

THE CONCEPT OF PROFIT IN THE PROPOSED CCCTB DIRECTIVE

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1. Introduction

On the 16th of March 2011, after a decade of preparation, the European Commission (hereinafter: the Commission) submitted its proposal for a Council Directive on a Common Consolidated Corporate Tax Base (hereinafter: CCCTB).² The CCCTB introduces a common EU Corporate Tax Base. The CCCTB purports to reduce existing inefficiencies and distortions on the internal market resulting from the co-existence of twenty-seven different regimes. It also aims to significantly reduce the administrative burden, compliance costs and legal uncertainties.

The CCCTB gives a single set of rules for computing a corporate tax base of companies which are tax resident in the EU and of EU-allocated branches of third-country residents. The CCCTB also provides in the consolidation of the tax base of group companies that are resident of different EU Member States. Therefore, under the CCCTB cross border loss compensation will be possible.

The CCCTB can be seen as a new important possible step in the harmonisation of direct taxation. It is by far the most profound proposal for a Directive on direct taxation that has ever been published.

The adoption of the CCCTB Directive would, according to Article 115 Treaty of the Functioning of the European Union (hereinafter: TFEU) require unanimity in the European council.³ Currently, such a broad consensus seems not possible. Maybe a smaller group of Member States voluntarily will adopt the CCCTB by

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² COM(2011)121, final.

³ Article 115 TFEU.

means of enhanced cooperation.⁴ However, it is possible that even the supportive Member States might limit their support and advocate a ‘small’ solution: the implementation of a CCTB instead of a CCCTB. In that case it would include the common tax base but not the consolidation of the tax bases of the group followed by the sharing mechanism. The Dutch government has officially rejected the CCCTB⁵, so it is safe to assume the Netherlands will not be one of the Member States that probably will choose to adopt a CCTB or CCCTB under application of the enhanced corporation procedure.

Although many aspects of the proposed CCCTB Directive are interesting subjects, in this paper I will only focus on the concept of profit. First I will give some general theoretical views on the designing of a tax base. After that, I will analyse the concept of profit that is used in the proposed CCCTB Directive. In this analysis I will investigate whether or not open legal norms are used in designing the tax base and what the relationship is with financial accounting. In doing so, I will first discuss the main rules of profit in the CCCTB. After that, I will make some observations from a Dutch point of view. Finally, my conclusions will be presented in the last section.

2. General fundamental choices in designing a tax base

When designing a tax base, fundamental choices are to be made in designing the structure of the tax base. There are at least two of these fundamental choices that have to be dealt with.

- The first fundamental choice in designing a tax base is the way legal norms are formulated.⁶ In general there are two possibilities.

The first possibility is to make detailed rules. Rules have a conditional structure. If the condition of the rule is satisfied, the rule is applied and its conclusion follows directly.⁷ When a tax base is mainly using detailed rules it is called rule based.⁸

4 See Article 20 TEU and Article 326 – 334 TFEU.

5 See the letter of the State Secretary for Foreign Affairs: Kamerstukken II, 2010/11, 32 728, No. 2, pp. 5-6.

6 See about this choice, for example R. Russo, ‘CCCTB General Principles and Characteristics’, in: D. Weber, *CCCTB Selected Issues* (EUCOTAX Series on European Taxation, volume 35), Alphen aan den Rijn: Kluwer Law International 2012, p. 70.

7 R.J.N. Schlössels et al., (red.), *In beginsel. Over aard, inhoud en samenhang van rechtsbeginselen in het bestuursrecht*, Deventer: Kluwer 2004, p. 23; R.H. Happé, *Drie beginselen van fiscale rechtsbescherming*, Deventer: Kluwer 1996, p. 78.

8 See, for example: R. Russo, ‘Een nieuw winstbegrip in de CCCTB: nu de invulling nog’, *Forfaitair* 2011/217, p. 14; P.H.J. Essers in: W. Schön et al., *A Common Consolidated Corporate Tax Base for Europe*, Heidelberg: Springer Verlag 2008, p. 107.

The second possibility is to use open legal norms. Open legal norms are legal norms that are formulated in a more autonomous way. In doing so, there are two possibilities.

The legislator can knowingly use vague words and leave it up to the tax administration or case law to further clarify and interpret these words.⁹ It is also possible to design these open legal norms by incorporating principles themselves. When a tax base is mainly using principles it is called principle based.¹⁰ In the Dutch Corporate Income Tax we are familiar with this kind of legal norms. An example is the concept of sound business practice (in Dutch: goed koopmansgebruik) that is used to determine the annual profit in the Personal Income Tax Act 2001 (hereinafter: PITA 2001) and the Corporate Income Tax Act 1969 (hereinafter: CITA 1969).¹¹

- The second fundamental choice in designing a tax base is to determine what the relationship is with financial accounting.

In theory the legislator has two opposite possibilities. In short: he can choose to formulate tax accounting rules that are in some kind of relationship with financial accounting or he can choose to design more autonomous tax accounting rules with only a weak link or no link at all with financial accounting.¹² These links can occur in a formal and a material way. In the literature five forms of dependency between financial accounting and tax accounting are described.¹³

1) Formal dependence

This is the situation in which financial accounts are fully decisive for the determination of the taxable result.

2) Practical formal dependence

In this system there are no separate tax accounts allowed. Fiscal option rights must be used in accordance with the use of these

9 R.E.C.M. Niessen, *Inleiding in het Nederlandse belastingrecht*, Deventer: Kluwer 2010, p. 184.

10 See note 6.

11 See Article 3.25 PITA 2001 and Article 8 CITA 1969 in conjunction with Article 3.25 PITA 2001.

12 P.H.J. Essers, 'The precious Relationship between IAS/IFRS and the CCCTB with respect to Provisions and Liabilities', in: M. Lang et al., *Common Consolidated Tax Base* (Series on International Tax Law, volume 53) 2008, p. 389 and 390.

13 P.H.J. Essers, 'The precious Relationship between IAS/IFRS and the CCCTB with respect to Provisions and Liabilities', in: M. Lang et al., *Common Consolidated Tax Base* (Series on International Tax Law, volume 53) 2008, p. 389 and 390.

rights in financial accounting. Only explicit tax legislation can create differences between financial and tax accounting. In practice, these exemptions can be quite substantial.

3) Material dependence

In principle, financial accounting is decisive for tax accounting, but it is not necessary that the option rights in tax accounting are used in the same way as they are used in financial accounting.

4) Material independence

Although, financial accounting can be seen as starting-point for tax accounting, separate tax accounts exist.

5) Formal independence

There is no connection at all between tax and financial accounting. Tax accounting is governed by specific rules, totally independent from the financial accounting rules.

In the United Kingdom, Sweden and Ireland the relation between tax accounting and financial accounting can be described as material dependent.¹⁴ In France, Germany and Belgium this relationship is situated near the category of practical formal dependence. In the Netherlands this relationship can be described as material independent.¹⁵ The relationship of the CCCTB with financial accounting will be discussed later.

3. Overview main rules concept of profit

The main rules of the concept of profit can be found in Chapter 4 and 5 in conjunction with the definitions that are given in Chapter 2 of the CCCTB.

In Article 4(9), the CCCTB gives a general definition of profit. This general definition of profit is used for determining the tax base in Article 10. Profit is defined as an excess of revenues over deductible expenses and other deductible items in a tax year. It is important to note that in the CCCTB the definition of revenues has a large scope. The revenues are defined as “proceeds of all sales and other transactions”. In Paragraph 10 of the Preamble it is clearly stated, that all

14 P.H.J. Essers, ‘The precious Relationship between IAS/IFRS and the CCCTB with respect to Provisions and Liabilities’, in: M. Lang et al., *Common Consolidated Tax Base* (Series on International Tax Law, volume 53) 2008, p. 390.

15 P.H.J. Essers, ‘The precious Relationship between IAS/IFRS and the CCCTB with respect to Provisions and Liabilities’, in: M. Lang et al., *Common Consolidated Tax Base* (Series on International Tax Law, volume 53) 2008, p. 390.

revenues should be taxable unless they are expressly exempted. Revenues do not include equity raised by the taxpayer or debt repaid to it.

The exempt revenues are mentioned in Article 11 CCCTB. Mentioned are,

- subsidies directly linked to the acquisition, construction or improvement of fixed assets, subject to depreciation in accordance with Articles 32 to 42;
- proceeds from the disposal of pooled assets referred to in Article 39(2), including the market value of non-monetary gifts;
- received profit distributions and proceeds from a disposal of shares; and
- income of a permanent establishment in a third country.

Article 12 CCCTB shows that also the deductible expenses are defined with a large scope. According to this article, deductible expenses include,

- all costs of sales;
- expenses incurred with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purpose of the business; and
- under conditions monetary gifts and donations to charitable bodies, to a maximum of 0.5% of total revenues that are taxed in one tax year.

In accordance with Article 13 CCCTB, other deductible items consist of the proportional deduction that is made in respect of the depreciation of fixed assets in accordance with Articles 32 – 42 CCCTB.

A list of non-deductible expenses can be found in Article 14 CCCTB. It seems that Article 12 CCCTB is intended not only as a definition but also as an independent restriction on deductibility next to the Articles 14 and 15 CCCTB. In my opinion, it is possible that according to Article 12 CCCTB expenses are not deductible, although they are not listed in the CCCTB.

The structure of Chapter 4 and 5 of the CCCTB makes clear that the drafters of the CCCTB intended to create a tax base by using mainly detailed rules and only a few principles. So, it can be concluded that the Proposal contains only a few open legal norms and therefore, it can be qualified as mainly rule based. The few principles that are incorporated in the CCCTB can be found in the Articles 9 and 17 and in Paragraph 19 of the Preamble in conjunction with Articles 15 and 79 CCCTB.

Article 9 CCCTB refers to four general principles. The first principle that is mentioned is the realisation principle. In accordance with this principle revenues

and losses should only be recognised when realised. According to Article 9(2) CCCTB transactions and taxable events should be measured individually. Article 9(3) CCCTB contains the notion of consistency requirements, it determines that the calculation of the tax base should be carried out in a consistent manner, unless exceptional circumstances justify a change. Article 9(4) CCCTB states that the tax base shall be determined for each tax year, unless otherwise provided. A tax year shall be any twelve-month period, unless otherwise provided.

In accordance with Article 9(1) CCCTB the moment of realisation is – in principle – decisive for timing issues. As I mentioned before, profit is calculated as revenues less exempt revenues, deductible expenses and other deductible items. Article 17 CCCTB determines that revenues, expenses and all other deductible items shall be recognised in the year in which they accrue, or are incurred, unless it is provided otherwise in the CCCTB. In other words, Article 17 CCCTB chooses the accrual principle as the leading principle for timing and quantifications. Articles 18 and 19 CCCTB contain further definitions of the terms ‘accrue’ and ‘incurred’. The decisive moment is that when the right to receive a payment or the obligation to make a payment arises.

Notwithstanding the Articles 9 and 17, the CCCTB gives some deviating rules that seem to be based on the prudence principle. The CCCTB gives, for example, different rules for provisions in Article 25 CCCTB, and bad debt deductions in Article 27 CCCTB.

The final principle that can be found in the CCCTB is the arm’s length principle. Paragraph 19 of the Preamble states that transactions between a taxpayer and an associated enterprise which is not a member of the same group should be subject to pricing adjustments in line with the arm’s length principle, which is a generally applied criterion. Articles 15 and 79 CCCTB contain specific rules that can be seen as based upon the arm’s length principle.

Regarding the relationship of the tax accounting of the CCCTB with financial accounting rules, the following observations can be made.

- Although, the IAS/IFRS at the start, were seen by the Commission as a starting-point for a system of common consolidated tax accounting, later on the IAS/IFRS were only seen as a tool to guide and inform the discussion. Eventually, the Commission stated that a formal link between the CCCTB and the IAS/IFRS was not possible.

There are three reasons why there is no formal link in the CCCTB with the IAS/IFRS. The first reason can be found in the different aims of tax accounting and financial accounting. Tax accounting is based upon the realization principle. Inversely tax accounting is based on the company’s

ability to pay. The aim of financial accounting is to provide useful information of the performance of the company. Therefore, it is taking in account fair value and not realised profits and losses, which is against the realisation principle. When financial accounting rules were to be used as rules of tax accounting this could lead to serious liquidity problems. The second reason that is mentioned is that the use of IAS/IFRS differs among the different Member States. The final reason is that the IAS/IFRS are promulgated by a private non-governmental organisation and therefore lack constitutional authorization and democratic control.¹⁶

- Because there is no linkage at all with financial accounting rules, it can be concluded that the proposed CCCTB Directive gives totally autonomous rules for determining the tax base. The relationship between the tax accounting rules in the CCCTB and the financial accounting rules can, therefore, be described as formal independent.

4. Analysis of the concept of profit in the CCCTB from a Dutch point of view

The Dutch Corporate Income Tax Act distinguishes between the concept of total profit (In Dutch: *totaalwinst*)¹⁷ and the concept of sound business practice (in Dutch: *goed koopmansgebruik*).¹⁸

Total profit is the aggregate amount of benefits, in any form or any name that is obtained from trade or business during the existence of the enterprise. Benefits can be positive and negative. In the concept of total profit strict nominalism is applied. This total profit, received during the existence of the enterprise, must be attributed to the various years in which the company exists. The annual fiscal accounting is determined by the concept of sound business practice.

The concept of total profit is mainly principle based. There are some detailed rules, but for the most part the concept of total profit is based on the total profit principle. It follows from this principle, what is to be taxed as income in the Dutch Corporate Income Tax. Furthermore, it makes clear that only revenues and expenses that are obtained from trade or business are to be recognised. Expenses incurred for other purposes, such as the satisfaction of the personal needs of the shareholder, cannot be deducted. All capital increases and reductions that are not obtained from trade or business are not included in the taxable profit. The concept

16 CCCTB/WP057, p. 5 para. 9.

17 Article 8 CITA 1969 in conjunction with Article 3.8 PITA 2001.

18 Article 8 CITA 1969 in conjunction with Article 3.25 PITA 2001.

of total profit also incorporates the at arm's length principle. In 2002 this principle is also codified in the Dutch Corporate Income Tax.¹⁹

The proposed CCCTB Directive does not contain a concept of total profit. However, in the CCCTB there can be found some rules that seem to refer to a kind of concept of total profit. The following examples can be mentioned.²⁰

- The definition of revenues that is used in the CCCTB has a wide scope. All revenues are taxable, unless they are expressly exempted.²¹
- Also the deductible expenses are defined with a large scope.²²
- According to Article 43 CCCTB losses can be carried forward indefinitely. According to Paragraph 15 of the Preamble, the aim of the carry forward is to ensure that a taxpayer pays tax on his real income.
- The arm's length principle is incorporated in the CCCTB in Article 79 CCCTB.

As mentioned before, the proposed CCCTB Directive is mainly rule based. Although, this different approach of course leads to obvious differences, it can be concluded that despite the absence of a principle of total profit, the rules on revenues and expenses in the CCCTB – in general – seem to lead to a comparable result. Of course, a comparison with the Dutch concept of total profits is also raising some questions. It is, for example, not clear if revenues in the CCCTB should be interpreted in a nominalistic way.²³

The proposed CCCTB Directive also does not contain a concept of sound business practice. The Dutch concept of sound business practice is a principle that is based on five principles. These principles are the reality principle, the realisation principle, the matching principle, the prudence principle and the simplicity principle.²⁴ The concept of sound business practice is defined by case law and is therefore flexible. It is important to realize that in some cases the concept of sound

19 Article 8b CITA 1969.

20 Cf. P.H.J. Essers, 'De winstbelasting in de Conceptrichtlijn CCCTB', *Weekblad Fiscaal Recht* 2011/6927, pp. 1398 – 1399.

21 See Paragraph 10 of the Preamble.

22 See Article 12 CCCTB.

23 Also known as the euro = euro principle. Cf. P.H.J. Essers, 'De winstbelasting in Conceptrichtlijn CCCTB', *Weekblad Fiscaal Recht* 2011/6927, p. 1399.

24 See for example G. te Spenke & M. de Vries, *Taxation in the Netherlands*, Alphen aan den Rijn: Kluwer Law International 2011, p. 43.

business practice is not applicable, because for those specific cases the Dutch legislator gives detailed rules.²⁵

Unlike the Dutch concept of sound business practice, the proposed CCCTB Directive does not mention the principle of prudence. Under the regime of the Dutch Corporate Income Tax the imparity principle is applicable. Losses and profits are treated differently. Profits don't have to be recognised until they are realised. In accordance with the concept of sound business practice losses can be recognised before they are realised, provided that they have a link with the concerned tax year and there is a reasonable chance that they are being incurred. Although the prudence principle in itself is not incorporated as a principle, the CCCTB contains a few specific rules that are based on this principle, which make sure that under certain conditions losses can be recognised before they are realised. See for example Article 25 CCCTB (which gives separate rules for provisions), Article 27 CCCTB (which gives rules for bad debt reduction), Article 28(4) CCCTB (which gives rules for stock valuation at the lower of the cost and net realisable value) and Article 41 CCCTB (which gives rules for exceptional depreciation of assets). Also here the drafters have chosen for a rule based approach, instead of a principle based approach.

The matching principle is also not in itself incorporated in the proposed CCCTB Directive. In combination with the accrual principle, the CCCTB can differ from the tax base that can be calculated according to the Dutch Corporate Income Tax. If for instance an enterprise would rent a building for four years, and this enterprise would pay the rent for this four years at the start of the renting period, the rules provided in the Articles 17 and 19 of the CCCTB lead to the conclusion that the rent as a deductible expense is to be recognised in the first year, because in that year the obligation to make the payment has arisen. In my opinion, this is not a desirable outcome. In the Dutch Corporate Income Tax Act the expenses would be spread over the four relevant years.²⁶

The Dutch Corporate Income Tax gives a taxpayer more freedom than the proposed CCCTB Directive does. In fact, the concept of sound business practice offers minimum and maximum rules allowing various systems all of which fit within the concept of sound business practice. No later than at the end of the existence of an enterprise, all hidden reserves and goodwill are taxed as a final profit. The system of the Dutch Corporate Income Tax is also more flexible then the proposed system in the CCCTB. The concept of sound business practice can be

25 See for example Article 8 CITA 1969 in conjunction with the Articles 3.26 – 3.29 PITA 2001.

26 P.H.J. Essers, 'De winstbelasting in de Conceptrichtlijn CCCTB', *Weekblad Fiscaal Recht* 2011/6927, p. 1401.

modified and modernised by social developments. The CCCTB doesn't offer this flexibility. An example of changes in sound business practice due to social developments can be found in the declining significance of the prudence and simplicity principle. In case law from the fifties of the 20th century, the Supreme Court of the Netherlands let plenty of room for deferring profit based on the prudence and simplicity principle.²⁷ Since the beginning of the nineties of the 20th century, it seems that the Supreme Court is restricting the possibility to defer profit and gives more weight to the matching principle (as part of the realisation principle). The matching principle prescribes that profits need to be recognised in the years they are realised.²⁸ In the older case law the Supreme Court allowed that the difference between the market value and the par value was instantly depreciated from the profit. In this old case law this method was regarded to be in accordance with the concept of sound of business practice. In its decision of 13 November 1992 (BNB 1992/109)²⁹ however, the Supreme Court came back on its previous decision and ruled that the concept of sound business practice required that the loss in amount of the difference between the market value and the par value must be spread over the years, until the year the securities are redeemed.³⁰

The Dutch Corporate Income Tax with its concept of sound business practice seems also more flexible if a taxpayer wants a change in the system that is applied for the determination of the fiscal profit. In the Dutch Corporate Income Tax Act, a system of fiscal profit determination is – in principle – considered to be in accordance with the concept of sound business practice, if this system is based on proper business economic views of profit determination. Exceptions to this rule are made if these views are in conflict with any regulation in a tax law, a general intention or principle of the relevant tax law.³¹ Therefore, every method to calculate the fiscal profit that is in line with business economics must always be tested against the fiscal concept of sound business practice. Every system that fits within these boundaries, is allowed under Dutch tax law. So, if a taxpayer wants to change the system that is applied on calculating his profits, this is permitted if the new system can be regarded in accordance with the concept of sound business practice. Article 9(3) CCCTB prescribes that the calculation of the tax base should

27 R.E.C.M. Niessen, *Rechtsvinding in belastingzaken*, Amersfoort: SDU Uitgevers 2009, p. 49.

28 See note 24.

29 HR 13 November 1991, *BNB* 1992/109.

30 R.E.C.M. Niessen, *Rechtsvinding in belastingzaken*, Amersfoort: SDU Uitgevers 2009, p. 49.

31 Cf. HR 8 May 1957, *BNB* 1957/208 and P.H.J. Essers, 'The precious Relationship between IAS/IFRS and the CCCTB with respect to Provisions and Liabilities', in: M. Lang et al., *Common Consolidated Tax Base* (Series on International Tax Law, volume 53) 2008, p. 391.

be carried out in a consistent manner, unless exceptional circumstances justify a change. This is in contrast with the Dutch Corporate Income Tax. As I stated before, in the Dutch Corporate Income Tax sphere a system change is permitted, when the new system is in accordance with the concept of sound business practice. In the Netherlands exceptional circumstances are not necessary.³² Furthermore, the CCCTB only allows first-in first-out (FIFO) as a stock measurement system,³³ while the concept of sound business practice also allows last-in last-out (LIFO) as a stock measurement system.

On the other hand, the CCCTB is, as I mentioned before, more flexible in carrying forward losses. Under the CCCTB losses can be carried forward indefinitely, while the period to carry forward losses under the Dutch Corporate Income Tax is maximised at nine years.

Although, the proposed CCCTB Directive is mainly rule based and therefore only a few principles are incorporated, the outcome of the CCCTB – in most cases – seems to be comparable with the outcome of the more principle based Dutch Corporate Income Tax.

It however, has to be stated that although the rules in the Directive are detailed, the Directive leaves regarding many articles a lot of room for interpretation, which leads to legal uncertainties. Therefore, it will not always be clear what the outcome of the proposed Directive will be. As mentioned before, the IFRS/IAS cannot (directly) be used for the interpretation of the CCCTB. However the working documents, in my opinion, may be used as a tool for the interpretation of the rules that are laid down in the proposed CCCTB Directive. Only through case law from the European Court of Justice these legal uncertainties can be resolved.³⁴ The problem is that, in this way, it will probably take decades before the legal uncertainties are reduced. The European Court of Justice will be overwhelmed to give preliminary rulings. Moreover, some authors fear that before the European Court of Justice gives a preliminary ruling on a case, the interpretations by the courts of the Member States may differ.³⁵ It is also argued that it is assumable that judges of the Member States will be influenced by their own fiscal law culture.³⁶

32 P.H.J. Essers, 'De winstbelasting in de Conceptrichtlijn CCCTB', *Weekblad Fiscaal Recht* 2011/6927, p. 1398.

33 Article 29 CCCTB.

34 Article 267 TFEU.

35 R. Russo, 'Een nieuw winstbegrip in de CCCTB: nu de invulling nog', *Forfaitair* 2011/217, p.14.

36 P.H.J. Essers, 'De winstbelasting in de Conceptrichtlijn CCCTB', *Weekblad Fiscaal Recht* 2011/6927, p. 1404.

To reduce these legal uncertainties it is, in my opinion, advisable to extend the list of definitions in Article 4. In that way, many terms that are used can be elaborated. In theory, it is also possible to grant the Commission the power to supplement some detailed rules by using the delegated act procedure.³⁷ The proposed CCCTB Directive, however, only permits application of this procedure in a few cases.³⁸

In my opinion, it is also advisable to incorporate the principles of prudence and matching, so they can function as main guidelines to resolve issues that are not covered by the detailed rules of the CCCTB. Designing a rule- based legislation is difficult, because rules only apply when the conditional elements of these rules are met. Therefore, the legislator will try to think about every possible situation. Because this is not possible, the incorporation of at least some principles is desirable. Principles are flexible over time and can help to find an answer, where detailed rules are not able to provide a solution.

5. Conclusion

In this paper, I have discussed the outlines of the concept of profit in the CCCTB. First I have discussed two fundamental choices a legislator has to make in drafting a tax base. One of them is the way legal norms are formulated. In general there are two possibilities. The legislator can either use detailed rules or make a rule based tax base, or he can knowingly use vague words and leave it up to the tax administration or case law to further clarify and interpret these words.³⁹ It is also possible to design these open legal norms by incorporating principles themselves. When a tax base is mainly using principles it is called principle based.

The concept of profit that is incorporated in the proposed CCCTB seems to be comprehensive and solid. The concept of profit in the CCCTB can be characterised as autonomous, and mainly rule based. An important difference between the CCCTB and the Dutch Corporate Income Tax can be found in the way the rules of the concept of profit are formulated. The CCCTB mainly uses detailed rules, while the Dutch Corporate Income Tax also uses a lot of open legal norms. In the Dutch system a distinction is made between the principle of total profit and the concept of sound business practice. The proposed CCCTB Directive is mainly rule based and, therefore, only a few principles are incorporated. Despite these differences, the

37 See Article 290 TFEU.

38 See Article 127 CCCTB. The rules that can be supplemented by The Commission, by using the delegated acts procedure, can be changed over time if this is necessary.

39 R.E.C.M. Niessen, *Inleiding in het Nederlandse belastingrecht*, Deventer: Kluwer 2010, p. 184.

outcome of the mainly rule based CCCTB – in most cases – seems to be comparable with the outcome of the more principle based Dutch Corporate Income Tax.

Although, the CCCTB contains a lot of detailed rules, the proposed CCCTB Directive leaves regarding many rules a lot of room for interpretation, which leads to legal uncertainties. Under the existing CCCTB Directive proposal, only case law can solve these legal uncertainties. In this way, it will probably take decades before these legal uncertainties are reduced.

To help resolving the aforementioned legal uncertainties, the Commission could be given the power to supplement more rules by using the delegated act procedure. It is also possible to extend the list of definitions in Article 4, so the meaning of more terms that are used in the proposed CCCTB Directive, can be explained. In my opinion, it is also advisable to incorporate the principles of prudence and matching, so they can function as main guidelines to resolve issues that are not covered by the detailed rules in the CCCTB.