Leaflet 3: Directives on the Common Consolidated Corporate Tax Base / the Common Corporate Tax Base (CCCTB and CCTB)

1. General information

   a) Title of proposal
      and
      and Communication from the Commission to the European Parliament and the Council: Building a fair, competitive and stable corporate tax system for the EU.

   b) Date receipt of Commission document
      October 26, 2016

   c) Commission document no.

   d) EUR-Lex

   e) No. impact assessment Commission and Opinion Impact Assessment Board
      SWD(2016) 342

   f) Council process
      ECOFIN Council

   g) Responsible ministry
      Ministry of Finance

   h) Legal basis
      Both proposals for a directive are based on Article 115 of the Treaty on the Functioning of the European Union

   i) Council decision-making procedure
      Unanimity

   j) Role of the European Parliament
      Consultation
2. Essence of proposal
   a) Content of proposal

   In June 2015 the Commission presented an Action Plan for a fair and effective corporate income tax system in the European Union. The Commission argued that a healthy internal market needed a fair and efficient corporate tax system, which contributes to economic growth and is based on the principle that companies must pay tax in the country where value is created. The Common Consolidated Corporate Tax Base (CCCTB) is presented as a comprehensive initiative by the Commission, which can most effectively contribute to achieving this goal. The Action Plan argues for a step-by-step approach, whereby agreement should first be reached on the rules for a common corporate tax base, before proceeding to rules on consolidation. Under this consolidation, the profits and losses of a group that is active within the EU are set-off against one another and intra-group transactions cancel one another out.

   In a Communication from the Commission, four proposals for a directive that were published on 25 October 2016 are briefly explained. This BNC leaflet discusses the proposals for a CCTB and a CCCTB. Separate BNC leaflets have been produced on the two other proposals for a directive, which will be sent to the Lower House at the same time.

   The Common Corporate Tax Base (CCTB) and the Common Consolidated Corporate Tax Base (CCCTB) were presented in two separate proposals for a directive, in accordance with the step-by-step approach. Both proposals for a directive are largely based on the original CCCTB proposal\(^1\) from 2011. The Commission’s new proposals mean that this earlier proposal has been withdrawn. Several aspects of the present proposals for a directive differ from the original proposal\(^2\). The new proposals for a directive are mandatory for EU entities and EU-resident permanent establishments of multinational groups with a total consolidated group revenue of at least EUR 750 million; they are optional for other enterprises within the EU.

   **CCTB proposal**

   This proposal for a directive limits itself to establishing the rules for a common corporate tax base, such as the manner in which profit is calculated, the avoidance of abuse and the cross-border dimension of the proposed system. The consolidation, which was part of a comprehensive proposal in 2011, is now detached from the common corporate tax base and appears in a separate proposal.

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\(^2\) Cf. also the BNC leaflet accompanying the 2011 CCCTB proposal. Leaflet: Directive for a Common Consolidated Corporate Tax Base (CCCTB) (Parliamentary Documents II 2010/11, 32 728, no. 2).
Compared to the CCCTB proposal from 2011, the new directive contains a number of anti-abuse measures that are in line with the measures in the Anti-Tax Avoidance Directive, which was adopted in 2016.3 Some options that the latter directive leaves up to the Member States are elaborated in the Commission’s CCTB proposal. The switch-over provision, which was negotiated out of the final Anti-Tax Avoidance Directive, returns in the CCTB proposal. In addition to this, according to the Commission the difference in the treatment of equity and debt has been narrowed down due to the introduction of a deduction or an addition that is dependent on the change in equity. The Commission wants to boost innovation by introducing a deduction for research and development, despite the fact there does not appear to be room for the innovation box, which is included in the tax legislation of many Member States. Lastly, a limited cross-border loss set-off within the EU is introduced, in anticipation of the consolidation in the CCCTB proposal.

**CCCTB proposal**

This proposal consolidates the profit of all EU entities4 and EU-resident permanent establishments that was determined in accordance with the common tax base. In this way, profits and losses within a group that is active in the EU are set off against one another and intra-group transactions are ignored in the determination of the profit.

This common consolidated profit is then spread among the Member States where the enterprises are active, based on the apportionment formula laid down in the Directive. The apportionment formula is based on three equally weighted (1/3) factors: sales, fixed tangible assets and labour. The labour factor is separated into two equal parts (1/2) based on the total payroll and the total number of employees. Each Member State can subsequently apply its own national rates to its apportioned share of the common profit. The Commission stresses that this proposal is not aimed at harmonising rates.

If the CCCTB applies, the parent company of the group will, as taxpayer, file the tax return for the entire group in the Member State where the parent company is established or – in the case of a permanent establishment – where it is located (one-stop shop). Tax audits will, in principle, be coordinated and conducted by and at the discretion of the tax authorities of the Member State where the parent is established or located. Tax disputes are dealt with according to the laws of the Member State where the parent is established or located.

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3 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

4 Legal entities/individuals that are independently subject to tax for the purposes of the Commission’s proposals.
b) Impact assessment Commission

The impact assessment that was carried out by the Commission looked at various options for implementing the step-by-step approach for the Commission’s proposals. The directives proposed by the Commission were retained as starting point. The equilibrium model used by the Commission assumes that the CCCTB will be implemented in a budget-neutral manner by way of compensation via tax rates, which rates the Member States would have to revise. This also assumes that Member States are actually willing to raise their tax rates. It is also assumed that this proposal will end the practice of enterprises shifting their profits between Member States, which will reduce the costs of tax planning. The impact assessment compares the economic impact of the CCTB and the CCCTB with the situation prevailing before the ATAD was implemented. The reduction in compliance costs has, as such, probably been overestimated, because this has already been partly achieved via the ATAD. According to the Commission, the administrative burden for enterprises will also decrease, because there is one uniform set of rules which forms the basis for calculating the tax base throughout the entire EU. It is this assumption, in particular, that will lessen the costs of capital and thus increase investment in the EU, which will have a positive impact.

The Commission believes that a partly mandatory and partly optional CCCTB will have a slightly positive economic impact, with an average increase of 1.16 percent in Gross National Product (GNP), expressed in a GNP-weighted average for the 28 Member States. According to the Commission’s calculations, the proposal will also result in Member States experiencing, on average, a drop in the cost of capital of up to 0.04 percentage points, 0.57 percent more investment, 0.40 percent higher wages, 0.19 percent higher employment and a 0.07% increase in prosperity, all expressed in a GNP-weighted average for the 28 Member States. The budgetary impact at the EU level will be slightly negative, according to the Commission: overall tax revenue will fall by 0.08% of GDP, which amounts to EUR 11 billion at the EU level. In the scenario where only CCTB is implemented, the results are also positive for the EU as a whole, but this will also be accompanied by a drop in tax revenue.

Although the Commission states that the budgetary impact at the Member State level is difficult to predict, the effects at this level are rough estimates. Overall tax revenue is projected to increase slightly for the Netherlands due to an expected increase in foreign investment and the associated extra jobs this will create. These projections are based on the assumption that the Member States will revise the tax rate in such a way that the transition to a CCCTB is budget-neutral. Under that scenario, 16 Member States, including the Netherlands, will raise their tax rate by 4 percentage points. However, the Commission has failed to take into account the fact that Member States may not want to raise their tax rates. Internationally, the trend is to revise tax rates downward and fully harmonising the tax base is likely to accelerate this trend.

In addition, no consideration has been given to the effects of abolishing national
patent or innovation boxes. Under the CCTB scenario, the Netherlands will raise the tax rate by 2.7 percentage points.

If the CCCTB were mandatory for all enterprises, the Commission believes that the results for all economic factors will be more positive. The difference in the results compared with the present proposal is, however, only marginal. According to the Commission, the positive economic impact of both options are reflected in lower lending costs, which triggers higher investment by multinationals. The Commission does, however, point out that the simulation model used (CORTAX) was designed on the basis of the assumption that multinational enterprises operate in all 28 Member States, whereby a loss in one Member State can always be set off against the profit in another Member State. According to the Commission, this results in the positive effects for multinational enterprises being overestimated, while the positive effects for national enterprises are underestimated. The Commission believes this is due to the fact that for small enterprises the decision to opt for the CCCTB is dependent on the pros and cons of the national corporate income tax regime.

The impact assessment does not deal in depth with the economic impact at the Member State level. As stated above, the Commission itself indicates that it is difficult to predict the impact at the Member State level. The general equilibrium model that was used is a good indicator at the EU level, but is less accurate for individual Member States. In 2011, the impact for individual Member States was addressed in detail, with the Netherlands experiencing a negative economic impact. At that time, the Lower House gave the proposal a ‘yellow card’ because it was incompatible with the subsidiarity principle. As the content of the proposal has not substantially changed, any differences in economic impact will primarily arise from the model assumptions used. An important factor in this appears to be that declining compliance costs are projected to have a greater impact than was the case in the 2011 model, whereby the impact of both the CCTB and the CCCTB on investments and thus GDP will also be greater. The current impact assessment also does not address incidental administrative expenses for taxpayers and incidental implementation costs, nor does it address the length of the lead time. The Commission has presented the new proposal as positive for the Netherlands.

As the Commission has strong reservations about the simulated impact per Member State, it is difficult to quantify how the proposal will impact the Netherlands. Furthermore, the policy assumes that Member States will raise their tax rates, but this may not occur. For the Netherlands, the impact of both the CCTB and CCCTB on GDP will be less than the average impact at the EU level. A major causal factor in this – the harmonisation of the tax base and the elements used in the apportionment formula – has, after all, been retained without change in the Commission’s present proposals. The impact assessment accompanying the CCCTB proposal from 2011 made clear that investment in the Netherlands would fall under an optional CCCTB. Although the present
Commission proposals and the proposal from 2011 are not identical, they are both expected to negatively impact the Dutch investment climate. Various elements of the Dutch tax base will no longer apply to enterprises covered by the CCTB/CCCTB. For example, the Dutch innovation box in its present form will no longer apply to enterprises covered by the CCTB/CCCTB. This will, in principle, lead to an increase in corporate income tax revenue, but is also likely lead to an outflow of enterprises and activities to countries which still have such a regime, such as Switzerland. Furthermore, the CCTB and CCCTB proposals eliminate the distinctive features of the Dutch corporate income tax regime. It is projected that this will negatively impact the Netherlands, because it can also play a role in an enterprise’s choice of location.

3. The Dutch position on the proposal

a) The essence of Dutch policy in this area

The Commission’s proposals are intended to create a fair and efficient profit tax regime, which contributes to economic growth and is based on the principle that companies must pay tax in the country where value is created, partly by preventing abuse.

The Netherlands endorses this objective and current Dutch policy is focused on this. For example, the Netherlands has for years maintained a system of transfer pricing between undertakings of a multinational group, which is based on agreements made by the Organisation for Economic Cooperation and Development (OECD). In this way, profits are taxed where value is created. It goes without saying that the Cabinet believes that any economic disruption to a tax system should be kept to a minimum, so that impediments to economic growth are kept to a minimum. In a letter dated September 20, 20165, the Cabinet emphasized the importance of a sound business climate and therefore outlined its future plans for the Dutch business climate.

The Netherlands plays a leading role in avoiding abuse at the international level. In response to the OECD Action Plan against tax avoidance through Base Erosion and Profit Shifting (BEPS), the Netherlands, for example, had already transposed the agreements on Country-by-Country reporting into national law before it took over the presidency of the Council of the European Union. During its presidency, the Netherlands was successful in its efforts to lay down EU-wide Country-by-Country reporting in a directive. The EU Anti-Tax Avoidance Directive was subsequently adopted6 in June 2016 under the Dutch presidency.

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5 Parliamentary Documents II 2016/17, 25 087, no. 130.
6 Cf. also the letter from the Minister of Finance dated 21 June 2016 regarding the report of the Euro Group and the ECOFIN Council held on 16 and 17 June 2016 (Parliamentary Documents II 2015/16, 21 501-07, no. 1384).
b) Assessment + position to be taken on this proposal

The Commission stressed that the proposals are aimed at strengthening the internal market and also further combating tax avoidance. The Netherlands supports these objectives, but has grave reservations about the implementation proposed by the Commission. The proposals drastically limit the ability of the Netherlands to organise corporate income tax as it sees fit. The only thing the Netherlands can independently do is set the tax rates for taxpayers that fall under the scope of the Commission’s proposals; the tax base and apportionment of the profit is organised at the EU level. Moreover, the proposed system is ‘rule-based’, while the Dutch tax system is ‘principle-based’. This means that the Netherlands will lose some fiscal instruments and any leeway it has to make its own policy choices or to anticipate national developments. The Cabinet considers this excessive limitation of its discretionary power undesirable. The possibility of responding to future developments by changing the tax base is also limited, given that unanimous agreement must first be reached on this. Current Dutch tax treaties are the result of negotiations based on the national systems of the Netherlands and the other contracting state. Implementing the Commission’s proposal can upset the balance of these tax treaties.

The proposals must have a positive impact for the business sector, while at the same time not creating new possibilities for tax avoidance. It seems that these proposals will not, or will only barely, enable abuse to be tackled further. If the proposals appear to give rise to new possibilities for abuse, then at that time unanimity will again have to be agreed in order to amend the CCTB and the CCCTB on that point.

Besides the Commission’s first objective (combating tax avoidance), the second objective of these proposals (contributing to economic growth) also needs to be reconsidered. As can be inferred from the impact assessment, these proposals will barely contribute to economic growth. Therefore, what needs to be considered is whether the very limited impact on economic growth in the EU as a whole outweighs the disadvantages of the proposal.

The impact of the Commission’s proposals on the Dutch business climate, on current corporate income tax rules and the Dutch tax authorities’ ability to enforce them are of fundamental importance to the Cabinet. The implications for the Dutch tax authorities are considerable. Besides the fact that such a change to the present corporate income tax regime will lead to major changes to existing systems and operating processes, an enormous amount of extra capacity will be required for the efforts needed to introduce and operate an additional system for taxing profit. This also means, for example, that all existing corporate income tax agreements will cease to apply for taxpayers that intend to apply the CCCTB/CCTB. Of major importance to the Cabinet in their consideration of the CCTB and the CCCTB is the impact these proposals will have on tax revenue, investment, employment and economic growth in the EU as a whole and in the Netherlands in particular. While it is a good thing if proposals contribute to a properly functioning internal market, the proposals should not reduce the economic internal market or weaken the potential for growth.

CCTB proposal
The Cabinet’s position is that base erosion must be actively countered at the international level by harmonising critical aspects - where the differences between systems is abused - without this envisaging a complete harmonisation of the tax base. The Cabinet supports the approach of the Commission to work further on the aspects related to the OECD/G20 BEPS project and lay these down in law. The Cabinet doubts whether the CCTB proposal will contribute to this. The most important measure against tax avoidance have already been taken with the Anti-Tax Avoidance Directive. Similar measures appear in the CCTB proposal, but the other elements of the common tax base do not or hardly contribute to preventing tax avoidance. Moreover, it cannot be ruled out that this new system will trigger new ways to avoid tax, with any changes to the system always requiring unanimous agreement from the Member States.

The CCTB proposal introduces a new system for taxing profit in addition to the existing Dutch methodology of taxing profit under the personal and corporate income tax regimes. For enterprises that are currently subject to corporate income tax, these will either have to apply the rules in the CCTB proposal (if their total consolidated group income exceeds EUR 750 million) or may opt to do so (in the case of lower group income). Developing and implementing such a radical new system is a major task and it will be years before this new system takes shape in practice. Moreover, the CCTB differs far too much from the current Dutch corporate income tax regime. Several actual measures will be discussed to explain this in more detail below.

For example, the proposal contains rules that are similar to the participation exemption, although crucial aspects of these rules differ from the participation exemption in the corporate income tax. The exemption for dividends from disposal results has a higher threshold: 10% participation instead of 5%. In addition, the participation should be held at least 12 months, before this exemption can apply. These rules would drastically curtail the current participation exemption. According to the Cabinet, this exemption differs far too much from the participation exemption in the corporate income tax to avoid economic double taxation.

In order to stimulate R&D, the CCTB proposal has an additional deduction for costs associated with R&D, which is primarily dependent on the level of an enterprise’s R&D costs. The Cabinet endorses the desirability of fiscally stimulating R&D, but is a proponent of the Dutch system, whereby the entire R&D life cycle is stimulated. The Dutch system has a remittance reduction for certain R&D payroll costs. Furthermore, the corporate income tax regime has the innovation box, which applies if the R&D activities generate profit. Again, the Cabinet believes that the CCTB proposal differs far too much from the Dutch system on this point; changes to the Dutch system have recently been proposed so that it complies with international agreements. The 2017 Tax Plan implements the nexus approach and the eligibility criteria, which arise from the OECD agreements made on this, in the Dutch innovation box. Other Member States should also amend their preferential regimes for intellectual property, such as innovation and patent boxes, in line with these agreements. Within the EU, the EU Code of Conduct Group monitors whether the EU Member States are complying with this. Legislation of the EU Member States and OECD countries with a preferential intellectual property regime will thus be equally resistant to the possibility of tax avoidance.
For the purposes of both personal and corporate income tax, the principle of sound business practice applies in the Netherlands to the determination of the annual profit. The principle of sound business practice, which determines in which year which part of an enterprise's overall profit must be taken into account, is laid down in law and applies to both personal and to corporate income tax. Although the Act only provides for an open standard - with a few legal deviations - the principle of sound business practice has mostly been elaborated on in case law. At present it is still unclear how certain terms, which are not further defined in the proposal, will be interpreted. This creates uncertainty for Member States and for the business sector. The Commission's CCTB proposal has its own methodology for determining the annual profit. It is crucial for the Netherlands that the present Dutch methodology is retained.

In order to ensure that enterprises financed with debt or with equity are treated more equally, the Commission’s proposal introduces a deduction or an addition that is dependent on the change in equity. The principle of a more equal treatment of equity and debt appeals to the Cabinet. However, the proposal rules have a pro-cyclical character and are too dependent on the change in equity. After all, an enterprise is not always able to influence the change in equity.

The CCTB proposal provides for a limited loss carry-over, in anticipation of a full consolidation under the CCCTB proposal. As a result of this loss carry-over, the Netherlands could see a (temporary) decline in its corporate income tax revenue if losses from other Member States are - possibly artificially - taken into account in the Netherlands. Furthermore, without a central database, it is difficult for tax authorities to monitor and check this.

CCCTB proposal
The Cabinet also doubts whether the CCCTB proposal effectively combats tax avoidance. Because of the consolidation in the CCCTB proposal, intercompany transactions within the EU cancel one another out and profits are shared among the Member States on the basis of an apportionment formula. These intercompany transactions are now subject to the OECD Transfer Pricing Guidelines which are designed to prevent abuse. The Commission does not make clear why, on this point, no connection was sought with current OECD transfer pricing methodology, which is standard practice for tax authorities and taxpayers worldwide. Moreover, this will become even more complex, because multinational enterprises that operate within and outside the EU, will be subject to two systems\(^7\) for splitting the profit between states. The Cabinet therefore does not expect that the CCCTB will give rise to additional ways to combat abuse.

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\(^7\) Putting into effect the requirement of substantial activities in preferential regimes for intellectual property, such as the innovation box.
The Cabinet does not agree with the composition of the apportionment formula in the CCCTB proposal. The apportionment formula for consolidated profit is designed such that Member States with a large, conventional industrial sector will be apportioned more profit than Member States with a large service sector and many innovative enterprises. This is because fixed intangible assets and financial assets are not included in the apportionment formula, for example. This is disadvantageous for the Netherlands, because the Netherlands has traditionally been a trading nation with a large service sector. That is why the OECD Transfer Pricing Guidelines must be followed. Following current international methodology can limit the number of potential disputes. After all, Member States must be able to rely on the fact that the share of the tax revenue apportioned to them and which is part of their budget, is as stable as possible and is almost never in dispute.

Furthermore, Member States must also be able to rely on the fact that other Member States also establish, monitor and collect the corporate income tax for them. The CCCTB proposal also affects the current methodology for procedural law and tax collection. The Cabinet considers it important that the Dutch tax authorities remain closely involved with enterprises with significant activities in the Netherlands. The Cabinet also looks at how feasible this is, in general, for the Dutch tax authorities.

c) First estimate of forces at play

The Commission first presented a proposal for a CCCTB in 2011. In the years following its presentation, the proposal was discussed extensively by the Council, but it appeared to be too complex and contained too many controversial elements, which meant that it was not possible to reach unanimous agreement on it at that time. Although the most controversial element - the consolidation - has now been decoupled from the provisions about the tax base, and although agreement has been reached about tax avoidance measures in the form of an Anti-Tax Avoidance Directive, the expectation is that it will still be difficult to get all the Member States to agree to the CCTB proposal.

It is also extremely unlikely that the Member States will reach agreement on the CCCTB proposal, primarily because of the composition of the apportionment formula and the economic effects in various Member States. It remains to be seen whether the consolidation will eventuate.

If the EU Member States cannot reach unanimous agreement, a smaller group of Member States may try to reach agreement on the Commission proposals on the basis of enhanced cooperation.

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Within the EU on the basis of the apportionment formula proposed by the Commission and outside the EU on the basis of the OECD Transfer Pricing Guidelines.
4. Assessment of authority, subsidiarity and proportionality

a) Authority

The Commission bases the jurisdiction for the proposed directives on Article 115 of the Treaty for the Functioning of the European Union. The Netherlands considers this to be the correct legal basis. Article 115 concerns the amendment of those legal provisions of the Member States which directly affect the establishment or functioning of the internal market. Where the Commission takes initiatives to coordinate taxes, this tax base is often chosen. In the Cabinet’s opinion, this tax base can be used for both the proposals for a directive.

b) Subsidiarity

CCTB proposal

The Cabinet’s assessment of subsidiarity was negative. It endorses the objectives of this proposal – strengthening the internal market and the business climate within the EU and tackling tax avoidance. However, the proposals do not or barely contribute to these objectives.

The Commission states that a common tax base for the purposes of strengthening the internal market can only be established at the EU level. According to the Cabinet, the proposals do not show that a European solution has added value for all the actors involved with this issue. Having a system that is partly optional means that a government must maintain two different corporate income tax systems instead of one; there are obvious drawbacks to this with regard to an effective implementation. Furthermore, the Anti-Tax Avoidance Directive adopted under the Dutch presidency has mostly led to the harmonisation of the tax base in Member States, with the objective of preventing abuse. Anti-abuse measures comparable to the measures in the Anti-Tax Avoidance Directive appear in the CCTB proposal. The other measures in the CCTB proposal do not or barely contribute to this objective. It is therefore questionable whether and to what extent this proposal provides additional measures to combat abuse situations.

CCCTB proposal

The Cabinet’s assessment of subsidiarity was negative. The Cabinet has doubts about the necessity to consolidate and reapportion at the European level. There are already OECD agreements about intra-group transfer pricing – which deviate from the apportionment formula – on the basis of which profit is attributed internationally.
c) Proportionality

**CCTB proposal**

The Cabinet’s assessment of proportionality was negative. It endorses the objectives of this proposal — strengthening the internal market and the business climate within the EU and tackling tax avoidance. However, the proposals do not or barely contribute to these objectives.

Profits taxes are becoming increasingly complex; three profit tax regimes in fact arise:

- personal income tax for enterprises that receive business profits;
- corporate income tax or the CCTB for taxpaying entities with a total consolidated group revenue up to EUR 750 million, and
- the CCTB for taxpaying entities with a higher total consolidated group revenue.

The introduction of a third regime will increase the inequality between various groups of taxpayers that receive income from dividends and business profits. For the Dutch tax authorities, an optional CCTB in any case means that it will have to set up and maintain two tax regimes for entities (the current Dutch corporate income tax regime and a CCTB), which will carry significant implementation costs. The implementation and transitional phase will also stretch the capacity of the Dutch tax authorities.

Moreover, the proposal provides for a limited and temporary loss transfer, which means that corporate income tax revenue could fall if losses from other Member States are - possibly artificially - taken into account in the Netherlands.

**CCCTB proposal**

The Cabinet’s assessment of proportionality was negative. In addition to the abovementioned increased complexity and implementation costs, the Cabinet cannot accept the composition of the apportionment formula, which is in line with more conventional economies and is less focused on a modern service economy. This is disadvantageous for the Netherlands. After all, it ignores the increase in value that arises from fixed intangible assets and financial assets. This will limit tax revenue for the Netherlands. If factors other than labour, fixed tangible assets and sales are included in the apportionment formula (such as fixed intangible assets and financial assets) a more realistic share of the profit can be attributed to the Netherlands, which better reflects economic reality and the Commission’s objectives. Moreover there are already OECD agreements about intra-group transfer pricing – which deviate from the apportionment formula – on the basis of which profit is attributed internationally. Although the impact of the proposals on tax revenue, investment and employment in the EU as a whole appears to be slightly positive, the impact for the Netherlands and some other Member States will probably be negative.

The potential impact of the earlier proposal from 2011 was especially negative for the Netherlands. How the proposal will impact the Netherlands is therefore crucial. The very limited positive impact on prosperity for the entire EU does not outweigh the potential negative benefits for a number of Member States, including the Netherlands.

5. Financial implications, impact on the regulatory burden and the administrative burden
a) **Implications for EU budget**

There are no implications for the EU budget.

b) **Financial implications (including personnel) for central government and/or decentralised governments**

Any budgetary implications will be accommodated in the budgets for the departments responsible for policy, in accordance with budgetary discipline guidelines. Implementing the CCTB and CCCTB will have a significant impact on the Dutch tax administration. The earliest the proposal will be enforceable is two years after the implementation of the national regime and only under the condition that the necessary additional capacity is made available. The Dutch tax administration cannot accommodate the major financial implications of the CCTB and CCCTB proposals within its budget without taking measures that require political choices to be made and which can have consequences for the services to be provided.

c) **Financial implications (including personnel) for the business sector and the public**

According to the Commission, the proposals benefit multinational enterprises operating in multiple Member States, given that tax law in the various Member States will become more uniform and simpler. The Commission has calculated that the costs for setting up a subsidiary in a Member State will decrease by between 62% and 67%. According to the Commission, the time spent on compliance will decrease by 8% as a result of these proposals. There will be smaller benefits for enterprises with a total consolidated group revenue of less than EUR 750 million and these will depend on the choice they can make between the current national corporate income tax regimes and the system proposed by the Commission. Furthermore, the Commission argues that this proposal will lead to a more level playing field between multinational enterprises and other enterprises.

d) **Implications for the regulatory burden/administrative burden for central government, decentralised governments, the business sector and the public**

It is plausible that the administrative burden for international businesses will be reduced as a result of the Commission’s proposals. At present, it is not possible to determine the precise implications for the Dutch business sector. It is however probable that the administrative burden for the Dutch business sector will be reduced, for example due to a common tax base applying to the entire group in the Member States where the group operates. On the other hand, it is difficult to judge whether the Commission’s proposals will not be accompanied by a new administrative burden for the Dutch business sector. During the Commission’s consultation on the potential implications of the proposals, the business sector drew attention to this. More attention will be paid to this once there is more clarity on the design of the proposals for a directive.

e) **Implications for competitiveness**

Laying down a common corporate tax base (CCTB proposal) and the consolidation of this tax base (CCCTB proposal) in EU directives will create a level playing field within the EU. This could contribute to the competitiveness within the EU. Although the opportunity for
Member States to design their own corporate income tax will be limited, Member States will remain free to set their own tax rates. The ability to respond quickly to developments will be limited once these measures are in force, because at the EU level unanimous agreement must be reached in order to change the system. In all likelihood the Commission’s proposals will lead to a relative deterioration in the Dutch tax and business climate, depending on the Dutch tax rates. As the rules in the proposals are not mandatory for all enterprises, this competitive disadvantage will primarily arise for enterprises for which the CCTB or the CCCTB applies either mandatory or optional.

6. Legal implications
   
   a) Implications for national and decentralised rules and/or sanctions policy
   
   If one of the proposals for a directive is adopted, then the Corporate Income Tax Act 1969, the Dividend Withholding Tax Act 1965 and possibly the General Taxes Act and the Tax Collection Act 1990 will have to be amended.

   b) Delegated and/or implementing acts, including the Netherlands’ assessment thereof

   **CCTB proposal**

   The CCTB proposal empowers the Commission to adopt delegated acts in respect of (i) laying down or amending the legal forms and taxes to which the CCTB applies, as a result of changes to the national laws of the Member States (Article 2(5)); (ii) establishing additional definitions (Article 4); (iii) laying down detailed anti-abuse rules which are relevant for the deduction or addition that is dependent on the change to equity (Article 11(6)); (iv) defining the concept of legal and economic ownership of leased assets in more detail (Article 32(6)(a)); (v) calculating the interest and capital elements of the lease payments and the depreciation basis for leased assets (Article 32(6)(b) and (c)); and (vi) more precisely establishing the categories of depreciable fixed assets (Article 40). In addition to this, the Commission may adopt an implementing act in respect of the preparation of an annual list of third country company forms that are similar to the company forms listed in Annex I (Article 2(2)).

   **CCCTB proposal**

   The CCCTB proposal empowers the Commission to adopt delegated acts in respect of (i) laying down or amending the legal forms and taxes to which the CCCTB applies, as a result of changes to the national laws of the Member States (Article 2(5)); (ii) establishing additional definitions (Article 3); and (iii) supplementing the interest deduction limitation with rules aimed at preventing abuse within a group (Article 69(3)).

   The Commission may also adopt implementing acts on (i) drafting an annual list of third country company forms that are similar to the company forms listed in Annex I (Article 2(2)); (ii) laying down detailed rules on the calculation of the labour, assets and sales factors, for the allocation of employees and payroll, assets and sales to the respective factor and for the valuation of assets (Article 39); (iii) establishing a standard form for the notice to create a group (Article 48); and (iv) laying down rules on the electronic filing
of the consolidated tax return, on the form of the consolidated tax return, on the form
of the single taxpayer’s tax return and on the supporting documentation required
(Article 55).

The Netherlands can agree to the proposed adoption of implementing acts in the
proposals, since these ensure uniform conditions for the implementation of the directives.
The implementing acts will be adopted by the Commission in accordance with the
examination procedure. The Netherlands considers this procedure to be appropriate,
because it concerns the adoption of general implementing acts.

With regard to the proposed delegated acts, the Cabinet’s efforts will focus on a clear
delineation of these acts. As far as the Cabinet is concerned, establishing additional
definitions should not lead to an expansion of the scope of the rules, given that the Cabinet
regards such radical changes are part of the essential elements of the proposals for a
directive, which should be regulated in the directives. In the opinion of the Cabinet,
detailed rules on determining annual profits do not have to be established if current sound
business practice methodology is followed. This open standard is more flexible and avoids
the necessity of establishing a detailed set of (delegated) rules on the determination of
annual profits.

c) Proposed implementation period (for directives) or the proposed effective date (for
regulations and decisions) with commentary on feasibility

The proposed implementation date for the CCTB proposal is 1 January 2019, and 1 January
2021 for the CCCTB proposal. These implementation dates are very tight given the scope,
nature and impact of the proposals for a directive. In addition to current tax laws, a new
tax law will be introduced along with the associated exemption transitions for taxpayers
that are required or that opt to use the new system. The Netherlands will therefore
concentrate its efforts on extending the implementation period to at least five years as of
the date on which the proposals for a directive are adopted.

d) Desirability of evaluation clause/sunset clause

The Commission’s proposals contain a sunset clause. The Commission will evaluate the
operation of both proposals five years after these take effect. The evaluation clauses are
desirable, primarily in order to assess whether the envisioned objectives have been
achieved and the economic impact of the proposals on the EU as a whole and on the
individual Member States. The Cabinet considers that the Commission has set a
reasonable period, given that the first tax assessments will only be imposed after several
years have passed. At that time the effects can be better assessed.
7. Implications for implementation and/or enforcement

The CCTB and the CCCTB will have a significant impact on the Dutch tax authorities (first rough assessment concerns incidental costs of at least EUR 20 million and also structural implementation costs). This will be examined in more detail. At the earliest, the proposals will be enforceable two years after the implementation of the national rules.

The potential costs of implementing policy proposals will also be subject to enhanced monitoring. The Dutch tax authorities cannot accommodate the major financial implications of the CCTB and CCCTB proposals within its budget without taking measures that require political choices to be made and which can have consequences for the services to be provided. This should be taken into consideration in any determination of position.

8. Implications for developing countries
The proposals do not impact developing countries.