THE COMMON CONSOLIDATED CORPORATE TAX BASE: IMPLICATIONS OF THE CCTB FOR MALTA

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Introduction

Upon accession to the European Union, Member States were given the sole mandate of domestic direct taxation insofar as their policies do not contravene the objectives of the Union. It can be safely said that Member States' sovereignty on this issue is well safeguarded by the general principles of subsidiarity and proportionality, making it extremely difficult for the Commission to ever arrive at a common solution that would be accepted by all the Member States.

On the other hand, since the European Union's inception in the 1950s, the Commission has made every effort to integrate the Member States' corporate direct taxation systems. Its latest attempt is known as the Common Consolidated Corporate Tax Base (CCCTB).

The purpose of this essay is to examine the extent to which Malta would be affected should the CCCTB come into being, as a result of which corporate direct taxation would be harmonised.

To fully explore the implications that the CCCTB would have on Malta, a brief history of this proposal's development throughout the years shall be given. This shall attempt to determine the rationale behind the Commission's various proposals, while keeping in mind that various EU Council Presidencies have had a significant influence on the progress of the CCCTB. Following this, a brief description of the distinctive features of the CCCTB shall then be given.

This essay examines the different theories and justifications in favour of the CCCTB. This author holds

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that an understanding of this proposal requires one to recognise the EU's necessity for economic reform, most notably following the 2004 and 2007 enlargements.

This author shall also discuss the justifications given by those who are in favour of the CCCTB, most notably the larger Member States, while also highlighting the strong objections raised by its opponents, which in the majority of the cases happen to be smaller Member States, such as Ireland and Bulgaria.

This author ultimately aims to assess the potential effect that the CCCTB would have on Malta's economic policies. In so doing, a brief explanation of Malta's current corporate tax regime shall be provided, which is pivotal in fully understanding the country's stand on this issue.

The introduction of the CCCTB proposals is still uncertain, if not distant, however the possibility of their introduction remains. It is thus essential for the Maltese business community to be well aware of what these proposals entail and the implications these will have on the economy, should they be introduced.

The Common Consolidated Tax Base

The Common Consolidated Corporate Tax Base (CCCTB) is a major initiative of the European Commission, under which EU companies and, perhaps most importantly, groups of companies, would follow the same rules for calculating the tax base for all their EU-wide activities. The CCCTB would apply to EU companies subject to corporate income taxes as well as third-country companies subject to taxation by Member States.[2]

This ambitious project proposes a system whereby each participating Member State's tax regime would be managed by a central Principal Tax Authority ('PTA'), instead of the existing revenue authorities of each state, entrusted with the coordination of the revenue authority administration and enquiries for each of the Member States in which CCCTB is applied.[3]

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[2] Bill Dodwell, 'The CCCTB – is it a dream or a mirage?' *Tax Adviser* (April 2008) 7 http://www.tax.org.uk/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=9bba54df7e8846419e6a1dc176315524&mode=link&guid=33b9e0dc2e6a4bf0aad9bc71eb379d72 accessed 23 July 2011.

[3] Ernst & Young, 'Common Consolidated Corporate Tax Base: A study on the Impact of the Common Consolidated Corporate Tax Base Proposals on European Business Taxpayers', (January 2011) 9 <http://www.taxireland.ie/images/EY_CCCTB_Report_Jan_2011(3).pdf> accessed 23 July 2011.

1. A Brief History of its Development

While the CCCTB is a relatively recent proposal, the prospect of corporate tax harmonisation has been debated within the EU for over forty years. It has arguably always been considered a fundamental element for the completion of the Internal Market.

The harmonisation of direct corporate taxation was first proposed in the 1962 Report of the Neumark Committee to the European Commission. The Committee believed that more action at Community level had to be taken to address the current state of affairs in the fields of company and dividend taxation. The Report held that while differences in the total tax burden imposed by individual Member States might not influence conditions of competition within the Community, it was rather the differences in tax bases and structures that had this effect.[4]

By the proposals that were being put forward at the time, it was clear that the Commission's intention initially was towards full harmonisation of the corporate tax systems of all Member States.

Later on in 1975, the Commission proposed a directive for the harmonisation of the systems of company taxation which suggested the alignment of rates as a solution. However, this attempt once again proved futile, as the requirement of approval by unanimity prevented the acceptance of these measures. This pattern prevailed in subsequent proposals brought forward by the Commission. It is thus safe to conclude that the sixties and seventies were devoid of any concrete development on this issue, and by 1980, the Commission was arguing that even though a common taxation system might be desirable on competition grounds, 'any attempt to resolve the problem by way of harmonisation would probably be doomed to failure.'[5]

The Commission's statement may be interpreted to mean that it had understood that Member States were not going to forego their sovereignty on direct taxation easily. It therefore decided to concentrate on more limited measures essential for the completion of the Single Market, such as the Guidelines for Company Taxation, published in 1990,

[4] Jean-Philippe Chetcuti, 'The Process of Corporate Tax Harmonisation in the EC', (*Chetcuti Cauchi*, 2001) <http://www.chetcuticauchi.com/jpc/research/eu-tax-harmonization.htm> accessed 23 July 2011.

[5] Commission, *The Scope for Convergence of Tax Systems in the Community,* COM(80)139.

which gave priority to proposals dealing with mergers and the issue of double taxation of dividends.[6] This was also known as the 1990 Package of Three.[7]

In the following year, the Ruding Committee of independent experts on company taxation was established. It recommended a programme of action to:

- eliminate double taxation;
- harmonise corporation tax rates within a thirty to forty per cent band and a minimum tax base; and
- ensure the full transparency of the various 'tax breaks' given by Member States to promote investment.[8]

As a result of this report, the Commission, in 1992, issued a series of guidelines setting out its views on corporate taxation in the single market. Although it agreed in principle with the Report's conclusion, it was of the opinion that some of the Committee's recommendations on the convergence of corporation tax rates, bases and systems went beyond what was strictly necessary at Community level.

In March 1996, in a paper titled 'Taxation in the European Union', the Commission once again highlighted the need to eliminate distortions in the internal market caused by both direct and indirect taxation. The paper indicated that the proposal that would allow parent companies to offset losses of subsidiaries was also still on the Commission's agenda.[9]

In 2001, the Commission issued a Communication titled 'Towards an Internal Market without tax obstacles'. At the same time, it also released the Bolkestein Report, which identified four possible methods for removing tax barriers in the Single Market:

- Home State Taxation;
- the Common Tax Base (CTB);
- the European Union Company Income Tax; and

[6] *European Parliament Fact Sheets: Personal and Company Taxation Taxation* (2000) <http://www.europarl.europa.eu/factsheets/3_4_8_en.htm> accessed 23 July 2011.

[7] *Chetcuti* (n 4).

[8] *European Parliament Fact Sheets: Personal and Company Taxation* (n 6).

[9] *Chetcuti* (n 4).

- the Harmonised Tax Base.[10]

The Commission in 2003 concluded that the CCCTB was the most balanced method for the removal of such barriers. Subsequently, the proposal was expanded even further to include consolidation, that is, the process of joining combined taxable incomes into one, of the common tax base for related groups of companies.[11]

In 2004, the Commission issued its 'non-paper on the common tax base', while the ECOFIN Council founded the CCCTB Working Group. This Working Group realised that tax compliance costs for EU firms could only be reduced through the development of a common tax base and held that 'the purpose of the common tax base is not to reduce the level of taxation in any way, but rather to create a more efficient method of taxing EU companies in a broadly revenue neutral manner.'[12]

Following an initial progress report in 2006, the European Commission adopted a second Communication on the progress towards a Common Consolidated Corporate Tax Base (CCCTB).[13]

A proposal on the CCCTB was planned for 2008 during the French EU presidency, itself a strong supporter of the initiative. However, the idea was abandoned after it was deemed to have contributed to Ireland's rejection of the Lisbon Treaty,[14] as it allegedly feared that a CCCTB would bring about harmonised tax rates, to which it was and remains strongly opposed.

However, Lithuanian Commissioner Šemeta stated that he would reopen the debate and is ready to apply the enhanced co-operation procedure, which allows a small number of Member States to agree on legislation among themselves. This has brought the contentious CCCTB back to the forefront of discussion in several Member States.

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[10] ACCA, 'CCCTB: ACCA Position Statement' (25 May 2010) <http://www.accaglobal.com/pubs/about/public_affairs/unit/european_briefings/PAMR-PP-CCCTB.pdf> accessed 23 July 2011.

[11] *Ernst & Young* (n 3) 9.

[12] Commission, *Non-Paper to Informal Ecofin Council, 10 and 11 September 2004 – A Common Consolidated Corporate Tax Base* (7 July 2004), 4.

[13] *ACCA* (n 10).

[14] *ACCA* (n 10).

To date, the most recent Commission Working Group meeting took place in April 2008. Following this meeting, the Working Group produced two working papers respectively titled 'Various detailed aspects of the CCCTB' and 'Anti-Abuse Rules'.[15] The latter document dealt with the proposals of various laws required to tackle the issue of 'artificial'[16] tax planning, namely:

- excess interest deductions
- rules regarding dividends paid for low-tax countries
- sales of assets and the participation exemption
- double-deductions when a non-EU firm is in command of a group
- factor manipulation[17]

2. The CCCTB: Some Technical Features

The CCCTB is intended for EU groups of companies which are subject to a Member State's corporate income tax regime. However, the proposal is intended to operate on an optional basis, allowing Member States to decide at a national level whether to offer the CCCTB to groups of companies in that state. The groups would then have a further option to choose whether to opt in or out of the CCCTB. However, groups which decide to adopt this system would have to do so on an 'all-or-nothing' basis, meaning that all the companies of a group established in participating Member States will be required to join the CCCTB.

For instance, if a company owning at least seventy-five per cent of a subsidiary joins the CCCBT, then even that subsidiary would be included in the consolidated group. Where ownership by the company of its subsidiary is between fifty and seventy-five per cent, both the subsidiary may still opt into the group, but it will not be consolidated.

It is the Commission's desire to have a wide tax base founded on the groups' profits. It has been stated that this profit would not be calculated according to International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS), and as yet there has been very little information given as to how it shall be calculated.

[15] *Ernst & Young* (n 3) 9.

[16] Ibid.

[17] Ibid.

The total profit would then be allocated to each Member State based on a series of apportionment factors, which the Working Group suggests should be:

i. The sales factor in the apportionment is required to 'represent the demand side in income generation.'[18] It is argued that sales would be accredited to the Member State in which they are delivered, rather than to the state from which the goods were shipped.
ii. The labour factor combines both the payroll of the workforce as well as the number of employees.
iii. With regard to the assets factor, the Working Group has decided that only fixed tangible assets shall be taken into account as an apportionment factor.

The Working Group also suggests that these three factors should be given equal weighting, and hence the complete formula to apportion the tax base to a company of a given group would be as follows:

$$\left(\frac{1}{3} X \frac{Sales}{Sales^{group}} + \frac{1}{3} X \left(\frac{1}{2} X \frac{Payroll}{Payroll^{Group}} + \frac{1}{2} X \frac{No. of\ Employees}{No. of\ Employees^{Group}}\right) + \frac{1}{3} X \frac{Assets}{Assets^{Group}}\right) X\ CCCTB$$

The Justification of Corporate Tax Harmonisation

1. The Internal Market

The concept of a common market as defined by the Court in a consistent line of decisions involves the elimination of all obstacles to intra community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market.[19]

In order to further the achievements of the Common Market, which has today developed into the internal market, the Commission has examined the possibility of harmonising the corporate tax regimes of all the Member States. However, as aforementioned, Member States'

[18] *Ernst & Young* (n 3) 11.

[19] Case 15/81 *Gaston Schul Douane-Expediteur BV v. Inspecteur der Invoerrechten en Accijnzen* [1982] ECR 1409.

sovereignty on the issue of direct taxation is well preserved, as opposed to indirect taxation, in which some form of harmonisation has already taken place.

It was evident from the start that for the internal market to function well, harmonisation of the Member States' taxation regimes would be necessary – a provision for such harmonisation is even found in the EEC Treaty (1957).[20] Different tax bases and tax rates create obstacles to the free movement of goods and services, which thwarts the goal of achieving a genuine internal market.

The EC Treaty stated that the internal market was to be 'characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital'[21], and there was to be 'a system ensuring that competition in the internal market is not distorted.'[22] This went beyond the early steps towards indirect tax harmonisation.
Undoubtedly, to sustain a single market, it is not only necessary to prohibit discrimination between imports and domestically produced goods and services, but it is equally essential that labour and capital should not be encouraged to migrate within the internal market for purely fiscal reasons and therefore corporate and personal taxation should be harmonised as well.

Furthermore, different tax burdens in various Member States will result in different rates of return and pay-back periods for the same investor. This is known as 'distortion of competition',[23] and in this author's opinion, arguably goes against the fundamental principles of the internal market.

The diversity of tax burdens among Member States can also be regarded as an obstruction to the free movement of capital.[24] The Commission argues that the preference for investment in a particular Member State over another purely because of the lesser tax burden imposed in the former prevents the neutrality of capital imports from being achieved. The diversity in tax regimes can be regarded as being a means of discrimination.

[20] Article 93 EC (ex Article 99).

[21] Article 3 EC (ex Article 3).

[22] Ibid.

[23] *Chetcuti* (n 4).

[24] Ibid.

It is thus clear that the European Commission believes that tax competition among Member States is a detriment to the internal market. It is of the opinion that an optimum allocation of resources[25] within the EU cannot be achieved until there are diverse corporate tax rates across the EU. Businesses would not be based on purely economic efficiency (labour and production costs) but would be influenced by the different tax rates. The principle of 'fiscal neutrality', enshrined in Article 110 TFEU (ex Article 90 TEC), prevents buyers and sellers to take different courses of action for tax reasons alone. It also ensures that differences in tax systems do not interfere with general efficiency in production within the EU.

[25] Ibid.

2. An increase in competitiveness

One of the primary aims of the internal market was to make the European Union a more competitive, flexible and dynamic market. However, this author holds that it is only through an optimum allocation of resources and a reorganisation of industry which lies at the Community's, rather than individual Member States', interests that the EU can become more competitive. It is evident that industries within the EU, despite the creation of an internal market, are still not enjoying the same economies of scale as those enjoyed by their competitors in America, Japan and China, among others. In order for a business to benefit from economies of scale, it must be operating in a full internal market. However, until this fiscal disharmony between Member States subsists, a complete internal market will not be possible. It thus becomes clear that the lack of tax harmonisation between Member States has contributed to making EU less competitive in world markets.[26]

3. Administration Costs

The Commission also argues that the CCCTB will reduce the administrative costs for businesses to comply with the different tax regimes of the various Member States, in the case of groups of companies, and the cost of complying with several different regulation bodies of the EU. This most probably also acts as a deterrent to businesses, most notably SMEs seeking expansion in other Member States.

Despite the high initial cost to train employees to acquaint themselves with the new system, this author argues that in the long run, having a uniform system of tax compliance would reduce costs and thus make EU businesses more competitive. Furthermore, should a company desire to operate from more than one Member State other than the Member State of establishment, it will not need to suffer any extra initial expenditure for the implementation of that state's tax regime.

However, a recent report on the impact of the CCCTB on EU business has found that, contrary to the stated expectation of the Commission, the CCCTB would actually lead to an increase in compliance costs.[27] More will be said about this report's findings.

[26] *Chetcuti* (n 4).

[27] *Ernst & Young* (n 3) 5.

4. A Much-needed Reform

This author believes that EU leaders have realised that a reform in today's internal market is sorely needed in view of the dominance of large multinationals in today's global markets operating in several countries across Europe. Some may even go so far as to argue that their interests should be safeguarded and given priority over Member States' individual interests.[28]

The diversity in tax regimes across the EU can have a negative impact on investment, both from Member States themselves and also from outside the EU. The prospect of having to acquaint one's staff with not only one new tax regime, but several, may be enough for a firm to decide not to invest in the European Union.

Several EU Governments have discovered that tax competition between Member States has been harmful to their revenues. Large corporations have been moving to the countries which offer them the most beneficial tax return systems, and this has in turn led governments aiming to decrease their corporation rates in order to attract investment to its country. The problem with this is that the Government will still have to obtain money from elsewhereentailing higher direct and indirect taxation for its citizens. Furthermore, the Commission argues that the different tax systems across the EU increase the opportunity for tax planning and avoidance.[29] While initially one may think that this is actually a benefit for businesses, such a loss of revenue must be recovered by the authorities, who will have no option but to dig their hands deeper into other taxpayers' pockets.

This author thus believes that, even those states who are in principle against the introduction of the CCCTB proposals must acknowledge that several justifications for its implementation not only exist, but also make a great a deal of sense from an economic perspective. One also has to realise that the completion of the internal market is a very high priority for the Commission, and that explains why it works so fervently on these proposals. The concept of tax harmonisation in the European Union is thus part of a much wider programme of integration.

[28] Trudy Attard, 'The Implications of a Common Consolidated Corporate Tax Base for Malta', (LL.D. thesis, University of Malta 2010).

[29] *Chetcuti* (n 4).

Drawbacks and Limitations to the Implementation of the CCCTB

In a very recent study, a case study approach was taken in order to establish the impact of the CCCTB at an operational and practical company level. The report was meant to carry out a study of potential compliance cost and effective tax rates should the CCCTB proposals come into being.

In the study, the activities involved in the tax return process were found to be the following:[30]

- **preparation and filing of the corporate tax return** – this refers to 'the time spent by the group in preparing and filing the various corporate tax returns for all relevant entities in each of the Member States that would potentially be affect by the CCCTB.'[31]

- **Preparation of tax provision numbers –** this refers to the time required to prepare the tax provision numbers for inclusion in the financial statements in each of the Member States potentially affected by the CCCTB**.**[32]

- **Key corporate tax administration activities –** key tasks which fall under this heading include the time spent liaising with tax authorities and preparing and filing claims.[33]

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[30] This takes into consideration both the internal hours utilised as well as external spending.

[31] Ernst & Young (n 3) 26.

[32] Ibid 27.

[33] Ibid 29.

- **Transfer of pricing activities**.

	Current hours on activity as % of total hours	Current external spend on activity as % of total spend	Weighted average % movement in hours under a CCCTB	Weighted average % movement in spend under a CCCTB	Combined weighted average
Prepare and file corporate tax return	41%	49%	+44%	-5%	+27%
Prepare tax provision numbers	15%	7%	+1%	-10%	-1%
Key tax administration activities	17%	17%	+33%	-6%	+21%
Transfer pricing related activities	19%	5%	-16%	-22%	-16%
Overall			**+21%**	**-5%**	**+13%**

As can be seen from the above table, the cost of tax compliance in general is expected to increase under the CCCTB, and not decrease as the Commission is stating. The report holds that '[t]his was predominantly due to the additional work that was needed at the group level outweighing the reduction in work undertaken at the local level.'[34] Therefore while the external spend would decrease, the amount of hours required to adhere to the new tax regime will be greater than the expenditure saved.

Furthermore, what these figures do not take into account (but are mentioned later on in the same report) is the transitional impact of the CCCTB and the expenses that come with such a transition. For instance, many of the groups taking part in the case study believed that there may be a need for companies to implement a new set of

[34] Ibid 25.

CCCTB accounting book to run alongside the existing tax system during the transitional period, in order to ensure that all tax adjustments were being correctly implemented.

Moreover, the cost to train a firm's staff upon transition was considered both critical and costly. This is thus another drawback to the implementation of the CCCTB proposals. However, the Commission argues that this initial cost will be reversed in the long run. Another point worth mentioning is that it seems that the CCCTB system as proposed is still very complex to use – from the twenty groups used in the case study, only five were able to complete the exercise.

The report therefore drew up the following conclusions:[35]

i. The complexity of the date required to simulate the CCCTB proposals (only five out of twenty groups managed to complete the exercise) and the difficulty for businesses to engage fully with this study, showcased the challenge for businesses to make the transition from the current tax regime to a CCCTB system.

ii. It is several businesses' opinion that the CCCTB would lead to an average increase of thirteen per cent in compliance costs. In addition to this, businesses would also incur substantial one-off costs in the transition to a new system.

iii. The majority of businesses found that their corporate income tax burden would increase under a CCCTB, largely owing to the apportionment mechanism, which meant that a greater proportion of income would be apportioned to Member States with higher corporate tax rates.

[35] Ibid 5.

Other Reservations

1. Loss of Fiscal Autonomy

Several Member States argue fervently against the CCCTB because they believe it would deprive them of their national tax sovereignty. Taxation is a very important fiscal policy tool at the disposal of the Government, who may use it for the benefit of the state's economy. The chief concern is hence that the CCCTB is the first step towards a fully harmonised EU system of corporate taxation.[36] The concern here is two-fold: that an important fiscal policy tool will no longer be at the government's disposal, and that the CCCTB might eventually lead to a common tax *rate*.

Ireland has traditionally been one of the staunchest opponent of the CCCTB purely because of this concern, with Internal Market Commissioner Charlie McCreevy stating that tax competition is in fact beneficial for the internal market.[37] However, the Commission has long stated that it has no desire in harmonising the tax rates of Member States, as this remains a vital tool which should be used by national Governments.

2. Increase in Administrative Costs

The issue of the increase in administrative costs is a subjective one, in that some believe that administrative costs will increase if the CCCTB proposals are implemented, while others opine that they will actually decrease, as explained earlier on in this essay.

This author's personal opinion on this issue is that large corporations will actually benefit from a reduction in administrative costs, especially those that operate from more than one Member State; however the same cannot be said for SMEs. These are less likely to operate in more than one Member State, yet they still would have to pay the cost of adhering to the CCCTB.

The Implications for Malta

1. Malta's Corporate Tax System

[36] Attard (n 28).

[37] Charlie McCreevy, 'Tax Harmonisation – No Thanks' (*Europa Press Releases RAPID*, European Business Initiative on Taxation, 10 November 2005) <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/05/679&format=HTML&aged=0&language=EN&guiLanguage=en> accessed 23 July 2011.

In order to be competitive with other Member States, Malta has implemented an appealing corporate tax regime which enables it to attract foreign investment and several multinational corporations to its shores.

Malta's fiscal policy, formulated on the UK model, has long adhered to favourable corporate taxation. This is an issue on which both political parties agree, who prefer to increase their tax revenues through indirect taxation. As a consequence, the higher direct taxes applied as a result of the larger Member States' fiscal policies are incompatible with the Malta's economy.

Maltese-registered limited liability companies are liable to tax on income derived globally in Malta and are considered as domiciled in Malta. Such companies are liable to a thirty-five per cent income tax rate. However, the tax paid by the company is set-off against the dividend received by shareholders, meaning that the latter are not liable to tax on their dividend, Which consequently reduces the risk of double taxation.

Companies not domiciled in Malta may be considered as residents if they are effectively controlled and managed in Malta. The foreign-sourced income of such companies is taxable on a remittance basis, meaning that only the income or capital gains arising in Malta, or any income remitted to Malta, is liable to tax. Furthermore, the income remitted to Malta may be entitled to tax refunds or exemptions, as in the case of a participation holding.

Moreover, the Maltese government incentivises companies to set up locally, both from an administrative and a financial perspective. The initial share capital amount required for a limited liability company is only €1200, of which only twenty per cent must be paid up upon registration.[38] The registration process is relatively straightforward and brief, while registration costs are among the cheapest in Europe. Furthermore, the Maltese corporation tax system is very easy both to understand and implement, meaning there is no huge administrative expense required until employees are acquainted with it.

2. Malta: A Tax Haven?

Despite applying a thirty-five per cent corporation rate on the taxable profits of Maltese-registered companies, the island is still labelled as a tax haven in the EU. Malta however offers several tax refunds and incentives, such as the possibility of reducing the corporate income

[38] Attard (n 28).

tax liability and the provision of a VAT number applicable to EU trade. Furthermore, the number of bilateral tax treaties that Malta has with other states further improves Malta's appeal to businesses.[39]

This author holds that this strategy has proved to generally successful for Malta, as it has attracted a great deal of foreign investment. Moreover, Malta's low tax rate exerts pressure on competing tax rates throughout the EU to decrease accordingly. This could well be larger Member States' primary reason for their support of direct corporate tax harmonisation.[40]

Germany has been one of the harshest critics of Malta's tactic, blaming the island for being responsible for unhealthy competition after several large German firms formed Maltese companies to avoid the applicability of the German tax regime.[41]

Since the coming into being of the Code of Conduct Group (Business Taxation), Malta has reformed several of its discriminatory policies so as not to be in breach of Union law. However, it still applies a low effective tax rate, as this is till now still unregulated. That said, Maltese authorities, namely the MFSA, opine that the 'tax haven' label does not subsist anymore.[42] It believes that following the rigorous reform of finance sector legislation to be in line with international best practice, as well as reaching an agreement on fiscal matters with the OECD, 'Malta is NOT considered as a tax haven.'[43]

3. The Effects of the CCCTB in Malta

The cost of losing the ability to use financial policies as a tool to attract tax revenue is perhaps the foremost disincentive of the Common Consolidated Corporate Tax Base.[44]

Losing this fiscal policy tool will be a major blow to the Maltese economy, as Malta generally seeks a competitive advantage over the other Member States by offering a lower effective tax rate to

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[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] 'Mission' (*Malta Financial Services Authority*) <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=334> accessed 23 July 2011.

[44] *Attard* (n 28).

businesses. This could well be one of the main reasons why larger Member States are pushing so hard for the CCCTB's proposals to be implemented, as they stand to benefit by not allowing smaller Member States such as Ireland and Malta to keep a lower effective corporate tax rate. On the other hand, the Commission has stated that it has no desire to remove such an important tool from the hands of the Member States, as they will always have sovereignty over their corporate tax rate.

Should the CCCTB come into being, it is very clear that larger Member States will stand to benefit from the apportionment mechanism. The 'labour' factor will benefit countries with large working populations, while the 'assets' factor, which only covers fixed assets, will only benefit countries with large manufacturing bases. Industries such as information technology, pharmaceutics and financial services, being three of the largest industries in Malta, do not require as much assets as say, the automobile industry in Germany. Moreover, the 'sales' factor, if calculated by 'destination', will be to the advantage of Member States with larger consumer markets.[45] This author thus deems it safe to conclude that apportionment mechanism as proposed will affect Malta in a negative manner, should it be implemented.

One should also keep in mind that the majority of businesses established in Malta are classified as Small and Medium-Sized Enterprises (SMEs). It is rather difficult for SMEs to operate from more than one state and thus, this author notes that Maltese firms would be compelled to pay the costs and administration fees of the CCCTB without having any realistic opportunity of availing themselves of its benefits. In fact, the Commission itself has admitted that the CCCTB favours cross-border enterprise, entailing that this initiative favours the larger Member States.

Moreover, as explained earlier, the administration costs for tax compliance will most likely increase should the CCCTB proposals be adopted. As stated in the above-quoted report, 'a side effect of the CCCTB [is] to bring more activities in house, hence reducing external spend but increasing internal costs.'[46]

Taking all these consequences into consideration, it comes as no surprise that local enterprise has taken an overall negative position

[45] Ibid.

[46] Emmet Oliver, 'Country will not benefit from new corporate tax system' (*The Independent* (Ireland), 8 February 2011) <http://www.independent.ie/business/irish/country-will-not-benefit-from-new-corporate-tax-system-2529380.html> accessed 23 July 2011.

with regards to the CCCTB. In the words of the Malta Business Bureau,

'it is [the Maltese Business viewpoint] that tampering with taxation policy is detrimental to Malta's attractiveness as a business destination.'[47]

The negative impact that the CCCTB could have on Malta was even noted in the IMF Annual Report on Malta:

Moreover, Malta's attractiveness as a business location and some of its new high-growth export activities (e.g. some business and financial services, pharmaceuticals, etc.) could be adversely affected should EU or member state regulations or taxation change.[48]

Conclusion

The Single Market's completion is of fundamental importance for the EU as it will put the Community on a level-playing field with its global competitors, namely the US, China, India and Japan. Hence, the proposed Single Market Act is welcomed with open arms.

While agreeing in principle with most of the Commission's proposals for the single market, such as the proposal for an EU patent, the initiatives to enhance the development of electronic commerce in the internal market as well as the proposal to revise the Energy Tax Directive, this author believes that while it is true that the internal market can never be fully completed without a proper harmonisation of taxation regimes, taxation is too important as a fiscal policy tool to be removed from the Member States' sovereignty.

In view of the above, this author believes that the CCCTB proposals should not be implemented, as their effects might prove catastrophic on small economies such as those of Malta and Ireland. The suggestion that the CCCTB be 'centralised' is also not favourable in this author's opinion, as the research conducted proves that the apportionment mechanism is more likely to favour larger Member States.

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[47] John Huber, 'Malta cares about Single Market' (*Times of Malta*, 4 December 2010) <http://www.timesofmalta.com/articles/view/20101204/opinion/business-cares-about-single-market> accessed 23 July 2011.

[48] International Monetary Fund, 'Malta: 2010 Article IV Consultation – Staff Report; Public Information Notice on the Executive Board Discussion; and Statement by Executive Director for Malta' (IMF Country Report No 11/29, January 2011) 8 <http://www.imf.org/external/pubs/ft/scr/2011/cr1129.pdf> accessed 23 July 2011.

This author opines that as an alternative to the CCCTB, enhanced cooperation between Member States regarding their corporate taxation regimes should be given a priority. Consensus should at least be achieved on a common corporate taxation base, yet this author does not believe that it should be consolidated as proposed.