

POSSIBLE WAYS OF CORPORATE TAX BASE HARMONIZATION IN THE EUROPEAN UNION

D. Nerudová

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Abstract

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The possible ways of corporate tax base harmonization in the European Union are presented in the paper. Present situation when there are 27 different taxation systems used in the EU increases compliance costs of taxation to the companies and therefore decreases their competitiveness. It was proved, that there is negative correlation between the size of the company and the size of the compliance costs of taxation. Based on that, the European Commission has decided for twin-track strategy – to introduce home state taxation in the short term and common consolidated corporate tax base in the long term. In respect to the fact, that the pilot project in the frame of home state taxation system has not started yet, the attention has been turned to the common consolidated corporate tax base. The paper discusses the possible attitudes and methods of consolidated tax base allocation. Based on mentioned arguments the formulary apportionment with factors which generate the taxable income of the group (assets, payroll, turnover, etc.) seems to be the best solution. Factors and their weight should become the subject of further discussion in the European Union. The aim of the paper is to present the possible harmonization models and further to discuss the methods which could be used for allocation of the consolidated tax base under CCCTB.

home state taxation, common consolidated corporate tax base, European Union company income tax, single compulsory harmonized tax base

The primary idea of the European Commission was the structural harmonization of direct taxation. On the contrary to the situation in the area of indirect taxation, the structure of the direct taxation in the EU seemed to be more uniformed. All EU member states (excluding Italy) had the same structure of direct taxation – they were applying personal and corporate income tax separately. However, the above mentioned structural similarity was hiding huge differences resulting from different accounting systems and methods of the tax base construction. There are applied two accounting systems in Europe:

- tax accounting – the accounting profit is equal to the tax base;
- accounting – the accounting is not equal to the tax base → it has to be transformed via number of non-accounting operations.

Based on the above mentioned, the European Commission decided to harmonize only the provisions endangering the smooth functioning of the internal market or creating the obstacles on the market.

The corporate taxation is the area, which influence the functioning of the internal market significantly. The growth of globalisation and financial market integration has brought the increase in capital mobility and has also strengthened the need to harmonize this area of taxation, at least partially. Capital is considered to be fully mobile (in contrast to the labour, which is considered to be immobile) and therefore it can easily move to the lower tax rate jurisdiction. This breaks the tax neutrality, for the decisions of the corporations about the investment placement are driven by the amount of the tax rate.

1 The Commission has suggested the unified corporate tax rate band 45%–55%. Later, based on the study of the Ruding Committee the Commission has suggested as a minimum for the corporate tax rate 30%. The maximum corporate tax rate was suggested on 40%. Both of the suggestions were refused by the EU member states.

The efforts to practically implement the harmonization in this area have produced the great unwillingness of EU member states – as well as in case of indirect tax harmonization. Harmonization efforts have been perceived as the attempts to restrict the fiscal sovereignty of the EU member states. That has resulted in to the harmonization failure¹ during 1970s and 1980s. In 1990s remarkable changes has occurred in economic environment, mainly the development of e-commerce, development of international acquisitions and mergers, and the growth of factors mobility. All the above mentioned should be reflected by the tax legislation.

The establishment of economic and monetary union has changed the behaviour of the corporations. They do consider as the domestic market the European market, not the national one. The existence of 27 different taxation systems on the internal market does not enable to use all the advantages connected with internal market, it leads to the decrease in the economic efficiency, it decreases the competitiveness of the corporations in the global context and lastly, it generates the additional costs to the corporations.

In that connection the European Commission has decided to start the study which should explore the area of corporate income taxation on the EU internal market in 1999. The aim of the study was to judge the impact of the different methods of tax base construction on the effective corporate tax rate and further to identify the regulations, which could decelerate the cross-border activities on the internal market.

The results² of the study have proved that the tax burden plays very important role in the process of decision about the investment placement. Other important factors which drive the decisions are economic infrastructure, qualification of the labour force, accessibility of the markets, etc. The strength of the factors depends on the type of the investment. The study has proved that in the frame of the economic and monetary union where the capital is fully mobile, the investments are very sensitive on the differences in the corporate income tax rates.

The aim of the paper is to present and discuss the possible ways of corporate income tax base harmonization and tools which can be used as the key for the apportionment of the tax base of the group. The paper presents the results of the research project GA CR No. 402/07/0547 “The Impact of Financial Reporting Harmonization for Small and Medium-Sized Enterprises in Relation to the Income Tax Base Construction”.

THEORETICAL BACKGROUND

In connection with above described growth in factors mobility, there was also growth of the need to take action on the field of direct taxation. Capital mobility growth has abolished the borders between the states; therefore there was strong need to remove the obstacles of legislative character.

The basic directives in the area of corporate taxation have been adopted in connection with the establishment of the internal market in 1990, for it was needed to harmonize the taxation of cross-border corporate activities. Merger Directive No. 90/434/EEC establishes the unified system of merger taxation, postponing of the tax liability arising from the capital revenues during the merger, company splitting, transfer of the assets and cross-border exchanges of the shares in the EU. The aim of the directive is to prevent the taxation of the profit, which can arise during the merger from the difference between the transfer price of assets and liabilities and their price in accounting.

In connection with the establishment of new European law vehicle – the statute of the European Company, the Merger Directive has been amended by the Directive No. 2005/19/EC which is extending the scope of the Merger Directive also on European Company and European Cooperative Company³.

Second basic directive represents Parent Subsidiary Directive No. 90/435/EEC, which regulates taxation of the group of corporations acting on the national level and also corporations acting on the EU internal market. Based on that, double taxation of dividends flowing between the parent and the subsidiary⁴ should not arise. Further the directive should guarantee the exemption of the distributed profit of the subsidiary from the withholding tax.

In 2003 the directive was amended by the directive No. 2003/123/EC which is extending the scope of the Parent Subsidiary Directive also on European Company and European Cooperative Company. The directive further establishes the decrease of the share, which identifies the company as the parent from 25% on:

- 20% since 2005,
- 15% since 2007,
- 10% since 2009.

Other very important directive in the area of direct taxation represents the directive No. 2003/49/EEC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. This directive eliminates withholding tax and tax on royalties and interest paid cross-border between associated companies. Until 2002 the area was regu-

2 COM(2001)582 final

3 For details see Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company and Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.

4 The parent is considered to be the company owning 25% of the shares issued by the subsidiary for two years at least.

lated by the double taxation elimination treaties only. They eliminated withholding taxes, however the process connected with the claim of the exemption from the withholding tax had raised the additional financial costs to the companies. The adoption of the above mentioned directive should decrease the compliance costs of taxation in companies with cross-border interests or royalties payments.

Due to the fact that the directive was adopted in 2003 with the legal force from the 1st January 2004, the new EU member states has not been provided with the sufficient time limit for the implementation. Therefore the directive No. 2004/76/EC was adopted to enable the transitional period for the new EU member states.

Even though that European Commission has introduced the above mentioned directives, structural harmonization or coordination of the corporate taxation still has not take place. Therefore the European Commission decided to suggest four possible models of corporate tax base harmonization:

- **Single Compulsory Harmonized Tax Base** – under that system, all corporations in EU member states (domestic and national ones) would be subjected to the unified rules for corporate tax base construction. In respect to the fact, that all companies would have the same conditions, the system does not leave any space for speculation (for example speculations about the preference of the tax system), tax arbitrations, tax avoidance or tax fraud.
- **Common Consolidated Corporate Tax Base (CCCTB)** – under that system, all corporations with European activities would be subjected to the unified tax base. Further, that harmonization model is connected with wide range of advantages but also disadvantages. The advantages are represented mainly by:
 1. removing the obstacles to the international mergers and acquisitions mainly in the form of the lack of coordination in capital gains taxation,
 2. significant decrease of compliance costs of taxation caused by the existence of unified taxation system for corporations with European activities,
 3. significant elimination of transfer pricing problems,
 4. the elimination of differences between the nominal and effective tax rate; tax competition would be no more harmful,

As the main disadvantages can be considered:

1. the existence of two taxation systems opens the area for tax speculations, tax arbitrations, tax evasion and tax fraud,
2. the system discriminates small and medium sized enterprises (SMEs) without European activities.

- **European Union Company Income Tax**

Under that system the multinational enterprises (MNEs) would be subjected to European Union company income tax, which would be administered on EU level and which would have the unified tax rate. In respect to the unified corporate tax rate, it is very probable, that the model would not be adopted.

- **Home State Taxation**

That model is aimed at SMEs. Those companies would use for taxation of their European activities the rules, which are valid in the country, where the company does have the seat or headquarter. Home state taxation system would be voluntary – companies could opt whether they are going to use domestic taxation rules or not. The above mentioned model does not represent the harmonization, for under that system, there would still exist 27 different national taxation systems. Application of the model could also increase the tax competition in order to attract the companies who would tax their profits from the European activities in the country.

In respect to the fact that the practical implementation of the above mentioned models would be time demanding, the European Commission has decided for so called twin-track strategy. It means that two aims are tried to be reached – short-term and long-term. In the short run the European Commission decided to choose home state taxation system for SMEs, for at present they are the key factors of the economic growth and employment in the European Union. The long-termed aim represents the common consolidated corporate tax base, which is suitable mainly for the MNEs.

RESULTS

Home State Taxation System

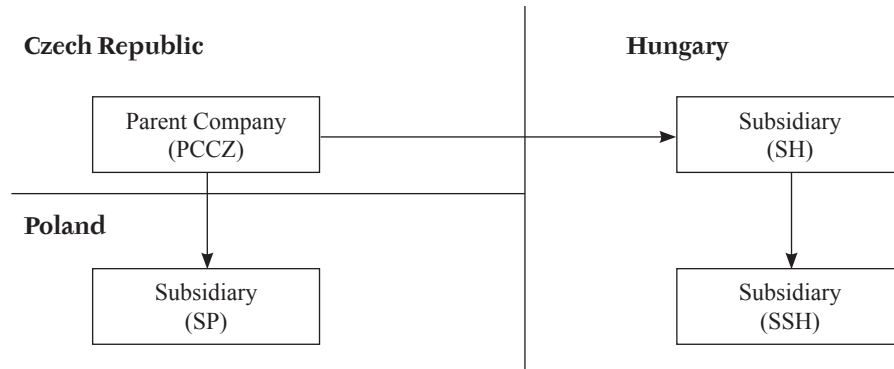
At present the business acting on the Internal Market is facing 27 different corporate taxation systems. As a result of that the compliance costs of taxation are arising to the business. It has shown that these compliance costs of taxation are regressive to the size of the business. *Cressy (2000)*, *Chittenden (2000)*, *Michaleas (2000)* and *Pouziouris (2000)* assume that small and medium sized enterprises (further just SMEs) are facing compliance costs of taxation which are hundred times higher than in case of large sized enterprises (LSEs). The compliance costs of taxation are disproportionately higher for SMEs in comparison to the LSEs, which can in some cases generate so called prohibitive effect – i.e. compliance costs of taxation represents the obstacle which discourages SMEs to act on the internal market. The abovementioned was proved by the research of the European Commission⁵. It was revealed that the compliance costs of

5 European Commission. European Tax Survey. Commission Staff Working Paper, SEC(2004) 1128/2.

taxation create in case of LSEs 1.9% of taxation payments, while in case of SMEs 30.9% of taxation payments. Those are the main reasons why the Commission has decided to try to eliminate the above mentioned obstacles to the SMEs business.

The European Commission tries to introduce the pilot project of home state taxation system, which would be applied for 5 years in selected countries

(in those which would participate on the project). It means that home state taxation system would apply on the companies which have the seat in the country, but also on the subsidiaries and permanent establishments in the participating countries. The mechanisms of home state taxation model is shown on the following figure⁶:



PCCZ – Parent Company in the Czech Republic

SP – Subsidiary in Poland

SH – Subsidiary in Hungary

SSH – Subsidiary of subsidiary in Hungary

1: Taxation under the Home State Taxation System

In the frame of the pilot project, all the companies on the Figure I can create the group for the home state taxation (supposing that above stated countries and companies are going to participate on the project). Parent company in the Czech Republic will determine the taxable income of SP, SH and SSH according the taxation rules valid in the Czech Republic (home country). Defined tax base then will be allocated according the turnover in each jurisdiction (Czech Republic, Hungary and Poland). Parent company will submit the tax return for the whole group in the Czech Republic. The tax will be paid from the allocated part of the tax base according the turnover. SP will have to calculate its individual tax liability (does not submit the tax return) and will pay the tax in Poland. Also SH and SSH will have to calculate its individual tax liability (do not submit the tax return) and will pay the tax in Hungary.

At present, the efforts to start the project have stopped. There have been no new developments since 2006. Therefore the Commission turned the attention to the second aim, which is the establishment of common consolidated corporate tax base.

Common Consolidated Corporate Tax Base

The implementation of that model brings practical problems, mainly connected with the tax base apportionment. Therefore the European Commission has identified three key points in connection with that:

- Apportionment is a necessary consequence of consolidation
- The tax base should be apportioned to companies no to member states
- The criteria for the apportionment should lead to sharing that is fair, neutral, enforceable, simple and cost-efficient.

There are several mechanisms which are used for sharing the tax base in the countries as United States or Canada. Some of them have been chosen by the CCCTB working group for as the potential candidates for tax base apportionment in CCCTB system. Allocation formulas can be divided according the factors which are used for allocation on macro-based formula and micro-based formula. While applying micro-based formula, two approaches can be used – value added approach (VA) and formulary apportionment (FA) approach. Selected formula can influence the portion on the tax base in dependence on the factors which are used.

Macro-based formula

The common consolidated corporate tax base can be apportioned according the factors which are aggregated at national level – for example GDP or “national value added tax base”. Macro-based formula enables two ways how to apportion the CCCTB. Firstly, the CCCTB can be distributed only among

6 TAXUD C.1/DOC (04) 1410.

the member states, in which the group is active. Secondly, the CCCTB can be apportioned among all the member states.

Example I: Macro based formula when the CCCTB is distributed among all the member states

The group is acting in the member states A and B. Member state A accounts for 5.8% of EU GDP, member state B for 3.4% of GDP, member state C for 8.9% of GDP and member state D for 1.3% of GDP.

In that situation, when the apportioning factor is GDP and CCCTB is distributed among all the member state each state will receive following part.

- Member state A will receive 5.8% from the CCCTB of the group
- Member state B will receive 3.4% from the CCCTB of the group
- Member state C will receive 8.9% from the CCCTB of the group
- Member state D will receive 1.3% from the CCCTB of the group

Example II: Macro based formula when the CCCTB is distributed only among the member states in which the group is active

The group is acting in the member states A and B and the distribution of the aggregated GDP of these countries is 35% and 65%. Then, the tax base will be distributed according these above mentioned percentages between the member state A and B. It is necessary to mention at that point that this system enables tax planning – the company can locate in low tax jurisdiction in order to avoid taxation or at least to decrease the tax burden. Therefore the implementation will require also the implementation of anti-avoidance rules.

Value added approach

The common consolidated corporate tax base can be also apportioned according the value added⁷.

There are two ways of calculating value added by a business:

1. A subtraction-based value added,
2. An addition-based value added.

Under the subtraction-based method, the value of the inputs is subtracted from the value of the outputs⁸ (in a given time period). Value added can be then calculated as follows:

Value added = total value of the output – total value of the input (1)

Under the addition-based value added, the total remuneration of the employed production factors is employed. Therefore the value added is calculated as follows:

Value added = labor compensation + interests + profits (2)

The following formula is showing the distribution of the CCCTB according the value added:

$$TB_i^{VA} = CTB \left(\frac{VA_i}{\sum_i VA_i} \right) \times 100, \quad (3)$$

where (i = 1, ..., n represents all the jurisdictions where the group operates) stands for the tax base of the group that would be allocated under the value added (VA) approach. Based on the above stated formula the CCCTB would be distributed among the jurisdiction according the share of the value added of the company operating in one member state on the total value added of the group Agúndez-García (2006).

Example III: Example of subtraction-based value added and addition-based value added approach

The group of the companies is operating in member states A, B and C. The microeconomic indicators of the group in each member state are shown in table I.

I: Microeconomic indicators of the group

Indicator	Member state A	Member state B	Member state C	Total
Sales (output)	1800	250	2750	4800
Labor compensation	350	25	650	1025
Interests	150	0	125	275
Other external costs (input)	750	100	650	1500
Profit	550	125	1325	2000
Profit in %	27.5%	6.25%	66.25%	100.00%
Subtraction-based value added	1050	150	2100	3300
Addition-based value added	1050	150	2100	3300

7 The definition of value added for apportionment does not necessarily coincide with the value added for the use as the tax base in case of VAT (consumption tax).

8 Inputs do not include capital purchases or depreciation.

As can be seen above subtraction-based value added and addition-based value added are producing the same results, for the difference between the total production (output) and total consumption

(input) of the company should be equal to the remuneration of the labor and capital plus profit.

The apportionment of the CCCTB based on value added approach is shown on the table II⁹:

II: The apportionment of the CCCTB based on the value added approach

	Member state A	Member state B	Member state C	Total
Share of the CCCTB	$\frac{1050}{3300} = 31.8\%$	$\frac{150}{3300} = 4.6\%$	$\frac{1300}{3300} = 63.6\%$	100.0%

Formulary Apportionment (FA) approach

Formulary apportionment represents the traditional tool for the distribution of the tax base of the group which has been applied in the U.S.A. and Canada. Under that principle the tax base of the group is distributed according to the special formula, whose elements represent the factors which are generating taxable income of the group. The most frequently used factors are represented by:

- profits,
- payroll,
- property,
- sales.

The above described factors of the formula are used in various combinations and are weighted differently in the states using FA for the apportionment *Werner (2005)*.

Example IV: The application of the three-factor formula, where the weights are same for each factor

III: The application of three-factor formula with equally weighted factors

Factor	Member state A	Member state B	Member state C	Total
Profits	300 (30.8%)	125 (12.8%)	550 (56.4%)	975 (100.0%)
Payroll (PA)	150	25	450	625
Property (PR)	40	0	25	65
Sales (S)	800	250	1500	2550
$TB_i^n = \frac{1}{3} \frac{PA_i}{\sum PA_i} + \frac{1}{3} \frac{PR_i}{\sum PR_i} + \frac{1}{3} \frac{S_i}{\sum S_i}$	(39%) 380.25	(4,6%) 44.85	(56.4%) 549.9	(100%) 975.0

Example V: The application of the two-factor formula, where the weights are 1/3 payroll and 2/3 sales

IV: The application of three-factor formula with factors weighted differently (1/3 payroll and 2/3 sales)

Factor	Member state A	Member state B	Member state C	Total
Profits	300 (37.8%)	125 (13.5%)	550 (48.7%)	975 (100.0%)
Payroll (PA)	150	25	450	625
Sales (S)	800	250	1500	2550
$TB_i^n = \frac{1}{3} \frac{PA_i}{\sum PA_i} + \frac{2}{3} \frac{S_i}{\sum S_i}$	(28.9%) 281.78	(7.8%) 76.05	(63.3%) 617.17	(100.0%) 975.00

DISCUSSION AND CONCLUSION

At present the business acting on the Internal Market is facing 27 different corporate taxation systems. As a result of that the compliance costs of tax-

ation are arising to the business. That fact decreases the competitiveness of the European companies on the global market. Therefore the Commission decided to introduce to harmonization models in the area of corporate income taxation – home state

⁹ While applying the formula No. 3.

taxation system and common consolidated corporate tax base. The introduction of pilot project under home state taxation system has not started yet; therefore the Commission has turned the attention to the CCCTB.

Before the practical implementation the European commission should consider three possible methods for apportioning of CCCTB. The basic difference is that the distribution can be done either on macro or micro level. In case of micro-level, there can be used two alternatives – formulary apportionment or the method based on the calculation of the value added.

The main disadvantage of the macro-based formula is that, it can generate a decoupling between the creation of the value in the member state by a multinational group and its tax liability in that member state. It represents the disconnection between the real economic activity performed by a company and the share on the tax base which is in the conflict with the idea of the fair distribution of the tax base. Therefore the macro-based formula seems to be rather unacceptable option. Further, it is important to mention at that point that the even though the distribution between all member states seems to be just it can generate race-to-the-top of the tax rates, for member states will get a fixed share on any group (under that system they would not be forced to attract the tax base by the lower tax rate). Therefore, the distribution among all member states should be accompanied by the measurement on the EU level concerning the tax rates. In respect to the fact that

member states are not willing to approve any measurement concerning the corporate tax rates, macro-based formula seems to be unrealistic solution.

Under the value-added based formula the situation described above is avoided for it relies on micro-economic indicators (as profit). On the other hand, some disadvantages can be found. Firstly, the system requires a lot of calculations from the side of the companies. Secondly, for the value-added calculation all the intra-group transactions should be done at arms length price¹⁰.

Formulary apportionment seems to be more just, for under that system, the connection between the factor which creates the value in the jurisdiction and the share on the CCCTB is closer (relative to the others). It is important to mention that formulary apportionment has been applied in the U.S.A. and Canada for quite a long time. As states *Hellerstein and McLure (2004)* EU should learn from the problems and experience in U.S.A. for they are facing serious problems connected with the lack of unified factors and weights used for the apportionment (at present different weight on each factor is used in individual states). On the contrary there is common definition of tax base and allocation factors throughout the Canadian provinces.

The formulary apportionment seems to be the most suitable tool for the tax base apportioning in the European Union. There should be established discussion on the field of European Commission about the choice and definition of the possible factors of the formula and also about their weights.

SUMMARY

Present situation in the area of corporate income taxation in the European Union decreases the competitiveness of the corporations, for it does not enable to use fully the advantages connected with the internal market. Based on that, the European Commission has decided for twin-track strategy – to introduce home state taxation in the short term and common consolidated corporate tax base in the long term. In respect to the fact, that the pilot project in the frame of home state taxation system has not started yet, the attention has been turned to the common consolidated corporate tax base. The paper discusses the possible attitudes and methods of consolidated tax base allocation. Based on mentioned arguments the formulary apportionment with factors which generate the taxable income of the group (assets, payroll, turnover, etc.) seems to be the best solution. Factors and their weight should become the subject of further discussion in the European Union.

SOUHRN

Modely harmonizace daně z příjmů právnických osob v Evropské unii

Současná situace panující v Evropské unii v oblasti korporativního zdaňování snižuje konkurenceschopnost korporací, neboť jim neumožňuje plně využívat výhod spojených s jednotným trhem. Prováděné studie prokázaly, že existuje negativní vztah mezi velikostí podniku a vyvolanými náklady zdanění. Z toho důvodu vyvolané náklady zdanění představují pro malé a střední podniky větší překážku než pro podniky velké. Na základě výše uvedeného se Evropská komise rozhodla sledovat dva cíle současně – v krátkém období představit systém zdanění v domácí zemi a v dlouhém období zavést společný konsolidovaný základ daně. Vzhledem k faktu, že se pilotní projekt v rámci systému

10 I.e. transfer prices should be used.

zdanění v domácí zemi nepodařilo nastartovat, pozornost je upřána zejména ke společnému konsolidovanému základu daně. Článek diskutuje možné přístupy a metody k rozdělování konsolidovaného základu daně společností mezi jednotlivé státy. Diskutuje základní přístupy – přístup na základě makro ukazatelů, dále na základě přidané hodnoty a taktéž tzv. alokační rovnici. V rámci příspěvku jsou prezentovány jednotlivé přístupy na konkrétních příkladech, s nejrůznějšími variantami řešení. Diskutovány jsou možné výhody a především úskalí výše uvedených přístupů. Za hlavní nevýhodu rovnic založených na makro ukazatelích je považována neexistence vazby mezi vytvořením hodnoty v daném státě a její daňovou povinností v tomto státě. V tomto případě je také nutno zvážit efekty, jaké by nastaly v situaci, kdyby se základ daně rozděloval mezi všechny členské státy, nebo pouze mezi státy, ve kterých je skupina aktivní. Přístup založený na přidané hodnotě sice zohledňuje mikro ukazatele v podniku, nicméně klade na podnik vyšší nároky v podobě výpočtu potřebných ukazatelů. V rámci tohoto přístupu by také nebyl splněn jeden z cílů, proč chce komise zavést CCCTB systém, a to je odstranění problémů s transfer pricing. V případě přidané hodnoty by se totiž u všech transakcí v rámci skupiny musela cena stanovovat na základě pravidel tržního odstupu. Na základě uvedených argumentů se jako nejlepší řešení jeví být rozdělení na základě rovnice, jejíž proměnné tvoří faktory, jež generují zdanitelný příjem skupiny (majetek, obrat, vyplacené mzdy, atd.). Rozdělování na základě rovnice je již delší dobu úspěšně aplikováno např. v Kanadě či USA. Evropa tedy má možnost se poučit z chyb a zkušeností zemí, které tento přístup aplikují v praxi. Zařazení a váha jednotlivých proměnných by se v Evropské unii mělo stát předmětem další diskuse, neboť mohou výsledný podíl členského státu na základu daně výrazně ovlivnit.

konsolidovaný korporátní základ daně, evropská daň z příjmů korporací, jednotný povinný harmonizovaný základ daně

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Address

Ing. Danuše Nerudová, Ph.D., Ústav účetnictví a daní, Mendelova zemědělská a lesnická univerzita v Brně, Zemědělská 1, 613 00 Brno, Česká republika, e-mail: d.nerudova@seznam.cz