their civil law resemblance with domestic entities and tax them accordingly. Alternatively, some countries treat all foreign entities as opaque for domestic tax purposes or allow the owner to elect whether a foreign entity should be considered as transparent or opaque (e.g. US “check-the-box).

With this in mind, symmetry is best ensured if the CCCTB provides for a common classification rule which ensures that an entity which is transparent (or opaque) in its home country is likewise treated as transparent (or opaque) for CCCTB purposes by the other countries involved. This is achieved by attributing decisive importance to the actual tax law characteristics as they are defined in the home country of the entity.

It should be noted that a consistent tax treatment within the CCCTB is not only a desired objective, but also a natural and necessary consequence of the system as such. Indeed, the tax law characteristics of the various national entity types would presumably still need to derive from the national rules of the entity’s home country. However, if there is to be a common tax base with respect to corporate income within the EU, there inherently needs to be a common understanding of who should be liable to tax for that income. This is required in order to ensure a correct and common allocation of the profits. A failure in this respect would be detrimental for the smooth functioning of the allocation key and the assurance of net taxation.

### 3.4.5 Common Transfer Pricing Rules

As been established above, by eliminating intra-group transactions and departing from an allocation of taxable income based on the result of the business, transfer pricing problems would in principle be removed. In relation to third countries, however, transfer pricing will still be an issue, presumably requiring rules similar to present ones.

No doubt, any transfer pricing regulation based on the arm’s length principle will impose considerable compliance difficulties and administrative costs. This would also be the case for the CCCTB with respect to cross border activities with third countries. However, many of the current problems are due to the fact that different countries

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66 That is, if the general law characteristics of e.g. a foreign transparent limited partnership most resemble the general law characteristics of a domestic opaque company, it will be treated as opaque regardless of its actual tax law characteristics in its home country.

67 As it is hardly acceptable to require that a country shall ignore the actual tax law characteristics of a domestic entity for the reason that a foreign state does not respect these characteristics for its own tax purposes.
(and Member States) are imposing different transfer pricing rules and documentation requirements. As a consequence, MNEs are currently struggling with the compliance of a large number of similar, but yet not identical transfer pricing regimes. Perhaps most notably, deviation in documentation requirements imposes a significant ‘extra’ compliance burden.

Indeed, some of these problems are mitigated by the continuous work conducted by the Joint Transfer Pricing Forum (JTPF). However, as the materials are only guidelines, domestic deviations will remain. Under a CCCTB, these difficulties could be considerably simplified by providing for a common transfer pricing regime for the entire CCCTB area vis a vis third countries. Apart from having a single set of rules to comply with, such an approach would allow for a single documentation package for the entire CCCTB-group.

### 3.5 Increased Compliance with EC-law

Based on recent ECJ case law, it is clear that Member State’s rules on cross-border taxation frequently are in breach of EC-law. Perhaps most notably, this refers to the application or limitation of cross-border loss relief, exit taxation or CFC-rules within the Union. Somewhat simplified, in the *Marks & Spencer* case it was decided that countries must allow for cross-border loss relief of final losses if this is allowed nationally. In the cases *Lasteyrie du Saillant* and *N*, it was held that exit taxation upon transfer is prohibited and that a deferral system must be strictly proportionate and account for later value decreases. Finally, in the *Cadbury Schweppes* case, it was concluded that CFC taxation can only be imposed to prevent ‘wholly artificial arrangements’.

At present, far from all Member States live up to these norms. Also, Member States seem to be increasingly reluctant to make appropriate adjustments in their domestic tax codes to adhere to the legal principles carved out by the ECJ. As an effect, taxpayers often face considerable uncertainty as how to interpret and comply with domestic law. Apart from the tap in economic efficiency imposed by this, it also gives rise to costly and lengthy litigations and added complexity in how to structure cross border activities within the EU.

No doubt, also under a CCCTB there will be uncertainty. Also, as a CCCTB would only constitute secondary law there is, at least in theory, a limited scope for conflicts between the CCCTB regulation and the Treaty. However, by eliminating intra CCCTB-transactions for tax purposes, many of the current difficulties related to the

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68 NOTE
69 Case C-446/03.
70 Case C-9/02.
71 Case C-470/04.
72 NOTE
73 NOTE
74 NOTE Ståhl!
treatment of fundamental cross border transactions would be removed or at least considerably mitigated. Also, in the presumably rare case where the CCCTB would provide for a potential conflict with the Treaty, the ECJ-case law would not need to be “translated” to apply on a large number of different national regulation but would apply the same way for all Member States adopting the CCCTB. Most likely, this would reduce the number of litigations and provide for better predictability.

4 Challenges and risk for added complexity

4.1 General remarks

From the above, it appears as if the CCCTB shows considerable potential in allowing for simpler tax rules. However, the introduction of a pan-European tax base is a monumental task which requires tremendous political will and which faces the apparent risk of being ‘watered down’ by political compromises. Also, a legal change of such a scale will inevitably face transactional difficulties and teething problems. If these facts are not closely monitored, there is a sizable risk for new and added complexities. Although it is hard to foresee in detail what problems that could arise, a couple of apparent pitfalls will be presented and discussed below.

4.1.1 Comprehensive system v. supplementary system

As been mentioned above, it is essential that the CCCTB turns out to be a comprehensive system which is ‘exclusive’ rather than ‘supplementary’ to current domestic regimes. Although one would think of this as a self evident objective, in its discussions with the Member States, the Commission has on some occasions worryingly indicated that domestic treatment of e.g. certain income or certain activities could be left outside the CCCTB. Considering the difficulties of reaching agreement and the instinctive wish to stick with current practices (e.g. domestic tax incentives etc.), there is also a risk that the Member States are tempted to retreat to domestic treatment in cases where it is hard to find consensus on a common approach (i.e. the CCCTB).

If this were to be the case, the CCCTB would loose one of its core advantages from the perspective of simplicity. The aim of the CCCTB is to replace 27 parallel tax systems with one common scheme and thereby considerably reduce compliance burden and ease other complexities associated with the parallel use of conflicting tax regimes. A split approach would, however, counteract the very purpose of a common and simple tax base as it would lead to a situation where groups no longer have to comply with up to 27 but rather 28 tax systems. If e.g. foreign income would be excluded from CCCTB-treatment and taxed under domestic law, a CCCTB-group would not only have to comply with the CCCTB-regulation but also each domestic

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75 See sec. 3.2.

76 See e.g. European Commission, The territorial scope of the CCCTB, CCCTB\WP\026 (2006), p. 7.

77 For such a discussion see EU Comission, The territorial scope of the CCCTB, CCCTB\WP\026 (2006), p. 7.
tax legislation to which the foreign income were to be attributed. Apart from adding an extra layer of new rules on top of the old ones, this would most likely lead to great demarcation problems and possible double taxation.

For this reasons, the CCCTB must be a comprehensive and “exclusive” tax base. That is, where a company has opted for the CCCTB treatment, all income (or loss) should be taxed solely under this system and Member States must not impose any taxation by reference to their domestic rules (e.g. on income exempt under the CCCTB). Only then would the CCCTB provide for true simplicity with respect to compliance, overlapping tax bases and alike.

4.1.2 Scope for adaptability and modernization

Taxation is an area of continuous change. To minimize distortions, ensure efficiency and to prevent tax abuse, it is important that a tax system is adaptable and can be modernized on a timely basis. Currently, each Member State is in a position to change its tax base as it see fit (provided it is in compliance with EC-law). Changes to the CCCTB, however, would presumably require the consensus by all Member States applying the CCCTB. This would most likely be to the detriment of adaptability and provide for a system which is difficult to alter once it has been launched.

Admittedly, this could work both for and against tax simplicity. New tax rules tend to be complicated as they try to adapt to an increasingly more complex market environment at least partly triggered by the rapid globalization. Occasionally, the perceived rigidness of the CCCTB could therefore work to hamper the introduction of such new complicated regimes without very significant consideration. Conversely, however, it would be equally difficult to change the CCCTB to remove complexities arising due to flaws in the system or that arises due to tax changes in the rest of the world.

Certainly, it is not possible to foresee what ‘force’ will be strongest once the CCCTB is in place. However, considering the balance between countries’ determination to secure present tax revenue levels on the one hand, and improve the tax system to better ensure the fundamental freedoms on the other, there is at least a risk that consensus is easier found to adopt complex rules to safeguard revenues under the CCCTB, than to remove complexities to ensure the better functioning of the CCCTB.

In any case, unless the CCCTB is adopted with some legislative powers delegated to a central and independent body (which appears unlikely considering the Member States’ will to remain sovereign on the tax area), it seems hard to ensure a high level of flexibility. If nothing else, this reinforces the argument that the CCCTB needs to be optional so that businesses can opt out (or refrain from opting in) should the CCCTB prove to be inefficient for this or any other reason.

4.1.3 Disconnection from accounting

As been mentioned above, unlike many current domestic systems, the CCCTB will not be directly linked to either domestic accounting rules or IAS/IFRS. At least for operations in countries currently linking the tax base to the financial accounts, this disconnection will probably impose some additional compliance burden.

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78 See sec. 2.2.
To minimize this problem, the Commission’s stand point to having the IAS/IFRS as a tool to guide the design of the CCCTB seems appropriate.\textsuperscript{79} Even though there will be no formal link between the two, the more similar they are, the less extra administration would presumably be required. Indeed, not all companies opting for CCCTB-treatment would be IAS/IFRS-companies. However, considering that the IAS/IFRS is the only harmonized accounting standard for EU-companies, this seems to be the only approach offering some positive synergies in this respect. Also, even though the CCCTB need to be competitive and attractive for all types of groups (large or small), it is possible that it, at least initially, will attract MNEs with considerable cross-border operations which are already familiar with the IAS/IFRS. These are presumably the ones having the most benefit of the CCCTB and also the ones having the resources to change from current practices to this new system. Considering the difficulty of foreseeing the design and attractiveness of the CCCTB, the latter argument is, however, uncertain. Like the problem with adaptability (above), the risk of some added burden in this respect seems to be an unfortunate but necessary consequence of the CCCTB. To outweigh this, there is even more pressure on the CCCTB to be truly simple and easy to comply with. Also, even though using the IAS/IFRS as a starting point for the discussions is advantageous, it is very important that the design of a competitive and simple CCCTB is not hampered by these accounting standards where they do not prove to give a satisfactory result in this respect.

\subsection*{4.1.4 Implementation and interpretation}

The functioning of a CCCTB is not only dependent of common rules but also on a common implementation and interpretation of those rules. If this is not achieved, there is considerable risk for problems due to the diverging application of the CCCTB in different Member States. Perhaps most notably, great difficulties could arise if two Member States makes a different interpretation of how to allocate the profits or losses among them. Numerous other problems, such as an inconsistent determination of deductible expenses, eligible entities etc., could equally occur. If this is not appropriately handled, there will be a large scope for costly and complex litigations, with double taxation and other adverse effects as an ultimate consequence.

As been argued above,\textsuperscript{80} to ensure a common implementation, the CCCTB should preferably be introduced by means of a regulation (rather than a directive). Worryingly, however, the Commission has indicated that it sees a directive as a possible alternative.\textsuperscript{81} If so, the directive must be extremely detailed not to allow for any domestic deviation, something that appears very difficult. If this is not achieved, application problems deriving from deviations in the implementation of the CCCTB appear unavoidable. Furthermore, it seems crucial that the CCCTB is not implemented without a common administrative and legal infrastructure featuring clear rules on interpretation/application procedures. Most notably, to ensure that the individual

\textsuperscript{79} European Commission, Progress to date and future plans for the CCCTB (2005), p. 4.

\textsuperscript{80} See sec. 3.2.

\textsuperscript{81} NOTE
taxpayer is provided with a common application, the ‘one-stop-shop’ approach advocated above seems to be essential.\textsuperscript{82} This would allow the taxpayer to face only one tax authority, applying the CCCTB uniformly for the entire group regardless of where they are situated.

In addition, the CCCTB needs to ensure that different taxpayers are treated equally regardless of the ‘one-stop-shop’ authority chosen. For this reason, it would be advantageous to allow for a central body to give out interpretative guidelines which are authoritative for the domestic tax authorities and which the taxpayer can rely upon. Such an approach would advocate predictability and a conform implementation.

Finally, considering the current difficulties in resolving international tax disputes bilaterally (through Mutual Agreement Procedures or similar), one could foresee that CCCTB-disputes including a multiple of Member States could be very time consuming and costly. To mitigate this, it appears as if the CCCTB must be accompanied with clear and authoritative arbitration or litigation procedures, perhaps even featuring a common Supreme Tax Court responsible for the ultimate interpretation of the CCCTB. Today, international tax disputes take unacceptably long time. A similar situation under the CCCTB would be detrimental to the objectives of the regime.

No doubt, all these measures would require great political determination as it would frequently include the handing over of interpretation power to a central EU-body or another Member State. It is not difficult to imagine that such an approach would face considerable resistance from the Member States. However, if the CCCTB is not built up together with such an administrative and legal infrastructure, featuring a common interpretation and litigation apparatus, there is a great risk that the system would fail to reach the needed level of simplicity, efficiency and competitiveness to reach the Lisbon objectives.

### 4.1.5 Allocation key

The successful design of the allocation key is perhaps the single most challenging task for the achievement of an efficient and competitive CCCTB. This also seems to have bearing on the aspect of simplicity. Since the discussion on the design of the allocation key has just started,\textsuperscript{83} only some very brief remarks will be given.

As been argued above, transfer pricing compliance is one of the most difficult and burdensome tax requirements for MNEs today. It is therefore crucial that this is resolved under the CCCTB. To do so, however, the CCCTB must deviate from the current practices of allocating profits and losses based on where or by whom they are generated. If the allocation key were to be based on where the actual result has occurred, the transfer pricing issue would prevail.

\textsuperscript{82} See sec. 3.2.

From a conceptual perspective, there seem to be several alternatives to achieve this (formula apportionment, macro economic approach etc.).\(^84\) Considering the Member States’ eagerness to safeguard their current tax bases, however, finding political agreement on a single and completely new method of distributing the taxable income is no doubt a huge challenge.

With this in mind, it is likely that the Member States will push for allocation criteria that bests suits their respective interest. If not closely monitored, this could impose a risk for the allocation key to be based on a fragmented formula rather than a uniform formula (i.e. that the key is not based on identical factors and weights in all CCCTB-countries). As been pointed out by the Commission, and like the experience in USA, this would lead to great complexities including distorting tax competition on the factors and double taxation (or double non-taxation).\(^85\)

For this reason, the CCCTB must, despite any political hardship, be based on a uniform formula which is the same for all Member States. Also, to avoid room for diverging application and interpretation (which in essence could lead to the same problems), the allocation factors need to be as clear and confirmable as possible. If not, the CCCTB would fail to prevent double taxation and most certainly fall short of being simple and efficient.

In addition, from a perspective of simplicity, it seems preferable not only to have a uniform formula with respect to the relevant countries but also in relation to different business sectors or income types (e.g. business profits and capital gains). Indeed, problems related to distorting tax competition and double taxation would not equally occur if the allocation key were to be fragmented in this sense. It would nevertheless give rise to demarcation problems and complexities related to transactions between different business sectors (within the same CCCTB-group). It would equally open the door for interpretation differences (e.g. regarding the definition of a “special” sector) and thus a risk of litigations and diverging applications between different Member States.

Also from this perspective, however, a uniform formula might face some resistance. Considering the large differences in potential allocation factors (e.g. payroll, assets, turnover etc.\(^86\)) between different sectors (e.g. manufacturing, financial sector etc.) it is no doubt challenging to find one single formula that would allow for a satisfactory result in all sectors. If this were to be the case, the number of formulas should in any case be kept to a minimum. Again, if this is not achieved, there seems to be a risk of added complexity.

4.1.6 Anti avoidance

Finally, to promote simplicity and predictability and to reduce compliance costs, it is essential that any anti-avoidance rules are introduced with great care and only where it is absolutely necessary in order to uphold the principle of net taxation. As been


\(^{85}\) European Commission, The mechanism for sharing the CCCTB, CCCTB\ WP\047 (2006) p. 6.

\(^{86}\) See European Commission, The mechanism for sharing the CCCTB, CCCTB\ WP\047 (2006) p. 5.
mentioned above, also under a CCCTB some rules to prevent abuse could be necessary (e.g. transfer pricing rules in relation to third states).\(^{87}\) Looking at the CCCTB-discussions so far, however, there seem to be a worrying tendency that the uncertainty of how the CCCTB will materialize and work triggers considerable debate on introducing various anti-avoidance regimes.\(^{88}\) Again, if this is not closely monitored, there is a risk for new and complex anti-avoidance rules, something that would reduce the potential and the competitive edge of the CCCTB. In particular, unlike what is often the case under domestic law (e.g. with respect to CFC-legislation or certain exit tax provisions), the CCCTB must under no circumstance allow for anti-avoidance rules which are questionable from an EC-law perspective.

### 5 Conclusions

From the above, it appears as if an optional CCCTB shows considerable potential in allowing for simpler tax rules and administrative procedures for EU based businesses. Significant simplicity gains could be achieved provided the CCCTB proves to be a comprehensive and exclusive tax base which allows for a single compliance in a single location ("one-stop-shop"). It is equally important that the CCCTB is fully consolidated from the outset, allowing for complete elimination of all intra-group transactions. Furthermore, the CCCTB need to provide for a comprehensive mechanism to resolve any remaining double taxation occurring in relation to third countries. From the perspective of efficiency and simplicity, this should preferably be achieved by adhering to the principle of CIN. This could be achieved either by adopting a territoriality approach or a world-wide approach featuring exemption.

If this were to be achieved, the CCCTB would most likely work to considerably reduce current compliance burdens, mitigate problems related to double taxation and remove transfer pricing problems and similar complexities. Additional simplicity gains would be achieved if the CCCTB were to allow for a depreciation scheme based on a pooling method. Increased simplicity would equally be reached if the CCCTB were to ensure a symmetrical tax treatment of foreign entities and provide for a common transfer pricing regulation in the relation to third countries. Most of these effects would beneficial for both taxpayers and tax administration.

Not surprisingly, however, the success of the CCCTB in these respects greatly depends on the political determination to achieve a truly simple and competitive system. As been shown above, despite the commonly agreed objectives of the Lisbon agenda and the widespread recognition of the benefits of an open and efficient internal market, short term national considerations risk to ‘pollute’ the potential gains of a CCCTB. In this respect one can only emphasize that the challenge is hardly to cope with the competition within the EU, but rather with the ever fiercer competition between the EU and the rest of the world. If the EU is to win this match, politicians must take a more proactive role to ensure the better functioning of the internal market will less tax obstacles. A simple, competitive and comprehensive CCCTB could undoubtedly play an instrumental role in this respect.

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\(^{87}\) See sec. 3.3.

\(^{88}\) Reference
Admittedly, there seems to be some areas where the very nature of the CCCTB would impose challenges from the perspective of simplicity. Lost synergies in relation to financial accounting, the scope for adaptability and modernization and transactional implementation and interpretation difficulties has been mentioned. Ample resources need to be allocated to ensure that these potential hurdles are mitigated to the extent possible. Considering the possible benefits of a well designed CCCTB, these difficulties do, however, not seem insurmountable. Nevertheless, they have to be closely monitored. They also reinforce the importance of ensuring simplicity in other areas of the CCCTB.

With this in mind, whether the CCCTB will be a beauty or a beast in the quest for simplicity is yet to be seen. Despite huge challenges, one can only hope that the Member States recognizes the full potential of the ambitious and commendable work done by the Commission to create a truly competitive and simple CCCTB.

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