

CFC RULES IN THE CONTEXT OF THE PROPOSED CCCTB DIRECTIVE

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Abstract

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In the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) there have been introduced a specific anti-abuse provisions, CFC rules. These rules are aimed at tax evasions and tax avoidance. The basic principle is the protection of the tax base against erosion through practices of artificial income shifting. Generally, CFC rules prevent tax avoidance in a state of a shareholder by denying the deferred taxation of profits generated by its controlled company, which is a resident in a tax preference jurisdiction. Even though the CCCTB directive would be aided easier and low-costs cross-border business as well as it would be restricted the harmful tax competition there are questions whether it is advisable to introduce these rules into such system of the CCCTB, whether these rules are compatible with the CCCTB and whether it is regulated properly. So, the focus of this paper rests on the interaction of the proposed CCCTB directive with existing CFC rules in the European Union. The paper deals with pros and cons, economic and legal perspectives these rules in the context of the proposed CCCTB directive.

anti-abuse provisions, anti-avoidance rules, CCCTB, CFC rules, tax evasions

In the field of the European Union there has been appeared an effort to creation of a harmonized corporate tax base that would be aided easier and low-costs business in the European Single Market. The Working Group (CCCTB WG) which was established for that purpose has been worked on this scheme for many years, already since year 2004. The European Commission published its results in the long-awaited proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) on 16 March 2011. This proposed system of the CCCTB is a system of common rules for computing the tax base of companies which are the European tax resident and branches of third-country companies located in the European Union. Under the CCCTB, groups of companies would have to apply a single set of tax rules across the European Union and deal with only one tax administration (so called one-stop-shop). The companies that will opt for the CCCTB system will be regulated only by the common rules and not by the national corporate tax arrangements. This will ensure that

the administrative costs for companies will be reduced. Business operating across national borders will benefit both from the reduction of company tax related compliance costs and from the consolidation of profits and losses, which will be definitely positive for companies. Even though the proposed CCCTB directive would be aided low-costs cross-border business as well as it would be restricted the harmful tax competition, nevertheless, there have been introduced anti-abuse provisions as a protection of the CCCTB base.

The anti-abuse shield of the CCCTB is structured through rules at two levels, general anti-avoidance rules (GAAR) and specific anti avoidance rules (SAAR). Generally, while some countries apply GAAR rules against tax evasions, many countries have adopted SAAR rules. Nevertheless, many of them apply both rules just as it was proposed in the CCCTB directive. As stated in the proposed CCCTB directive, GAAR rules have to prevent the artificial transactions. According to GAAR rules will be ignored these transactions for the purpose

of calculating the tax base. SAAR rules include the rules about disallowance of interest deduction (so called thin capitalization rules) and about controlled foreign company (CFC) legislation. The specific anti-abuse rules will always apply in conjunction with GAAR rules. The thin capitalization rules limitation in the tax a deductibility interests and CFC rules prevent tax avoidance in a state of a shareholder by denying the deferred taxation of profits generated by its controlled company, which is a resident in a tax preference jurisdiction.

Definitely, GAAR and SAAR rules in the proposed CCCTB are aimed at tax evasions and tax avoidance. Nevertheless, there is a question whether it is advisable to introduce these rules into such system of the CCCTB, whether these rules are compatible with the CCCTB and whether it is regulated properly.

The focus of this paper is only on CFC rules and the main idea is the verification of interaction of the existing CFC rules in the Member States with the proposed CFC rules in the CCCTB directive. The paper deals with pros and cons, economic and legal perspectives CFC rules in the context of the proposed CCCTB.

MATERIALS AND METHODS

The fundamental principle of the CCCTB system was determined within the paper. The CFC rules were defined in its context, i.e. the conditions for their application and the procedure for calculating of the CFC's income for a CCCTB base. At the same time the common characteristics of CFC rules in the European Union Member States were identified. Subsequently, there was performed a comparative analysis of CFC rules in the CCCTB system and in the Member States. Based on this analysis there were found essential differences in the application of CFC rules in the CCCTB system and in the Member States. Interactions of CFC rules were investigated in the CCCTB system compared to CFC rules in the Member States. Pros and cons of these rules were evaluated under the CCCTB and their economic consequences have been established in terms of corporate.

Due to use of comparative analysis an impact on the CCCTB base was evaluated for the application of CFC rules within this system. I.e. on the model examples was verified whether the CFC rules within the CCCTB are more stringent or not. All the calculations were made based on valid legislation about CFC rules of certain state, related to the effective date on 1st April 2011 available from scientific database IBFD (area of Economic Surveys), and according to procedures laid down in Art. 82 and 83 of the proposed CCCTB directive published on 16 March 2011.

There were used standard scientific methods that allow objective and systematic qualitative and quantitative description of the existent issue. To meet the aim of the paper, the method of analysis,

comparison, description and modelling was used. To draw conclusions synthesis method was applied.

Theoretical background

The basic principle of the CCCTB and the protection of the CCCTB base

According to Panayi (2008) is the CCCTB a proposal to provide companies with establishments in at least two Member States with the option to compute their group taxable income according to one set of rules. The CCCTB is expected to be confined to EU companies (whether or not under ultimate EU ownership) and permanent establishments (PEs), with the option to extend the regime to partnerships.

The CCCTB as a set of common rules establishing an EU-wide consolidated tax base will be an alternative to the current 27 national corporate tax systems and the use of "separate accounting" in allocating revenues to associated enterprises. Consolidation is an essential element of such a system, since the major tax obstacles faced by companies in the European Union can be tackled only in that way. It eliminates transfer pricing formalities and intra-group double taxation.

As stated in the proposed CCCTB directive (2011), eligibility for consolidation is determined in accordance with a two-part test based on control (more than 50% of voting rights) and ownership (more than 75% of equity) or rights to profits (more than 75% of rights giving entitlement to profit). The two thresholds should be met throughout the tax year; otherwise, the company should leave the group immediately.

The consolidated tax base (CCCTB base) will include all revenues which aren't expressly exempted and these revenues will be reduced by deductible expenses. According to the proposed CCCTB directive (2011), the exempted income should be the income consisting in dividends, the proceeds from the disposal of shares held in a company outside the group and the profits of foreign permanent establishments. The common corporate tax base will be then re-distributed among the respective Member States according to a pre-established sharing mechanism based on a formula.

To a protection such CCCTB regime against tax evasions has been proposed an anti-abuse shield and so at two levels. The CCCTB anti-abuse shield includes the protection within the CCCTB group and the protection between CCCTB group and non-consolidated affiliates. The first mentioned is an avoidance of manipulation of the asset factor, it means to make the provision for entry into the CCCTB group (Art. 61 of the CCCTB directive), the provision for business reorganizations (Art. 70 of the CCCTB directive) and the provision for intra-group transfer of assets prior to sale of assets outside the group (Art. 94 of the CCCTB directive). The second mentioned provides the protection of the CCCTB base. This protection includes GAAR

and SAAR rules and also proceeds from the sale of assets after leaving the group (Art. 67 of the CCCTB directive), disallowance of exempt share disposals (Art. 75 of the CCCTB directive) and disallowance of interest deduction (Art. 81 of the CCCTB directive).

Definition of CFC rules in the proposed CCCTB directive

Considerations for a common CFC rules have been discussed at many meetings CCCTB WG. The CFC rules have been developed for a variety of purposes. As stated Lang and *et al.* (2008), in some case, the policy focus has been on tax avoidance transactions, tax haven abuse and the unwillingness to allow migration of passive income, in other cases, the policy focus has been represented a boarder limitation on the deferral of tax on income realized through foreign subsidiaries to achieve equity and economic efficiency in the form of capital export neutrality.

Due to this difference of opinions there exist as proponents so opponents for common CFC rules. According to these authors proponents of capital neutrality argue that CFC rules are necessary to protect the very principles of worldwide taxation, while opponents argue that CFC rules infringe tax sovereignty, destroy capital import neutrality, prevent fair tax competition and confuse deferral of tax and abuse.

On the basis of discussions of CCCTB WG, proponents and opponents of CFC rules have been introduced common CFC rules in the CCCTB directive as the protection CCCTB base against tax evasions. Art. 82 and 83 of the proposed CCCTB directive contains such a rule concerning controlled foreign companies. Art. 82 includes conditions triggering the application of the CFC regime and Art. 83 sets out the calculation of the CFC tax base. Generally, this regime sets that the non-distributed income of an entity qualifying as a CFC is subject to tax without any further distinction in proportion to a tax payer's profit entitlement to the entity.

The CFC legislation will be applied only to subsidiaries resident in a third country if the following requirements will be fulfilled (Weber *et al.*, 2011):

- Control requirement (directly or indirectly): 50% voting rights or 50% capital, 50% right to the profits.
- Low tax jurisdiction: corporate tax rate lower than 40% of the average EU corporate or a special regime allowing for a substantially lower level of taxation than the general regime.
- More than 30% of the income accruing to the entity is „tainted“ (i.e. interests, royalties, dividends and income from the disposal of shares, income from movable property, income from immovable property and income from insurance, banking and other financial activities).

- The entity's principal class of shares is not regularly traded on more or more recognized stock exchanges.

The author adds that CFC rules are not applicable if the third country is party to the European Economics Area Agreement and there is an agreement on the exchange of information comparable to the exchange of information on request provided in the Mutual Assistance Directive.

As stated in Art. 83, the CFC income to be included in the CCCTB base shall be calculated according to the general rules in the CCCTB directive in proportion to the entitlement of the taxpayer to share in the profits of the foreign entity. Possible losses of the foreign entity shall not be included in the tax base but shall be carried forward and taken into account when applying Art. 82 in subsequent years.

Definition of CFC rules in the EU Member States

The CFC rules were first introduced in United States in 1962. The second state which implemented the CFC legislation into the national law was Germany in 1972. Other European countries and so non-European countries established CFC rules in domestic law for the following years. At the present, CFC rules are applied in twelve European countries, in Germany already mentioned, further in France, United Kingdom, Sweden, Norway, Finland, Spain, Portugal, Denmark, Hungary, Estonia and Italy. Even though there CFC legislation exists in many variants these rules have the main objective aim. Their common target is the protection of the domestic tax base against tax distortion.

According to Lang (2004), under the CFC legislation a resident taxpayer's income arising through direct or indirect control of foreign entity located in a state or territory granting a privileged tax regime should be taxed in the hands of the resident taxpayer.

The CFC legislation of state “one” is not necessarily comparable to that of state “two”. Differences in an application of CFC rules in the Member States could be found in several categories, i.e. in conditions for application of CFC rules (Sobotková, Solilová 2011):

- Shareholder and control.
- Definition of a CFC's company.
- CFC income and CFC losses.
- Low taxation and preferential tax regimes.
- Exceptions.

The first point above mentioned, i.e. shareholder and control, defines an amount controlled share of the foreign CFC's company. In a majority Member States the resident shareholder is defined as a company, in some countries it is an individual. For the application of CFC rules is crucial that the shareholder holds (directly or indirectly) more than 50% voting rights, capital or profits of the foreign CFC's. In some cases it is enough that this share is only 25% as in Finland (Sobotková, Solilová, 2011).

According to Gebhardt (2010), there are also states which have been regulating the control at the level of 20% in their tax law as in Italy.

The CFC's company is perceived as a foreign entity in which shareholder holds (directly or indirectly) more than 50 % of the voting rights, capital or profits. This definition of the CFC's is the same for most states, nevertheless some countries, namely Finland, France, Hungary, Italy, Portugal and Spain, include other legal forms than "entities", i.e. partnerships, foundations, trusts, associations and even permanent establishments (Gebhardt, 2010).

The location of the CFC's in a tax preference jurisdiction advises the application of CFC rules. The question is how to determine preferential tax treatment. The determining this regime is different from state to state. As stated Gebhardt (2010), the determining the low taxation in the foreign country depends on objective characterization of a low-tax country, an objective fiscal criteria and if no exchange of information. With respect to the objective characterization of preferential tax regime, countries which apply the jurisdictional approach use black or white lists to designate countries with low tax regimes. Besides this criterion there specifies the preference tax regime there exists usually the second condition for tainted tax regime, the effective tax rate. The effective tax rate is based on a comparison between the domestic tax rate on the CFC's recalculated foreign income under national rules and the tax rates in the CFC's residing country and usually ranges between 50% and 75% of the domestic corporate income tax rate (Gebhardt, 2010; Sobotková, Solilová, 2011).

Generally, the taxable CFC income which is included into the resident shareholder's tax base is mostly all an income, i.e. both active and passive income as well as the revenues acquired by the sale of property or the rendition of services (so called the entity approach). However, in some cases predominates the entity approach i.e. that only tainted income is attributed to the tax base. On the basis of the taxation of these two approaches there exist relatively considerable differences in the EU Member States. The differences concern a distinction between active and passive income in the sense that each states define this income otherwise¹. Further, even though the practical effect of CFC rules is always the same, it can be that the method for arriving at the tax base differs and due to that some EU Member States refer to piercing the CFC's corporate veil and others deem a notional dividend distribution².

Likewise, the exceptions cause the increases contrast of application of the CFC legislation in the EU Member States. The exceptions can be divided into the several types with regard to the

jurisdictional approach and the transactional approach. Regarding to the first point mentioned, as stated Gebhardt (2010), this exclusion is linked to the higher taxation of income in a jurisdiction assigned to a white list or not included in a black list. The transactional approach is based on the non-tainted income and the active business income. Many countries exclude from taxation the income of CFC's company which established in the European Union. This called "safe harbour". These exemptions which enable prevent the application CFC rules are used in many variations and combinations in the Member States therefore it is very difficult to specify concrete differences.

Another problem is the losses from business of CFC's company. It is questionable whether losses may be deductible at the level of the shareholder or at that of the CFC itself. Despite this question Member States generally do not allow the deductibility of losses incurred by a CFC at level of the domestic shareholder (Gebhardt, 2010).

RESULTS AND DISCUSSION

Pros and cons for common CFC rules

There is a question whether the tax planning between CCCTB group members and non-consolidated affiliated companies off a third countries will be distort for the CCCTB base. With respect to this there is a question if common CFC rules are needed. Sure, there are the political reasons for the common CFC legislation however it is unclear whether there is the economic reason as well.

In the case of mobile investments, it is extremely attractive if the EU-company can move these investments into the foreign country where is the lower level taxation. These moves of capital could result in the erosion of the tax base. One could argue that the protection of the common tax base is ensured by switch-over clause in Art. 73 and by general anti-abuse rules in Art. 80 of the CCCTB directive. Nevertheless, these provisions exist alongside CFC rules and do not extend such protection like CFC rules in the specific situations.

Besides that the switch-over clause is applied only in the case of distributed income derived from a permanent establishment or a major shareholding, the problem of the switch-over clause consists in the shortfall of definition of the average statutory corporate tax rate, i.e. in the definition of low corporate taxation in foreign country where the foreign income is generated. The switch-over clause does not provide any real economic activity test and would restrict genuine investment behaviour. For a measurement of the economic activity or passivity

1 European Commission, 2010: Anti-abuse Rules in the CCCTB, 30 August 2010, No. CCCTB/RD\004\doc\en.

2 European Commission, 2010: Anti-abuse Rules in the CCCTB, 30 August 2010, No. CCCTB/RD\004\doc\en.

of the foreign company and its tax abuse there are more suitable to apply CFC rules so that the genuine investments wouldn't be restricted.

Likewise, general anti-abuse rules are targeted on artificial transactions and compliance with arm's length principle. Even though the scope of this rule is broad, in fact rules could not be applied in specific situations which relate to the non-distributed income. So, for complete protection of the CCCTB base there is required the protection, from the point of view of non-distributed income of the foreign CFC's company, to apply CFC rules.

Additional arguments for a common CFC rules are based on a general aim of the CCCTB system. The CCCTB is an important initiative on the path towards removing obstacles to the completion of the Single Market. The CCCTB means the partial harmonization in the area of the direct taxation. Due to this and the many differences of CFC rules in the Member States it is very suitable to introduce the common CFC rule in the context of the CCCTB. Diverging CFC provisions in the Member States creates the obstacles to the Single Market and it is undesirable. Also, it is not possible so that the CCCTB system would be without common CFC rules because the Member States would have lost a certain anti-abuse shield. Currently, CFC rules are implemented already in twelve Member States that it can't be ignored. Within the CCCTB directive there CFC rules would facilitate combating potential abusive tax structures by including a CFC's non-distributed income directly in the tax base of its shareholder. It is so necessary to protect the tax base against tax evasions by common CFC rules in the context of the CCCTB.

On the other hand, it is expected that the CCCTB regime will produce the reduction of compliance and administrative costs for corporations. The common CFC regime would be produced the same. So, the common CFC rules should not create a harsher tax environment.

Although the proposed CCCTB system will only harmonize the tax base, there is no intention to extend harmonisation to the rates, it will mean the partial restriction of the fiscal sovereignty of the Member States. Each Member State will be applying its own rate to its share of the tax base of taxpayers. This will be ensured a fair tax competition among the Member States. Nevertheless at the present time, the tax burden of the Member States and the moving of capital is rather depends on the structure of the tax base than on the tax rate. In case of the optional

CCCTB, the loss of the fiscal sovereignty would not be so great, but if the CCCTB will be mandatory as the Commission envisages for the future it would mean de facto the loss of financial autonomy of the Member States. This problem affects the common CFC legislation, i.e. the elimination of the tax deferral by the Member States. It is so question whether the states will support the common CFC regime because individual CFC rules are more attractive than common CFC rules for the Member States. On the other hand, if the proposed CCCTB directive will be passed it will be better from an economic perspective for the Member States so that the CFC legislation will become a part of the CCCTB directive.

The con for above mentioned is that the Member States will apply two different CFC rules, in the context of the CCCTB directive and in the context of the national jurisdiction. This will increase the costs of tax administration.

Within the tax administration, the interpretation and the case law will be not created by the national tax administrations and the national courts but by Brussels officials and by ECJ case law. This would be the disadvantage for some Member States.

Moreover, the capital export neutrality, according to the some opponents, isn't secured within the common CFC legislation. It is important the exempting a higher amount of foreign income for the capital export neutrality. In case of common CFC rules it is not secured.

Due to pros and cons for common CFC rules, I think the CFC legislation would be a part of the CCCTB directive. The harmonization of the corporate tax base within the CCCTB should not only concern an approximate of the tax base but also an approximate and the harmonization of the anti-abuse provisions. The harmonization should touch all the level of the corporate taxation of the Member States. Otherwise, the harmonization will not be properly ensured and will lack the economical purpose.

The scope and the economic effects of common CFC rules

The application of the CFC regime may not lead to higher taxation than in a comparable domestic situation. The common CFC rules should not create a harsher tax environment. Further, CFC rules can usefully comprise "safe harbour" criteria. With respect to this CFC rules in the CCCTB only apply to subsidiaries resident in a third country.

I: Pros and cons for common CFC rules

Pros	Cons
Target on non-distributed income	Loss of the fiscal sovereignty
Target on passive income	Individual CFC rules are more attractive
Eliminating of obstacles in the Single Market	Additional costs of the tax administration
Combating abusive tax structure	ECJ case law and no domestic case law
Reduce the compliance costs	Restriction of the capital export neutrality

The CFC rules within the CCCTB operate outside the scope of the fundamental freedoms since the freedom of establishment is only relevant within the European Union. Given that it is defined the control and passive activities within common CFC rules, a potential conflict with the freedom of capital movement in third-country situations would be moderated. For the elimination of this conflict there is so determined the escape clause. In the light of this, an escape clause grants a waiver to countries of the European Economic Area which exchange information on request to the standard of the Mutual Assistance Directive.

Nevertheless, this narrow scope of the CFC rules that could in turn encourage corporations to create constructs which would lead to tax evasions. One might argue that for these situations there is for this the switch over clause and GAAR rules. Another argument for the application CFC rules only in the third country is that, generally, the average statutory corporate tax rate in the Member States has now fallen to 23.1 %.³ With respect to the definition of the law tax regime in the common CFC legislation within the CCCTB, the statutory corporate tax rate in the Member States will not range below this defined

border, i.e. below 40% of the average statutory tax rate in the European Union, i.e. below 9.24%. This assertion can be demonstrated on example in the table II.

One might argue that base on above mentioned the common CFC regime is no strict so as national CFC rules in the Member States.

Besides, there would be problem with an interpretation of the term "entity resident in a third country". It is obvious that the income from the foreign permanent establishment will be exempted. So, the third-entity resident is a controlled company. The controlled company is defined as company on which the shareholder owns more than directly or indirectly 50% of the capital, voting rights or profits. It is questionable, capital and profits not always ensure the control on the foreign company's decision. This condition of the control is the same also in the EU Member States, so there is no different. The control is so defined with the respect to the freedom of the capital movement in third country situations. CFC rules will apply if the resident shareholder, directly or indirectly, holds a majority of voting rights.

For common CFC rules it is useful as the entity so the transactional approach, nevertheless, the most Member states apply only entity approach. The entity approach minimizes the compliance and administrative burden, but either tainted income will escape tax or the non-tainted income will be taxable. Even though the transactional approach is seemed with the notion of tax avoidance as developed by the ECJ case law, despite the broad range of tainted income from the CFC's company, for common CFC rules there have been mainly targeted "passive income".

Particularly questionable it is the definition of low-tax countries. The conditions for definition the preferential tax regime is different in all the Member States. Within common CFC rules have been established the definition of law taxation as the tax burden which is less than 40% of this average burden or as lower level of taxation than that of the general regime.

Even though in the Member States there is no possible to include the losses, the common CFC legislation make possible to carry forward the losses for the future years. This is beneficial for the resident-shareholders. From of the point, the common CFC regime is no strict so as the national CFC rules.

To prevent double taxation, tax exemption continues to apply to amounts of income already taxed under CFC rules. Dividend distributions will be exempted by the CFC up to the extent that the profit corresponds to income already been taxed under CFC rules. And the proceeds from disposals

II: Statutory corporate income tax rate 2011[%]

Country	SCITR	40% ACITR
Austria	25.0	9.24
Belgium	33.99 (33.0)	9.24
Czech Republic	19.0	9.24
Denmark	25.0	9.24
Estonia	21.0	9.24
Finland	26.0	9.24
France	34.4	9.24
Germany	15.825 (15.0)	9.24
Greece	20.0	9.24
Hungary	19.0	9.24
Ireland	12.5	9.24
Italy	27.5	9.24
Luxembourg	22.05 (21.0)	9.24
Netherlands	25.0	9.24
Norway	28.0	9.24
Poland	19.0	9.24
Portugal	25.0	9.24
Slovak Republic	19.0	9.24
Slovenia	20.0	9.24
Spain	30.0	9.24
Sweden	26.3	9.24
United Kingdom	26.0	9.24

Source: OECD Tax Database, Corporate income tax rate, table II.1 and owns calculation.

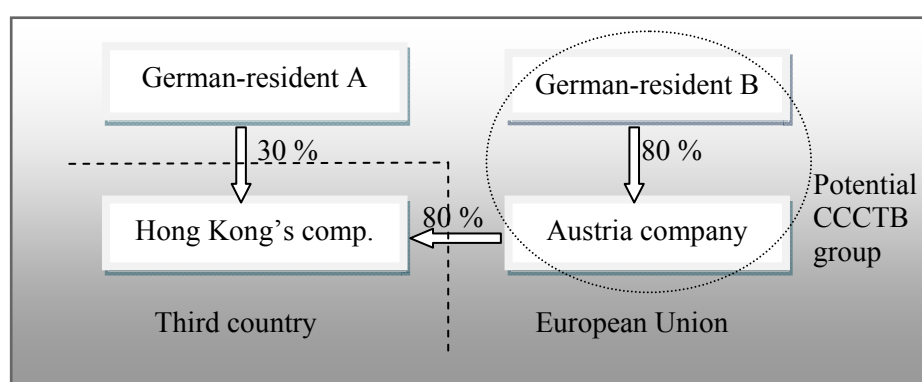
3 European Commission, 2011: Taxation trends in the European Union – Data for the EU Member States, Iceland and Norway.

of shares in the CFC will be exempted up to the amount of undistributed income already been taxed under CFC rules.

Additional, common CFC rules may overlap with the application of the national CFC rules, so there is need for coordination. The following example shows this fact and illustrates that common CFC rules are no strict so as national CFC rules.

Example

The German-resident company A holds directly 30% of the share capital in the Hong Kong's corporation. The other German-resident corporation B owns 80% capital in an Austrian corporation which holds 80% capital in the Hong Kong's corporation.



1: Structure of the shareholders on the CFC's company

III: The condition for the application of CFC rules

German CFC rules		Common CFC rules	
Conditions	Fulfilled	Conditions	Fulfilled
Control – 64% of capital	yes	Control – 64% of capital	yes
Low taxation – statutory corporate tax rate below 25% (tax rate in Hong Kong is 16.5%)	yes	Low taxation – 40% average corporate tax rate is 9.24% (Hong Kong's tax rate is more than 9.24%)	no
Passive income	yes	Passive income	yes
No recognized stock	-	No recognized stock	yes

The German-resident B indirectly holds 64% of Hong Kong's company's capital. So, the condition of the control is fulfilled.

The Hong Kong's company non-distributed income is derived only from the financial activities and the entity's principal class of shares is not regularly traded on recognized stock exchanges. There is a question whether common or national CFC rules will apply on the German-resident taxpayer B.

It is quite evident that common CFC rules under the CCCTB will not apply because the conditions for the application of the CFC rules have not been fulfilled. On the other hand, the national CFC rules would be used when there the CCCTB group not exists. Under the general findings, the national CFC

rules are stricter than the common CFC rules. The Member States would lose the part of the financial sovereignty in the sense that they can't regulate the definition of the tax preferences regime in the foreign country of CFC's company. This problem will only touch the definition of the low taxation in third countries. The most Member States have been introduced in their CFC legislation so called clause of safe harbour. I.e. the CFC legislation is not mostly applied on the CFC's company from the European Union. As well as, common CFC rules are only targeted on the CFC's company from the third states. In the case that the CFC's corporation would be established in the European Union, the national CFC rules will not apply to the German shareholder.

CONCLUSION

In the proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) there have been introduced a specific anti-abuse provisions, CFC rules. These rules are aimed at tax evasions and tax avoidance. The basic principle is the protection of the tax base against erosion through practices of artificial income shifting. Generally, CFC rules prevent tax avoidance in a state of a shareholder by denying the deferred taxation of profits generated by its controlled company, which is a resident in a tax preference jurisdiction. Even though the CCCTB directive would be aided easier and low-costs cross-border business as well as it would be restricted the harmful tax competition there are questions whether it is

advisable to introduce these rules into such system of the CCCTB, whether these rules are compatible with the CCCTB and whether it is regulated properly. So, the focus of this paper rests on the interaction of the proposed CCCTB directive with existing CFC rules in the European Union. The paper deals with pros and cons, economic and legal perspectives these rules in the context of the proposed CCCTB directive.

Under the general findings, the national CFC rules are stricter than the common CFC rules. The Member States would lose the part of the financial sovereignty in the sense that they can't regulate the definition of the tax preferences regime in the foreign country of CFC's company. This problem will only touch the definition of the low taxation in third countries. The most Member States have been

introduced in their CFC legislation so called clause of safe harbour. I.e. the CFC legislation is not mostly applied on the CFC's company from the European Union. As well as, common CFC rules are only targeted on the CFC's company from the third states.

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REFERENCES

- European Commission, 2010: Anti-abuse Rules in the CCCTB, 30 August 2010, No. CCCTB/RD/004/doc/en.
- European Commission, 2011: Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), 16 March 2011, No. COM 2011/121.
- GEBHARDT, F., 2010: *CCCTB and CFC taxation*. Wien: WU University. Master thesis.
- LANG, M. et al., 2004: *CFC Legislation, Tax Treaties and EC Law*. Wien: Kluwer Law International, 656 pp. ISBN 90-411-2284-2.
- LANG, M. et al., 2008: *Common Consolidated Corporate Tax Base*. Wien: Linde Verlag Wien, 1101 pp. ISBN 978-3-7073-1306-2.
- PANAYI, CH., 2008: The Common Consolidated Corporate Tax Base – Issues for Member States Opting Out and Third Countries. *European Taxation*. 48, 3: 114–123. ISSN 0014-3138.
- SOBOTKOVÁ, V., SOLILOVÁ, V., 2011: Komparace CFC pravidel ve vybraných státech EU. [CD-ROM]. *Teoretické a praktické aspekty veřejných financí*. ISBN 978-80-245-1763-6.
- WEBER, D. et al., 2011: Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) – Comments. *Highlights and Insights on European Taxation*. 4, 6: 5–85. ISSN 1879-0665.

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