Skattekommittén

16 november 2022

ICC Sweden

Mötets öppnande

Uppdatering från ICC internationellt
Ordförande Yvonne Bertlin, Director of Tax, AstraZeneca
Vice ordförande Karin Attorps, Partner, DLA Piper
Alfred Ram, Policykoordinator, ICC Sverige

EU och utvecklingen på skatteområde
Sune Hein Bertelsen, Head of Tax Law & International Tax, Dansk Industri (Confederation of Danish Industry)

Skatteaspekter av hållbarhetsredovisning
Hans Peter Larsson, Skatteansvarig, FAR

Svensk skattelagstiftning och miljö- och klimatmålen
Ordförande Yvonne Bertlin, Director of Tax, AstraZeneca
Vice ordförande Karin Attorps, Partner, DLA Piper Alfred Ram, Policykoordinator, ICC Sverige

Nästa möte och avslut

Uppdatering från ICC internationellt

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Alfred Ram, Policykoordinator, ICC Sverige

ICC Sweden

- Återrapportering från ICC:s Kommissionsmöte
- Ordförandenätverket
- *Trade and the Global Goals*
- COP27

- Utgår från ICC:s 10 Principles for Carbon Pricing
- Ska erbjuda insikter och inspiration till beslutsfattare
- EU, Indonesien, Kanada, Nya Zeeland och Sydafrika
- Komplexitet
- Vikten av ihopkoppling
- *”The key is to start”*

EU och utvecklingen på skatteområde

Sune Hein Bertelsen, Head of Tax Law & International Tax, Dansk Industri (Confederation of Danish Industry)

ICC Sweden

EU och utvecklingen på skatteområde
ICC SVERIGES SKATTEKOMMITTÉ
16 november 2022

Sune Hein Bertelsen
Head of Tax Law & International Tax
Chair BusinessEurope Tax Policy Working Group

Internationale engagement
Confederation of Danish Industry

Chair
Tax Policy Working Group

Primary focus on initiatives from EU, but also the OECD and UN to the extent relevant initiatives begins here, e.g. current proposal on global minimum taxation (OECD Pillar 2)

Member
Committee on Taxation

Primary focus on OECD

Member
Commission on Taxation

Primary focus on UN /global

Historic overview EU tax initiatives

Published proposals

Directive on Minimum Taxation

- EU implementation of the OECD global tax agreement
- Rules of 15% effective tax rate
- A common set of rules on how to calculate effective tax rate
- Only Hungary formally ‘veto’ adoption of the Directive

www.businesseurope.eu/publications/directive-ensuring-minimum-level-taxation-multinational-groups-within-european-union

BUSINESSEUROPE

2 February 2022

Directive on ensuring a minimum level of taxation for multinational groups within the European Union (‘Pillar Tw

KEY MESSAGES

1 We welcome the global agreement reached at the OECD/Inclusive Framework (IF) on a global corporate tax reform. Provided that they are implemented globally and in a harmonised way, both ‘Pillar One’, regarding the reallocation of taxing rights and ‘Pillar Two’, introducing a global minimum effective corporate tax, have the potential to provide stability and coherence to the international corporate tax system. We strongly urge EU Member States to incorporate the detailed technical rules, concerning the implementation and administration of the minimum tax, which will be agreed at the OECD in the following months, into the EU directive.

2 A priority in the implementation of the EU directive should be the protection of European competitiveness. While the current proposal aligns closely with the key elements of the OECD/IF agreement, any EU directive in this area must continue to avoid a ‘gold-plated’ approach, as it would risk putting European companies at a competitive disadvantage and cause double taxation.

3 Similarly, the OECD/IF agreement must not end up as an ‘EU only’ agreement, with the United States not implementing either (or both) Pillar One or Pillar Two a particular risk. If major trading partners of the EU do not join the global minimum tax in full, then this raises critical questions in particular about the feasibility, effectiveness and fairness of the minimum tax at EU level and increases the risk of legal uncertainty and double taxation. The EU must ensure that implementation of the Pillar Two directive limits as much as possible the danger of European companies being put at a competitive disadvantage. This will require in particular more safeguards to ensure that the ‘backstop’ mechanism - the Undertaxed Payments Rule (UTPR) - works efficiently.

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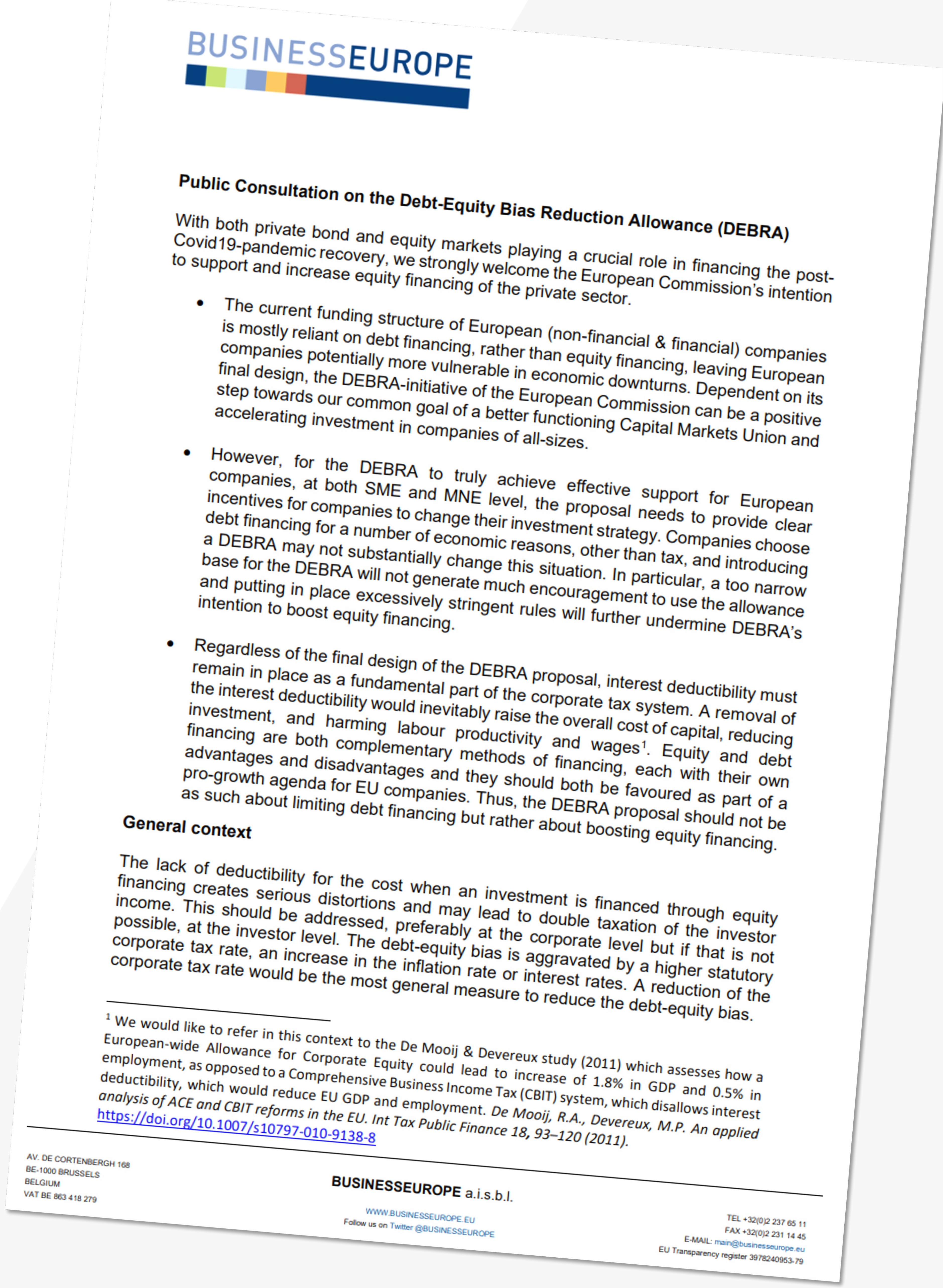
EU Transparency register 3978240953-79

Published proposals

Directive on Debt-Equity Bias Reduction Allowance (DEBRA)

- Deductibility of notional interest on increases in equity, based on two components: a risk-free interest rate (RFR) with a maturity of ten years and a risk premium of 1-1,5 %
- Deductibility of interest will be limited to 85 % of excess borrowing costs (i.e. interest paid minus interest received)
- Countries and business critical


BUSINESSEUROPE

Public Consultation on the Debt-Equity Bias Reduction Allowance (DEBRA)

With both private bond and equity markets playing a crucial role in financing the post-Covid19-pandemic recovery, we strongly welcome the European Commission's intention to support and increase equity financing of the private sector.

- The current funding structure of European (non-financial & financial) companies is mostly reliant on debt financing, rather than equity financing, leaving European companies potentially more vulnerable in economic downturns. Dependent on its final design, the DEBRA-initiative of the European Commission can be a positive step towards our common goal of a better functioning Capital Markets Union and accelerating investment in companies of all-sizes.
- However, for the DEBRA to truly achieve effective support for European companies, at both SME and MNE level, the proposal needs to provide clear incentives for companies to change their investment strategy. Companies choose debt financing for a number of economic reasons, other than tax, and introducing a DEBRA may not substantially change this situation. In particular, a too narrow base for the DEBRA will not generate much encouragement to use the allowance and putting in place excessively stringent rules will further undermine DEBRA's intention to boost equity financing.
- Regardless of the final design of the DEBRA proposal, interest deductibility must remain in place as a fundamental part of the corporate tax system. A removal of the interest deductibility would inevitably raise the overall cost of capital, reducing investment, and harming labour productivity and wages[1]. Equity and debt financing are both complementary methods of financing, each with their own advantages and disadvantages and they should both be favoured as part of a pro-growth agenda for EU companies. Thus, the DEBRA proposal should not be as such about limiting debt financing but rather about boosting equity financing.

General context

The lack of deductibility for the cost when an investment is financed through equity financing creates serious distortions and may lead to double taxation of the investor income. This should be addressed, preferably at the corporate level but if that is not possible, at the investor level. The debt-equity bias is aggravated by a higher statutory corporate tax rate, an increase in the inflation rate or interest rates. A reduction of the corporate tax rate would be the most general measure to reduce the debt-equity bias.

[1] We would like to refer in this context to the De Mooij & Devereux study (2011) which assesses how a European-wide Allowance for Corporate Equity could lead to increase of 1.8% in GDP and 0.5% in employment, as opposed to a Comprehensive Business Income Tax (CBIT) system, which disallows interest deductibility, which would reduce EU GDP and employment. De Mooij, R.A., Devereux, M.P. *An applied analysis of ACE and CBIT reforms in the EU. Int Tax Public Finance 18, 93–120 (2011).* https://doi.org/10.1007/s10797-010-9138-8

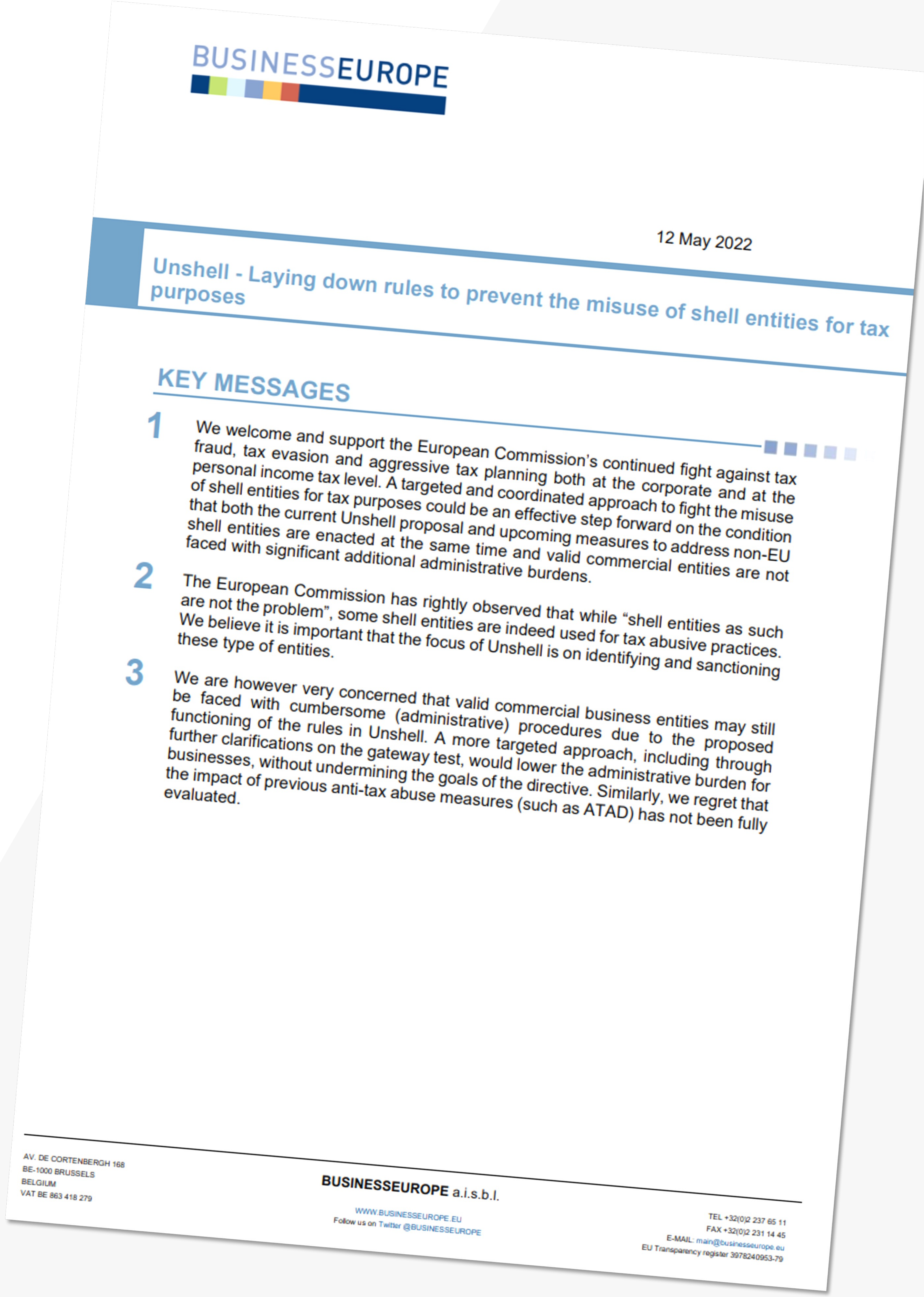
www.businesseurope.eu/publications/debt-equity-bias-reduction-allowance-debra-businesseurope-reply-public-consultation

Published proposals

Unshell

- Entities in the EU that have no or minimal economic activity are unable to benefit from any tax advantages
- Aims to introduce common rules within the EU to identify shell entities at high risk of tax abuse
- Lays down a substance test (using a number of indicators related to income, staff and premises)

www.businesseurope.eu/publications/unshell-laying-down-rules-prevent-misuse-shell-entities-tax-purposes-businesseurope



BUSINESSEUROPE

12 May 2022

Unshell - Laying down rules to prevent the misuse of shell entities for tax purposes

KEY MESSAGES

1 We welcome and support the European Commission's continued fight against tax fraud, tax evasion and aggressive tax planning both at the corporate and at the personal income tax level. A targeted and coordinated approach to fight the misuse of shell entities for tax purposes could be an effective step forward on the condition that both the current Unshell proposal and upcoming measures to address non-EU shell entities are enacted at the same time and valid commercial entities are not faced with significant additional administrative burdens.

2 The European Commission has rightly observed that while "shell entities as such are not the problem", some shell entities are indeed used for tax abusive practices. We believe it is important that the focus of Unshell is on identifying and sanctioning these type of entities.

3 We are however very concerned that valid commercial business entities may still be faced with cumbersome (administrative) procedures due to the proposed functioning of the rules in Unshell. A more targeted approach, including through further clarifications on the gateway test, would lower the administrative burden for businesses, without undermining the goals of the directive. Similarly, we regret that the impact of previous anti-tax abuse measures (such as ATAD) has not been fully evaluated.

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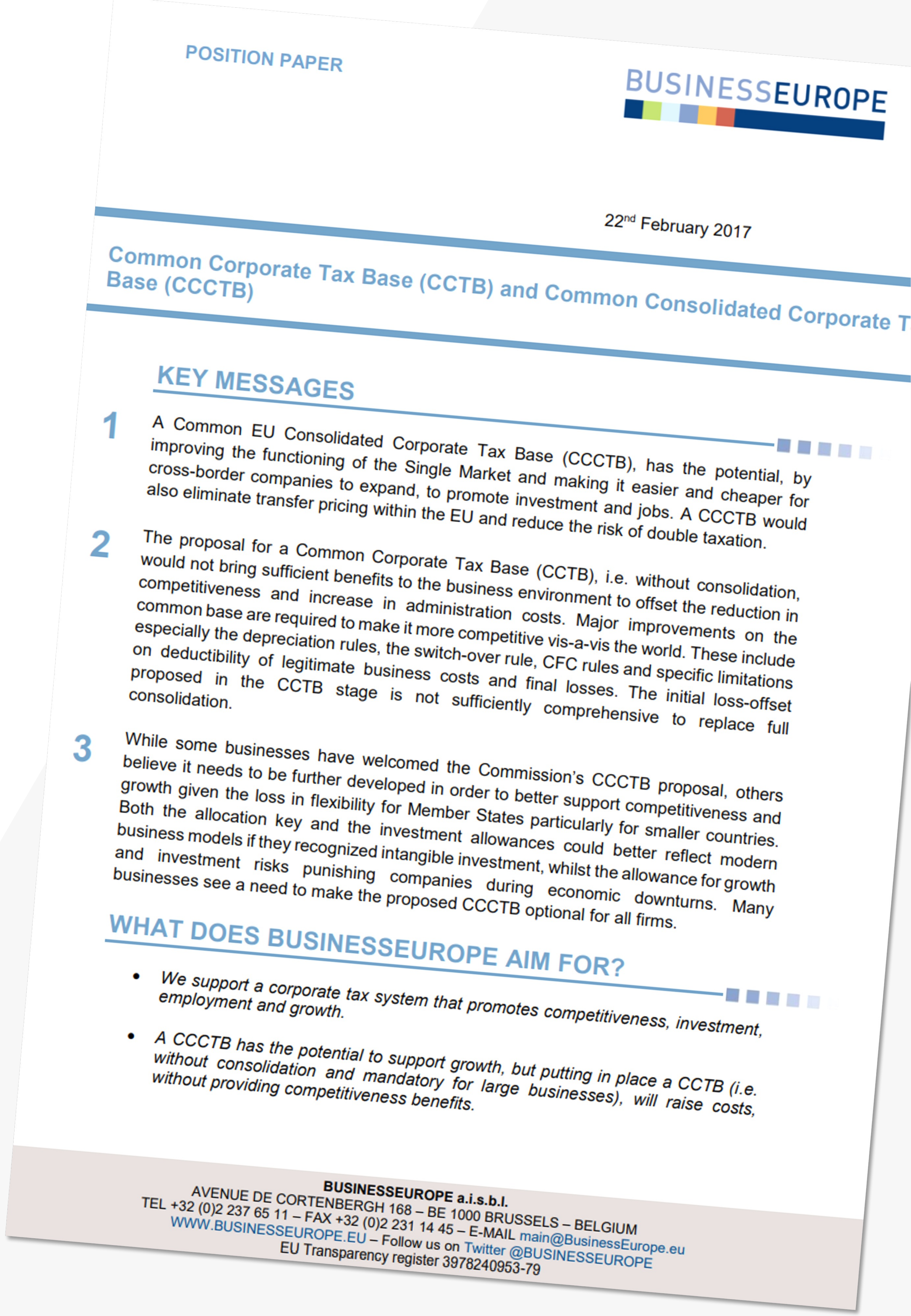
Forthcoming proposals

BEFIT Directive

- Directive on Business in Europe: Framework for Income Taxation (BEFIT)
- Replaces previous proposals for a Common (Consolidated) Corporate Tax Base
- Focus on SME according to 2022 State of the Union Address by Commission President von der Leyen
- Legislative proposals are expected in Q3 2023

www.businesseurope.eu/publications/common-corporate-tax-base-cctb-and-common-consolidated-corporate-tax-base-ccctb



POSITION PAPER

BUSINESSEUROPE

22nd February 2017

Common Corporate Tax Base (CCTB) and Common Consolidated Corporate T Base (CCCTB)

KEY MESSAGES

1 A Common EU Consolidated Corporate Tax Base (CCCTB), has the potential, by improving the functioning of the Single Market and making it easier and cheaper for cross-border companies to expand, to promote investment and jobs. A CCCTB would also eliminate transfer pricing within the EU and reduce the risk of double taxation.

2 The proposal for a Common Corporate Tax Base (CCTB), i.e. without consolidation, would not bring sufficient benefits to the business environment to offset the reduction in competitiveness and increase in administration costs. Major improvements on the common base are required to make it more competitive vis-a-vis the world. These include especially the depreciation rules, the switch-over rule, CFC rules and specific limitations on deductibility of legitimate business costs and final losses. The initial loss-offset proposed in the CCTB stage is not sufficiently comprehensive to replace full consolidation.

3 While some businesses have welcomed the Commission's CCCTB proposal, others believe it needs to be further developed in order to better support competitiveness and growth given the loss in flexibility for Member States particularly for smaller countries. Both the allocation key and the investment allowances could better reflect modern business models if they recognized intangible investment, whilst the allowance for growth and investment risks punishing companies during economic downturns. Many businesses see a need to make the proposed CCCTB optional for all firms.

WHAT DOES BUSINESSEUROPE AIM FOR?

- *We support a corporate tax system that promotes competitiveness, investment, employment and growth.*
- *A CCCTB has the potential to support growth, but putting in place a CCTB (i.e. without consolidation and mandatory for large businesses), will raise costs, without providing competitiveness benefits.*

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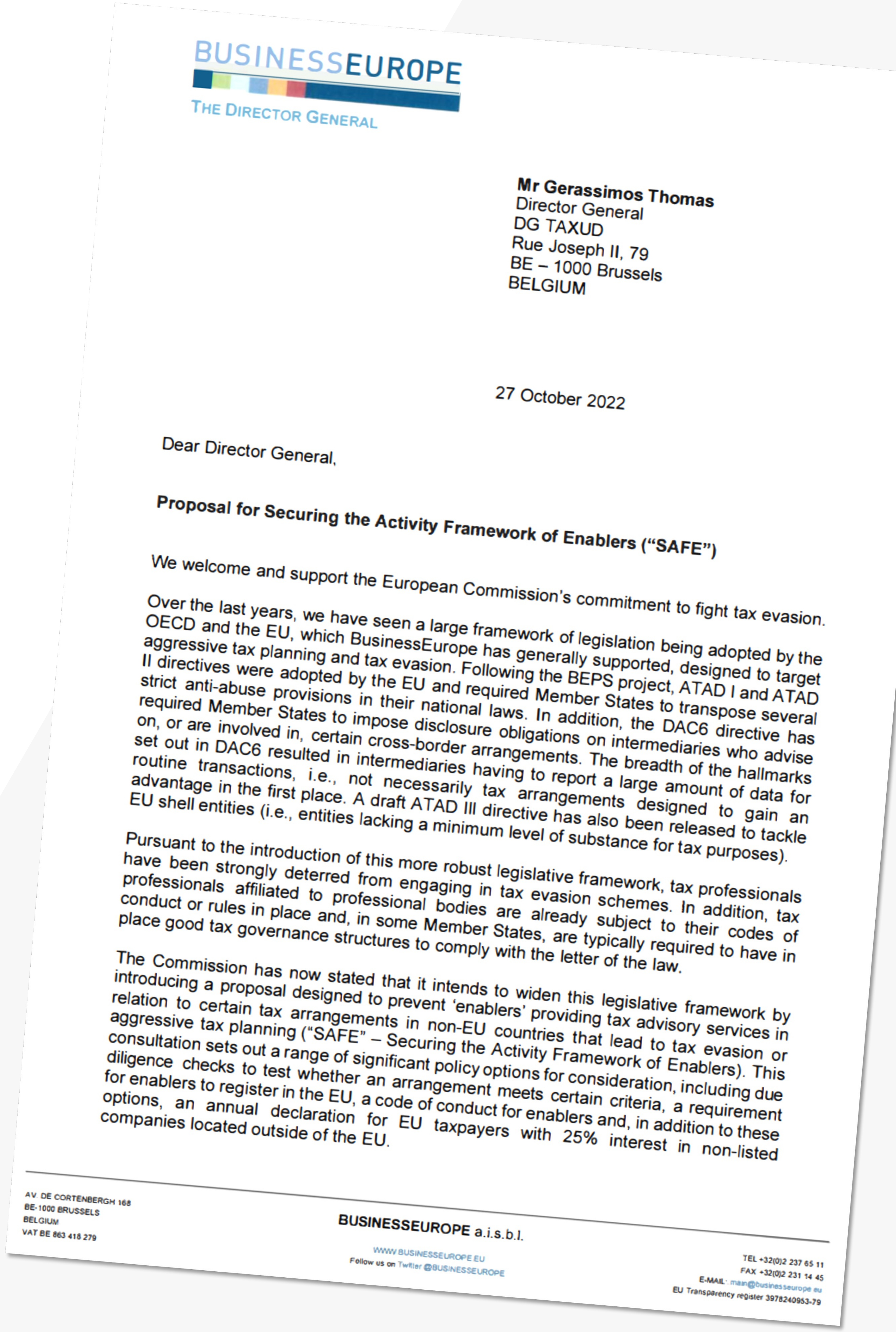
Forthcoming proposals

SAFE Directive

- Directive to tackle the role of enablers that facilitate tax evasion and aggressive tax planning
- Securing the Activity Framework of Enablers (SAFE)
- Supposed to interact and build on existing initiatives to combat tax evasion and aggressive tax planning, notably DAC6, the Anti-Tax Avoidance Directive, the AML Directive and the Whistle-blowers Directive
- Legislative proposals are expected in spring 2023

www.businesseurope.eu/publications/proposal-securing-activity-framework-enablers-safe-letter-markus-j-beyrer-gerassimos



BUSINESSEUROPE
THE DIRECTOR GENERAL

Mr Gerassimos Thomas
Director General
DG TAXUD
Rue Joseph II, 79
BE – 1000 Brussels
BELGIUM

27 October 2022

Dear Director General,

Proposal for Securing the Activity Framework of Enablers ("SAFE")

We welcome and support the European Commission's commitment to fight tax evasion.

Over the last years, we have seen a large framework of legislation being adopted by the OECD and the EU, which BusinessEurope has generally supported, designed to target aggressive tax planning and tax evasion. Following the BEPS project, ATAD I and ATAD II directives were adopted by the EU and required Member States to transpose several strict anti-abuse provisions in their national laws. In addition, the DAC6 directive has required Member States to impose disclosure obligations on intermediaries who advise on, or are involved in, certain cross-border arrangements. The breadth of the hallmarks set out in DAC6 resulted in intermediaries having to report a large amount of data for routine transactions, i.e., not necessarily tax arrangements designed to gain an advantage in the first place. A draft ATAD III directive has also been released to tackle EU shell entities (i.e., entities lacking a minimum level of substance for tax purposes).

Pursuant to the introduction of this more robust legislative framework, tax professionals have been strongly deterred from engaging in tax evasion schemes. In addition, tax professionals affiliated to professional bodies are already subject to their codes of conduct or rules in place and, in some Member States, are typically required to have in place good tax governance structures to comply with the letter of the law.

The Commission has now stated that it intends to widen this legislative framework by introducing a proposal designed to prevent 'enablers' providing tax advisory services in relation to certain tax arrangements in non-EU countries that lead to tax evasion or aggressive tax planning ("SAFE" – Securing the Activity Framework of Enablers). This consultation sets out a range of significant policy options for consideration, including due diligence checks to test whether an arrangement meets certain criteria, a requirement for enablers to register in the EU, a code of conduct for enablers and, in addition to these options, an annual declaration for EU taxpayers with 25% interest in non-listed companies located outside of the EU.

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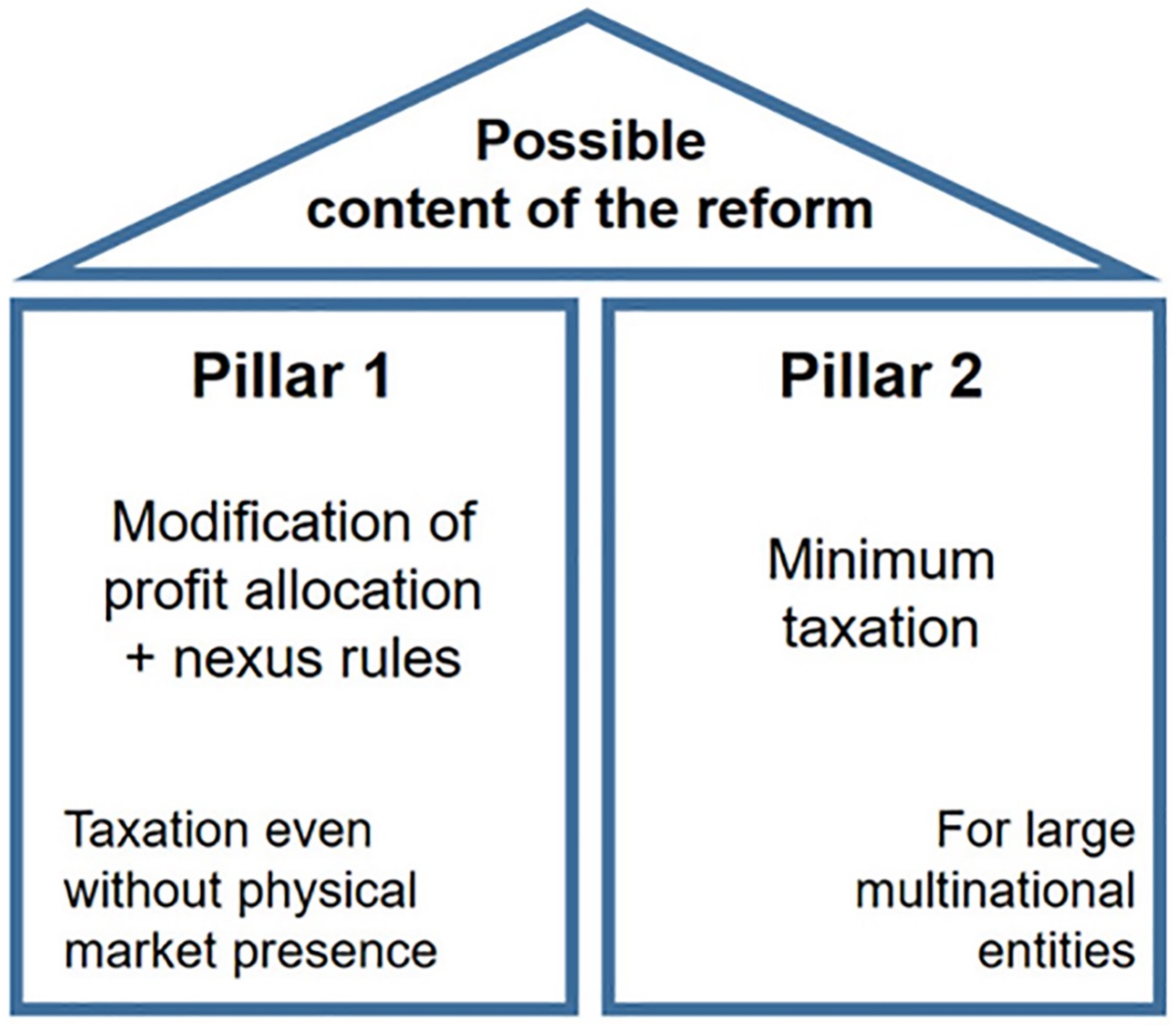
Forthcoming proposals

DAC8

- Crypto-assets and e-money
- Expected to legally oblige exchanges and other crypto asset service providers to report their customers' transactions to member states' authorities
- Legislative proposals are due for publication in December 2022 or early 2023

Forthcoming proposals



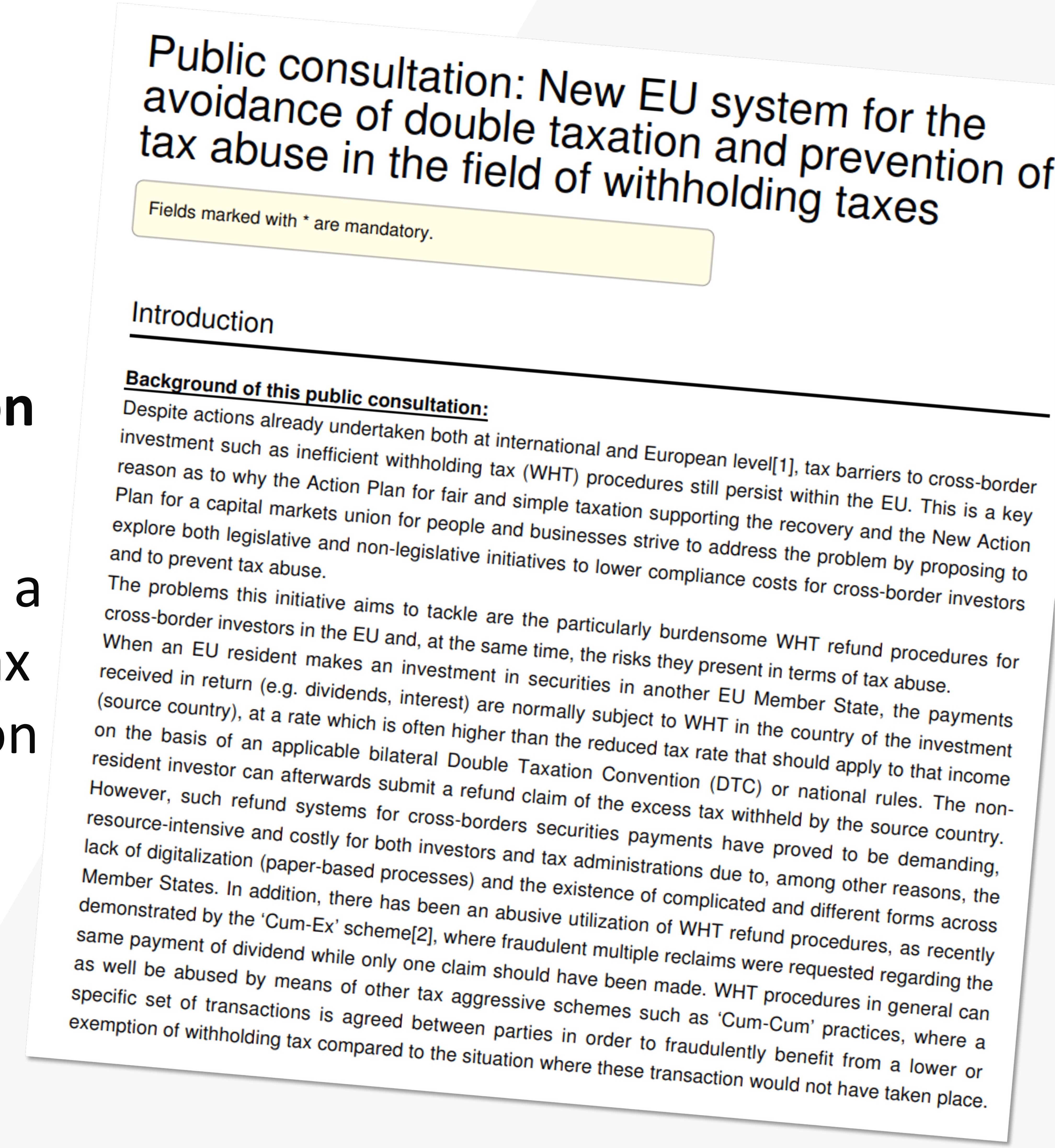
Pillar One – Digital Taxation

- Proposals to implement Pillar One of the OECD global tax agreement
- Targets the largest multinational groups and requires them to pay tax in the locations where their customers and users are located
- There are indication for a potential new EU-wide digital levy to apply until Pillar One is adopted
- Legislative proposals summer 2023

Forthcoming proposals

Withholding taxes – new EU system to avoid double taxation

- EU Commission work on more effective system
- Will most likely propose a legislative initiative to introduce a common, standardized, EU-wide system for withholding tax relief at source accompanied by an exchange of information between the Member States
- Electronic tax residency certificate in a digital readable format with a common set of information



Public consultation: New EU system for the avoidance of double taxation and prevention of tax abuse in the field of withholding taxes

Fields marked with * are mandatory.

Introduction

Background of this public consultation:

Despite actions already undertaken both at international and European level[1], tax barriers to cross-border investment such as inefficient withholding tax (WHT) procedures still persist within the EU. This is a key reason as to why the Action Plan for fair and simple taxation supporting the recovery and the New Action Plan for a capital markets union for people and businesses strive to address the problem by proposing to explore both legislative and non-legislative initiatives to lower compliance costs for cross-border investors and to prevent tax abuse.

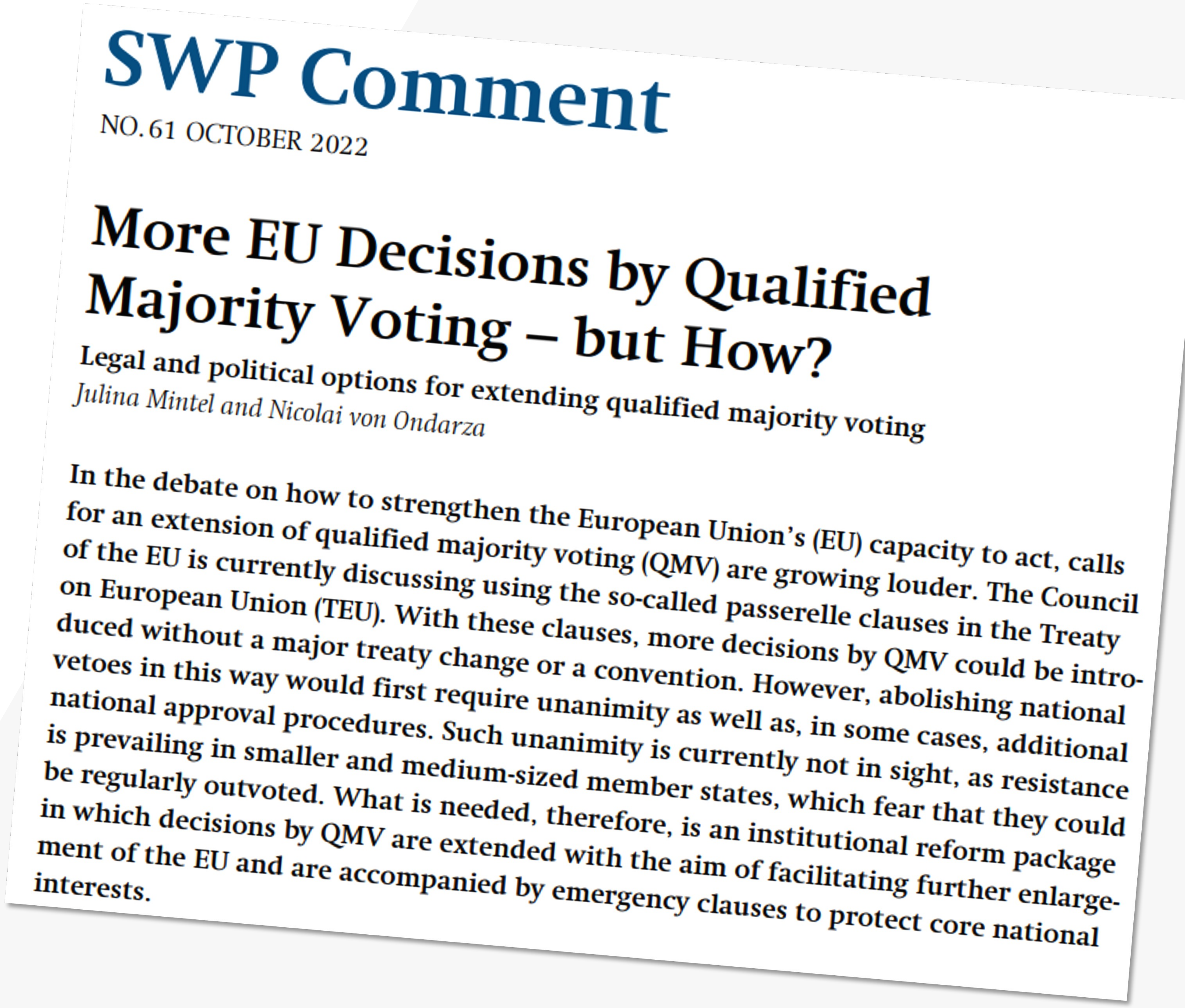
The problems this initiative aims to tackle are the particularly burdensome WHT refund procedures for cross-border investors in the EU and, at the same time, the risks they present in terms of tax abuse.

When an EU resident makes an investment in securities in another EU Member State, the payments received in return (e.g. dividends, interest) are normally subject to WHT in the country of the investment (source country), at a rate which is often higher than the reduced tax rate that should apply to that income on the basis of an applicable bilateral Double Taxation Convention (DTC) or national rules. The non-resident investor can afterwards submit a refund claim of the excess tax withheld by the source country. However, such refund systems for cross-borders securities payments have proved to be demanding, resource-intensive and costly for both investors and tax administrations due to, among other reasons, the lack of digitalization (paper-based processes) and the existence of complicated and different forms across Member States. In addition, there has been an abusive utilization of WHT refund procedures, as recently demonstrated by the 'Cum-Ex' scheme[2], where fraudulent multiple reclaims were requested regarding the same payment of dividend while only one claim should have been made. WHT procedures in general can as well be abused by means of other tax aggressive schemes such as 'Cum-Cum' practices, where a specific set of transactions is agreed between parties in order to fraudulently benefit from a lower or exemption of withholding tax compared to the situation where these transaction would not have taken place.

Voting by unanimity or qualified majority

How to adopt better EU tax regulation?

- Benjamin Angel, director of direct tax at the European Commission in Brussels, has recently confirmed that there are ongoing discussions on moving away from unanimity to majority voting
- State leaders as German Chancellor Olaf Scholz has voiced public opinions to end unanimity in Council decisions
- However, abolishing national vetoes in this way would first require unanimity as well as, in some cases, additional national approval procedures. Such unanimity is currently not in sight.



SWP Comment

NO. 61 OCTOBER 2022

More EU Decisions by Qualified Majority Voting – but How?

Legal and political options for extending qualified majority voting

Julina Mintel and Nicolai von Ondarza

In the debate on how to strengthen the European Union's (EU) capacity to act, calls for an extension of qualified majority voting (QMV) are growing louder. The Council of the EU is currently discussing using the so-called passerelle clauses in the Treaty on European Union (TEU). With these clauses, more decisions by QMV could be introduced without a major treaty change or a convention. However, abolishing national vetoes in this way would first require unanimity as well as, in some cases, additional national approval procedures. Such unanimity is currently not in sight, as resistance is prevailing in smaller and medium-sized member states, which fear that they could be regularly outvoted. What is needed, therefore, is an institutional reform package in which decisions by QMV are extended with the aim of facilitating further enlargement of the EU and are accompanied by emergency clauses to protect core national interests.

THANK YOU

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Skatteaspekter av hållbarhetsredovisning

Hans Peter Larsson, Skatteansvarig, FAR

ICC Sweden

Skatt och hållbarhet

Hans Peter Larsson,
Auktoriserad skatterådgivare
Far. Skatteansvarig Far.

Normer, lagregler.

”Har oerhört stora förhoppningar på CSRD och ESG-processen att den ska resultera i mycket mer information från företag om skatter.”

Paul Tang, ordf. Parlamentets skattegrupp.

Benjamin Angel, Kommissionen, verkar i samma anda.

Beslut om CSRD direktivet fattades 10 november. Förslag till mer konkret innehåll ska redovisas av Efrag senare under november. Skatter?

GRI 207 Tax standard

En ”ambitiös” modell för skattepolicy utifrån redovisningen.

1. Approach to tax. Skattepolicy?
2. Uppföljning och intern kontroll av skattepolicyn.
3. Dialog och kommunikation med intressenter kring skattepolicyn.
4. Country-by-country reporting. Publik?

The B Team Responsible Tax Principels.

Mer governancemodell. Framtagen av företag.
Sju principer.

1. Accountability and Governance.
2. Complience.
3. Business structure.
4. Relationships with authorities.
5. Seeking and accepting tax incentives.
6. Supporting effective tax systems.
7. Transparency.

Far. Självskattningstest

Öppet för företag och rådgivare att göra. Tas fram av medlemmar från big 4.

Utvärdering, ”läge”, inom dessa områden. Fyra delar/avsitt, cirka 30 frågor. Poäng, grön, gul eller röd i respektive del och som helhet.

Var finns potential till förbättringar?

Information till marknad och intressenter på frivillig basis. Fars hemsida far.se början av 2023.

Tack!

hans.peter.larsson@far.se

Swedish Tax Law and Sustainability

Ordförande Yvonne Bertlin, Director of Tax, AstraZeneca
Vice ordförande Karin Attorps, Partner, DLA Piper Alfred
Ram, Policykoordinator, ICC Sverige

ICC Sweden

Nästa möte och avslut