



Federation of German Industries - 11053 Berlin, Germany

**Taxation and Fiscal Policy**

Dr. Gabriele Rautenstrauch  
Via Email

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Dear Ms. Rautenstrauch,

We would like to thank the European Commission for giving us the opportunity to comment on the working document regarding the possible elements of the administrative framework of a Common Consolidated Corporate Tax Base (CCCTB/WP061).

In general, we support the intention of the European Commission to offer businesses involved in cross-border transactions a one-stop shop regarding the fulfilment of their fiscal reporting obligations. A harmonisation of the administrative framework would entail a significant reduction in reporting obligations, since the operations related to the filing and ongoing supervision of fiscal reporting could be concentrated in one group company (i. e. the principal taxpayer). This requires, however, that the one-stop shop is designed in a practical and unbureaucratic manner.

It has to be pointed out, however, that a one-stop shop only makes sense, if the taxable person can rely on the one-stop shop's effectiveness to make legally binding, final decisions that other national tax authorities have to adhere to and respect. Assessment notices issued by the principal tax authority may not be single-handedly changeable by national tax administrations. The success of a CCCTB essentially depends on its ease of use and application in practice. This is especially true for the administrative framework of a CCCTB. In our opinion, detailed regulations are necessary. In the working paper under discussion here, the manner of cooperation between national tax authorities as well as between national courts is not described, for example.

### **Comments regarding particular text numbers of the working paper**

In **text number 8**, we would highly welcome if the opportunity to use the CCCTB administrative regulations was made available, even if a given group company is not calculating its tax base according the CCCTB-rules (e.g. in case of a participation below 50 %). Also due to reasons of practicability, a certain part of a group should not be deprived of the opportunity to make use of the EU-framework. For clarification it should be added that

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national administrative regulations are generally not applicable in case the CCCTB administrative framework is applicable.

Regarding **text number 11** we would like to point out that different ownership requirements for the purpose of consolidation regarding commercial, group and tax accounting could lead to unnecessary complications. Thus, it should be thought about whether ownership requirements along the rules of IAS 27 § 13 would not be helpful also for CCCTB purposes. In addition, this would lead to a relatively large number of group companies to be included in the consolidation since the ownership requirement is rather small. Thus, the application of the CCCTB regulations would be more likely to spread more quickly. In case this cannot be supported by the European Commission, a consolidation should at least be possible in the case of a majority participation (i.e. 50 % + 1 share).

In the current national system, the suspension of expiry for the period during which assessment notices can be changed during external audits poses the biggest problems for businesses (§ 171 Sec. 4 AO; German General Tax Code). This regulation could lead to possible changes of assessments of up to 10-15 years after the respective tax year in question, even if the tax payer was not involved in a fraudulent activity. This is not proportional and does not align with the principles of legal certainty. Thus, we highly welcome the regulation mentioned in **text number 42** of the working paper. In one aspect, however, the German regulation is more appropriate. The begin of the period available for changes regarding the assessment is triggered by the actual filing of the tax return (and not by the final date for filing the consolidated return, as suggested in the working paper) (§ 170 Sec. 2 Nr. 1 AO). The latter design of the EU-regulation would reward “laggards” who file their returns after the filing period of nine months (**text number 31**).

Furthermore, it should be clearly stressed in **text number 42** that the period of three years is not automatically extended through external audits or in cases of Section VII. Otherwise, national tax administrations could argue that the current examination periods date back much further than three years, thus possibly leaving the fiscal years between the last audit year and the first year for which the CCCTB administrative framework is applicable unexamined. Thus, a transitional rule is required for these cases. We suggest that the period of three years in **text number 42** should already be available for the last two years before the tax year for which CCCTB is applicable for the first time. Lastly, we would like to urge the European Commission not to extend the period of three years in the further discussions due to reasons of legal certainty for businesses.

We highly welcome the period mentioned in **text number 43**.

The period of nine months regarding the filing of the consolidated return (**text number 31**) should be extended to one year. Especially in multinational groups it is difficult to gain access to the relevant data included in the commercial statements: decisions of the company organs that only meet in spring/summer of the subsequent year are often times necessary. The period for composing commercial financial statements often times only ends on 30 June of the subsequent year (§ 264 Sec. 1 S. 3 HGB, German Commercial

Code). Without these commercial statements, tax returns cannot be compiled, since these use the commercial statements as a starting point.

The fact that according to **text number 52** tax assessment notes can only be issued once every 12 months is not appropriate. Businesses could incur very high payables including the interest on these amounts from these assessment notes. Thus, we advocate the deletion of the second part of **text number 52** (...”and would normally be issued no more than once every 12 months”).

**Text number 63** urgently has to be changed. In the case a tax administration does not want to decide in favour of the taxable person, it could just wait until the period for the decision making is over. This does not suffice the principles of legal certainty. In our opinion, the tax administration at least has to issue a reason for the rejection of an appeal. Only in this manner, a judge can reconstruct how the initial appeal decision came to be. Also, in case documents get lost, this would trigger an automatic rejection of the appeal even in cases where the tax administration actually would have decided in favour of the taxable person.

In **text number 64**, we highly welcome the period of 60 days. In the current German system, enormous delays can be caused since the AO (General Tax Code) does not include a period within which a decision has to be made by the tax authorities. The applicable regulation (§ 46 FGO, judicial appeal due to tax authorities' failure to act) is rarely used in practice since the taxable person does not want to give up on the possibility of receiving a favourable decision in an administrative appeal.

We would like to thank you again for providing the opportunity to submit our comments on this topic. Please do not hesitate to contact us in case of questions.

Kind regards



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