

## Questionnaire on corporate income tax subjects

2013 Congress

### Background

In terms of tax policy, tax harmonization or coordination of corporate taxation in the EU is usually considered from two complementary points of view: tax base and tax rate. These two perspectives structure the debate whether EU Member States, and more broadly States belonging to the same economic area, should harmonize or coordinate their policies in tax matters.

However, little attention has been paid so far to a more basic question: who are corporate taxpayers? Are they defined in the same way over Europe?

This may be explained by the fact that the vast majority of tax systems accept the same fundamental idea: while companies limited by shares and limited liability companies should be subject to corporate income tax (CIT), partnerships should be considered fully or partly transparent for tax purposes.

This general statement is nevertheless an oversimplification of reality. Comparative law indeed shows that the conditions which must be met in order to be subject to CIT are very different from one country to another.

The way tax systems define foreign entities which fall under their CIT may also vary in a significant way, which may in practice give rise to interesting tax planning opportunities.

Against this background, the EATLP congress devoted to CIT subjects should enhance the main similarities and differences which exist between European countries in order to reach a better understanding of the need (or the absence of need) of increased harmonization in this matter.

### Questions

*The following questions should be answered in their order, in a reasonably detailed way, bearing in mind that neither insufficient nor excessive accuracy allow constructive comparative work. Your report should therefore not exceed 15 pages. Please quote the relevant legal sources (provisions of your tax legislation, academic literature, etc.) upon which you rely to answer the questions.*

*Furthermore, in order to avoid a fragmented report in the form of (short) answers to questions, the national report should not be written in question and answer style, but in the form of a full text survey of the corporate income tax subjects in your country following the order of the questions.*

## 1. General presentation of CIT in your country

### 1.1. Please provide for a quick overview of the system of CIT in your country

- date of introduction of CIT
- existence of a tax distinction between corporations and partnerships (opacity vs. transparency)
- number of corporations ; proportion of corporations in the total number of businesses (the goal of this question is to understand whether the setting up of a corporation is an ordinary way of performing a business activity or whether corporations are normally used by big companies only) ;
- CIT and other taxes :
  - CIT revenue compared to income tax revenue and to tax resources of the State more generally (if available) ; ratio CIT/Gross Domestic Product
  - Are there taxes in your country which “look like” CIT but are distinct from CIT (i.e. taxes which have a comparable base, or which are presented as “additional taxes” to CIT although they have a different nature)?

### 1.2. Presentation of the historical evolution of CIT in your country (to the extent relevant)

- Has the CIT system been changed significantly since it was introduced?
- Has the personal scope of CIT (i.e. the list of entities which are subject to CIT) been modified since CIT exists in your country? If so, why?

## 2. Legislative technique

### 2.1. Sources

- Please explain which is the legal instrument for defining CIT subjects : are taxable entities defined through a section of your tax code, a provision in another piece of legislation, a decree, case-law, etc?

### 2.1. Legal drafting

- Does your tax system contain an accurate list of entities which fall under CIT?
- Does it rather provide for a general criterion (for instance legal personality, lucrative goal, commercial activities etc.)? *Please answer this question from a legal drafting perspective only, at this stage. Further details on the substance of the criterion will be requested later on.*
- Does it combine both of the above legal drafting techniques?

## 3. Domestic entities

### 3.1. First approach

- Please give an accurate list of all domestic entities which are subject to CIT in your country
  - Please check whether this list is consistent with the annexes to the Parent-Subsidiary directive, the Interest-Royalty Directive and the Draft CCCTB Directive. If not, can you provide for an explanation?
- Please give an accurate list of all domestic entities which are not subject to CIT in your country

-Can you explain *why* some entities are subject to CIT while others are not? Is there a widely accepted reason for distinguishing between taxable subjects and non-taxable subjects? If partnerships are transparent, is there a clear explanation in your domestic academic literature for the contrast between opacity of corporations and transparency of partnerships?

### 3.2. More details

#### 3.2.1. Link between company law and tax law

-Does the definition of a person subject to CIT depend upon company law definitions? This is the case, for instance, where the law states that entities which have a specific legal form are subject to CIT.

-Is there a link between limited liability of shareholders (or partners) and the personal scope of CIT?

-May one-person companies be subject to CIT?

-Is it necessary to enjoy legal personality to be subject to CIT? Do entities without legal personality have to pay CIT? If so, what are the conditions for these entities to fall under the scope of CIT?

-Conversely, may corporations (for company law purposes) be outside the scope of CIT?

#### 3.2.2. Charitable organizations and associations

-May charitable organizations and associations be subject to CIT? If so, which are the criteria which are applicable? Are these criteria identical to those used in the context of VAT liability?

-Are criteria of for-profit entities identical for domestic and foreign entities?

#### 3.3.3. Miscellaneous on CIT subjects

If this is relevant, please underline specific legal structures which may be used in your country, e.g. trusts, silent partnerships, etc. and explain what their status is with regard to CIT.

If State-owned entities raise specific issues in your country, please explain.

If companies belonging to a group no longer enjoy full tax personality in your country, please explain.

#### 3.3.4. Partial implementation of CIT

In some countries, limited partnerships are subject to CIT to a limited extent. Please explain how limited partnerships are treated in your country, and especially whether they are considered transparent/opaque/half-transparent. Any comment on why this is so, and whether the rule could be improved, is more than welcome.

In some countries, partnerships may be partially liable to CIT (i.e. part of their profits are taxed under CIT). Is this the case in your country? Can you explain the conditions and the rationale for this rule?

In some countries, partnerships or other entities which normally do not fall within the scope of CIT may opt to be treated as CIT subjects. Conversely, some countries (sometimes the

same) allow CIT subjects to be treated as transparent entities. Is this the case in your country? What are the conditions and rationale of the rule?

### 3.3.5. Tax planning

Is the choice between setting up a corporation rather than a partnership (or the opposite) tax-driven in your country? Is there some government interest and/or academic literature on the neutrality of taxation with respect to the choice of legal structure?

### 3.3.6 Others

Does submission to CIT have other tax side-effects? For instance, does it have an impact on the possibility for the taxable income to be assessed on a lump-sum basis?

Are there any other procedural consequences to be drawn from being subject (or not) to CIT?

## 4. Cross-border situations

Where a foreign entity carries out business in your country, under which conditions may it be subject to CIT? Please note that this question only relates to personal conditions (form, activity, etc.), not to territoriality criteria.

Does a “resemblance test” apply (i.e. the foreign entity is subject to CIT provided that its features are comparable to those of a domestic CIT subject)?

Do other criteria apply?

May foreign entities opt to be treated as either transparent or opaque?

How does your country interpret Article 2 a (iii) of the parent-subsidiary Directive regarding the “subject to CIT” condition? The same question applies in the context of other tax directives.

*Thank you for your time and efforts!*