



Houses of the
Oireachtas
Tithe an Oireachtais

**An Comhchoiste um Airgeadas, Caiteachas Poiblí agus Athchóiriú,
agus Taoiseach**

COM (2016) 683 & COM (2016) 685

**Thogra le haghaidh Treoir óngComhairle maidir le Comhbhonn
Comhdhlúite Cánach Corparáide agus ar Thogra le haghaidh Treoir
óngComhairle maidir le Comhbhonn Cánach Corparáide**

Nollaig 2016

**Joint Committee on Finance, Public Expenditure and Reform, and
Taoiseach**

COM (2016) 683 & COM (2016) 685

**Proposal for a Council Directive on a Common Consolidated
Corporate Tax Base (CCCTB) & Proposal for a Council Directive on a
Common Corporate Tax Base (CCTB)**

December 2016

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**JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM AND
TAOISEACH**

**Report under Dáil Standing Order 114 and Seanad Standing Order 107 on
COM (2016) 683 & COM (2016) 685 - Proposal for a Council Directive on a
Common Consolidated Corporate Tax Base(CCCTB) & Proposal for a Council
Directive on a Common Corporate Tax Base (CCTB).**

1. Introduction

1.1 The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU) as follows:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

1.2 The test established by Article 5(3) TEU is, in effect, a “comparative efficiency” exercise, involving a “*necessity*” test and a “*greater benefits*” test:

- (i) *Necessity* - Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
- (ii) *Greater Benefits* - Would the objective be better achieved at EU level – i.e. would EU action provide greater benefits than action at Member States level?

1.3 To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

“Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States...”

- 1.4 Therefore, any new draft legislative act,
- must be supported by a sufficiently ‘detailed statement’ to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity
 - must clearly satisfy both the *necessity* and *greater benefit* tests
 - must, under the principle of conferral set down in Article 5(2) of the TEU, show that the Union is acting ‘*only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.*’

2. Scrutiny by the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

The Joint Committee (hereinafter referred to as the “Committee”) has scrutinised this proposal at three meetings on 1 December 2016, 6 December 2016 and 13 December 2016.

- 2.1 At its meeting of 1 December the Committee agreed that COM(2016)683 and COM(2016)685 warranted further scrutiny and agreed to invite officials from the Department of Finance, Office of the Revenue Commissioners and the European Commission to a meeting of the Committee to further discuss and to be briefed on the technical aspects of the proposals. The Committee also agreed to invite stakeholders/experts to discuss the wider implications of the proposals on Ireland’s corporate tax structure.
- 2.2 Respective witnesses attended Committee meetings on both the 6 and 13 December. Following the Committee’s consideration of these matters, the Committee agreed a reasoned opinion on the proposal at its meeting on 14 December.

3. Opinion of the Joint Committee

The Committee has had specific regard to the Treaty provisions and is of the opinion that the proposal does not comply with the principle of subsidiarity. The reasons are set out in the following paragraphs:-

- 3.1 The Committee is of the opinion that the EU Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a *detailed statement* with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the implications in a cross-border proposal of this nature. The Committee acknowledges the publication of a staff assessment but has concerns regarding the methodology used to calculate a net decline in corporate tax receipts for Ireland equal to 1.4% on GDP. In the absence of a detailed analysis and the fact that the EC study does not include data on sales by destination, the Committee believes the 1.4% figure to underestimate the true impact of these proposals on corporate tax receipts.
- 3.2 Similarly, the Committee notes that the Commission’s impact assessment suggests that CCCTB may increase growth in the EU by up to 1.2%. However, the Committee also notes that the impact assessment is silent on the impact of CCCTB on individual Member States. The Committee is

further of the opinion that the proposals will impact on the smaller open economies of some Member States, including Ireland, disproportionately.

- 3.3 The Committee is strongly of the opinion that the implications of the proposal fall generally within the area of tax policy and thus impinges on a national competency.
- 3.4 The Committee believes that the proposals impacts directly on sovereign tax rates currently in place in Member States and also on the ability of Member States to set tax rates in the future, which is an exclusive competence of member states.
- 3.5 Furthermore, the intention to introduce a single rate as part of the consolidation proposal will effectively entail the abolition of two rates currently in operation in Ireland – namely a 25% non-trading tax rate and a 33% Capital Gains Tax rate. The Committee believes the impact of the single tax rate should be more clearly articulated as this implication became apparent during Committee hearings. The Committee heard during its examination that Ireland could potentially lose in excess of €450mn from the abolition of the two rates system.
- 3.6 The Committee is of the opinion that the proposals cedes responsibility for an element of tax policy from Member States to the Commission without clearly establishing benefits which do not already exist under the Anti-Tax Avoidance Directive agreed in July 2016.
- 3.7 With regard to the creation of a single base, the Committee believes this will, in effect, lead to a narrowing of the tax base that currently exists in Ireland. Thus, the Committee believes that tax receipts will be significantly reduced which will in turn negatively impact on the Irish Exchequer and the ability to fund public services.
- 3.8 The Committee believes that, notwithstanding that some smaller companies may decide to opt in to the new CCCTB regime, the proposals provide for two different tax systems operating in parallel to each other. Such an approach has the scope to add complexity to the tax system. Thus, the Committee deems that the proposals, as published, may not meet the stated objectives of reducing administrative burden and streamlining the taxation system.
- 3.9 The Committee is further concerned that the proposals may be counterproductive to ongoing initiatives formulated by the OECD through its BEPS initiative. Ireland has actively contributed and engaged with the OECD on a number of reforming initiatives. The Committee believes the various BEPS actions should be given adequate time for implementation and consequently for a review to take place in 2020.

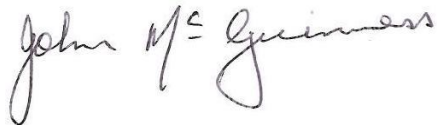
The Committee notes that the CCCTB proposal seeks to eliminate transfer-pricing within the EU. However, the Committee is of the opinion that transfer pricing will continue to occur involving activities outside the EU. The OECD and the BEPS initiatives have sought multilateral reforms that take into account the global tax environment. The Committee is of the opinion that these proposals may undermine the ongoing BEPS initiatives and therefore are unnecessary in the context of existing reforms involving “arms length” principles of transfer pricing.

- 3.10 The Committee believes that significant case law and expertise in the administration of taxation in Ireland is likely to be lost in the event that CCCTB is introduced. The Committee believes the introduction of a whole new system of tax has the potential to complicate, in Ireland, what is acknowledged as a transparent and accessible tax environment. The Committee has concerns that the loss of such expertise and precedent established over a considerable period of time would be counterproductive and may indeed lead to confusion and uncertainty for businesses.
- 3.11 The Committee is of the opinion that the three factors that comprise the allocation formula under the consolidation element of the proposal appear arbitrary. Furthermore, the allocation formula ignores the existence of 'intangible assets' which in an increasingly digitalized business environment make up an increasingly larger share of companies assets. Allocation on the basis of sales invariably means that larger countries with bigger populations and larger customer bases will receive significantly more tax revenue than smaller states solely on the basis of scale.
- 3.12 The Committee is also of the opinion that that the formula apportioning profits set out in the CCCTB is unlikely to remove the ability for tax planning any more than the existing transfer pricing rules.
- 3.13 The Committee expresses concerns in regard to the future role of national courts to adjudicate in tax matters at a national level. Under CCCTB, the intention is that tax matters and disputes would likely be adjudicated in the European Court of Justice. The Committee believes that Irish citizens must be entitled to maintain the existing rights enshrined in Irish law to access legal services/rulings on taxation matters of national import.
- 3.14 The Committee questions the rationale that the 'CCCTB will lead to greater investment and growth across Europe'. The Committee believes that smaller companies may avail of the increased deductions and expenses under the Common Base to reduce tax liabilities. Equally, larger companies may revise their investment portfolios in Europe which, in turn, could lead to a decrease in inward investment and potentially make Europe a less attractive destination for investment and make Europe less competitive in the global marketplace.
- 3.15 The Committee is satisfied that the above points, taken together, clearly demonstrate that the proposed Directives breach the principle of subsidiarity.

4. Recommendation of the Select Committee

The Committee agreed this Report under Dáil Standing Order 114 and Seanad Standing Order 107 on 14 December 2016.

The Committee, pursuant to Standing Orders recommends the reasoned opinion contained in section 3 above for agreement by Dáil and Seanad Éireann.

A handwritten signature in cursive script that reads "John McGuinness".

John McGuinness, T.D.
Chairman

14 December 2016

**MEMBERS OF THE
JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND
TAOISEACH**

Deputies:

John McGuinness T.D. (FF)
(Chairman)

Peter Burke T.D. (FG)

Michael D’Arcy T.D. (FG)

Pearse Doherty T.D. (SF)

Michael McGrath T.D. (FF)

Paul Murphy T.D. (Ind)

Seán Sherlock T.D. (Lab)

Senators:

Paddy Burke (FG)

Rose Conway-Walsh (SF)

Gerry Horkan (FF) (Vice-Chairman)

Kieran O’Donnell (FG)

ORDERS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:
 - (a) matters of policy and governance for which the Minister is officially responsible,

- (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission

as a basis of possible legislative action,

- (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

b. Scope and Context of Activities of Committees (as derived from Star Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing

Orders; and

- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.