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FILIPPO LUIGI GIAMBRONE*

The future international taxation framework concerning multinationals. CCTB and CCCTB as a possible resolution mechanism to counteract tax avoidance. Considerations regarding the implementation of CCCTB into the Turkish taxation code.

ABSTRACT

Companies employ various loopholes to evade taxes, such as shifting profits to EU countries with lower tax rates. In an effort to curb this practice, the European Commission has proposed new EU rules. The implementation of these rules is intended to occur in two phases: Phase 1 - Common Corporate Tax Base (CCTB): This phase involves the establishment of a unified set of rules for calculating taxable corporate profits across all EU Member States. Currently, companies operating in different Member States calculate profits for their subsidiaries based on different tax regimes. Phase 2 - Common Consolidated Corporate Tax Base (CCCTB): In this phase, consolidation is allowed, enabling a group to offset the profits and losses of its various companies in different Member States. This calculation leads to a net profit or loss at the EU level, which is then used to determine the taxable amount based on

* Ricercatore di Tipo A in Diritto tributario presso l'Università degli Studi del Sannio.

common tax base rules. The resulting profits are distributed among the Member States in which a company has subsidiaries, and each Member State can tax its share of the profits at its national corporate tax rate. The distribution of profits takes into account factors such as buildings, machinery, employees, and turnover in each Member State. At the EU level, the Pillar Two Directive sets a deadline of 30 June 2023 for progress in implementing Pillar One. If insufficient progress is made, the Commission may face pressure to propose legislation to tax the digital economy. The nature of this potential proposal remains uncertain, but it is likely to take the form of a revived version of the EU digital levy. Whether it would resemble the EU 2018 Digital Services Tax (DST), an existing unilateral DST already in force in Europe, or completely different measures, such as indirect taxes, is unclear. Additionally, the introduction of a new EU own resource through BEFIT could potentially include measures to tax the digital economy. In light of these EU developments, there is a debate as to whether it would be advantageous for a candidate country like Turkey to begin implementing the Common Consolidated Corporate Tax Base (CCCTB) and align its national tax laws with the European tax system during the accession negotiations. Alternatively, it is also worth considering whether it would be more appropriate for the candidate country Turkey to wait for the implementation process, including any potential modifications, until the relevant chapters are opened.

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[1] With regard of possible introduction of fiscal federalism in Italy cfr. A. F. URICCHIO, Complessitá e criticitá dell'attuazione del federalismo fiscal, p. 41, in A. F. URICCHIO, Federalismo fiscale: evoluzione e prospettive, 2013. According to A. F. URICCHIO, the enabling act No. 42 of 2009 had been hailed as an extraordinary opportunity to rethink the entire 10-cal tax system, strengthening the autonomy of local authorities and enhancing the principles of financial accountability and territoriality. The breadth of the reform and its underlying principles had led many commentators to easy enthusiasm about strengthening local taxation through old and new taxes that were supposed to ensure greater revenue and financial self-sufficiency. In fact, the above-mentioned enabling act, bearing largely vague and generic provisions, lent itself to being considered a veritable white paper rather than a comprehensive regulatory measure that complied with the dictates of Article 76 of the Constitution, which, as is well known, requires a definition of the subject matter, the identification of guiding principles and the indication of definite timeframes. In fact, it referred extensively to delegated legislation, betraying the intention of reserving to the Government the most delicate choices both in terms of the criteria for allocating expenditure and the levy models, thus removing them from the parliamentary debate. The whirlwind of delegations provided for by Law 42/2009 has, however, brought to the surface the desire to leave the executive with a free hand as regards the reorganisation of state and local taxation, the control of public spending and the containment of public debt'; cfr. C. A. GIUSTI, *Banche e mutui, dalla portabilitá alla rinegoziazione*, 2011; cfr. Pierre de Gioia Carabbellese, *Crisi della banca e diritti die creditori*, Cacucci editore, 2020; G. Giannelli, Banche dati e antitrust, in AIDA (Annali Italiani del Diritto d'Autore),2001.

Turkish tax law system. - 5.2. Turkey´s economic interests associated to the Common Consolidated Corporate Tax Base (CCCTB). - 5.3. The reactions towards corporate tax law in expert cycles. - 5.4. Considerations for implementing elements of cctb into Turkish tax law. - 6. Conclusions.

1. Introductive aspects concerning the CIT background

As a general principle, corporate income tax (CIT) is a tax charged on businesses' net profits and covers taxes levied on potential capital gains. For the taxation of cross-border income, domestic tax rules generally address two situations: the taxation of outbound investments of resident companies, and the taxation of inbound investments of non-resident companies. The concepts of residence and location of where the income is generated are therefore key, but at present while some criteria are used there is no harmonised common definition.[2] Moreover, the process of globalisation and the acceleration of business integration at the international level has naturally led to a more strategic organisation of multinational enterprises (MNEs). The reorganisation of global value

[2] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; European Parliament, Fair and simpler taxation supporting the recovery strategy – Ways to lower compliance costs and improve EU corporate income taxation, European Parliamentary research Study, 2021, p.1.

chains also has direct implications for tax revenues in the EU. Moreover, a number of high-profile sophisticated tax schemes, such as cases relating to the 'Panama Papers' and the 'Lux Leaks' revelations have attracted a lot of attention. Recently, several specific cases relating to the digital economy have also been highlighted examples of non- addressed CIT loopholes and policy gaps in the regulation and administration of corporate taxation at international and EU level. Numerous publications[3] have studied and dealt with the fight against international corporate tax avoidance, which has been at the agenda of both the OECD and EU countries for many years. Corporate tax avoidance is broadly defined 'as acting within the law, sometimes at the edge of legality, to minimise or eliminate tax that would otherwise be legally owed'.[4] Profit-shifting specifically arises from the exploitation by multinational corporations of a combination of tax provisions, loopholes and/or mismatches between national tax systems. Although already a concern for many years, policy actions have recently stepped up. In 2013, following a call from the G20, the OECD (2013) launched its Base Erosion and Profit Shifting (BEPS) project. Likewise, in recent years, the European Union has adopted a series of actions to fight tax avoidance and proposals to increase the transparency of the corporate

[3] European Commission Joint Research Centre, Fiscal Policy Analysis Unite, How large are the corporate tax base erosion and profit shifting? A general equilibrium approach, in, Economic Systems Research, 2021, p. 1; OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019-July 2020, The Organisation for Economic Co-operation and Development (OECD), July 2020.
[4] European Commission (2016a), The missing part. http://ec.europa.eu/taxation_customs/taxation/ tax_fraud_evasion/missing-part_en.htm.

tax system. In 2012, the European Commission (2012) adopted an action plan to fight tax fraud and tax evasion and in March 2015[5] it presented a package on Tax Transparency. In June 2015, the European Commission (2015b) presented an Action Plan for a Fair and Efficient Corporate Taxation in the EU, in which it announces the re-launch of a proposal for a Common Consolidated Corporate Tax Base (CCCTB), eventually tabled in October 2016. It was followed by the Anti-Tax Avoidance Package[6] that consists of a set of proposals for the Directive including legally-binding anti-abuse measures, provisions for country-by-country reporting between Member States' tax authorities, a recommendation to introduce a general anti-abuse rule in tax treaties and to revise the definition of permanent establishments, and a communication to invite EU member states to have a more coherent approach vis-à-vis third countries on good tax governance.

[5] European Commission, 2015.

[6] European Commission. (2016b). Anti-tax avoidance package: Next steps towards delivering effec- tive taxation and greater tax transparency in the EU, Communication from the Commission to the European Parliament and the Council, COM(2016)023, January.

In September 2017, The European Commission[7] announced an EU agenda for the taxation of the digital economy[8] and a proposal for a Directive was published in 2018. The progress of the OECD/G20 mandate on BEPS[9] can be found in the Inclusive Framework report (2020). There is a growing desire for policymakers to try to measure BEPS, as exemplified by recent attempts by the IMF[10] or 'Action 11 - Measuring and Monitoring BEPS' of the BEPS project.[11] Accordingly, several papers have tried to estimate the extent of BEPS using various econometric and estimation techniques. But while informative, these estimates are limited when it comes to understanding the complete set of channels through

[7] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; European Commission. (2017). A fair and efficient tax system in the European Union for the digital single market, Communication from the Commission to the European Parliament and the Council COM(2017)547, September.
[8] Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 113 ff, in, F. Gallo – A. F. URICCHIO, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*, 2023.
[9] Cfr. Oecd/G20 Base Erosion and Profit Shifting Project, Programme of Work to Devolop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, cit., p. 23 ss. In argomento, cfr. T. Ro-sembuj, Digital taxation: pillar one and two, cit., p. 85 ss.; M. Lang, GloBe: learning the lessons of the past, in Lexology, 12 novembre 2019, consultabile in www.lexology.com; L. Parada, *The GloBe puzzle: a debate way beyond use of financial accounts, in MNE Tax - Multinational Group Tax & Transfer Pricing News,* 18 novembre 2019, consultabile in www.mnetax.com.
[10] International Monetary Fund. (2014). Spillovers in international corporate taxation. IMF Policy Paper.
[11] Organisation for Economic Cooperation and Development. (2015a). Measuring and monitoring BEPS, action 11: 2015 final report. Paris.

which BEPS affects tax revenues. Some studies show that BEPS[12] can be detrimental to tax collection and makes it difficult for governments to accurately predict corporate tax revenues. Corporate tax avoidance also means that the tax burden falls onto other (less mobile) tax bases and this might penalise smaller companies or households[13] or companies in specific industries[14] who cannot exploit international tax loopholes as effectively. Importantly, another study confirms[15] that profit-shifting distorts competition, leading to higher market concentration and higher mark-ups for companies engaged in tax planning. Against this background, corporate taxation increases the cost of capital and limits corporate investment. Hence, tax avoidance might also spur investment and produce some benefits for the economy as well,[16] particularly in the case of financial

[12] European Commission Joint Research Centre, Fiscal Policy Analysis Unite, How large is the corporate tax base erosion and profit shifting? A general equilibrium approach, in, Economic Systems Research, 2021, p. 2; Clausing, K. A. (2015). Beyond Territorial and Worldwide Systems of International Taxation. Journal of International Finance and Economics, 15(2), 43–58. https://doi.org/10.18374/JIFE-15-2.5.

[13] Dyreng, S. D., Hoopes, J. L., & Wilde, J. H. (2016). Public pressure and corporate tax behaviour. Journal of Accounting Research, 54(1), 147–186. https://doi.org/10.1111/1475-679X.12101

[14] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; Barrios, S., & d´Andria, D. (2019). Estimating corporate profit-shifting with firm-level panel data: time trends and industrial heterogeneity. CESifo Economic Studies, 66(2), 134–156. https://doi.org/10.1093/cesifo/ifz006.

[15] Sorge, S., & Johansson, A. (2016). International tax planning, competition and market structure. OECD Economics Department Working Papers, 1358.

[16] Gravelle, J. (2013). Corporate tax incidence: review of general equilibrium estimates and analysis. National Tax Journal, 66(1), 185–214. https://doi.org/10.17310/ntj.2013.1.07

constraints.[17] This other aspect is generally not accounted for in studies assessing the extent of BEPS. Another study for example shows[18] that international tax planning may positively affect real investment. They find however that high-tax countries may want to eliminate tax planning and cut tax rates to reach a similar level of investment, but at a lower welfare cost. Other use a partial equilibrium model and show that profit-shifting to tax havens hurt tax collection in high tax countries while decreasing the sensitivity of real investment location to tax differentials. The latter effect would allow countries to keep or increase their tax rates without large impacts on outwards FDIs. Using a similar model, other scientists find on the contrary that profit-shifting is welfare decreasing.[19] The increased burden of taxes on labour due to profit-shifting creates an additional source of deadweight loss. The elimination of tax havens would induce non-tax havens to increase their tax rates, which would otherwise be set at inefficiently low levels, and lead to a welfare improvement. On the other hand, the effects of BEPS on employment have not been extensively study. Recently, studies[20] have found that the higher the aggressiveness of

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[17] Alm, J., Liu, Y., & Zhang, K. (2019). *Financial constraints and firm tax evasion. International Tax and Public Finance,* 26(1), 71–102. https://doi.org/10.1007/s10797-018-9502-7

[18] Mintz, J., & Smart, M. (2004). Income Shifting, Investment, and tax Competition: Theory and Evidence from Provincial Taxation in Canada. Journal of Public Economics, 88(6), 1149–1168.https://doi.org/10.1016/S0047-2727(03)00060-4

[19] European Commission Joint Research Centre, Fiscal Policy Analysis Unite, How large is the corporate tax base erosion and profit shifting? A general equilibrium approach, in, Economic Systems Research, 2021, p. 2.

[20] Istok, M., Khouri, S., Slampiakova, L., & Scerba, K. (2020). Companies located in tax havens and wage costs: The case of Slovakia. Transformation in Business and Economics, 9(2), 182–198.

tax planning the lower the salaries and social contributions paid by Slovak companies. Numerous publications have dealt with these issues in detail, looking at the type of schemes, at the channels of transmission to the economy and at the potential economic impact of such tactics. Currently the most relevant challenges deal with several points which will be in the following briefly highlighted. Transfer pricing abuse embodies a key factor in this regard. Direct empirical evidence is scarce and does not unequivocally point to large effects.[21] Studies find signs of significant tax-motivated transfer pricing abuse of intracompany trades by U.S. multinationals[22]; another scientific doctrine[23] attributes about two-thirds of their consensus spillover effect to transfer pricing abuse. Other studies conducted from the International Monetary Fund[24] , on the other hand, reported responses of transfer prices with respect to cross-country differences in tax rates that are very small. It seems likely that the potential for abusive transfer pricing in advanced countries occurs not so much for trade in tangible goods—as it may for developing countries, which often lack appropriate information on comparable prices even for these

[21] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff.

[22] A.Clausing, 2003, *Tax-Motivated Transfer Pricing and U.S. Intrafirm Trade Prices*, in Journal of Public Economics, Vol. 87 (September), pp. 2207–23.

[23] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff; Heckemeyer, Jost H., and Michael Overesch, 2013, "Multinationals' profit response to tax differentials: Effect size and shifting channels," Centre for European Economic Research Discussion Paper No. 13-045 (Mannheim: Zentrum für Europäische Wirtschaftforschung GmbH).

[24] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff.

transactions—as for transactions for which even advanced countries may lack comparables, such as intangibles, risk premia or management services. The issue of taxing cross-border business activities is relevant to the process of harmonizing laws for EU accession candidates, including Turkey. This study focuses on the current draft directive for a Common Consolidated Corporate Tax Base (CCCTB) and its implementation process in the context of Turkey's EU accession candidacy. The main question is whether Turkey should adopt the two-step introduction model of the CCCTB, regardless of the outcome of the accession process and the expansion of the customs union.[25] To explore this question, a theoretical-analytical approach and secondary research were utilized. The study begins by presenting the need for the establishment of the CCCTB and outlining the complexities of the draft directive. Special attention is given to the situation of small and medium-sized enterprises and the potential effects of the CCCTB. Additionally, the study examines the process of adapting existing EU law in this regard. It has been demonstrated that an early implementation process of EU law into Turkish national law, even before the opening of the respective chapters, is associated with economic benefits for Turkey. There is still an expectation, both within expert circles and from the government, regarding the realization of EU membership. However, paradoxically, there is a lack of in-depth discussions on the CCCTB. Nevertheless, it has

[25] Neslihan AKSOY, *Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht,* 2019, Vi.

been shown that, considering the further development of the customs union and the deep integration of Turkey, particularly with Germany, an adaptation in two steps is advantageous.[26]

1.1. Location of intangible assets

CIT rates appear to have large negative effects on the number of patents filed by a subsidiary[27] and on the magnitude of intangible assets reported on a company's balance sheet.[28] This is consistent with profit shifting and indeed there is evidence that profit shifting activities are larger in MNEs with high IP holdings and R&D intensities.[29]Another key factor is represented by the Intra-company debt shifting. There is substantial evidence that taxation induces intracompany borrowing to reduce tax

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[26] N. AKSOY, *Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht,* 2019, Vi.

[27] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff; Karkinsky, Tom, and Nadine Riedel, *Corporate Taxation and the Choice of Patent Location within Multinational Firms,*in, Journal of International Economics, Vol. 88 (September), 2012, pp. 176–85.

[28] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff; Dischinger, Mathias, and Nadine Riedel, 2011, "Corporate Taxes and the Location of Intangible Assets within Multinational Firms," Journal of Public Economics, Vol. 95 (August), pp. 691– 707.

[29] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff; Grubert, Harry, 2001, "Enacting Dividend Exemption and Tax Revenue," National Tax Journal, Vol. 54 (December), pp. 811–27.

payments in high-tax locations.[30] Effects are larger for affiliates located in developing economies than for those in developed economies; and are found to be important also for multinational banks. Mismatches and other devices play a significant role. For the U.S., the IMF discovered[31] that 'check-the-box' rules in the U.S. (by which such mismatches can be exploited) created a revenue loss for the U.S. treasury of $7 billion between 1997 and 2002. In this regard Treaty abuse, especially the Treaty shopping, embodies one of the most important sources of BEPS concerns. Prevent, through specific anti-abuse clauses, the granting of benefits in inappropriate circumstances, by virtue of what is permitted by double taxation conventions. It is referred, in particular, to the definition of minimum standards to avoid the so-called "treaty shopping", which is configured when a subject who does not reside in either of the two States that have stipulated a treaty on taxes tries to obtain the benefits that the treaty reserves for residents. These strategies are often implemented by giving rise – on the territory in relation to which the desired benefits are in force – to fictitious companies (called "letterboxes", "shell companies", "conduits"), almost completely non-existent from a substantive point of view. Many studies of the International monetary fund provide quite compelling prima facie evidence for extensive use of conduit countries.The term 'conduit country' is used widely, but with little

[30] De Mooij, Ruud A., 2011, The Tax Elasticity of Corporate Debt: A Synthesis of Size and Variations," IMF Working Paper 11/95 (Washington: International Monetary Fund).
[31] Altshuler, Rosanne, and Harry Grubert, 2009, *"Formula Apportionment? Is it better than the current system and are there better alternatives?, in,* National Tax Journal, Vol. 63 (December), pp. 1145–84.

precision. As used in this paper, it simply refers to countries that are widely perceived as attractive intermediate destinations in the routing of investments—whether for tax or other reasons.

Using firm-level data, the IMF finds strong effects for German MNEs, while others document[32] a significant impact of Dutch Special Purpose entities on the routing of FDI. Another concern is represented by the Inversion. Between 1997 and 2007 about 6 percent of all MNEs relocated their headquarters. Studies[33] find that a 10 percentage point higher tax on repatriations increases the probability of such relocation by more than one third. A contrary perspective, moreover, estimates that if the U.S. were to eliminate worldwide taxation, the number of parent companies that would choose residence in the U.S. after a cross-border merger would increase by 5 percentage points.[34] When the U.S. tax rate on repatriated dividends was reduced from 35 percent to 5.25 percent for one year in 2005, corporations repatriated $312 billion, much of which was distributed as dividends to U.S. shareholders[35]. Studies conducted by the Joint Committee on Taxation and the U.S. Treasury estimate that eliminating deferral would yield an annual revenue gain in the U.S. of between $11

[32] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff.; Weyzig, Francis, 2014, "Tax Treaty Shopping: Structural Determinants of Foreign Direct Investment Routed through the Netherlands," International Tax and Public Finance, Vol. 2 (December), pp. 910–37.

[33] Voget, Johannes, 2011, "Headquarter Relocations and International Taxation," Journal of Public Economics, Vol. 95 (October), pp. 1067–81.

[34] International Monetary Fund, Spillovers in international corporate taxation, 2014, p. 18 ff

[35] Marples and Gravelle, 2011; Dharmapala and others, 2011.

and $14 billion[36], allowing a revenue-neutral reduction of the CIT rate to around 28 percent.[37] In addition, the lack of harmonisation and effective cooperation at international and EU level also sometimes contributes to harmful tax competition and complex taxation for cross border activities or double taxation, thus discouraging some investments, in particular for smaller businesses. As a result of the complexity generated by the existing regulatory framework at individual Member States level, tax compliance costs remain high. Lack of transparency and complexity are also contributing to distortions within the single market, as some businesses benefit from arrangements with tax authorities in some Member States while others are excluded. From an economic point of view, the relative lack of cooperation in this area, the limited impact of past initiatives and the actions of some vested interests are all proving to be very costly for EU governments, citizens and business alike. The OECD[38] has estimated that BEPS represents around 4 to 10 % of global corporate income tax revenues, or €70-200 billion every year. For the EU, this amounted to between €19 billion and €38 billion in 2020. Recent estimates in the literature seem to confirm this evaluation and give a figure of around €35 billion per year for the EU, representing 7.7 % of total EU CIT revenues.

[36] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; Gravelle, 2013.
[37] Altshuler and Grubert, 2008.
[38] OECD/G20 Inclusive Framework on BEPS: Progress Report July 2019-July 2020, OECD, July 2020.

More broadly, a 2015 EPRS study 6 estimated that if other tax regime issues are included, such as special tax arrangements, inefficiencies in collection and other practices, revenue losses for the EU resulting from the CIT gap could amount to around €140 to €170 billion per year. This contributed to calls for an end to complacency and for effective reforms in this area. In 2013, following a call from the G20, the OECD started its work on BEPS. In the EU, 7 an action plan to fight tax fraud and tax evasion and a package on tax transparency[39] led to a re-launch[40] of the CCCTB project in a two-step approach, with Commission proposals on a common corporate tax base (CCTB) and a common consolidated corporate tax base (CCCTB). In June 2021 following up on an ambitious proposal by the new US administration, the finance ministers at the G7 agreed to work towards a global minimum rate of at least 15 %, and on fair taxation of corporate income in the locations where it is generated. Negotiations are ongoing and much is still left to be decided among the international partners. Building on this new momentum, the European Commission published a communication on business taxation for the 21st

[39] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; Communication from the Commission on an action plan to strengthen the fight against tax fraud and tax evasion, COM(2012)722, December 2012 and Proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, COM(2017) 335 final, June 2016.
[40] Proposal for a Council directive on a common consolidated corporate tax base (CCCTB), COM(2016) 683,October 2016.

century, which includes the BEFIT proposal (business in Europe: framework for income taxation), moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States. BEFIT is also designed to cut red tape and reduce compliance costs, while supporting EU jobs and investment in the single market. BEFIT will replace the pending proposal for a CCTB, which will be withdrawn. The Commission will launch a broader reflection on the future of taxation in the EU, which will culminate in a tax symposium on the 'EU tax mix on the road to 2050' in 2022. Shedding further light on these issues and building on the study in the annex, the purpose of this paper is to look at ways to bring more simplicity, lower costs and improve CIT for EU businesses. The following section begins with an overview of progress made at international level and the main policy challenges. A list of various potential ways is then provided to address these challenges. Finally, conclusions will be drawn of the European Added Value of the policy options identified.

2. Evolution of the European framework concerning the taxation coordination

2.1. Introductive aspects

In 1992, the idea of a corporate income tax at EU level was discussed in the seminal Ruding Tax Report. The idea of tax coordination among

Member States was indeed already in the spotlight as economic openness and mobility of capital were increasing at a faster pace. The European Commission therefore started to investigate, focusing on how different national taxes impact the functioning of the internal market, whether or not action at EU level was necessary to alleviate market distortions, and, if so, what kind of measures the EU should adopt. One of the main issues with the corporate tax system related to its intrinsic design, as the fact that businesses should pay their taxes where they generate profits was being challenged by a reality where multinationals, with numerous subsidiaries in different countries, actively engage in cross-border activities on a frequent basis. In order to provide an updated scheme that keeps pace with this reality, the European Commission presented a proposal for a home state taxation pilot scheme in 2005 to allow cross-border companies to compute their profits in one single system, that of the parent company.[41]Following up on this initiative, a series of proposals were made. The European Commission launched an initial proposal for a CCCTB directive on 16 March 2011. This proposal contained specific provisions to increase CIT compliance as well as an attempt to reduce over taxation and double taxation. In 2012, the European Parliament adopted a legislative resolution with some amendments aimed at increasing cooperation among tax authorities and providing special tools for SMEs.[42]

[41] Communication from the Commission on tackling the corporation tax obstacles of small and medium-sized enterprises in the internal market – Outline of a possible home state taxation pilot scheme, COM (2005) 702 final, 2005.
[42] Resolution of 19 April 2012 on the proposal for a Council directive on a common consolidated corporate tax base (CCCTB), European Parliament; Cfr. G. Corasaniti, La

36 The European Parliament also highlighted that a mandatory system would bring more clarity, simplicity, lower compliance costs and higher added value.[43] Given the crucial importance of cooperation at international level on this file, the OECD presented an action plan on BEPS with 15 actions aimed at reducing gaps and friction that might arise in a globalised world owing to different national tax rules. These actions pursue several aims which are highlighted in the following. One objective concerns the effective taxation of the digital economy[44]. Another aim

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tassazione della digital economy: evoluzione del dibattito internazionale e prospettive, p. 1424 ff.

[43] See Amendment 14, 20 and 37 to the Resolution from the European Parliament (2012).

[44] Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax* , p. 69 ff, in, F. GALLO – A. F. URICCHIO, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*, 2023. A.F URICCHIO analyzes the EU digital economy package: a) The proposed Directive on the taxation of companies with a significant digital presence.

The European Commission Communication of 21 September 2017 on 'A fair and effective tax system in the European Union for the digital single market' addresses the issues related to the tax challenges posed by the digitalisation of the global economy, highlighting the need for a fair, effective and appropriate taxation system. In the same vein, the European Council, in its conclusions of 19 October 2017, expresses interest in appropriate proposals by the Commission. The ECOFIN Council, in its conclusions of 5 December 2017, also welcomed the Commission's proposals, taking into account the OECD's reflections, which are central to the challenge of taxing the digital economy, with particular reference to the definition of a permanent establishment, transfer pricing rules and the allocation of profits. The ECOFIN Council also invited the European Commission to explore possible measures of a temporary nature and in particular a contribution on digital revenues in the European Union (equalisation). On 21 March 2018, the Commission therefore presented a Package of Measures for the Fair Taxation of the Digital Economy, consisting of a Communication, a Recommendation and two proposals for Directives. The proposals for Directives on 'Meaningful digital presence' COM (2018) 147 final and 'digital services tax' COM (2018) 148 final, respectively, constitute implementation of Action 1 reached there, although not fully aligned with the conclusions. Under the BEPS (Base Erosion and Profit Shifting) project, the intention has been to bring taxation back to the place where the economic substance of the transaction is manifested. In March 2018, the OECD also released an interim report on

the measures being taken at the country level, entitled Tax challenges arising from digitisation: Interim Report 2018, consisting of 8 chapters: 1) Introduction to the Interim Report on the tax challenges arising from digitisation; 2) Digitisation, business models and value creation; 3) Implementation and impact of the BEPS package; 4)Relevant tax policy developments; 5) Adapting the international tax system to the digitalization of the economy; 6) Interim measures to address the tax challenges arising from digitalization; 7) Beyond the international tax rules: the impact of digitalization on other aspects of the tax system; 8) Conclusion to the Interim Report on the tax challenges arising from digitalization. The Interim Report, after a foreword on the impact of the digital economy on society and the global economy and an in-depth analysis of the main characteristics of highly digitised business models and value creation in the digital economy, provides an overview of the solutions already developed within the BBPS project and the unilateral measures developed by the individual domestic legislations in the area of the digital economy. Subsequently, following the OECD Inclusive Framework meeting held on 23 and 24 January 2019, a Policy Note was published, entitled 'Addressing the Tax Challenges of the Digitalisation of the Economy", which outlines the way forward for a The first concerns the correct allocation of the profits of web companies, through a review of the rules of transfer pricing and a rethinking of the nexus that binds the company to the territory of the State in which it operates, taking into account the 'marketing intangibles', the contribution of users in the creation of value and the no. s significant economic presence (declined in the sense of significant digital presence), even in the absence of a physical permanent establishment; the se condo, relating to the examination of the remaining issues of base erosion and profit shifting, through the elaboration of two interconnected solutions, consisting of a revenue inclusion clause and the taxation of outgoing financial flows. The Policy Note was followed by a more detailed document, adopted at the OECD and called 'Addressing the
Tax Challenges of the Digitalisation of the Economy',- Public Consultation Document', by which a public consultation was launched on 13 February 2019 with regard to the elaborations merged into the two pillars, whose contributions were then discussed at the Paris meeting on 13 and 14 March 2019. Subsequent actions were as follows in May 2019, a work programme was drawn up to develop an agreed solution; in October 2019, there was a proposal for a unified approach, which was followed by a public consultation, covering the first and second pillars, which took place in November and December 2019; the G20 plenary meeting was held on 29-30 January 2020, which was followed by the adoption of a declaration and meetings on the two pillars that took place between April and June 2020; the G20 meeting in Riyadh on 21 and 22 November 2020 called for the swift implementation and implementation of the proposals made, the final draft of which was discussed at the 11th G20/Inclusive Framework meeting, which took place on 27 and 28 January 2021.
Recommendation proposes that Member States adapt double taxation treaties concluded with third jurisdictions in order to extend the concept of permanent establishment to the "significant digital presence "so, through which a company conducts all or part of its business.

pursued regards the objective to mitigate the effects of aggressive tax planning (especially of hybrid mismatch arrangements). The BEPS report[45] calls for the development of "instruments to put an end to or neutralise the effects of hybrid mismatch arrangements and arbitrage". Hybrid mismatch arrangements can be used to achieve unintended double non-taxation or long-term tax deferral by, for instance, creating two deductions for one borrowing, generating deductions without corresponding income inclusions, or misusing foreign tax credit and participation exemption regimes.

Country rules that allow taxpayers to choose the tax treatment of certain domestic and foreign entities could facilitate hybrid mismatches. While it may be difficult to determine which country has in fact lost tax revenue, because the laws of each country involved have been followed, there is a reduction of the overall tax paid by all parties involved as a whole, which harms competition, economic efficiency, transparency and fairness. In order to neutralise the effects of hybrid mismatch arrangements model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities need to be developed. This may include: (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual

[45] European Parliament, Fair and simpler taxation supporting the recovery strategy – Ways to lower compliance costs and improve EU corporate income taxation, European Parliamentary research Study, 2021, p.1; Action plan on base erosion and profit shifting, OECD, 2013.

resident entities) are not used to obtain the benefits of treaties unduly; (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payor; (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and (v) where necessary, guidance on co-ordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be co-ordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping. One area in which the OECD has not done significant work in the past is CFC rules. These actions aim to revise controlled foreign company (CFC) rules**.** One of the sources of BEPS concerns is the possibility of creating affiliated non-resident taxpayers and routing income of a resident enterprise through the non-resident affiliate. CFC and other anti- deferral rules have been introduced in many countries to address this issue. However, the CFC rules of many countries do not always counter BEPS in a comprehensive manner. While CFC rules in principle lead to inclusions in the residence country of the ultimate parent, they also have positive spillover effects in source countries because taxpayers have no (or much less of an) incentive to shift profits into a

third, low-tax jurisdiction.[46]Another issue raising BEPS[47] concerns is excessive deductible payments such as interest and other financial payments. These actions aim to implement interest deductions and other fiscal incentives to reduce base erosion. The deductibility of interest expense can give rise to double non-taxation in both the inbound and outbound investment scenarios. From an inbound perspective, the concern regarding interest expense deduction is primarily with lending

[46]For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma.

[47] For a further understanding regarding BEPS and the Italian system cfr. M. GREGGI, Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment, p.208 ff., in, W. Kraft - Andreas Striegel, WCLF Tax und IP gesprächsband 2017. Immaterielle Werte als zentrale Komponente internationaler Steuerstrategien, 2019. M. GREGGI illustrates that , << *Italy implemented the first OECD recommendations with a circular letter (n° 32) of the Ministry of Finance in 1980: right one year after the OECD first intervention on Transfer pricing. The letter mirrored the findings of the Organization of Paris, and urged the local offices of the Tax administration to commence this new audit strategy, as to minimize the erosion of the taxable base in the country. Due to the extraordinary complexity of the methodology, and the very high expertise demanded, Transfer pricing audit were not so frequent till the latest years, in the country. The legislator obviously intervened as well, as a Circular letter by the Ministry of Finance or Tax administration is not a source of law in the Italian legal system. Currently, Transfer pricing is regulated by Article 110, § 7, of the Italian Income Tax Act (n° 917 passed on December 22nd 1986), with the possibility for the Tax office to use this assessment technique, if qualified conditions are met. In particular, a group may be targeted with a Transfer pricing audit if two or more companies are engaged in a cross border businesses whose conditions are not aligned with the market benchmarks (prices higher or lower than those independent business would have agreed on). Of course the companies of the case must be associated16. If these conditions are met, the price the parties have agreed on may be disregarded and substituted with the arm's length one for tax purposes only, and in a way to increase the tax liability of the company resident in Italy. The legal nature of the Transfer pricing rule is still debated in the country, particularly in the case law: some Courts consider it an anti-avoidance provision, while others are ague that article 110, § 7 is just a substantive provision aimed at the calculation of the business taxable income. The distinction is significant in the practice, as the interpretation of the provision (restrictive or not) depends on its nature.*>>

from a related entity that benefits from a low-tax regime, to create excessive interest deductions for the issuer without a corresponding interest income inclusion by the holder. The result is that the interest payments are deducted against the taxable profits of the operating companies while the interest income is taxed favourably or not at all at the level of the recipient, and sometimes the group as a whole may have little or no external debt. From an outbound perspective, a company may use debt to finance the production of exempt or deferred income, thereby claiming a current deduction for interest expense while deferring or exempting the related income. Rules regarding the deductibility of interest expense therefore should take into account that the related interest income may not be fully taxed or that the underlying debt may be used to inappropriately reduce the earnings base of the issuer or finance deferred or exempt income. Related concerns are raised by deductible payments for other financial transactions, such as financial and performance guarantees, derivatives, and captive and other insurance arrangements, particularly in the context of transfer pricing. The actions in object strive to ensure transparency while promoting increased certainty and predictability or transfer pricing. Preventing BEPS[48] implies transparency at different levels. Progress on transparency has been made by the Global Forum on Transparency and Exchange of Information for Tax Purposes, but the need for a more holistic approach has been revealed when it comes to

[48] For a further understanding regarding BEPS and the Italian system cfr. M. GREGGI, Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment, p.208 ff.

preventing BEPS, which implies more transparency on different fronts. Data collection on BEPS should be improved. Taxpayers should disclose more targeted information about their tax planning strategies, and transfer pricing documentation requirements should be less burdensome and more targeted. Improving the availability and analysis of data on BEPS is critical, including to monitor the implementation of the Action Plan.[49] The BEPS report[50] notes that there are several studies and data indicating that there is an increased disconnect between the location where value creating activities and investment take place and the location where profits are reported for tax purposes. The report noted that further work needs to be done to evaluate such studies, to develop measures of the scale and effects

[49] For an overview concerning the international taxation system please cfr. V. UCKMAR, G. CORASANITI - P. de´CAPITANI DI VIMERCANTE - C. CORRADO OLIVA, *Manuale di diritto tributario internazionale, Milano*, Cedam ed., 2012, XXVI ss.; P. PISTONE, *Diritto tributario internazionale*, Torino, Giappichelli ed., 2017. Please also refer to G. CORASANITI, *Aggressive tax competition and State aid: brief considerations regarding the "Apple case"*, in Proceedings of the Conference held in Rome at the Sapienza University of Rome on 19 February. 2017, P. BORIA (edited by), Milan, Cedam ed., 2018, p. 86; for an overview regarding the Italian permanent establishment in VAT Cfr. P. PURI, *La stabile organizzazione nell'Iva*, in *Riv. Dir. trib.*, 2/2000; F. L. GIAMBRONE, Transposition of the Judgements of the European Court of Justice in Germany.Case note regarding the abnormal use of checks in the Judgement of 5 May 2020 of the German Federal Constitutional Court from a fiscal point of view, in, Rivista di diritto finanziario e scienza delle finanze, Anno LXXX Nr. 3, P. PISTONE, *On Abuse and Fraud in VAT: Setting the Appropriate Boundaries for GAARs in the EU VAT System*, in M. LANG et al(eds.), *Improving VAT/GST - Designing a Simple and Fraud-Proof Tax System,* Amsterdam, pp. 591-602.P. PISTONE, *Die gemeinschaftsrechtliche Verpflichtung zur Anrechnung von Quellensteuern im Ansässigkeitsstaat* (co-author Massoner, C.), in M. Lang - J. Schuch - C. Staringer (eds.), *Quellensteuern – Der Steuerabzug bei Zahlungen an ausländischen Empfänger*, pp. 133-153.

[50] For an overview of the financial balance with regard of reform of local finance cfr. Cfr. A.F. URICCHIO, Equilibrio finanziario e prospettive di riforma della finanza locale tra fiscalità di prossimità e neocentralismo, in AA.VV., Per un Nuovo Ordinamento Tributario. Contributi Coordinati da Victor Uckmar in Occasione dei Novant'anni di Diritto e Pratica Tributaria, Cedam.; OECD, 2013a

of BEPS behaviours, and to monitor the impact of measures taken under the Action Plan to address BEPS. This should include outcome-based techniques, which look at measures of the allocation of income across jurisdictions relative to measures of value creating activities, as well as techniques that can be used to monitor the specific issues identified in the Action Plan. Accordingly, it is important to identify the types of data that taxpayers should provide to tax administrators, as well as the methodologies that can be used to analyse these data and to assess the likely economic implications of BEPS behaviours and actions taken to address BEPS.[51]Transparency on certain tax planning/transactions is also needed. Comprehensive and relevant information on tax planning strategies is often unavailable to tax administrations. Yet the availability of timely, targeted and comprehensive information is essential to enable governments to quickly identify risk areas. While audits remain a key source of relevant information, they suffer from a number of constraints as tools for the early detection of aggressive tax planning techniques. Measures designed to improve information flow about tax risks to tax administrations and tax policy makers ("disclosure initiatives") may be useful in this regard. Other potentially useful measures include co-operative compliance programmes between taxpayers and tax administrations.[52]Transparency also relates to transfer pricing and value-

[51] Action plan on base erosion and profit shifting, OECD, 2013; For a further understanding regarding BEPS and the Italian system cfr. M. GREGGI, Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment, p.208 ff.
[52] Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 69 ff, in, F. GALLO – A. F. URICCHIO, *La*

chain analyses. A key issue in the administration of transfer pricing rules is the asymmetry of information between taxpayers and tax administrations. This potentially undermines the administration of the arm's length principle and enhances opportunities for BEPS. In many countries, tax administrations have little capability of developing a "big picture" view of a taxpayer's global value chain. In addition, divergences between approaches to transfer pricing documentation requirements leads to significant administrative costs for businesses. In this respect, it is important that adequate information about the relevant functions performed by other members of the MNE group in respect of intra-group services and other transactions is made available to the tax administration. The anti-tax-avoidance package presented by the EU Commission in 2016, reflected the BEPS[53] recommendations. In this view one should recall the four Pillars on which the tax avoidance package of the EU is based, namely: the first pillow is based on the ATAD I, Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. The final reports on the OECD's 15 BEPS Action Points were published on 5 October 2015.[54] This was welcomed by the Council in its conclusions of

tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo, 2023.

[53] For a further understanding regarding BEPS and the Italian system cfr. M. GREGGI, Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment, p.208 ff.,

[54]Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 66 ff, in, F. Gallo – A. F. URICCHIO, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*,

8 December 2015. In these conclusions, the Council also stressed the need to find common but flexible solutions at EU level in line with the OECD BEPS conclusions. It also supported the effective, rapid and coordinated implementation of anti-BEPS measures at EU level and considered that EU directives should be the preferred means of implementing the BEPS conclusions of the OECD in the EU. In order for the internal market to function well, Member States must at least fulfil their BEPS obligations and take general measures to combat tax avoidance practices and to ensure fair and effective taxation in the Union, taking a sufficiently coherent and coordinated manner. In an area of highly integrated economies, common strategic approaches and a coordinated approach are needed to improve

2023. According to A. F. URICHIO, in 2015, the OECD adopted 'Addressing the Tax Challenges of the Digital Economy", Action 1 - Final Report, 2015 of Action 1, as part of the Base Erosion and Profit Shifting Project (hereinafter, "BEPS"), through which the issue of the taxation of the digital economy and, in particular, of cross-border activities produced through permanent establishments was addressed. Central to this was the issue of the criteria for apportioning the right/duty to tax, with regard to which the OECD, in launching the Base Erosion and Profit Shifting (BEPS) project, defined Action 7 (Preventing the artificial avoidance of permanent establishment status), Action 6 (Preventing treaty abuse), Action 15 (Developing a multilateral instrument), contributing to the definition of the concept of 'virtual permanent establishment' or 'digital permanent establishment', with consequences on actions to combat the phenomena of evasion and avoidance of the web economy. In particular, Action 1 envisages, among the measures to be undertaken, the analysis and identification of the main points of friction between the forms and strategies of the new economy and the rules of international tax law, both with regard to direct and indirect taxation and, in particular, with regard to "the evanescent territorial links of the digital presence of enterprises, on the ways of creating value in this specific area, on the identification and classification of income deriving from the new business models and on the collection of VAT with regard to the cross-border supply of digital goods and services. In addition, again in Action 1, attention is focused on the innovative concept of 'significant economic presence', considered to exist when specific conditions relating to revenues, digital factors (digital factor) and other elements related to the contribution of digital users (user-based factor) are met.

the functioning of the internal market and maximise the impact of the BEPS initiative. Moreover, only a common framework can prevent market fragmentation and eliminate the current mismatches and market distortions. Finally, where national implementing measures are uniform across the EU, taxpayers have a view to ensuring that the measures in question comply with Union law. The second pillar is based on the Recommendation on tax treaties, Commission recommendation on the implementation of measures against tax treaty abuse.[55]The Recommendation in object highlights several concerns for example the tax treaty shopping and the definition of permanent establishments.[56] The

[55] Europäische Kommission, Empfehlung der Kommission vom 28.1.2016 zur Umsetzung von Maßnahmen zur Bekämpfung des Missbrauchs von Steuerabkommen, C(2016) 271final.

[56] A.F. URICCHIO - F.L. GIAMBRONE, European Finance at the emergency test, 2020; On the concept of permanent establishment reference is made to: V. Uckmar, C. Garbarino, Aspetti fiscali delle operazioni internazionali, Genova, 1995; K. Vogel, Double Taration Convention, Milano, 1997; A.Fantozzi, *L'imposizione fiscale delle stabili organizzazioni: problematiche e prospettive*, in Riv. dir. trib. int, 2002, 1, p. 9 ss.; E. Della Valle, La nozione di stabile organizzazione nel nuovo T.U.I.R., In Rass. trib., 2004, 5, p. 1597 ss. In legal literature, the different (and less) scope of the notion of "permanent establishment" has been remarked.
in the field of VAT compared to that deducible from the conventions stipulated to avoid double taxation on income and from the Convention Mod. OECD (Article 5). See on the topic: M. Giorgi, La stabile organizzazione nel sistema dell'imposta sul valore aggiunto: profili interni e comunitari, in Riv. dir. trib. internaz., 2000, p. 59 ss.; C. Garbarino, La nozione di stabile organizzazione nell'imposta sul valore aggiunto, in Dir. prat. trib., 2002, 3, p. 20428, nota a sentenza Cass., Sez. V, 7 marzo 2002, n. 3367 (vicenda "Philip Morris"). On the difficulties of applying the ordinary rules and adapting schemes and concepts found in domestic legislation with respect to companies operating in the web economy,cfr. A. M. Gaffuri, Le ipotesi negative di stabile organizzazione. Spunti problematici e sviluppi interpretativi, in Dir. prat. trib., 2015, 2, p. 10205. See, in this regard, the observations of the Group of experts on the digital economy, established by the European Commission, contained in the report of 28 May 2014, according to which"

final report on Action point 6 identifies the abuse of tax treaties, and treaty shopping in particular, as an important source of BEPS concerns and proposes an approach based on different types of safeguarding against the abuse of tax treaties and a degree of flexibility in their application. In addition to the suggested clarification that tax treaties are not intended to open up opportunities for double non-taxation, the report mentions, inter alia, the inclusion of a general rule to prevent abuse based on a "Examination of the main purpose" of transactions or arrangements

The digitalisation of the economy has changed the way businesses are organised. Auxiliary activities have become core activities...

[56] On topic of permanent establishment in the field of electronic commerce see: V. Perrone, R. Lupi, Economia digitale tra stabile organizzazione occulta e pubblicità online, in Dialoghi Tributari, 2014, p. 324 ss. Addresses the notion of virtual permanent establishment" A. Giovannini, Legalità ed equità: per un nuovo sistema impositivo, in Dir. prat. trib., 2017, 6, p. 2335; The author believes that the "bit tax can be justified in different terms, referring to the concept of utility relationship" between taxpayer and tax assumption, "utility relationship" which must become the new objective element of identification of the ability to pay". Transfer pricing adjustments, in the presence in the State of a legal entity of the foreign multinational group, as a reconstructive approach to be preferred during control over disputes by hidden permanent establishments, see in this regard D. M. Cardone, Branch occulte e azione del Fisco, in S. Mayr, B. Santacroce (a cura di), La stabile organizzazione delle imprese industriali e commerciali, Milano, 2016, p. 869. Sul fenomeno dell'esterovestizione si rimanda, ex plurimis, a M. Trivellin, Aspetti procedimentali, in E. M. Bagarotto (a cura di) La presunzione di residenza fiscale delle società "esterovestite", Padova, 2008; M. Fanni, L'esercizio delle prerogative del socio non determina l'esterovestizione della controllata se il"day-to-day management' è nello Stato estero, in GI - Riv. giur. trib., 2015, p. 813; P. Formica, C. Guarnaccia, *Esterovestizione: day to day management e corretta interpretazione delle dinamiche aziendali multinazionali*, in Fisco, 2016, 39, p. 3740; F. Moretti, Questioni attuali in tema di esterovestizione delle società, in Dir. prat. trib. int., 2016, 3, p. 1021; D. Avolio, Il modello di 'impresa globale': effetti sulle contestazioni di esterovestizione e stabile organizzazione 'occulta', in Fisco, 2017, 6, p. 550. On the stable notion of organization in the OECD model and in the context of conventional legislation, cfr. P. Puri, La stabile organizzazione nell'IVA, in Riv. dir. trib., 2000, p. 239; G. Fransoni, La nozione di stabile organizzazione personale nel diritto interno e la rilevanza della 'stabilità" dell'organizzazione, in Riv. dir. trib., 2002, p. 363.

recommended in the multilateral instrument.[57] In particular, the final report on action point 7 identifies Commission agreements and the use of the specific exceptions to the definition of permanent establishment as the most common strategies for artificially avoiding tax presence in the form of circumvention of permanent establishment status. The Commission agreements usually use the relatively formal approach of the current Article 5(5) of the OECD Model Convention to conclude sales contracts. The specific exceptions to the definition of permanent establishment that apply to preparatory or supporting activities, apart from being susceptible to abuse through strategies based on fragmented activities, are not suitable for dealing with digital economy business models. The report therefore proposes to amend Article 5 of the OECD Model Convention to be better protected against artificial arrangements designed to circumvent its application.[58]The third pillar is based on the ACD, Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.[59] This Directive amending Council Directive 2011/16/EU, which is part of the Commission's Anti-Tax Avoidance Package, takes into account the political priority of combating tax avoidance and aggressive tax planning

[57] Europäische Kommission, Empfehlung der Kommission vom 28.1.2016 zur Umsetzung von Maßnahmen zur Bekämpfung des Missbrauchs von Steuerabkommen, C(2016) 271final; For a better understanding of the new perspectives in Europe cfr. A.F. URICCHIO, New future perspectives: the cost of rights between debt control, extraordinary finance tools and windfall taxes, p. 129-135, in, A.F. URICCHIO - F.L. GIAMBRONE, European Finance at the emergency test.
[58] A. F. URICCHIO - F.L. GIAMBRONE, *European Finance at the emergency test*, 2020.
[59] COM(2016) 25 final, 2016/0010(CNS), European Commission, January 2016.

and responds to the demands of the European Parliament.[60] The Directive is in line with the anti-tax avoidance initiatives announced in the Commission's Action Plan for Fairer Corporate Taxation.[61]Companies have always regarded tax planning as a legitimate practice to use existing legal arrangements to reduce their tax burden. In recent years, however, tax planning across the boundaries of tax jurisdictions has developed increasingly sophisticated strategies aimed at shifting taxable profits to states with favourable tax regimes. This "aggressive" form of tax planning can take many different forms. For example, advantages can be derived from the specific design of a tax system or due to incongruities between two or more tax systems in the sense of reducing or avoiding tax liabilities. This can lead to double deductions (e.g. the same expense is deducted both in the source state and in the country of residence) or to double non-taxation (if, for example B income is not taxed in the source state or in the country of residence). Unlike small and medium-sized enterprises or individual taxpayers, multinational groups of companies are able to exploit tax loopholes in national and international tax regulations to shift profits from one country to another in order to reduce their tax burden. The global economic and financial crisis of recent years has made the public aware of the importance of ensuring that all taxpayers pay their fair share

[60] Europäische Kommission, RICHTLINIE DES RATES zur Änderung der Richtlinie 2011/16/EU bezüglich der Verpflichtung zum automatischen Austausch von Informationen im Bereich der Besteuerung

[61] Cfr. A. F. URICCHIO, *La fiscalitá ambientale locale tra problemi e prospettive: relazione introduttiva tenuta allasummer school UNIBA*, p. 17 ff., in, A. F. URICCHIO- G. SELICATO, *Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021*, 2022; COM(2015) 302.

of tax revenues. This should increase tax revenues, which would help to reduce public deficits and thus benefit everyone. The last pillow is based on the Communication on an external strategy for effective taxation, more precisely on the Communication from the Commission on an external strategy for effective taxation.[62]This Communication proposes a framework for a new EU external strategy for effective taxation. It describes key measures that the EU should take to promote good governance in the field of taxation worldwide, to combat the erosion of the tax base from the outside and to ensure a level playing field for all companies. The Communication also addresses the question of how good governance in the field of taxation can be better integrated into the EU's external relations policy and how it can support the EU's commitments at international level, in particular in development policy.[63]

2.2. Anti avoidance package, ATAD, CCCTB

The anti-tax-avoidance package presented by the EU Commission in 2016, reflected the BEPS recommendations.39 This package, designed to lay down the rules for fairer, simpler and more.

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[62] COM(2016) 024 final, January 2016.

[63] Europäische Kommission, Mitteilung der Kommission an das Europäische Parlament und den Rat über eine externe Strategie für effektive Besteuerung, COM(2016) 024 final; Cfr. A. F. URICCHIO, *La fiscalitá ambientale locale tra problemi e prospettive: relazione introduttiva tenuta allasummer school UNIBA*, p. 17 ff., in, A. F. URICCHIO- G. SELICATO, *Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021*, 2022.

effective taxation in the EU, was based on four pillars: first, an anti-tax-avoidance directive (ATAD I), envisaging rules to counteract tax abuse, and prevent double taxation and profit shifting, among others. Second, a recommendation on tax treaties that sets out proposals to reinforce tax treaties against tax abuse. Third, the revised DAC4, introducing the country-by-country reporting work on multinationals.[64] And, lastly, a communication on an external strategy for effective taxation to enhance cooperation between the EU and third countries on tax governance, which sets out a common and unified approach with third countries concerning tax issues. Building upon renewed momentum and following calls for effective action, the Commission presented a new proposal in 2016 for a common corporate income tax directive. The relaunched CCCTB[65] was to

[64] Cfr. F. GIAMBRONE, *New fiscal, monetary, financial, banking and capital perspectives of the European Union, in Centro Interuniversitario popolazione, ambiente e Cultura*, Nr. 39, 2021.

[65] P. Pistone, A. Turina, The Way Ahead: Policy Consistency and Sustainability of the GLoBE Proposal, in A. Perdelwitz, A. Turina (a cura di), Global Minimum Taxation? An Analysis of the Global Anti-Base Brosion Initiative, cit., p. 16, secondo i quali "the Pillar Two proposal brings about a structural reform in the international coordination of corporate income tax that goes beyond the prevention of profit shifting and enhances the conditions for transparent tax competition, while setting the boundaries within which states can exercise their taxing powers. In this regard, the view may perhaps be held that Pillar Two and, in particular, the Global Anti-Base Erosion (GloBE) rules arguably constitute the very first example of an attempt to foster international tax harmonization, beyond regional experiences, on a fully fledged global stage. In fact, if Pillar Two and, in particular, the GloBE rules lead to outlining common rules for the determination of a (tax) base, it will pursue virtually the same purpose as the Common Corporate Tax Base (CCTB) within the European Union. The introduction of common rules to determine the taxable base of business income across states may help to achieve a form of transparent tax competition, thus facilitating the assessment of their proportionality with the pursued goals. It may be argued that these dynamics have demonstrably been very successful in improving the functioning of the EU internal market after the introduction of the Sixth VAT Directive, which approximated the taxable base and led to its harmonization in the early 1990s in the wake of the Scrivener Action Plan.

be implemented in two steps: first, a common corporate tax base, and second, consolidation. The first step entailed rules to determine the taxable common base. The second step would consist of a single EU system for computing tax liabilities and filing tax returns through a one-stop shop, rather than 27 different national ones. It was designed to minimise compliance costs and allow organisations to offset profits in one country against losses in others. Rules against debt-bias and a reduction for research and development (R&D) activities were envisaged in this second proposal in order to promote stable financing. The proposal was based on a set of rules to calculate taxable profits in a single EU system, allowing firms to file a single tax return even if they operate across different countries. This system would be mandatory for large groups and optional for small and medium-sized enterprises. In 2017, the ATAD I was amended to extend the rules against hybrid mismatches to third countries, bringing about ATAD II. In 2019, the OECD presented the BEPS 2.0 proposal based on two pillars: revised nexus and profit allocation rules and a global anti-base erosion proposal to address the challenges posed by the digital economy. Building upon BEPS 2.0, a new tax package for fair and simple taxation was published by the Commission in July 2020. This package seeks to ensure cooperation between tax authorities and between EU countries and third states, as well as to reinforce the fight against tax fraud. Three separate initiatives were adopted, namely an action plan for fair and simple taxation supporting recovery, a communication on good tax governance in the EU and

beyond, and a proposal for better administrative cooperation. The action plan for fair and simple taxation supporting the recovery contains 25 initiatives to be implemented between 2021 and 2024 with a view to making taxation simpler and fairer and more adapted to current challenges, such as digital consumption. 'Realigning taxing rights with value creation and setting a minimum level of effective taxation of business profits' are two of the main initiatives set out in the action plan concerning corporate income tax along with increased transparency and the exchange of tax data. Similarly, an EU cooperative compliance framework would be necessary in order to enhance cooperation between different tax authorities throughout the Union.[66] The communication on tax good governance in the EU and beyond sets out recommendations to strengthen transparency and promote fair taxation. To tackle harmful tax competition, the communication sets out improvements to the list of non-cooperative jurisdictions, reform of the code of conduct, expanding its scope, and recognition of the role of taxation in ensuring the implementation of Agenda 2030. The revision of the DAC (DAC7) is aimed at enhancing the way digital platforms exchange tax-related

[66] For an overview of international taxation law with regard of international taxation problems arising cfr. W. SCHÖN, Transfer Pricing issues of BEPS in the light of EU Law, British tax review, 50 (3), 417-428; OECD (2014), Guidance on Transfer Pricing Aspects of Intangibles, OECD Publishing; M. GREGGI, The Regulation of the Italian Tax Office on the Correlative Adjustments Procedure, in, ITAX papers, 8(3) 1-5; F. L. GIAMBRONE, Protection in Germany of the fundamental rights of the European Union (GrCH). Case note of the BVerfG (German Federal Constitutional Court) of 06.11.2019 – 1 BvR 16/13 concerning the interpretation of the fundamental rights within the Basic law with regard to non- fully harmonized EU law, in, Journal of Modern science, 2/2021 vol. 47, 1, p. 523 ff.

information. It should strengthen the transparency of the current tax framework. Finally, an ambitious proposal in 2021 by US president Biden and Secretary of the Treasury Yellen, of potentially historic importance, has been agreed under the G7/OECD framework and is currently under discussion at international level. The new framework is still based on two pillars and it seeks to ensure a tax system fit for the challenges of the 21st century, namely digitalisation[67] and rapidly evolving and interconnected economies. MNEs will be legally bound to pay taxes where they make profits, providing for a fairer tax system. Pillar one will provide a common methodology for the distribution of taxing rights across countries, while pillar two will put a floor on the CIT rate with a view to reducing harmful

[67] Cfr. A.F. URICCHIO, The taxation of artificial intelligence between new taxes and additional incentives, p. 146 ff. According to A. F. URICCHIO, In warning of the importance of this issue, international and European institutions, even if only in recent years, have considered that the adoption of fiscal measures in the digital and technological economy, as well as the definition of rules for the allocation of powers of taxation between States, also in the light of the economic globalisation drive that the digital market favours and accelerates, can no longer be delayed. From this point of view, the definition of common principles by European and international institutional bodies through which to express guiding principles about models and criteria for the taxation and combating of harmful competitive practices seems inescapable. In particular, the OECD, in launching the Base Erosion and Profit Shifting (BEPS) project, defined Action 7 (Preventing the artificial avoidance of permanent establishment status), Action 6 (prevent treaty abuse), Action 15 (develop a multilateral instrument), helping to define the concept of "stable virtual organization" or "digital", with consequences on actions to combat the phenomena of evasion and circumvention of the web economy. In particular, Action 1 (Addressing the tax challenges of the digital economy) provides for among the measures to be taken the analysis and identification of the main points of friction between the forms and strategies of the new economy and the rules of international tax law, both with regard to direct and indirect taxation and in particular with regard to "the evanescent territorial interconnections of the digital presence of companies, on the ways of creating value in this specific area, on the identification and classification of income deriving from new business models and on the collection of VAT with regard to cross-border supplies of digital goods and services".

competition. During pillar one[68] discussions, carve-outs were proposed for extractives and regulated financial services. Only MNEs with a global turnover of at least €20 billion and 10 % of profitability come within the scope of the proposal. Another key element of this pillar is the profit threshold that a MNE has to earn in a jurisdiction to take it into account when redistributing excess profits. As a general rule, it was set at one million, with €250 000 as an exception in smaller jurisdictions whose GDP is lower than €40 billion. Pillar two is based on two different rules, GloBE and the treaty-based rule. The threshold for being subject to GloBE[69] rules

[68] Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 111 ff, in, F. GALLO – A. F. URICCHIO, La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo, 2023. According to A. F. URICCHIO , the so-called "Pillar One", also called "Unified Approach" (rectius, "unified approach on the tax treatment of the digital economy"), performs a "reallocative" function, being preordained to review the criteria for linking and allocating income, through a modification of the provisions on the transfer of intra-group profits, also in derogation of the arm's length principle, and the preparation of new "nexus rules, based on the concepts of "user participation", "significant digital and economic presence", "distribution-based approach" so as to grant the power of taxation to the jurisdictions in whose territory consumers and users of digitised business models are located. It is evident that through this model, also the subject of a public consultation, it is intended to overcome the criterion of permanent establishment, dating back to the beginning of the twentieth century, subjecting to taxation, within a given territory, the profits achieved by multinational companies (with revenues exceeding a certain amount) operating in it, even in the absence of a physical presence. The implementation of this model requires international rules on how to distribute corporate profit tax rights among the largest and most profitable multinationals among several countries, also taking into account the ability of companies to operate without a physical presence.

[69] Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 113 ff, in, F. Gallo – A. F. URICCHIO, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*, 2023. According to A. F. Uricchio, even more complex is the adoption of the second pillar of the OECD agreement, called "Global Anti-Base Erosion Proposal (GloBE), which, in providing for the subjection of web multinationals to a minimum level of global

has been set at €750 million. To date 130 jurisdictions 52 have joined the statement. They have agreed on an ambitious timeline for implementation, with agreement on pillar two to be reached by October 2021 and the rest

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taxation, provides for changes to domestic legislation and to the provisions of the treaties against double taxation, so as to prepare instruments capable of counteracting the erosion of tax bases and the transfer of profits to low-tax jurisdictions (or none) taxation. The so-called "Pillar Two", also followed by a further public consultation, presupposes two closely related rules: the Income Inclusion Rule (ILR) and the Undertaxed Payment Rule (UTPR), which excludes deductions or requires adjustment. The first, under international law, would allow States to tax income generated by permanent establishments or controlled foreign companies, in the absence of effective minimum taxation in the State in which such income was obtained; the second, also domestic, should confer power of taxation on the source State to exclude withholding taxes or deductions, in respect of payments to related parties, not subject to a minimum level of effective taxation in the recipient's State of residence to the extent that the income equal to a given entity is not subject to a minimum rate. In addition to these domestic rules, there are also others based on multilateral instruments: the inclusion of a 'switch-over rule' within double taxation treaties, which would allow a state to benefit from the credit method, instead of the exemption method previously adopted, where the income generated by a permanent establishment or derived from a real estate asset is not subject to a minimum level of taxation in the source state; the provision of a 'subject to tax rule' aimed at allowing or precluding the application of the more favourable provisions of double taxation treaties, depending on whether an income component is subject to a minimum level of taxation" . The latter rule would allow source countries to impose source taxation on certain payments (such as interest and royalties) to controlled entities not subject to the minimum rate. The difficulties of implementation are evident, especially in translating the agreements reached into a stable and con-divided regulatory framework. One thinks of the particularly sensitive issue of the criteria for quantifying the revenue thresholds (EUR 20 billion or approximately USD 23.1 billion) and the 10% profit threshold. Added to this is the fact that the very high minimum revenue threshold means that the proposed regime can only be applied to a very small number of multinationals (in 2020, the OECD estimated that only 350 multinationals would exceed the EUR 10 billion consolidated threshold). The proposed solution, inspired by the declared onerousness and complexity of the same, also in consideration of the necessary phase of concertation between tax administrations, seems to conceal the purpose of limiting its application only to the top tier of digital multinationals, inhibiting the tax legislator from introducing new forms of levies capable of taxing the new and ever-changing manifestations of wealth that the new economy expresses.

of the proposal by 2023. A landmark deal setting a 15 % CIT rate floor on overseas profits was agreed at G7 level in London and at G20 level in Venice one month later. Following up on this initiative, the EU Commission published a new communication on business taxation for the 21st century and announced its plan to deliver its 'BEFIT' proposal – business in Europe: framework for income taxation – in 2023. The main objective is to reform the tax system to reflect global discussions and challenges. According to this proposal, which will replace the CCCTB proposal, EU MNE profits would be consolidated according to a common and single tax rulebook. A directive will be proposed for the implementation of pillar one while the transposition of pillar two will modify existing provisions in the ATAD Directive and might provide momentum to bring forward the proposal pending for recasting the Interest and Royalties Directive (IRD). Most recently, a public country-by-country reporting scheme was discussed to ensure transparency of big multinationals (turnover threshold of €750 million), even those that are not based in the EU. Council recently approved a requirement on disclosure of the income they pay and other related tax issues, for instance in its recommendation on the domestic treatment of losses. A directive on fighting tax avoidance through shell companies is to be implemented in the next two years (which will constitute ATAD III). All these measures build on the tax action plan for fair and simple taxation supporting the recovery.

3. Problems arising from the European taxation system

The CIT system has undergone profound modernisation in recent years. It is, however, still subject to a series of potential regulatory gaps and barriers that undermine its effectiveness and efficiency. The study in annex to this EAVA provides a complete and detailed overview of the limitations of the current EU legislative framework. Based upon this work and on the wealth of studies in the literature in this area, this study identifies the main challenges that the EU still faces in arriving at a fair and simpler CIT with lower compliance costs. These challenges are naturally not to be seen as completely independent from one another and therefore need to be addressed as part of a comprehensive and ambitious agenda to deliver mutually reinforcing results.

3.1. Fragmented organisation of the EU CIT tax system

Businesses with cross-border activities have to deal with a series of obstacles arising from the different tax regimes within the EU. First, they have to deal with different tax laws throughout the EU and, in most cases, these are in the national language and with a lack of detailed or up-to-date information and guidance provided by the public authorities. Moreover, there are other tax rules at international and bilateral level to take into

account. The result is potentially double taxation or double non-taxation on profits, mergers and acquisitions. Second, tax audits, litigation concerning tax issues, tax accounting and tax record keeping are costly and, again, follow different rules from country to country. Third, the rules on procedures and deadlines for tax returns differ across countries. Fourth, as it is not possible to offset losses against profit, large companies rationally tend to base their headquarters in low tax countries.[70]As a result, countries have an incentive to reduce tax rates, sometimes unilaterally and without proper coordination, or in general to take on deregulation initiatives, in an attempt to attract foreign investors.[71] On the one hand, if done responsibly, this competition has some advantages as it can be a disincentive to cartels, an efficient way to attract investment and innovation and motivation for government administrating expenditures and tax revenues efficiently.[72] In other words, tax competition can result in a more efficient allocation of resources. On the other hand, in a context of rapid globalisation and increasing integration of markets globally, wild tax competition can lead to a sub- optimal equilibrium if the allocation is driven by artificial improvements in the relative competitive position of some businesses or sectors. This is the case when some jurisdictions seek

[70] European Parliament, Fair and simpler taxation supporting the recovery strategy, 2021, p. 15.
[71] For an in-depth economic analysis see also European Tax Survey, European Commission, 2004.
[72] For an overview concerning the international taxation system please Cfr. V. UCKMAR, G. CORASANITI, P. de´CAPITANI DI VIMERCANTE, C. CORRADO OLIVA, Manuale di diritto tributario internazionale, Milano, 2012, XXVI ss.; Cfr. A. F. URICCHIO, Manuale di diriritto tributario, 2020.

to attract investment through beggar-thy-neighbour policies, which in practice means increasing the jurisdiction's tax base at the expense of other countries.[73] There have been identified several tax measures that states can use to render their tax system more competitive in this section. These measures are legitimate in themselves and may even have a positive impact on the economy of the state that implements them. They become harmful, if they are structured in such a way as to distort the natural allocation of resources (which is something for economists to study) and create fiscal outcomes that are disconnected from economic reality. In such a case, one can talk of harmful tax competition. Described models do not refer to the specific legislation of any Member State, so they can be used in a generalised way. Corporate tax reduction has always been associated, also in the eyes of public opinion, to a positive economic development, even if this fact is not universally agreed as being definitively proved empirically. This field of direct taxation is not directly governed by the European Union and remains one of the prerogatives most jealously retained by Member States. Member States have a wide leeway to shape their corporate tax rates structure in a way that is exclusively aimed at maximising their own welfare, even if it is to the detriment of other Member States. It is not an exaggeration to affirm that under the current legal framework, while Member States have achieved coordination in

[73] European Parliament, Fair and simpler taxation supporting the recovery strategy, 2021, p. 15; Harmful tax practices within the EU: definition, identification and recommendations, Directorate-General for Internal Policies, European Parliament, May 2021.

certain areas, such as double taxation, the driving forces of the corporate tax rates policies are unilateralism and competition. However, new initiatives towards the introduction of a concept of minimum taxation as an EU standard have been mentioned in the previous section (such as Tax Good Governance in the EU and beyond). As a consequence of this framework, the lowering of corporate tax rates can be considered as a harmful tax competition practice from the point where an excessive decline alters a physiological allocation of resources within the Single Market (which is something for economists to decide). In general, states lower their statutory tax rates for two main reasons: (i) to attract potential investors; and (ii) to compensate the expected or actual losses occurred from the lowering of tax rates by other jurisdictions. Nevertheless, the proposals contained in the BEPS[74] are mostly focused on managing

[74] For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; For a better understanding regarding the international tax challenges within the international scenario and Austria Cfr. Ch. Smekal/ Jr. Chen, International Tax Competition: A Case for International Cooperation in Globalization.
Transition Stud Rev 11, 59–76 (2004).; Ch. Smekal/ R. Sausgruber, Determinants of Foreign Direct Investment in Europe, in, Jr. Chen, Foreign Direct Investment, 33-42, Houndmills: McMillan Press; Ch.Smekal / H.Winner, Außerbudgetäre Finanzierung und verdeckte Staatsverschuldung. Eine finanzwissenschaftliche Betrachtung vor dem Hintergrund der monetären Integration in Europa. politicum, 74, 37-45; Cfr. Ch. Smekal, Finanzausgleich- Föderalismus- Gemeindeautonomie, 371, in: Andreas Kohl und Alfred Strinemann (Hrsg.), Österreichisches Jahrbuch für Politik, München, Wien 1979; Ch. Smekal, Transfers zwischen den Gebietskörperschaften. Ziele und Ausgestaltungsprobleme, in, K.- H. Hansmayer/ G. Seilerd/ Ch. Smekal, Probleme des Finanzausgleichs II, Duncker & Humboldt, 1980 Berlin.

artificial structures and reducing disparities between the place where the value is generated and the place where the taxes are levied. Moreover, they are not specifically tailored for the European Union, which has a peculiar and unique legal framework and equilibrium among its components (which is the reason why in the field of direct taxation it often limits its intervention to soft law). In addition to what is mentioned above, the reported data do not take into consideration the fact that several jurisdictions have 'further harmful tax practices' in force (some of which are analysed in the present report) which can help corporations in furtherly lowering or even avoiding paying the official corporate income tax rate where they do business. Experience shows that most of the times these practices are designed specifically for cross-border activities and are of no use to companies that are only present in one country, which is especially the case for many small and medium enterprises. If the trend observed at world level in the period 1980-2015 was to continue, the global corporate tax rate would hit zero by 2052.[75]The expression 'patent box', or 'knowledge box', refers to special types of incentives offered to corporations entitling them to reduce the tax burden on intellectual property.

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[75] For updated data on the revenue structure, see also the Report titled Taxation Trends in the European Union - Data for the EU Member States, Iceland and Norway 2020 Edition, Publications Office of the European Union, 2020; Cfr. A. F. URICCHIO, *La fiscalitá ambientale locale tra problemi e prospettive: relazione introduttiva tenuta allasummer school UNIBA*, p. 17 ff., in, A. F. URICCHIO- G. SELICATO, *Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021*, 2022.

To put it in a very simple way, they result in a lower corporate tax rate of corporate tax to profits earned from its patented inventions. It is one of the main instruments through which governments can support private research and development. One of its main advantages lays with the very low administrative costs that it generates for both governments and businesses.

Over the last decade, patent box regimes providing for the possibility to opt for an advantageous tax treatment with respect to profits generated by 'qualified intangibles' (namely those intangible that fall within the scope of application of the domestic legislation enacting the patent box), whilst promoting the research and development (R&D) activity, have increasingly been introduced by Member States (e.g. Belgium, Cyprus, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal and Spain). From a more technical point of view, in most countries that have adopted patent box regimes the tax incentive takes the form of a partial exemption or notional deduction of qualifying income. However, unlike other tax incentives, which are provided at the outset of the innovation process (in other words, upon incurring connected expenditures), patent box regimes intervene at the back end of such process, namely when income is received. Moreover the shell companies embody an important institute with regard of the tax competion.[76]

[76] For an overview regarding tax incentices in Europe an d Italy cfr M. GREGGI, *The Italian Tax Incentives to Undertakings and the European Constraints*,p. 187, in, M. Abdellatif- B. Tran- Nam- Marina Ranga- s. Hodzic, Government incentives for innovation and

There is a lot of linguistic confusion about the meaning of the concept of a 'shell company'. Several different expressions are often used interchangeably. Under the EU law there is no legal definition of what a 'shell company' is, nor a legal definition of what constitutes a 'genuine' company while the OECD Glossary of Tax Terms provides the following definition: "A paper company, shell company or money box company, i.e. a company which has complied only with the bare essentials for organisation and registration in a particular country. The actual commercial activities are carried out in another country".[77]Their use is not illegal per se, but it becomes contrary to the law when they are misused, namely inserted into schemes aimed at circumventing the rationale behind the current legal framework (e.g. directive or treaty abuse). Where well-

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Entrenepeurship. An international Experience, 22. According to M. GREGGI, «*Tax incentives in Italy have been used since 1948. They have been been used to stimulate the economic growth, to protect national companies from aggressive foreign competition, and to promote the less developed areas of the peninsula. This chapter tries to bring some order in the matter, clarifying what an incentive is, according to the domestic legislation, and then addressing the most important and – to some extent – structural measures currently in force. Italy has a long-standing tradition of State intervention in the market and on the market. Public authorities intervene by regulating the market, stimulating entrepreneurs and on some occasion operating directly via state-controlled business. In terms of policy recommenda tions, two elements must be considered: the necessity to curb the complexity of the system, and on the other side to address the enduring pandemic effects on the business development that make the future unpredictable*».

[77]For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma; EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022; See also T. Hastings, J. Cremers, Developing an Approach for Tackling Letterbox Companies, A learning resource from the Seminar of the European Platform Tackling Undeclared Work: How to identify and tackle fraudulent letterbox companies, Brussels, 30 November 2017.

known brands buy property or land, for example, they may be legitimately willing to hide their identity behind a shell company, in order to avoid price increases by the seller. Moreover, it has to be underlined that they are usable for several different purposes, with the consequence that their misuse may not be aimed at paying a low amount of taxes, but, for example, at hiding the real identity of a beneficial owner. From a tax policy perspective, the presence of shell companies in the domestic legislation becomes a harmful tax competition practice where it causes an allocation of resources that do not respond to the real economic situation and thus undermines the proper functioning of the Single Market. Foreign source income exemption regimes play a key role regarding the outstanding tax competition. Under a foreign source exemption regime, certain types of income, usually derived from financial activities, like for example participations, are totally or partially exempted from domestic taxation. The ones known as participation exemptions, for example, are regimes under which dividends received from a company by shareholders, and potential capital gains arising on the sale of shares, are exempted from taxation. Provided that the EU Directive 2011/96/EU already exempts intra-EU dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes, in general it can be affirmed that the exemption of foreign source income enhances the attractiveness of a jurisdiction as a holding company location. On 20 May 2019, the Code of Conduct Group (Business Taxation) agreed on an approach to assess foreign source income exemption regimes. It stated

that foreign source income exemption regimes are not, in themselves, problematic.[78] On the contrary, they are even recommendable, in certain cases, to prevent double taxation. Problems arise when such regimes not only prevent double taxation, but also create situations of double-non taxation. This is particularly the case for regimes that have an overly broad definition of the income excluded from taxation, notably foreign source passive income without any conditions or safeguards. Furthermore, tax competition is inextricably intertwined with economic development and the business environment; hence all governments have some degree of vested interest in taxing different sectors. Although some tax might have a local component, within a monetary union and a single market, a minimum level of regulation and harmonization is imperative to ensure stability and fairness.

3.1.2. The complexity of tax regulation represents an outstanding policy challenge

Since the financial crisis, governments have studied the impact of contemporary harmful tax competition in great detail.[79] Higher transfer

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[78] General Secretariat of the Council, To: Permanent Representatives Committee/Council Subject: The EU list of non- cooperative jurisdictions for tax purposes, Brussels, 4 October 2019 (OR. en) 12284/1/19 REV 1 FISC 367 ECOFIN 800.

[79] Cfr . A. F. URICCHIO, Emergenze ambientali e imposizione, p. 321, in, A. F. URICCHIO – M. AULENTA- G. SELICATO, La dimensione promozionale del fisco. According to A. F. URICCHIO, The appreciation of promotional schemes in the analysis

pricing in countries with high tax, debt shifting with the parent company or strategic allocation of assets, especially intangible ones, are three examples of schemes that companies develop to benefit from differences in taxation across jurisdictions. These are especially relevant in the EU where 27 different tax frameworks apply and where, as a result, tax planning has become a component of financial plans to ensure tax efficiency. Excessive and sometimes artificial complexity in tax systems inevitably leads to an increase in tax avoidance and, conversely, for businesses that comply with tax law, compliance costs are significantly higher. This is problem particularly acute for SMEs that can therefore be put off cross-border operations. The economy as a whole also suffers from these challenges, as investment in R&D or job creation can be reduced. The lack of transparent business environment also makes countries less attractive to investors and leaves the door open to new

of tax cases leads to the need to grasp, alongside the primary purpose of the levy concerning the financing of public expenditure according to the principles of ability to pay and equality, the so-called ancillary and further purposes also of a non-fiscal nature, which, admissible according to the fabric of constitutional values and according to the logic of balancing between them, enhance and enhance the taxation function. Despite the Community constraints on aid, which seem to be inspired by a model of fiscal neutrality and which appear to be preordained to the protection of competition and the free market, the bonus instruments of both a fiscal nature (concessions and exemptions) and financial (subsidies and incentives) not only cannot be considered derogations from the principles of ability to pay and equality, But they appear in some respects necessary and necessary, concretizing the constitutional guarantees and constituting the most advanced manifestation of the promotional model of the levy. The volume analyzes and deepens the various promotional aspects assumed by the tax authorities in the most recent experiences, addressing the various issues that affect the entire tax system. For the plurality of contributions, the proposed approach remains basically unitary, comparing the different areas in which the tax authorities implement its promotional intervention in a modern and innovative way compared to the past.

waves of aggressive tax planning (ATP) strategies. ATP also entails broader negative consequences, namely an inefficient allocation of resources (compared with the theoretical no-tax framework), which could lead to some social discontent as tax planning does not seem accessible to citizens or to all businesses, in particular the smaller ones. Another policy challenge is represented by the lack of administration effectiveness.[80] Tax authorities have so far proven only relatively successful when tackling the challenges of taxing MNEs or new forms of business such as those emerging from the digital economy. In particular, some tax authorities are facing a recurrent general problem of effectiveness.[81] This can be

[80] Cfr. P. FORTE, *Pubblica amministrazione ad eminenza scientifica e tecnologica. Riflessioni teoriche,* in Istituzioni del Federalismo, 2021, Nr. 4, p. 995 ss. The author subjects administrative discretion to a test of effort in relation to our time characterised by technique, scientific knowledge, and the "distinction" between politics and administration, and finds evidence to assume that the administrative one, purified by the political quota, is not a function of the aims, but a practice for achieving objectives established elsewhere, even when they have vague, indeterminate definitions, since it consists precisely in determining a decision. Today's administrative decision, therefore, must be unfolded, it can be said physiologically, using techno-scientific knowledge, expertise, basing on the reasons for decision-making and the reliability of the resulting act, in a kind of technique of the singular fact. Cfr. P. Forte, Caratteri della decisione pubblica di emergenza contemporanea, ne L'Ircocervo 20 (2021) n. 1; P. Forte, Diritto amministrativo e Data Science. Appunti di Intelligenza Amministrativa Artificiale (AAI), in P.A. persona e amministrazione, n. 1, 2021, P. Forte, Il bene culturale pubblico digitalizzato. Note per uno studio giuridico, in P.A. persona e amministrazione, n. 2, 2019. Cfr. A.F. URICCHIO/ J. Radwanowicz-Wanczewska, Respecting an Individual's Subsistence Minimum in Administrative Enforcement Proceedings, 2Rocznik Teologii Katolickiej,XVII (2018)

[81] For an overview of italian administrative law and its effectiveness cfr. P. Forte, Caratteri della decisione pubblica di emergenza contemporanea, ne L'Ircocervo 20 (2021) n. 1; P. Forte, Diritto amministrativo e Data Science. Appunti di Intelligenza Amministrativa Artificiale (AAI), in P.A. persona e amministrazione, n. 1, 2021, P. Forte, Il bene culturale pubblico digitalizzato. Note per uno studio giuridico, in P.A. persona e amministrazione, n. 2, 2019.

explained by obsolete organization or, as just mentioned, by national tax bodies that have to deal with sometimes unnecessarily complex tax systems. Some progress has been made in the EU in this area recently, especially after 2013 when DAC1 entered into force, but there is still room for improvement, especially regarding cross-border administrative cooperation. An evaluation of the DAC[82] conducted by the Commission showed that there are challenges to overcome in the coming years, namely the lack of standardised tax data, the need to enhance tax monitoring schemes and the lack of quality exchange of information between tax authorities. Importantly, it was pointed out that there is not enough evidence to assess whether or not the directive has proven successful in fighting tax fraud, tax evasion and tax avoidance.

4. Future perspectives concerning the European taxation

The enhancement of the administrative cooperation and reinforcement concerning the EU technical support, should be regarded as a priority.

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82 For a further understand regarding DAC 6 cfr. M. GREGGI, DAC6 and legal osmosis: the multiple interactions of the discipline with pre- existing internal and European regulations and institutions DAC6 e osmosi giuridica: le plurime interazioni della disciplina con preesistenti norme ed istituti dell'ordinamento interno ed europeo, in, RIVISTA DI DIRITTO TRIBUTARIO , Vol. 7, No. 2-bis, pp: 1-16, 2021; For an Introduction to the study of finance science, financial law and public accounting, cfr. URICCHIO A., PERAGINE V., AULENTA M. (2018). Introduzione allo studio della scienza delle finanze, del diritto finanziario e della contabilità pubblica, in URICCHIO A., PERAGINE V., AULENTA M, *Manuale di Scienza delle Finanze, Diritto finanziario e contabilità pubblica,* Nel Diritto Editore, Roma;

Cooperation among national authorities and with the EU is a cornerstone of any successful action against tax fraud. A lot of progress has been made through the directives on administrative cooperation (DAC1 to DAC6)[83]. Cooperation could still be further strengthened and promoted, in particular as the digital economy is now taking a centre stage. The latest revision of the Directive on Administrative Cooperation (DAC7) tries to address some of these challenges. Its main purpose is to enhance cooperation among Member States on the exchange of information of tax duties in the digital economy.[84] The joint investigation team could also be reinforced while best practices and reinforcement of tax administration capacities could be conducted. Best practices, in particular on simplification of multi-layered administrative burdens and on the adoption of digital tools could benefit from further support and assistance. The recent proposal for a regulation on a technical support instrument[85] might be instrumental in that respect. The improvement of the exchange of information – Fiscalis should be evaluated and regarded as a milestone.

[83] For a further understand regarding DAC 6 cfr. M. GREGGI, DAC6 and legal osmosis: the multiple interactions of the discipline with pre- existing internal and European regulations and institutions DAC6 e osmosi giuridica: le plurime interazioni della disciplina con preesistenti norme ed istituti dell'ordinamento interno ed europeo, in, Rivista di Diritto Tributario, Vol. 7, No. 2-bis, pp: 1-16, 2021.

[84] Inception impact assessment on a proposal for a Council directive amending Directive 2011/16/EU as regards measures to strengthen the exchange of information framework in the field of taxation, European Commission, February 2020.

[85] Proposal for a regulation of the European Parliament and of the Council establishing a technical support instrument, COM(2020) 409, European Commission, May 2020; Cfr. A. F. URICCHIO, *La fiscalitá ambientale locale tra problemi e prospettive: relazione introduttiva tenuta allasummer school UNIBA*, p. 17 ff., in, A. F. URICCHIO- G. SELICATO, *Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021*, 2022.

Against the backdrop of the growing digital economy, enhancing the exchange of information among tax administrations could help to improve tax compliance along with tax transparency. To this end, some bodies and tools have been put in place at EU level to encourage the exchange of tax information. The cooperation programme Fiscalis 2020[86] allows tax administrations to exchange data on taxation and to find solutions to address double taxation or double non-taxation issues. It helps to reinforce the skills of taxation administrators by means of workshops, seminars and working visits. The exchange of information also supported by the DAC in the field of direct taxation. The last amendment of it was useful in terms of combatting ATP. As the effectiveness of this directive has nevertheless been questioned,[87] measures to especially enhance spontaneous and automatic exchange of information by businesses are to

[86] For an overview concerning the international taxation system please Cfr. V. UCKMAR, G. CORASANITI, P. de´CAPITANI DI VIMERCANTE, C. CORRADO OLIVA, Manuale di diritto tributario internazionale, Milano, 2012, XXVI ss.; P. PISTONE, Diritto tributario internazionale, Torino, 2017. Please also refer to G. CORASANITI, Aggressive tax competition and State aid: brief considerations regarding the "Apple case", in Proceedings of the Conference held in Rome at the Sapienza University of Rome on 19 February 2017, P. BORIA (edited by), Milan, Cedam ed., 2018, p. 86; for an overview regarding the Italian permanent establishment in VAT Cfr. P. PURI, La stabile organizzazione nell'Iva, in Riv. Dir. trib., 2/2000; P. PURI, La "circolazione" del preliminare di vendita del costruttore e la fatturazione Iva, in Fondazione Nazionale del Notariato, 2022, I; P. PISTONE, On Abuse and Fraud in VAT: Setting the Appropriate Boundaries for GAARs in the EU VAT System, in M. LANG – I. LEJEUNE (eds.), Improving VAT/GST - Designing a Simple and Fraud-Proof Tax System, pp. 591-602.

[87] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022; Staff working document, Commission evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final, September 2019.

be implemented. Enhancing cooperation between tax authorities is of the utmost importance in the near future, as was highlighted in the package for fair and simple taxation. Again, digital tools[88] and AI might help in this regard.[89]

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[88]For an insight of administrative law and digital tools within the Italian administration cfr. P. Forte, Diritto amministrativo e Data Science. Appunti di Intelligenza Amministrativa Artificiale (AAI), in P.A. persona e amministrazione, n. 1, 2021, P. Forte, Il bene culturale pubblico digitalizzato. Note per uno studio giuridico, in P.A. persona e amministrazione, n. 2, 2019.

[89] A.F. URICCHIO, La sfida della strategia europea dell'intelligenza artificiale tra regolazione e tassazione, p. 193, in, A. F. URICCHIO- G. RICCIO – U. RUFFOLO, Intelligenza Artificiale tra etica e diritti. Prime riflessioni a seguito del libro bianco dell'unione europea, 2020. According to A. F. URICCHIO, among the missing issues are those of the impact on the labour market and, above all, that of the taxation of artificial intelligence, probably due to the awareness of the difficulty of adopting unanimously shared solutions among European states (given the unanimity rule for tax choices). Without recalling past experiences, it is clear that with the digital revolution and intelligent automation, the labour market may be destined to undergo a significant impact, as tasks that until recently were only human, such as reasoning, sensing, data analysis and decision-making, may be performed by intelligent machines. While we must assume that in the medium term the creation of new jobs resulting from the adoption of new technologies can compensate for the loss of jobs that are not in line with the market (the so-called 'end of jobs,' John Rifkin's expression)', we must be aware of this phenomenon in order to assess the regulatory and fiscal measures to be taken. The issue strangely eluded by the white paper deserves instead to be addressed by the European institutions, which also have specific competences in labour matters, especially following the treaties of Maastricht, Amnsterdam and Lisbon. Alongside precise strategies on active employment policies. resources are needed to promote the transition to the new digital professions. On the subject of training and retraining of human capital, the European document mentions this, but it is still necessary to intervene through measures incentivising the retraining of personnel who have lost their jobs (tax credit, deductions, etc.). Even more serious is the failure to analyse the fiscal implications of the epochal transformation we are witnessing. It is well known that artificial intelligences and robots fully express their suitability to act as generative situations of manifestations of wealth both ascribable to traditional categories (incomes, consumption, expenditure savings, etc.) and to entirely new situations (think of the value of the domain of information, which is difficult to measure according to traditional parameters, or the value of facilities that the socialisation of robotics entails). By means of AI, robotics, ubiquitous connections and the availability of a practically infinite number of IT identities (especially

Anti-tax avoidance measures in a new BEFIT proposal should be in line with the global discussions and the provisions laid out in the ATAD package. The latter contains specific provisions concerning CFC, the switchover rule, exit taxation, interest limitation and general anti-abuse rule. The CCCTB proposal did not contain anti-abuse provisions concerning for instance wilful misconduct when calculating the apportionment formula or paper profit shifting through labour or capital factors manipulation. A tailored anti-abuse rule for these problems that may arise in direct taxation and a revision of the switchover and CFC rules may be included as another policy option. Enhancing anti-tax avoidance measures also naturally goes hand in hand with an increase in tax transparency and better exchange of information. Concerning the link with transparency in tax issues, three different levels of actions could be proposed: first, a harmonised framework for tax ruling procedures at EU level. Some countries, such as Belgium and Luxemburg, have already changed their rules to improve tax ruling procedures, although there is no

with the new IPv6 protocol), economic operators and private entities carry out economic and social activities, digitally connect plants and people, achieve income and cost savings in ever new ways, offer and use information, experience, documentation, knowledge, and more generally communicate with each other, enabling individuals as well as network lords to benefit and be useful or achieve cost savings. Just think, for example, of entrepreneurs who, by presenting their products on the network, can reach a higher number of consumers, obtaining, on the one hand, greater revenues and, on the other, saving on advertising costs, on the costs of displaying the goods in physical places, on the cost of employees (clerks and other sales staff) or parasubordinate staff (commercial agents, promoters, etc.). From a different point of view, we can think of the advantages, also in terms of cost reduction (for example travel, postage, research, etc.), that a private individual can draw from the acquisition of information or from the cost savings he can benefit from by comparing goods and services of different operators on the global market and buying goods at more convenient conditions.

single approach at EU level for this. The second is to exchange tax ruling information publicly. The third would be a single central platform at EU level concerning tax issues. In this regard, tools such as artificial intelligence and search engines might help to develop a powerful tax platform.[90]

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[90] Cfr. A.F. URICCHIO - S. A. PARENTE, *Data Driven e Digital Taxation: Prime sperimentazioni e nuovi modelli di prelievo*, in, *Diritto e pratica tributaria internazionale* n. 2/2021, according to whom the spread of new enabling technologies and tools for the conservation and circulation of big data have generated new forms of wealth. In the face of this phenomenon, the search for new taxable situations and new taxation criteria can not only be arbitrary but must reflect the criterion of the suitability for the contribution of the case and the subject obliged according to economically appreciable situations. The most significant experiences on the imposition of big players in the digital economy have affected certain foreign legislation, both in advanced economic systems and in developing countries. However, in the current frameworks, taxation of the digital economy still appears to be an open construction site with several proposals drawn up in various areas to determine a minimum level of effective taxation, not necessarily linked to traditional economic capacity indices. Recently, the European Council also confirmed the indistinguishability of a web taxation intervention on the assumption that the objectives of digital transformation and sustainability will be the pillars of the post-pandemic recovery; For an overview regarding the judgements of the EU Court of Justice in tax matters cfr. C.A. GIUSTI, F. L. GIAMBRONE, *The nomophylactic function of the European Court of Justice in tax matters within the italian and German experience. Possible Dispute Settlement Solutions for the Member States, in, comparative law review* 2019; C.A. GIUSTI, F. L. GIAMBRONE, *The Biffi Judgement and the Suarez case. Judicial decision of the ECJ and possible reforms of the italian civil code from an european point of view,* 2020, in, Annali del CERSIG (Centro di Ricerca sulle Scienze Giuridiche). Harmful tax practices within the EU: definition, identification and recommendations, Directorate-General for Internal Policies, European Parliament, May 2021. This dimension of the phenomenon is not appreciated by the white paper, which ends up missing opportunities for a profound rethinking of the tax system43 , still mired in the mire anchored to outdated schemes that are unable to grasp the complex phenomena of the digital economy draws. And yet, the tax authorities can play a significant role both in promoting and stimulating technological and digital innovation, and in acquiring new revenue by taxing new manifestations of taxable capacity, in full adherence to the principles of distributive equity. Despite openings on so-called 'web taxation', on the subject of taxing artificial intelligence, the European Union appears 'conservative', perhaps aware of the difficulties of pursuing disruptive and innovative tax measures. In this regard, one must ask oneself whether and which artificial intelligences can be taken into taxation, given the variety and complexity

4.1. Why should the EU continue to act?

The current challenging economic situation, where a large amount of debt has been accumulated to address the negative impact of the Covid-19 pandemic, is leading to renewed interest in addressing potential revenue losses.[91] VAT and CIT are important sources of revenue for Member States; in 2020, VAT raised around €940 billion and CIT approximately €360 billion, which corresponds to around 9 % of EU gross domestic product (GDP) and 23 % of Member States' total tax revenues. Further action would thus be welcome, as the estimated VAT and CIT losses (i.e. the difference between potential expected revenues and revenues effectively collected) for the EU as a whole, including cross-border evasion and fraud, were around €270 billion in 2020, more than twice the entire annual EU budget. Furthermore, the EAVA studies emphasised that there is still room for faster convergence towards best practices. There is, notably, large untapped potential for further simplification, for more

of the phenomenon and, above all, if and when machines can take on a legal-tax subjectivity, even if they have no body or brain. In this sense, on 31 May 2016, the Committee on Legal Affairs of the European Union published a report (later accepted by the European Parliament on 1 January 2017) on the growing importance of the use of robots in modern society, in which it highlights how the cognitive skills of robots make them similar to subjects ("more and more similar to agents that interact with their environment and are able to alter it signifi-cantly"). The report adds "In this context, major changes to the current legal system could be contemplated such as granting robots a sort of "electronic personality and the possibility to be liable for actions, not to mention aspects related to privacy intellectual property or criminal law.

[91] Cfr. A. F. URICCHIO- G. SELICATO, Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021, 2022.; European Parliament, Fair and simpler taxation supporting the recovery strategy, 2021.

effective administration, for digitalisation, for higher transparency and for better enforcement. In practice, taxation laws and related accounting rules continue to form a web of complex and sometimes cryptic arrangements. This can lead to unhealthy tax competition, while the current EU tax framework remains relatively vulnerable to abuse, evasion and fraud. Moreover, the currently fragmented taxation systems, where businesses have to comply with different rules at Member State level, sometimes encourage aggressive tax optimisation by some businesses and could promote a narrow-minded perspective in some Member States. As recently confirmed in another comprehensive study for the European Parliament, 'Exploring opportunities and challenges of new technologies for EU tax administration and policy'[92], faster diffusion of advanced digital tools and consolidated databases in tax administrations across the EU would also be crucial to help address these concerns more effectively. This is particularly relevant in the current rapidly digitalising environment, as the shadow economy could explain a large portion of the losses and as some businesses – sometimes not registered – operate without reporting their activities to the authorities, hide some of their revenues, or are used as shell entities. This type of fraud usually takes place in a more diffuse way and could concern all types of products, services and intangible assets, adding further complexity for tax authorities. The excessive complexity of the regulatory framework, combined with a lack of exchange of

[92] A. F. URICCHIO – F. L. GIAMBRONE, Entwicklungen des italienischen Steuerrechts als Herausforderung des neuen europäischen Entwicklungsprozesses, 2020; EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

information between Member States and sometimes limited administrative capacities, also contributes to a high level of administrative burden. As a result, businesses, and particularly businesses involved in cross-border trade and investment, often face high compliance costs, estimated at more than €80 billion in 2020.

4.2. Future scenarios regarding the EU taxation

The two EAVA (European added value) studies identify the challenges for EU legislators and offer a series of policy options to address these challenges**.** Then, through a series of selected scenarios, they evaluate the potential net benefit corresponding to each scenario. They assume a progressive implementation of reforms over a five-year period (2020 to 2025). The baseline scenario considers a situation where no major change is made. This corresponds to a status quo scenario where cooperation is limited and where additional policy options to significantly reduce the CIT and VAT losses and to reduce compliance costs for businesses are not introduced or are further delayed. This would therefore also correspond to very low standards for convergence at EU level. A second scenario (limited BEFIT + reinforced exchange of information on CIT and VAT[93]) considers a situation of extended cooperation with enhanced exchange of information, where Member States substantially move forward with

[93]EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

implementing policy options. In this scenario, the priority is on tools to render the exchange of information more automatic, on options that improve Member States' administrative effectiveness, and on digitalisation of the tax system in Member States. The third scenario (ambitious BEFIT + VAT definitive regime), considers a situation of tangible progress where Member States move forward with implementing policy options in a coordinated fashion, with ambitious BEFIT proposals coming rapidly and effectively into effect and with the introduction of the VAT definitive regime.[94] This scenario would see revision of the Directive on administrative cooperation, policy options that introduce mandatory harmonisation of accounting rules, harmonised inclusion of intangible assets, generalised and enhanced anti-tax avoidance measures, a preferential regime for SMEs and a reformed mandatory code of conduct. The fourth scenario (EU treasury and taxation administered at EU level) In addition, the is purely hypothetical, as it would require substantial amendments on the Lisbon Treaty.[95] While such a centralised approach is extremely unlikely at this stage, it is still worth exploring as it serves to illustrate how a more integrated approach could potentially improve convergence between Member States and ensure more legal certainty, while also reducing compliance costs, particularly those associated with cross-border trade resulting higher collection rate of tax could also increase responsibility, sustainability and resilience in Member States and

[94] Cfr. A. F. Uricchio – F. L. Giambrone, European Finance at the Emergency test, 2020; EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.
[95] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

improve confidence between them.[96] The EAVA studies confirm the positive economic impact from more action at EU level. A scenario of limited BEFIT and reinforced exchange of information would reduce the total VAT and CIT revenue losses by around €52 billion. It would also bring about a reduction of €17 billion in compliance costs for businesses. A slightly bigger reduction in VAT and CIT revenue losses (€71 billion) and compliance costs (€20 billion) would be obtained with an ambitious BEFIT and the introduction of a VAT definitive regime. An even larger impact would be generated by the hypothetical scenario of an EU treasury and taxation administered at EU level. This breaks down into a reduction of more than €117 billion in VAT and CIT revenue losses and a reduction in compliance costs for businesses of around €30 billion. The hypothetical scenario is, however, rather unlikely to gather sufficient support at present. Moreover, the definitive VAT regime continues to be delayed and significant progress on BEFIT still has to be made. The EAVA studies therefore emphasise the potential benefits in the short term of the scenario of extended cooperation and reinforced exchange of information on CIT and VAT. The results also stress that complexity is by far the greatest cause of both CIT and VAT revenue losses and the high level of compliance costs for businesses. As expected, increasing administrative effectiveness, improving enforcement and increasing transparency would also contribute significantly to an EU tax system that is more supportive of the recovery. Finally, as expected, the move towards digitalising the tax administration

[96] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

appears to be another key enabling factor to reduce losses and compliance costs. These elements are naturally self-reinforcing and so, for an optimal result, they need to be addressed through a systemic approach rather than through independent and unrelated tools.[97]Moreover a single harmonised tax return, common digital platform and one-stop shop are required.[98] A single and harmonised CIT return could be envisaged to support BEFIT in the EU. A standardised approach to the content and format of the tax return could be used to simplify preparation of the return. This would help to simplify CIT reporting and reduce the need to outsource tax compliance work, for SMEs doing cross border business. As a next step, a single consolidated tax return and a single digital platform complemented by a one-stop shop to facilitate access to information for businesses engaged in BEFIT could be envisaged. This approach would address some of the ambiguity regarding the exchange of some non-comparable or incompatible data and ensure identical treatment across Member States.[99] This potential platform would make the most of the tools already in place and such an approach, combined with the mandatory

[97] European Parliament, Fair and simpler taxation supporting the recovery strategy, 2021.
[98] Cfr. A. F. URICCHIO, F.L. GIAMBRONE, Conclusions, p. 288 ff., in, A. F. URICCHIO – F. L. GIAMBRONE, European Finance at the Emergency test, 2020; for an overview of the European bank system cfr. C. A. GIUSTI, *Banche e mutui, dalla portabilitá alla rinegoziazione*, 2011; cfr. Pierre de Gioia Carabbellese, *Crisi della banca e diritti die creditori*, Cacucci editore, 2020.
[99] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

use of electronic declarations coupled with a strategy based on AI[100] could significantly increase the likelihood of success of the digital platform.[101]

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[100] A.F. URICCHIO, La sfida della strategia europea dell'intelligenza artificiale tra regolazione e tassazione, p. 206 ff, in, A. F. URICCHIO- G. RICCIO – U. RUFFOLO, Intelligenza Artificiale tra etica e diritti. Prime riflessioni a seguito del libro bianco dell'unione europea, 2020. According to A. F. URICCHIO, Data governance and the ecosystem of trust
In depicting and assessing the impact of AI in the new European context, the white paper addresses a number of issues that are considered central and of great impact in defining the European strategies to be adopted: the collection and governance of an infinite amount of data and the relationship between intelligence and the environment. Despite the breadth and depth of the report, two profiles that cannot be missed in an overall vision are not addressed: the impact of artificial intelligence and robotics on the labour market and the fiscal and financial issue in the light of the profound transformations in the way wealth is produced and public resources are used. Proceeding in order, it should first be recalled that the issue of data collection and governance has been addressed by the European Union on several occasions, returning forcefully also in the white paper under review. As warned in the latter document,"the areas of action set out are complementary to those of the plan presented in parallel in the European Data Strategy. Improving access to and management of data is a key issue. Without data, the development of AI and other digital applications is impossible. This huge volume of new data that has yet to be generated represents an opportunity for Europe to take the lead in the data-driven and AI transformation. The promotion of responsible data management practices and compliance with FAIR principles will help to build trust and ensure the reusability of data. Equally important is investing in key technologies and computing infrastructures. Under the Digital Europe programme, the Commission has proposed more than EUR 4 billion in funding to support quantum and high-performance computing, including edge computing and infrastructure for AI, data and the cloud. More precisely, the European data strategy further develops these priorities (Commission document of 19 February 2020), directing its attention first and foremost to the methodology for collecting and using such data, which, in a society in which the amount of data generated by individual citizens is constantly increasing, are of particular importance for safeguarding the interests of individuals and in full adherence to European values, fundamental rights and standards. Once the data have been acquired, equally important is their governance, which must be ensured by the institutions with total transparency, but also with respect for the strict provisions of the GDPR and the principles laid down therein.Only in this way will citizens be able to trust the decision-making processes based on data processing, enabling them to develop conscious and responsible convictions.
[101] European Parliament, Economic and Budgetary Outlook for the European Union, 2022.

4.3. An European permanent fiscal capacity[102]

Subsequent the euro crisis, one task in relation to which the possible role and contribution of the EU budget have been debated concerns efforts to strengthen economic and monetary union (EMU). In this respect, one idea that has long been on the table has been the creation of a specific 'fiscal capacity' for the euro area, either inside or outside the EU budget. Proving politically sensitive, the debate on this idea has advanced slowly, but it is possible that it will stay on the agenda and be broadened to the entire EU following the launch of NGEU[103]. In 2017, four months after being

[102] with regard of possible introduction of fiscal federalism in Italy cfr. A. F. URICCHIO, Complessitá e criticitá dell'attuazione del federalism fiscal, p. 41, in A. F. URICCHIO, Federalismo fiscale: evoluzione e prospettive, 2013. According to A. F. URICCHIO, the enabling act No. 42 of 2009 had been hailed as an extraordinary opportunity to rethink the entire 10-cal tax system, strengthening the autonomy of local authorities and enhancing the principles of financial accountability and territoriality. The breadth of the reform and its underlying principles had led many commentators to easy enthusiasm about strengthening local taxation through old and new taxes that were supposed to ensure greater revenue and financial self-sufficiency. In fact, the above-mentioned enabling act, bearing largely vague and generic provisions, lent itself to being considered a veritable white paper rather than a comprehensive regulatory measure that complied with the dictates of Article 76 of the Constitution, which, as is well known, requires a definition of the subject matter, the identification of guiding principles and the indication of definite timeframes. In fact, it referred extensively to delegated legislation, betraying the intention of reserving to the Government the most delicate choices both in terms of the criteria for allocating expenditure and the levy models, thus removing them from the parliamentary debate. The whirlwind of delegations provided for by Law 42/2009 has, however, brought to the surface the desire to leave the executive with a free hand as regards the reorganisation of state and local taxation, the control of public spending and the containment of public debt'; cfr. C. A. GIUSTI, *Banche e mutui, dalla portabilitá alla rinegoziazione*, 2011; cfr. Pierre de Gioia Carabbellese, *Crisi della banca e diritti die creditori*, Cacucci editore, 2020; G. Giannelli, Banche dati e antitrust, in AIDA (Annali Italiani del Diritto d'Autore),2001.

[103] Cfr. A.F.Uricchio, Equilibrio finanziario e prospettive di riforma della finanza locale tra fiscalità di prossimità e neocentralismo, in AA.VV., Per un Nuovo Ordinamento

elected, French President Macron revived the idea, calling for the creation of a common budget for the euro area,499 while Jean-Claude Juncker, Commission President at the time, supported the establishment of a dedicated euro-area budget line as a subsection of the EU budget itself. In May 2018, the European Commission put forward proposals for the establishment of two new budgetary instruments to deepen EMU under the post-2020 MFF. In the Meseberg Declaration of June 2018, France and Germany jointly proposed creating a euro area budget within the EU framework as of 2021, identifying the promotion of competitiveness, convergence, and stabilisation in the currency area as its objective.502 In this respect, the two countries presented a proposal on the architecture of such an instrument to the Eurogroup in November 2018. In 2019, discussions advanced on the design of a – rather limited – budgetary instrument for convergence and competitiveness (BICC), but references to a stabilisation function were not included. In 2020, the outbreak of the coronavirus pandemic and its severe impact changed the debate on this instrument dramatically, as the European Council and Parliament asked the Commission to put forward proposals for an appropriate recovery instrument. On 18 May 2020, a Franco-German initiative backed the idea of an ambitious recovery fund at EU level for solidarity and growth. A few days later, the Commission presented the proposal for NGEU and the amended proposals for the 2021-2027 MFF, withdrawing the proposal for

Tributario. Contributi Coordinati da Victor Uckmar in Occasione dei Novant'anni di Diritto e Pratica Tributaria, Cedam.EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

the BICC. The subsequent agreement on NGEU has led to the establishment of a recovery instrument that is much bigger in size and scope than the BICC would have been. Another important difference concerns geographic coverage, since NGEU is not limited to the euro area but is an EU-wide instrument, contrary to ideas that were explored in the wake of the euro crisis.[104] NGEU[105] being a temporary tool, the debate on the need to create a permanent fiscal capacity has been relaunched. In October 2020, Christine Lagarde, President of the ECB, deemed NGEU a turning point for the EU, arguing that its possible transformation into a permanent instrument should be discussed as well as the creation of a common budgetary tool for the euro area. In December 2021, in the context of the broader debate on the possible reform of EU's fiscal rules, Italian Prime Minister Mario Draghi and French President Emmanuel Macron, said that NGEU was a success in the way it assessed public spending quality and financed related investments, arguing that the instrument offered a useful blueprint for a possible way forward. Some analysts consider that transforming NGEU[106] into a permanent facility is

[104] European Parliament, Economic and Budgetary Outlook for the European Union, 2022; For an insight regarding a possible application of fiscal federalism cfr. F. L. GIAMBRONE, Finanzföderalismus als Herausforderung des Europarechts, p. 221 ff, 2020;
[105] Cfr. A. F. URICCHIO- G. SELICATO, Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021, 2022.
[106] Cfr. A. F. URICCHIO- G. SELICATO, Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021, 2022.

a key priority for reinforcement of EMU.[107]The overriding objective of the European Commissioner for Economic and Financial Affairs must be to avoid permanent economic consequences from the pandemic shock.[108] This goal entails unambiguously supporting the efforts of EU member states to maintain an expansionary fiscal policy at least until the 2019 level of GDP is restored, while ensuring that the economic policies adopted to cushion the shock do not widen intra–euro area economic divergences. As the shock fades, it is paramount that the commissioner lead the reform to strengthen the economic policy framework in order to better meet the needs of the European economy in the current context of low growth, inflation, and interest rates. The secular decline in neutral interest rates and very low levels of inflation have left fiscal policy as the main macroeconomic policy tool to respond to recessions.[109] Therefore, "sound fiscal policy" is no longer equivalent to deficit reduction: Deficits and debt ratios now must be instruments, not objectives, of policy. Furthermore, deficits and debt ratios have increased because of the necessary fiscal expansion required to successfully manage the COVID-19 shock. The combination of these two factors makes the Stability and Growth Pact targets set before 1999 obsolete in two senses: The SGP targets of 3 percent deficit and 60 percent debt-to-GDP ratio have become unrealistic,

[107] See for example: Á. Ubide, Memo to the European Commission on reforming Europe's economic policy to handle pandemic shock, Peterson Institute for International Economics (PIIE), 9 December 2020.
[108] European Parliament, Fair and simpler taxation supporting the recovery strategy, 2021.
[109] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

and the focus on debt and deficit levels, rather than on the uses of fiscal policy, is counterproductive. Therefore, the Stability and Growth Pact must refocus the assessment and design of fiscal policies on three new objectives: (1) avoiding past errors of premature tightening and instead supporting the European Central Bank's efforts to reduce unemployment and increase inflation to its target; (2) improving the quality of fiscal policies, instead of prioritizing the reduction of deficits at all costs; and (3) protecting public investment by developing fiscal golden rules. The Recovery and Resilience Facility, and the associated Recovery and Resilience Plans, provide unique opportunities to improve the growth potential of European economies, in addition to fostering the EU objectives of enhancing economic fairness and mitigating the impact of climate change. These tools should enable the Commission to establish the power of common fiscal efforts in Europe. These plans comprise a large deployment of resources, which must achieve the right combination of near-term demand support and long-term productivity growth increases. The Commission must carefully manage these plans to avoid a deployment that is misguided by an excessive focus on spending too fast on projects that might be suboptimal or face capacity constraints. Countries should also be able to keep the option to request the loans at a later stage as needed, and the European Central Bank should stay away from pushing for a full take-up of loans at the outset. Moreover, the possible development of European Union´s own resources should be highlighted. The European Council decision to launch the Next

Generation EU (NGEU)[110] program included a request to the European Commission to present proposals for new EU own resources that could be used to repay NGEU borrowing. These new resources—for example, creating an EU tranche of the value-added tax—will stabilize the European Union's borrowing ability and allow it to create revenues better suited to tax bases that are mobile or pan-European. A better revenue base should also correct the current political distortion whereby countries try to minimize their contributions to the European Union's resources without internalizing the spillback benefits of the spending programs that they finance. The debt issuance associated with the Recovery Fund, combined with new EU own resources, set the stage for the creation of a true euro area safe asset. Making this new asset succeed at scale will reduce

[110] Cfr. A. F. URICCHIO, *La fiscalitá ambientale locale tra problemi e prospettive: relazione introduttiva tenuta alla summer school UNIBA*, p. 17 ff., in, A. F. URICCHIO- G. SELICATO, *Green Deal e prospettive di riforma della tassazione ambientale. Atti della II Summer School in Circular Economy and Environmenatl Taxation Bari 17- 24 settembre 2021*, 2022. According to A. F. URICCHIO as highlighted by the European Green Deal, the actions to be implemented in order to effectively pursue the objectives of Agenda 2030 presuppose a gradual transition from the linear economy, characterised by the maximisation of production and consumption (especially of goods destined to become waste or to be destroyed), oriented towards waste and insensitive to the impact on the environment, to the circular economy, which indicates an economic system capable of regenerating itself as all flows of raw and secondary materials, both biological and non-biological (so-called technical), are reintroduced into production cycles without entering the biosphere (not by chance, the expressions regenerative economy or closed cycle are also used). d. technical), are reintroduced into the production cycles without entering the biosphere (it is no coincidence that the expression regenerative or closed-loop economy is also used). Having overcome the fideistic belief that growth depends on the production-consumption binomial and that resources are abundant and tend to be unlimited, easily accessible and disposable at low cost, effectively summarised by the formula "take, produce, use and throw", it has become necessary to propose and then move gradually to a development model based on the idea of recovery and recycling.

the cost of capital for European households and businesses and boost potential growth. This safe asset is also a necessary condition for completing the European banking and capital markets union and for boosting the international role of the euro. The next step should be making the Recovery Fund a permanent facility and catalysing the creation of an EU debt management office. The European Union should abandon the excessive focus on "risk reduction" that has been so detrimental to growth in the past decade. The endless debates on reducing sovereign exposures and debt restructuring mechanisms have kept financial conditions excessively tight over the last decade and diverted attention from the key priority of creating a euro area safe asset. Moreover it may be stated, that certain key priorities which have been ignored in the past should nowadays be pursued, for instance this is the case of the development of an euro area countercyclical fiscal capacity and the boost of the international role of the euro area. With regard of the development of a euro area countercyclical fiscal capacity, it should be highlighted that the economic architecture of the euro area is incomplete, as it lacks an instrument to achieve the optimal fiscal stance for the euro area as a whole. The Stability and Growth Pact is asymmetric, with detailed mechanisms to force countries to tighten fiscal policies but a complete lack of mechanisms to force them to loosen fiscal policies. Developing a euro area fiscal capacity should become a priority, especially in an environment where fiscal policy must be the leading economic policy for aggregate demand management. For example, some of the new EU own resources

could become tools for countercyclical stabilization. With regard of the enhancement of the international role of the euro, it should be remarked, that the euro area accounts for about a third of global GDP, and yet the euro is a much smaller share of global foreign exchange reserves and international transactions. Developing the international role of the euro, for which the creation of a euro area safe asset is a necessary condition, is a priority that would have large positive economic and geopolitical benefits for the European Union, including sharing the low financing costs generated by the US dollar's so-called exorbitant privilege and boosting the effectiveness and reach of the euro's global payment system.[111]

5. Feasibility of Implementing the Common Consolidated Corporate Tax Base in Turkey

The Turkish taxation law differentiates between income, expenditure, and wealth taxes, and further complicates the tax system with a number of specific special taxes, some of which are comparable to German tax law. In addition to tax types known in Germany, such as property tax, income tax, corporate tax, and value-added tax, there are additional special consumption taxes from a German perspective, such as taxes on luxury

[111] European Commission, Memorandum to the European Commission on Reforming Europe´s Economic Policy to handle pandemic shock, 1ff.

goods, and among expenditure taxes, in addition to sales tax and excise tax, there are also advertisement tax, communication tax, environmental levies, and fund levies.[112] There is no "trade tax" in Turkey; instead, the land registry fee replaces the real estate transfer tax. Similar to Germany, the practice of tax law in Turkey is accompanied by numerous circulars and regulations issued annually. Therefore, it is essential, especially for businesses, to engage local tax consultants. The tax registration process is becoming increasingly stringent in Turkey, including requirements such as having a tax identification number for opening a bank account.[113] Also worth mentioning in this context is the stamp duty (Damga Vergisi).This tax, which is less than 1%, is levied on every legal transaction and is payable when contracts and other certified documents are notarized or serve as evidence.[114] It is a type of consumption tax imposed on the production of documents that are legally required for the execution of legal transactions related to goods, services, and assets in the value chain. The stamp duty becomes due once the respective agreement is signed,

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112 N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 55 ff; Rumpf Rechtsanwälte, Die Türkeispezialisten. Steuern in der Türkei,Stuttgart, http://www.tuerkei recht.de/downloads/Steuerrecht_Tuerkei.pdf, p. 2 ff.(25.03.2019).

113 Rumpf Rechtsanwälte, Die Türkeispezialisten. Steuern in der Türkei,Stuttgart, http://www.tuerkei recht.de/downloads/Steuerrecht_Tuerkei.pdf, p. 2 ff.(25.03.2019).

114 N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 55 ff; Rumpf Rechtsanwälte, Die Türkeispezialisten. Steuern in der Türkei,Stuttgart, http://www.tuerkei recht.de/downloads/Steuerrecht_Tuerkei.pdf, p. 4 ff; Öncel, Y. (2003): Transfer Fiyatlaması, Örtülü Kazanç Dağıtımı ve Vergilendirme,Maliye Araştırma Merkezi Konferansları, 41. seri, 1-19.

even if it is subsequently terminated or mutually cancelled. The Stamp Duty Law (Law No. 488 dated 01.07.1964) and its related lists specify the rates in detail. Unlike in Germany, there is no trade tax in Turkey, and instead of real estate transfer tax, a land registry fee is levied. Additionally, other taxes at the municipal level and customs duties may apply. Similar to Germany and other countries, numerous regulations, decrees, and administrative instructions are published every year to facilitate the practical application of tax law. The registration of taxpayers and taxable income in Turkey is becoming increasingly comprehensive.[115] This includes the requirement of having a tax identification number to open a bank account. Similar to Germany, the practice of tax law is accompanied by numerous decrees and regulations each year. Therefore, the use of tax advisors is essential, especially for companies. Overall, determining the applicable taxes from a business perspective can be complicated.

5.1. Corporate tax in the Turkish tax law system

The taxation of corporations is regulated by the Turkish Corporate Tax Law (Kurumlar Vergisi Kanunu/KVK). Article 1, paragraph 1 of the

[115] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 55 ff; Rumpf Rechtsanwälte, Die Türkeispezialisten. Steuern in der Türkei,Stuttgart, http://www.tuerkei recht.de/downloads/Steuerrecht_Tuerkei.pdf, p. 2 ff.

KVK provides an exhaustive list of all types of corporations. According to this article, the KVK recognizes cooperatives, public economic enterprises, economic enterprises owned by associations and foundations, and joint ventures as corporations with their registered office or management in Turkey. Article 1, paragraph 2 of the KVK further defines economic enterprises as joint-stock companies (Turkish anonim şirketi (A.Ş.), joint-stock partnerships (komandit şirketler), or limited liability companies (Turkish limited şirket) (Turkish Corporate Tax Law 2006). The following articles contain provisions regarding unlimited and limited corporate tax liability, exemptions from corporate tax liability, and taxation of income from abroad. Since 2003, foreign investments are no longer subject to approval, as explicitly stated in the KVK. Additionally, foreign founding companies are no longer required to have a minimum share capital. The KVK provides equal treatment for corporations established in Turkey with foreign capital and those established with purely domestic capital. It is also worth noting that with the new KVK, capital and interest payments are freely transferable. In a direct comparison with the list of corporations subject to unlimited corporate tax liability according to § 1 of the German Corporate Income Tax Act (KStG), it can be observed that § 1 KStG additionally mentions the European Company (Societas Europaea= SE), which was introduced in Germany at the end of 2004 as a result of EU legal harmonization. The SE must have its registered office in an EU member state. Therefore, currently, before Turkey's accession to the European Union, the

establishment of a Turkish SE without relocating its registered office to the European Union is not possible. However, such provisions can be incorporated into national law during a transitional phase after accession, making it an option only after Turkey joins the European Union.

5.2. Turkey´s economic interests associated to the Common Consolidated Corporate Tax Base (CCCTB)

The first signs of a partnership between Turkey and the EU date back to the early 1960s. An association agreement paved the way for a bilateral customs union in 1963.[116] The Association Agreement of Ankara in 1963 envisaged the establishment of a customs union in the final phase of relations between the EU and Turkey. This final phase began on January 1, 1996.[117] In 1999, Turkey obtained the status of an EU accession candidate, and accession negotiations commenced in 2005.

Since the economic crisis of 2001, Turkey has experienced rapid development in its economy. The Turkish economy initially grew at a fast pace, with a Gross Domestic Product (GDP) of approximately 734 billion

[116] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 66 ff; Altay, Serda (2018): Toward a "Privileged Partnership": The EU, Turkey and the Upgrade of the Customs Union, in: Insight Turkey, Jg. 20, Nr. 3, S. 179 – 198.

[117] Europäische Kommission: Gemeinsame Steuerbemessungsgrundlage - European commission. http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_de.htm (20.03.2019).

US dollars in 2015, before the military coup that led to a reorientation of Turkish domestic politics.[118] GDP per capita increased to around 9,290 US dollars. However, since 2004, the growth rates have steadily declined, with a rate of 9.4% in 2004 and only 3.8% in 2015 (ibid.), and further declined after the military coup. This is particularly evident in the Turkish construction industry with its massive infrastructure projects (e.g., Istanbul New Airport, construction of the Istanbul Metro under the Bosphorus, etc.), some of which have now been completed and are intended to showcase the new Turkey by the year 2023, marking the centennial anniversary of the founding of the Republic.The Turkish construction industry has become the world's second-largest contractor in the construction sector, following the People's Republic of China.[119] The living standards of the majority of the population have also improved, although the unemployment rate has fluctuated significantly in the past. High youth unemployment remains a particular challenge.Foreign direct investments are of crucial importance. For this, in addition to political stability, Turkey must guarantee reliable and transparent framework conditions. Necessary reforms in the judiciary and public administration

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[118] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 66 ff; Schulz, Ludwig (2016): Die schwierige Beziehung der EU zur Türkei, in: ifo Schnelldienst 21/2016, 10.11.2016, S. 3 - S. 6; Tolksdorf, Helge (2016): Türkische Volkswirtschaft am Scheideweg, in: ifo Schnelldienst 21/2016, 10.11.2016, S. 7 – 9.

[119] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 66 ff.

need to be undertaken for this purpose.[120]After the coup attempt and due to various uncertainties, foreign direct investments are currently declining. The undeniable economic progress Turkey has made in the past decade is commendable, but it is not a unique feature or a reason to avoid self-critical examination of achievements and necessary reforms to enhance competitiveness in both the EU internal market and on a global scale.[121]This includes the introduction of the CCCTB. However, significant political risk factors have emerged since the coup attempt, leading to a sharp decline in foreign direct investments. In expert circles, further alignment of economic legislation with the acquis communautaire of the EU is seen as an essential point, as it is considered crucial for cooperation with the EU's largest target market, the EU internal market. Rebuilding trust in Turkey's political and economic environment is essential to sustain the economic model reliant on foreign loans and domestic consumption. Morover it is necessary to leverage both quantitative and qualitative growth drivers, Turkey needs to adopt an open and rule-based economic policy. Furthermore by enhancing investments in scientific research and development, implementing an inclusive innovation strategy, and fostering the growth of skilled professionals, Turkey can enhance labour productivity, global competitiveness, and

[120] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr einfluss auf das türkische Steuerrecht, 2019, p. 66 ff.
[121] Tolksdorf, Helge (2016): Türkische Volkswirtschaft am Scheideweg, in: ifo Schnelldienst 21/2016, 10.11.2016, S. 7 - 9.

avoid falling into the Middle Income Trap.[122]This line is also advocated by Turkish politics. Various ambitious reform programs have been launched, aiming primarily to make the necessary adjustments in the judiciary to meet the EU's legal standards. In 2009, the Turkish Ministry of Justice presented a reform strategy, based on the understanding that comprehensive judicial reform is a necessary precondition for further progress in the accession process and modernization of the Turkish economy. In particular, legal approximation and harmonization were highlighted as key points to achieve the goal of full EU membership.[123] Based on these strategies, various action plans have been presented, listing in detail the required individual measures. Each action plan contains a detailed catalogue of actions that envisages extensive adaptation measures in the legal field for the respective areas; this also applies to the 2016 Action Plan.[124] However, there is opposition stemming from the deteriorating political environment, which unsettles many investors and acts as a deterrent to tourism. Significant progress is particularly

[122] Tolksdorf, Helge (2016): Türkische Volkswirtschaft am Scheideweg, in: ifo Schnelldienst 21/2016, 10.11.2016, S. 7 - 9.

[123] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 66 ff.; Turkish Revenue Administration (2016): Yürürlükte bulunan çifte ver-gilendirmeyi önleme anlaşmaları. Hg. v. Turkish Revenue Administration.http://www.gib.gov.tr/sites/default/files/uluslararasi_mevzuat/VERGIANLASMA-LIST.htm (23.03.2019); Turkish Ministry of Justice 2009, p. 55: Judicial Reform Strategy *Action Plan 2009, August 2009*.

[124] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 66 ff.; Kolev, Galina (2016): Scheinsatbilität udn Strukturprobleme. in: ifo Schnelldienst 21/2016, 10.11.2016, S. 22 - 25.

anticipated in this regard to advance the integration process into European structures.[125] The integration of the Turkish economy into international value chains is considered crucial. Closer integration is seen as possible, and the opportunities arising from the current situation should be more effectively utilized. However, the accession negotiations that have been conducted since 2005 have come to a halt, also due to further domestic developments in Turkey.[126]Therefore, the EU membership is no longer considered the only conceivable scenario, as new obstacles to accession continue to arise on both sides. The increase in populist movements in Western Europe, the decision of the UK to leave the EU (Brexit), and growing resistance to Turkey's accession in Europe have pushed full membership into the distant future.[127]Although both Ankara and Brussels now believe that the accession process cannot be successfully concluded, neither side is willing to formally end the process (ibid.). Accordingly, EU membership can be seen today, in 2019, as a failed project with no realistic chance of realization. Instead, there is talk of a privileged partnership, raising the question in the present context of whether it makes sense to align Turkish corporate tax law with (future) EU law at the current stage. On the other hand, significant modernization processes have taken place in many areas due to previous adjustment strategies and programs. The

[125] Kolev, Galina (2016): Scheinsatbilität udn Strukturprobleme. in: ifo Schnelldienst 21/2016, 10.11.2016, S. 22 - 25.
[126] Altay, Serda (2018): Toward a "Privileged Partnership": The EU, Turkey and the Upgrade of the Customs Union, in: Insight Turkey, Jg. 20, Nr. 3, S. 179 – 198.
[127] Altay, Serda (2018): Toward a "Privileged Partnership": The EU, Turkey and the Upgrade of the Customs Union, in: Insight Turkey, Jg. 20, Nr. 3, S. 179 – 198.

state of legal adaptation to EU standards in Turkey in the various chapters of the accession negotiations is varied and currently (in 2018) as follows[128]
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Based on this overview and the numerous negotiation chapters that remain unresolved, it becomes apparent that the question of Turkey's EU accession will not arise in the foreseeable future.

The question remains whether the concept of a privileged partnership represents a meaningful exit strategy or a "Plan B" .[129] Therefore, the initial central question needs to be modified to whether, alternatively, even in the case of a privileged partnership for Turkey, it is sensible to start implementing the CCCTB now and align Turkish national tax law with the European tax regime, despite the lack of a foreseeable prospect of accession. Overall, the tax situation in Turkey is influenced by current global trends, such as globalization and IT technology development. High income and corporate tax rates have been reduced due to intensified intergovernmental tax competition. As a result, significant distortions have occurred in the tax system, leading to an unequal and unfair distribution of the tax burden.[130] The fact that indirect taxes account for approximately

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[128] Altay, Serda (2018): Toward a "Privileged Partnership": The EU, Turkey and the Upgrade of the Customs Union, in: Insight Turkey, Jg. 20, Nr. 3, S. 179 – 198.

[129] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 67 ff.

[130] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 67 ff; Kargi, Veli/Yaygir, Tacim (2016): Küreselleşme, Vergi Rekabeti ve Türkiye'de Vergi Yükü (Globalization, Tax Competition and Tax Burden İn Turkey), in: Internatio-nal Journal of Public Finance, Heft 1, S. 1 – 22.

70% of tax revenue in Turkey can be seen as an indication of the imbalance in the distribution of the tax burden in the country. Therefore, the causes of tax competition, the triggers for its increase, and its advantages and disadvantages are extensively analyzed in the academic literature in Turkey. The introduction of the CCCTB is welcomed there to eliminate the lack of transparency in the taxation of large companies. However, it is also closely observed that the process of introducing the CCCTB among EU member states has not yet reached the final phase and that significant adaptation measures are still required among EU member states. Despite the efforts made in the "Taxation" accession chapter, further steps are still necessary for legal harmonization in Turkey.

5.3. The reactions towards corporate tax law in expert cycles

The proposed implementation of the Corporate Tax Law (CCTB) has garnered predominantly positive responses in expert circles. Arek Ferahyan, a Senior Manager at KPMG, highlights Turkey's historical trajectory since 1958 and its strong economic integration with the EU, particularly through the establishment of the Customs Union and existing double taxation agreements with EU member states. The deficiencies in Turkey's tax system have long been acknowledged by experts, as they hinder the country's ability to effectively respond to economic challenges and crises such as poverty, unemployment, income inequality, and political

conflicts, despite its economic stability and commitment to inflation control. Therefore, tax reforms aim not to burden citizens further, but rather to create additional income opportunities and extend the tax burden to previously untapped income groups. The introduction of the CCTB aims to address profit shifting practices employed by companies, which have been a significant issue in Turkey. Taxes are regarded as a crucial tool for sustaining a market economy and promoting social welfare, but further adjustments are still necessary. Tax experts emphasize the need for a comprehensive analysis of tax legislation, administration, practices, and collection, as well as the importance of aligning with EU and OECD standards. It is essential to convince citizens that tax revenues are vital for the functioning of the state and should be utilized in line with the defined objectives. Simply resorting to politically motivated tax amnesties will not contribute to solving the underlying issues. Additionally, reforming the tax system to make investments in Turkey more advantageous from a business standpoint is crucial.[131]

5.4. Considerations for implementing elements of cctb into Turkish tax law

[131] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 73 ff; Özdemir, Biltekin (2016): Bağlamında Türk Vergi Sistemi Üzerine Tespit ve Öneriler (In the context of Globalization. Findings and proposals on the Turkish taxation system, in: Türk Vergi Sistemi S. 7 – 21.

The intention to implement elements of the CCTB is welcomed by official sources. The Turkish website of the Directorate General for EU Affairs considers it a solid foundation for ensuring sustainable taxation of multinational companies within a legally secure framework.[132] One particular issue lies in the design of transfer pricing. Due to divergent forms of corporate taxation, companies engaging in cross-border activities have various opportunities for tax evasion and avoidance through the manipulation of transfer prices. Businesses are aware of this transfer pricing challenge, and it is extensively practiced as a means of tax planning.[133] Internal transfer prices for inputs aim to either increase or decrease costs at the final destination or to raise or reduce revenues at the input location. This leads to a transfer of profits within the financial statements. As multinational and supranational companies increasingly operate in the market, the significance of transfer pricing becomes evident.[134]The EU applies the system of separate profit determination, which allows internationally operating companies to set prices for intra-group cross-border transfers of goods and services that do not correspond to actual market prices. This can result in tax savings. Costs are shifted to countries with higher tax rates to reduce taxable profits, while income is shifted to low-tax countries to lower the overall tax burden. Consequently,

132 DirectorateGeneralforEUAffairs(2017):21.09.2017, http://www.abgm.adlet.gov.tr/duyuru/2017/eylul/21.09.2017.html(28.03.2019).

133 Schewe, Stefan (2007): Harmonisierung der Körperschaftsteuer-Bemessungsgrundlage, München.

134 N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 73 ff;

states from which profits are shifted ultimately experience lower tax revenues.[135] The agreement of transfer prices is a method primarily employed by large multinational companies in their relationships with subsidiaries. Diverse corporate tax rates incentivize altering market prices for their products to shift profits to low-tax jurisdictions and, similar to the previous tax structure of the Double Irish, minimize the overall tax burden or achieve a reduction in corporate tax. Multinational companies, in particular, tend to engage in profit shifting from high-tax jurisdictions to countries with lower tax rates.[136]Based on representative surveys of prices reported in Turkey between 1995 and 2003 for imports from Germany, France, Italy, and the United Kingdom, it is evident that the reported product prices are highly sensitive to changes in corporate tax rates, particularly in the beverage, food, paper, and rubber goods sectors. The results of these surveys also demonstrate that an increase in tax rates leads to a higher frequency of arbitrarily set transfer prices. Overall, this indicates the postulate that due to the erosion of national tax revenues, international rules on transfer pricing must be urgently established,

[135] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 73 ff; Schewe, Stefan (2007): Harmonisierung der Körperschaftsteuer-Bemessungs-grundlage, München; furthermore, for an analysis of the comparison methodologies, please refer to the following sources. J. M. Rainer, Introduction to Comparative Law, Manz Verlag, Wien 2010; J. M. Rainer, Europäisches Privatrecht: Die Rechtsvergleichung, 2. überarbeitete und ergänzte Auflage, Peter Lang Verlag 2007.

[136] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 73 ff; Öncel, Y. (2003): Transfer Fiyatlaması, Örtülü Kazanç Dağıtımı ve Vergilen-dirme,Maliye Araştırma Merkezi Konferansları, 41. seri, 1-19.

especially for developing countries that currently lack such regulations. This was the reason why Turkey enacted a new corporate tax law in June 2006, which came into effect in early 2007 and includes provisions on transfer pricing in relation to OECD countries.[137] However, it soon became apparent that these provisions needed improvement, primarily in terms of clarity and further explanations (ibid.). Profit shifting can also be achieved through lending. It can be used as a means of profit shifting. State regulations on the deductibility of interest on borrowed capital, as opposed to the non-deductibility of equity costs, result in increased and exclusively tax-motivated debt financing.[138] Finally, tax incentives are also exploited by minimizing profits through license payments and shifting them to low-tax jurisdictions, with the aim of reducing the tax burden. This ultimately leads to lower tax revenues for the countries from which the profits are shifted, as explained in the case of the former tax structure of the Double Irish. The system of public revenues in Turkey is currently undergoing comprehensive adjustment, particularly in terms of the interactions between economic integration and tax revenues from a federated perspective. The main challenges lie in analyzing how Turkey's steps towards economic integration, especially since 1990, have affected tax revenues. It can be observed that a high degree of economic integration increases factor mobility and has impacted public tax revenues

[137] Cak, Murat/Cak, Demet (2008): International transfer pricing and taxation: Evi-dence from Turkey, in: METU Studies in Development, 35 (December), 2008, 265-275

[138] Gillamarian, D./Binding, J. (2013): Base Erosion and Profit Shifting ("BEPS") – Bericht der OECD zur Aushöhlung steuerlicher Bemessungsgrundlagen und Gewinn-ver-lagerungen, in: DStR 2013, S. 1153 – 1158.

in EU countries.[139] In this context, referring to partially published official statistics, it was found that there is a strong positive correlation between trade volume and the government debt-to-GDP ratio in Turkey. This is an important indicator of economic integration. Furthermore, such a strong correlation also exists between trade volume and the extent of labor taxation. [140]As a result of non-parametric analysis, Yücememis and Erol conclude that the share of consumption taxes in total tax revenues in Turkey has increased since the 1980s. Immovable production factors and labor costs are burdened with high taxes due to globalization. This also affects the share of labor income in national income. Decreasing labor incomes and higher consumption taxes result in a higher average effective tax burden. While the Turkish income tax system is progressive, it does

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139 N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 73 ff; Yücememis, Basak Tanınmış/Erol, Kazım Okan (2017): Average effective tax rates of Turkey in EU accession process, in: İktisat Fakültesi Mecmuası, 67. Jg., Heft 1, 2017, S. 24 – 42; For an overview concerning transfer pricing and tax law in Italy cfr. MARCO GREGGI, *Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment*, in, W.W. KRAFT, A. STRIEGL (edt.), *WCLF Tax und IP Gesprächsband 2017*, Immaterielle Werte als zentrale Komponente internationaler Steuerstrategien, 2017, p. 205 ff; furthermore, for an analysis of the comparison methodologies, please refer to the following sources. J. M. Rainer, Introduction to Comparative Law, Manz Verlag, Wien 2010; J. M. Rainer, Europäisches Privatrecht: Die Rechtsvergleichung, 2. überarbeitete und ergänzte Auflage, Peter Lang Verlag 2007.

140 Yücememis, Basak Tanınmış/Erol, Kazım Okan (2017): Average effective tax rates of Turkey in EU accession process, in: İktisat Fakültesi Mecmuası, 67. Jg., Heft 1, 2017, S. 24 – 42; For an overview concerning transfer pricing and tax law in Italy cfr. MARCO GREGGI, *Transfer Pricing and Tax Law – BEPS Actions 8, 9, 10 and the Italian System: an Assessment*, in, W.W. KRAFT, A. STRIEGL (edt.), *WCLF Tax und IP Gesprächsband 2017*, Immaterielle Werte als zentrale Komponente internationaler Steuerstrategien, 2017, p. 205 ff.

not lead to a uniform income distribution (ibid.). Part of the doctrine admits, ss often is the case, the devil is in the details: as convincing as the idea of introducing the CCCTB may be from a theoretical perspective, its practical implementation is challenging. In fact, the obstacles that already exist between the 28 (or 27) EU member states are being almost duplicated. Despite years of negotiations regarding EU accession, achieving the acquis communautaire, and successfully implementing numerous harmonization measures, it is currently nearly impossible for the considerations and intentions discussed here to be realized in political reality. Even if the situation remains within the customs union, introducing the CCCTB in two steps would still be reasonable and serve tax fairness. The practice of transfer pricing, profit shifting, and lending within cross-border parent-subsidiary relationships would no longer be attractive.

6. Conclusions

Given the importance of CIT in the EU tax framework[141], and after the revelation of a series of high profile cases of fraud in recent times, reform

[141] For a better understanding regarding the international tax challenges within the international scenario and Austria Cfr. Ch. Smekal/ Jr. Chen, International Tax Competition: A Case for International Cooperation in Globalization.
Transition Stud Rev 11, 59–76 (2004).; Ch. Smekal/ R. Sausgruber, Determinants of Foreign Direct Investment in Europe, in, Jr. Chen, Foreign Direct Investment, 33-42, Houndmills: McMillan Press; Ch.Smekal / H.Winner, Außerbudgetäre Finanzierung und verdeckte Staatsverschuldung. Eine finanzwissenschaftliche Betrachtung vor dem

of the international CIT system appears highly relevant. The current challenging economic situation, where a large amount of debt has been accumulated at Member State level to address the negative impact of the pandemic, will also renew interest in addressing potential CIT revenue losses. The economic consequences linked to the challenges of effective administration of the current EU CIT regime are well documented, in particular regarding its complexity, fragmentation and high level of compliance costs. Further action would thus be welcome as budgetary losses owing to BEPS in the EU are estimated at approximately €33 billion a year on average. More broadly, the CIT gap, including BEPS, was estimated at around €154 billion in the EU in 2020, which is more than the entire current annual EU budget. The European Commission has long since recognised the need to proceed with overall modernisation of the CIT system.[142] The reform envisaged in the CCTB proposal of 2016 and in the proposal on ATAD I and II, the successive revision of the DAC framework or more recently the tax package for fair and simple taxation were all aimed, sometimes partially, at addressing shortcomings in the EU CIT system.

Hintergrund der monetären Integration in Europa. politicum, 74, 37-45; Cfr. Ch. Smekal, Finanzausgleich- Föderalismus- Gemeindeautonomie, 371, in: Andreas Kohl und Alfred Strinemann (Hrsg.), Österreichisches Jahrbuch für Politik, München, Wien 1979; Ch. Smekal, Transfers zwischen den Gebietskörperschaften. Ziele und Ausgestaltungsprobleme, in, K.- H. Hansmayer/ G. Seilerd/ Ch. Smekal, Probleme des Finanzausgleichs II, Duncker & Humboldt, 1980 Berlin.

[142] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

The recent agreement reached under the auspices of the OECD/G7 offers much hope that further ambitious action will be taken in the coming period. Building on this new momentum, the European Commission published a communication on business taxation for the 21st century, which includes the BEFIT proposal, moving towards a common tax rulebook and providing for fairer allocation of taxing rights between Member States. This study analysed these proposals, with a view to identifying possible gaps and challenges in EU legislation and evaluating the EAV of potential policy options to address these challenges. A thorough comparative economic analysis of the EAV of a series of scenarios based upon the policy options identified was also carried out. Regarding first the baseline scenario, which included the OECD/G20 agreement, a substantial decrease in the CIT gap was found, of around €20 billion in absolute terms, from around €154 billion in 2019 to €134 billion in 2025. Under this scenario, the compliance costs for business decreased by around €3 billion, from €49 billion in 2019 to €46 billion in 2025. These results highlight the potential positive impact that the OECD/G20 agreement might have, as without it the reduction in the CIT gap and the compliance costs would be more limited.[143] Regarding the impact of the

[143] Cfr. A. F. URICCHIO- F. L. GIAMBRONE, *The EU budget powering the Recovery plan for Europe*, in, open review of Management Banking, Finance, 2020; for an insight of the taxation in Europe cfr. G. SELICATO, *La fiscalitá ambientale in Europa in La fiscalitá ambientale in Europa e per l´Europa,* Bari 2016; For an overview of the Italian windfall taxes cfr. M. GREGGI, *The wind doesn´t fall it drops, Mistakes misconceptions and misunderstandings about the Italian windfall tax,* in Verfassungsblog, 2022; furthermore, for an analysis of the comparison methodologies, please refer to the following sources. J. M. Rainer, Introduction to Comparative Law, Manz Verlag, Wien 2010; J. M. Rainer, Europäisches

other scenarios compared with the baseline, EAV of around €30 billion is seen for a scenario of G7/OECD agreement + limited BEFIT and reinforced and extended cooperation. This breaks down into a reduction of around €23 billion in the CIT gap and a reduction of €7 billion in compliance costs for businesses. A slightly higher EAV of around €45 billion is seen for a scenario of G7/OECD agreement + ambitious BEFIT and reinforced cooperation. This breaks down into a greater reduction of around €35 billion in the CIT gap and almost €10 billion in compliance costs for businesses. Finally, greater EAV of €76 billion is seen for the most ambitious scenario of an EU treasury, qualified majority voting (QMV) and CIT administered at EU level. This breaks down into a higher reduction of around €60 billion in the CIT gap and a greater reduction of €16 billion in compliance costs for businesses. The most ambitious scenario of an EU treasury and CIT administered at EU level is however still rather unlikely to gather sufficient support at the current juncture as it would require substantial Treaty changes to be pursued. Taking a more realistic view, it can be concluded that the two other less ambitious alternative scenarios are more likely to be implemented in the near future.[144]Moreover the Proposal on creating a Debt Equity Bias Reduction Allowance (DEBRA) should be highlighted. The Communication noted a

Privatrecht: Die Rechtsvergleichung, 2. überarbeitete und ergänzte Auflage, Peter Lang Verlag 2007; cfr. C. A. GIUSTI, *Banche e mutui, dalla portabilitá alla rinegoziazione*, 2011; cfr. Pierre de Gioia Carabbellese, *Crisi della banca e diritti die creditori*, Cacucci editore, 2020; G. Giannelli, Banche dati e antitrust, in AIDA (Annali Italiani del Diritto d'Autore), 2001.

[144] EU Parliament, Fair and simpler taxation supporting the recovery strategy, p. 4 ff, 2022.

pro-debt bias under the current tax framework, which allows for the corporate income tax deductibility of interest expenses related to debt financing but doesn't provide for an equivalent deduction of costs related to equity financing. The EC expressed its intention to address this issue through the introduction of a debt-equity bias reduction allowance (DEBRA).

On May 11, 2022, the European Commission issued its proposal for a Directive on a DEBRA and on limiting the deductibility of interest for corporate income tax purposes. Subject to certain conditions, the proposal would: provide for a deduction from the tax base of a taxpayer in respect of the increases in its net equity in a given tax year. The allowance would be determined by multiplying the allowance base with a notional interest rate. The notional interest rate would be calculated based on the 10-year risk-free interest rate for the relevant currency, increased by a risk premium of 1 percent or, in the case of SMEs, a risk premium of 1.5 percent. The allowance would be deductible for ten years, however the deduction would be limited to a maximum of 30 percent of the taxpayer's EBITDA for each tax year.[145] The calculation scheme for the EBITDA result follows the indirect calculation of a cash flow: By adding the non-cash depreciation to an operating result, an operating cash flow is obtained. Operating cash flow is calculated for EBITDA on the basis of a simplifying formula – not all non-cash transactions are recognised. In the

[145] KPMG, European Commission Agenda for business taxation in the EU- one year later, 2022.

calculation scheme, only the regularly occurring and quite stable depreciation is taken into account.[146] As a result, EBITDA is not distorted by changes in other items that fluctuate rather randomly (e.g. changes in provisions, changes in net working capital). As a result, the EBITDA result is significantly more stable than, for example, the cash flow from operating activities. EBITDA can therefore be interpreted as (easy to calculate) sustainable operating cash flow before taxes. The predicate "sustainable" is particularly justified if the calculation of EBITDA is based on an EBIT result that has been adjusted for extraordinary and aperiodic effects. The Directive further bargains for specific anti-abuse procedures to safeguard that engagements are not put in place to artificially benefit from the proposed new allowance on equity. A recapture rule affords that any subsequent shrinkage in equity would generate a taxable amount over 10 consecutive tax years, unless the taxpayer is able to demonstrate that the decrease exclusively relates to losses incurred during the tax year or to a legal obligation. The Commission proposes that Member States should transpose the rules into domestic law by December 31, 2023 and that the provisions of the DEBRA Directive should apply as of January 1, 2024. Member States that currently apply a tax allowance on equity funding under national law would be allowed to reschedule the application of the Directive for a period of up to 10 years. As is the case for the Unshell

[146] KPMG, European Commission Agenda for business taxation in the EU- one year later, 2022; cfr. C. A. GIUSTI, *Banche e mutui, dalla portabilitá alla rinegoziazione*, 2011; cfr. Pierre de Gioia Carabbellese, *Crisi della banca e diritti die creditori*, Cacucci editore, 2020; G. Giannelli, Banche dati e antitrust, in AIDA (Annali Italiani del Diritto d'Autore),2001

initiative, the proposed timeline and the text of the DEBRA Directive could suffer substantial changes during working group discussions in the Council. Input from stakeholders was collected through a public consultation that rand through the end of July 2022.[147] In view of the Unshell initiative, the EU Commission published, on 22 December 2022, the draft for another anti-tax avoidance directive, the so-called Unshell Initiative (formerly known as ATAD 3). This refers to low-substance companies based in the EU, commonly known as shell entities. However, the Unshell initiative does not only affect letterbox companies, but all companies. They have to be prepared for increased reporting, declaration and recording obligations. If the EU Member States agree to the proposal, it should be transposed into national law by 30 June 2023. The application is planned from 2024, but a previous two-year observation period applies to the objectified substance indicators, so that they will already be applied from 2022. with regard to residence, it should be emphasised that: The Directive has direct effect for all companies that are considered to be resident for tax purposes in the EU and are therefore entitled to a certificate of residence, irrespective of their legal form. The certificate regularly serves to make use of the withholding tax relief provided for in the DTAs or EU directives – i.e. in the exemption or refund procedure in the state in which withholding tax is withheld on the payments. This means that the Directive primarily covers limited liability companies

[147] KPMG, European Commission Agenda for business taxation in the EU- one year later, 2022.

established in the EU. This does not apply to tax-transparent partnerships that are not entitled to an agreement and are therefore not considered to be resident for tax purposes within the meaning of a DTA as long as they are not treated as corporations in their country of residence (in Germany, for example, as a result of the option to tax corporations).With regard of the long term initiative s regarding business taxation it should be stated that the lack of a common corporate tax system within the EU represents a competitive shortcoming for the EU Single Market compared to third country markets. The aim of the European Union is for EU citizens to study, live, shop, work or retire in all EU countries, as well as to choose from a wide range of products from all over Europe. To this end, it ensures the free movement of goods, services, capital and persons in an EU internal market. By removing technical, legal and bureaucratic obstacles, the EU enables citizens to trade and do business freely. According to the EC, the current corporate tax framework acts as a distortive element for investment and financing decisions and increases compliance costs for multinationals. To address this issue and building on the work commenced at the level of the IF, the Commission set out an ambitious plan for a new framework for income taxation for businesses in Europe (Business in Europe: Framework for Income Taxation or BEFIT), to be proposed in 2023. BEFIT will provide for common rules for shaping the corporate tax base and for the allocation of profits between Member States, based on a pre-defined formula (formulary apportionment). It is envisioned that the proposal will build on the principles agreed upon

under Pillar One[148] and Pillar Two and will further adapt these to ensure suitability for extended use within the EU Single Market.[149] The OECD reform proposal contains two central components: redistributing taxation rights (Pillar 1)[150] and introducing a global minimum taxation (Pillar 2) to prevent the transfer of corporate profits to low-tax countries. Pillar 2 is based on the german-French GloBE initiative, the so-called Global anti-Base Erosion Proposal. This is to ensure that corporate profits are not

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148 Cfr. A. F. Uricchio, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 111 ff, in, F. Gallo – A. F. Uricchio, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*, 2023. According to A. F. Uricchio , the so-called "Pillar One", also called "Unified Approach" (rectius, "unified approach on the tax treatment of the digital economy"), performs a "reallocative" function, being preordained to review the criteria for linking and allocating income, through a modification of the provisions on the transfer of intra-group profits, also in derogation of the arm's length principle, and the preparation of new "nexus rules, based on the concepts of "user participation", "significant digital and economic presence", "distribution-based approach" so as to grant the power of taxation to the jurisdictions in whose territory consumers and users of digitised business models are located. It is evident that through this model, also the subject of a public consultation, it is intended to overcome the criterion of permanent establishment, dating back to the beginning of the twentieth century, subjecting to taxation, within a given territory, the profits achieved by multinational companies (with revenues exceeding a certain amount) operating in it, even in the absence of a physical presence. The implementation of this model requires international rules on how to distribute corporate profit tax rights among the largest and most profitable multinationals among several countries, also taking into account the ability of companies to operate without a physical presence; furthermore for a glimpse regarding the taxation jurisdiction of other states cfr. Carlo Alberto Giusti-Filippo Luigi Giambrone, Towards an European harmonized environmental taxation policy. Comparative aspects of fiscal federalism and taxation aspects with regard to Germany, 2023.

149 KPMG, European Commission Agenda for business taxation in the EU- one year later, 2022.

150 Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax,* p. 113 ff, in, F. Gallo – A. F. URICCHIO, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*, 2023.

taxed below a certain effective tax rate. The sovereignty of the states with regard to the tax base and tax rate is to be preserved, but if the effective tax burden falls below the agreed minimum tax rate, an additional minimum tax is levied. [151]This can be levied either in the state in which the company has its registered office and thus a physical presence or in the market state. The two central elements of Pillar 2 are the so-called Income Inclusion Rule and the Tax on Base Eroding Payments: The Income Inclusion Rule is intended to supplement the tax burden until the total tax burden reaches the effective minimum tax rates. In addition, the Tax on Base Eroding Payments is intended to debit outgoing payments to affiliated companies abroad. It is intended to intervene in cases where countries apply no or only a weak income inclusion rule. In practice, it is criticised that the success of the agreed action plan to prevent base erosion and profit shifting (BEPS) of 2015 could not yet be sufficiently determined. [152]A precise design of the instruments under Pillar 2 can therefore not be sufficiently based on practical experience (ibid.).[153] This is particularly true if analyses show that the existing BEPS actions are already effective in preventing harmful tax avoidance practices. In this case, the requirement of extensive Pillar 2 rules would be questionable. Which reference point of minimum taxation is the Federal Government advocating in the negotiations on Pillar 2 of the OECD reform project, and for what reasons; (a) determine the minimum level of taxation

[151] English/Becker, Global Taxes, TLE-018-2019).
[152] OECD Consultation on Pillar Two, December 2019, BDI, p. 3).
[153] OECD Consultation on Pillar Two, December 2019, BDI, p. 3).

separately for each subsidiary;(b) determine the minimum taxation per jurisdiction;(c) determine the minimum taxation applicable to all foreign profits?.[154]In order to sum up BEFIT would consolidate the profits of the EU members of multinationals into a single tax base, to be consecutively allocated to Member States using a formula that will replace the current transfer pricing rules.[155] The formula will be established by bearing in mind issues such as: giving appropriate weight to sales by destination, reproducing the importance of the market where a multinational group does business, assets (including intangibles) and labour (personnel and salaries). Once allocated, profits would be subject to the corporate income tax rate of the respective Member State. This initiative was first announced in May 2021, and is one of the measures included in the Commission's Communication on Business Taxation for the 21st Century. In October 2022, it was opened for public consultation. As proclaimed in the communication «The next generation of own resources for the EU Budget», the Commission will present a proposal for a second basket of new own resources by the end of 2023, building on the BEFIT proposal The Council's statement included in the adopted Directive implementing Pillar Two in the EU (December 2022) which expressly notes that, if appropriate, the Commission shall 'submit a legislative proposal to address those tax challenges in the absence of the implementation of the Pillar One solution' (Article 57).

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[154] OECD Consultation on Pillar Two, December 2019, BDI, p. 3).
[155] KPMG, European Commission Agenda for business taxation in the EU- one year later, 2022.

The pending Common Consolidated Corporate Tax Base (CCCTB)[156] proposal will be withdrawn in light of this new initiative. Once

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[156] Cfr. A. F. URICCHIO, *L´ imposizione della data economy tra proposte di nuove forme di prelievo, wex tax italiana e global minimum tax* , p. 113 ff, in, F. Gallo – A. F. URICCHIO, *La tassazione dell´ economia digitale tra imposta sui servizi digitali, global minimum tax e nuovi modelli di prelievo*, 2023; According to A. F. URICCHIO On 21 March 2018, the Commission presented a 'digital tax package', comprising the Communication entitled 'It is time to establish modern, fair and effective tax rules for the digital economy'; a proposal for a directive on the taxation of companies with a significant digital presence I1; a Recommendation on the taxation of companies with a significant digital presence; and a proposal for a directive on a 'common system of taxation on digital services applicable to revenues deriving from the provision of certain digital services'.This set of initiatives is to be seen in the context of the Commission's broader effort to promote a tax system that is better adapted to the challenges of the modern economy, to be considered together with the attempt to introduce rules for the determination of the Common Consolidated Corporate Tax Base (CCCTB) (as well as the implementation of the VAT legislation on e-commerce).Following the subsequent discussions, the first focus was on the proposal for a directive on digital services tax (DST). The proposal for a Directive on the taxation of digital services and the introduction of the Italian ISD Pending final international solutions (OC SE, the E.U.I. Commission proposes, albeit as a provisional solution, a common system of taxation on revenues deriving from the provision of certain digital services.The proposal for a Directive COM (2018) 148 final128 focuses on the concept of 'value creation' by users, coordinating with what is provided for by the proposal for a Directive on a global solution, ut supra, and by the recommendation to the Member States to include it in the international conventions on double taxation. The 'interim solution' appears to be oriented towards those enterprise and business models in which the contribution of users to value creation is 'most significant'. ISD is a tax on revenues generated by the provision of certain digital services, characterised by the fundamental contribution of user participation in the digital business, i.e. those provided by business models 'that could not exist in their current form without user participation'. Thus, revenues generated by the provision of services punctuated by the proposal, produced with the contribution of users, are taxed. The 'taxable services?' are set out in Article 3(1) and can be categorised as: advertising services (subpara. a), brokering services and b) services for the transmission of data collected on users c). In the recitals it is made clear that the services producing taxable revenues are those where the digital interface is used to generate the user contribution and not to transmit otherwise generated data: ISD is designed to attract to taxation the transmission for consideration of data obtained from users' activities on digital interfaces (34). In essence, taxation concerns revenues derived from the processing of user contributions, not user participation per se. The taxable base of ISD is the gross revenues of the enterprise received in exchange for the provision of digital services, as outlined above, net of VAT and other 'similar' taxes. The nature of an

implemented, BEFIT could represent a stepping-stone for the introduction of an even more ambitious initiative, i.e., the possibility of a single EU corporate tax return for a group.[157]

Regarding Turkey, the following can be stated: it´s worth noting that Turkey experienced tremendous economic growth from 2001 onwards, which none of the EU member states achieved during the same period. This extraordinary surge in growth had a significant impact on the population's wealth development, overall prosperity, and the expansion and strategies of businesses. As predicted by general economic principles, this impressive development began to decline in the 2010s. The

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indirect tax is evident, with profiles of similarity with the taxable premise and the taxable base of IRAP: the 'value 13s is produced by the contribution of the users in the use of the services, provided by an 'autonomous organisation' of the enterprise, through a digital platform. Unlike the Italian web tax, the ISD concerns both B2B and B2C transactions, since the taxable person is the entrepreneur, the professional economic operator, but the 'user' is considered to be any person or company, without therefore the nature of the final consumer of the purchaser of the service or the scope of use of the same, in the exercise of a business or not, being relevant. Specific rules are provided in paragraphs 7 and 8 of Article 3 for revenues arising from the provision of taxable services between entities belonging to a consolidated group for financial accounting purposes, which are considered non-taxable, and for taxable services provided to third parties and collected by a group entity other than the one providing the service. In terms of taxable persons, the draft Directive sets two thresholds above which an entity is considered to be a taxable person, to be verified in the preceding financial year 31, the first concerns the total annual amount of worldwide revenues declared, where there are consolidated accounts (EUR 750 million): the second concerns the total taxable revenues (for ISD purposes) in the European Union EUR 50 million). When both conditions are met, the company is considered a taxable person for ISD purposes, even if it is established in a non-EU jurisdiction. The basic idea expressed in the thresholds is that of the economic capacity of large enterprises, in which the ability to involve a large customer base is developed, which constitutes a necessary element of the remunerativeness of the business model considered, according to the canon 138 of the contribution of significant value given by customer participation'.

[157] KPMG, European Commission Agenda for business taxation in the EU- one year later, 2022.

implementation of the CCCTB is welcomed by interested experts. However, their statements always assumed the realization of EU accession, which has consistently been favoured by the government. While there are discussions identified regarding the customs union under the current conditions, there is a lack of focus on the implementation of the CCCTB, which is the central topic under consideration. Bearing in mind the aforementioned points, the central questions raised initially revolve around whether it would be advantageous for a candidate country like Turkey to commence the implementation of the Common Consolidated Corporate Tax Base (CCCTB) and harmonize its national tax laws with the European tax regime during the accession negotiations, or if it would be more prudent for the candidate country to wait until the relevant chapters are opened before initiating the implementation process along with any subsequent modifications. Taking the aforementioned into consideration, the central questions raised can be addressed by stating that, in the case of Turkey, it would be beneficial to initiate the implementation of the Common Consolidated Corporate Tax Base (CCCTB) even before officially joining the European Union, provided that the process of accession and alignment continues to be pursued.[158] This should be done in two steps, as currently aimed for within the European Union. This is

[158] N. AKSOY, *Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht*, 2019, p. 73 ff; Schewe, Stefan (2007): *Harmonisierung der Körperschaftsteuer-Bemessungsgrundlage,* München; furthermore, for an analysis of the comparison methodologies, please refer to the following sources. J. M. Rainer, *Introduction to Comparative Law,* Manz Verlag, Wien 2010; J. M. Rainer, *Europäisches Privatrecht: Die Rechtsvergleichung*, 2. überarbeitete und ergänzte Auflage, Peter Lang Verlag 2007.

necessary due to the protracted and lengthy process of implementation. Therefore, Turkey's national tax legislation should be aligned with the European tax regime at this stage. Consequently, the second sub-question is also answered: It is not advisable for an accession country to wait for the implementation process, along with all its subsequent modifications, until the opening of the respective chapters. Historical experience speaks against this approach. If the situation remains within the customs union, as it has been so far, an adaptation of the CCCTB in Turkey's domestic tax law should also be pursued in the long term. The EU is Turkey's most important trading partner, and economic ties with companies in EU member states are particularly intense. Cooperation among trading companies is increasing, and there is a growing number of cross-border mergers and corporations. Turkey and the EU member state Germany have always maintained good and close relations. Therefore, numerous private sector economic cooperation's exist, especially between Turkey and Germany.[159]

[159] N. AKSOY, Die gemeinsame konsolidierte Körperschaftssteuerbemessungsgrundlage (GKKB) und ihr Einfluss auf das türkische Steuerrecht, 2019, p. 73 ff; Schewe, Stefan (2007): Harmonisierung der Körperschaftsteuer-Bemessungs-grundlage, München; furthermore, for an analysis of the comparison methodologies, please refer to the following sources. J. M. Rainer, Introduction to Comparative Law, Manz Verlag, Wien 2010; J. M. Rainer, *Europäisches Privatrecht: Die Rechtsvergleichung,* 2007.