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## **COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP (CCCTB WG)**

### ***Points for discussion on 'Administrative and Legal Framework'***

**Meeting to be held on Thursday 1 June 2006**

Centre de Conférences Albert Borschette  
Rue Froissart 36 - 1040 Brussels

**WORKING DOCUMENT**

## **I. Introduction and purpose of the document**

1. At the previous meeting of the Working Group on the Common Consolidated Corporate Tax Base (hereinafter the CCCTB) on 9 March 2006 the Commission Services presented the Working Document CCCTB\WP\030 "Administrative and legal framework/Questionnaire" (hereafter the Questionnaire) and asked MS to provide them with some initial input on what areas and issues arising from the establishment of the necessary administrative framework for CCCTB purposes would need to be analysed in more details by the CCCTB WG in the future. The questionnaire raised questions on tax returns, tax year, audit arrangements, assessments, rulings and legal interpretation, and dispute resolution procedures.

2. As at the date of this document the Commission Services have received comments from eight MS (Czech Republic, Denmark, Finland, France, Germany, Latvia, Luxembourg and Sweden)<sup>1</sup>. This relatively small number of contributions – and the fact that the Questionnaire was neither discussed in detail at the meeting in March 2006, nor in a subsequent sub-group – suggests that the administrative and legal framework issue should be discussed again at the meeting of the main Working Group.

3. The purpose of this document is to complement the Questionnaire and steer the discussions of the group on the main areas to be further elaborated to make the CCCTB fully functional at the administrative level. This working document develops further the issues raised in the Questionnaire. The order of points has been adjusted and several issues on the tax procedure that have emerged have been added. This document is divided in six sections: I Introduction and background information, II Harmonisation and mutual recognition, III Tax procedure (including issues related to tax returns, assessments, and audits), IV Interpretation of common rules, V Dispute resolution, VI Exchange of information and mutual assistance.

4. The underlying assumption is that the CCCTB system would apply to a group of **eligible**<sup>2</sup> entities which **opt** for the CCCTB<sup>3</sup> and are tax resident in **participating MS**<sup>4</sup>. In practical terms, each entity of the group keeps record of its transactions and any other taxable event, in order that the group of entities calculates its consolidated tax base and shares it among its members according to a given formula.

## **II Harmonisation and mutual recognition**

5. The tax administration and procedure represents a relatively autonomous discipline which is often covered by laws separate from the corporate income tax law. Harmonising

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<sup>1</sup> Written comments are summarized in a separate Room Document CCCTB\RD\003

<sup>2</sup> Certain requirements should be fulfilled by entities to fall within the scope of the CCCTB. See **paragraph 19 of the Working Document 'Issues related to Group Taxation' CCCTB/WP/035.**

<sup>3</sup> Assuming the CCCTB is an optional system.

<sup>4</sup> All 25 MS are assumed to participate.

rules for calculating the corporate tax base does not necessarily require an overall harmonisation of the tax administration and procedural rules. Since the CCCTB is being designed as consolidated some procedures will need to be done in the same way by all participating MS and it is important to identify these. This document seeks to identify key administrative and procedural areas for which a common approach is desirable or necessary in order to make the CCCTB fully functional and suggests some possible solutions. This work will need to be complemented progressively in close conjunction with the ongoing work on other elements of the CCCTB. MS are invited to express their views on what would be the best way of developing these issues further.

6. A substantial part of procedural rules will remain in the national systems and will be mutually recognised. A reinforced system for mutual cooperation between participating tax administrations will facilitate the efficient functioning of the system. If for example the tax administration of one MS needed audit confirmation from a company based in another tax jurisdiction, it would be preferable to simplify and accelerate current arrangements with common rules of how such an audit is requested, initiated and how the two tax administrations contribute to it. However, it is possible that MS would initially prefer that any audit itself should be run by the company's 'normal' tax authority and the procedural rules of this tax administration would continue to apply.

7. Information from companies will have to fulfil two purposes, first the initial calculation of net income (only 3<sup>rd</sup> party income if intra-group transactions are ignored for the purposes of consolidation). Second, the provision of company specific data for the sharing mechanism, for example labour costs and property if these are agreed factors. As already mentioned in the Questionnaire the CCCTB WG might want to consider whether the actual consolidation and apportionment 'calculation' should be audited quite separately from the basic underlying company calculations on the basis that this could be a 'multinational' exercise rather than being carried out potentially in every tax office in every Member State. However, it would seem to make sense for any audit of the actual company level data to remain at the individual company level. Similar consideration might be given to CCCTB companies being dealt with by 'centralised' offices within each MS but this goes beyond the level of details which need to be specified at EU level. Any separate auditing of the consolidation and apportionment would require a robust set of procedural rules. These could be a specific set of CCCTB procedures or each of the 25 existing sets of procedural rules could continue to be applied, with appropriate adaptations.

### **III Tax procedure**

#### **A General arrangements**

8. Some discussion would be useful on whether a common form of the documents submitted by companies (not only tax returns) needs to be agreed as for example whether it should be always in writing and in hard copy format, under what conditions electronic submissions would be acceptable, in what language the required documentation needs to be, etc. A common approach would facilitate the procedure. Recognition of practices

currently applied in participating MS would also be possible, however there would then remain 25 different ways of dealing with one common base. The 'master-file' concept (see COM(2005)543 'Communication on the work of the European Union Joint Transfer Pricing Forum on transfer pricing documentation for associated enterprises in the EU') might provide inspiration to the Working Group regarding both a common format of documentation and an approach to making available information from a group of companies to a number of different tax administrations.

9. Existing rules on the disclosure of information by the tax administration and their consequences have to be examined. The CCCTB legislation should make sure that the participating tax administration will be able to access information necessary for the execution of the tax procedure in case of the taxpayer applying the CCCTB and cannot be denied an access to such information because of the national rules on disclosure. A natural consequence of a mutual recognition of national rules would be that the information may be disclosed under different standards to different bodies in different MS according to existing rules. If MS wished to have the same treatment in all participating MS, they would need to agree on common rules which would replace the existing national rules for CCCTB taxpayers.

## **B Registration**

10. Common procedures will have to be set up in respect of the establishment of a group itself, stating which companies are covered, for which period and how potential 'joiners' and 'leavers' should be treated as groups re-structure. MS will need to decide whether any specific registration of the group (besides the registration of its members with the national tax administration) is necessary. If so it would seem most practical if this is done by the competent administration of the MS where the controlling entity of the group is tax resident. At the same time each company within the group should be required to notify their national administration when it enters or leaves the group.

11. Similarly if a new member of the group is established, and / or an existing one is dissolved, and/or any reorganisation issue (e.g. merger, acquisition, change of legal form etc.) occurs it has to be established which tax administration(s) needs to be notified and which decides whether the conditions for the creation of a group are still fulfilled in respect of the concerned company(ies). Members of the CCCTB WG may wish to discuss these details in conjunction with, or after, the 'Issues related to the Group taxation' are further developed.

## **C Tax returns and tax year**

12. As mentioned in the Questionnaire and confirmed by those MS who replied, two main methods are possible (with possible variants):

a) the controlling entity files a single return for all entities of the group (containing the information provided by each entity before consolidation, the resulting consolidated base and the apportionment) to the tax authorities of one MS (who is responsible for

distribution to other MS as appropriate) and the controlling entity is responsible for the gathering of any information requested by the tax administration<sup>5</sup>, or,

b) in addition, each entity of the group files its own return.

The main difference between the two possible scenarios seems to lie in the task of providing and disseminating information, whether this is the responsibility of the MS tax administration of the controlling entity, or the companies themselves.

13. It is necessary to find the balance between the need of MS tax authorities to maintain an effective control over entities within their jurisdiction and the need of the CCCTB to be a simple and competitive system where compliance costs for companies (and administrations) are reduced as much as possible. But, individual MS tax authorities do need certain information for assessment and audit purposes and for when entities of a group cease to be within the CCCTB system (for example if they are sold) and become subject to domestic rules. It should be discussed whether a reinforced system of exchange of information and mutual assistance among MS could replace the current system where the information is provided by individual entities. At the same time if the new system continues to be administered by 25 different tax administrations it is likely that audits and the communication with the taxpayer in general would be more easily done by the national administrations.

14. It seems to be a necessity to agree on the common set of information to be provided in the return and any obligatory additional documentation. As mentioned above the 'master file' concept may be relevant. The content of this documentation will depend on various facts, particularly on what method for calculation of the tax base is chosen (profit/loss or balance sheet comparison) and also on how the formula for apportionment works and which factors are employed.

15. As regards the correlated issues of taxable period and deadline for submission of tax returns, the comments received to date from MS seem to suggest the following: the taxable period could be a 12-month period (exceptionally shorter or longer for the first and the last year and for entities joining/leaving a CCCTB group) which does not have to coincide with the calendar year; entities belonging to the same group should have the same taxable period; the tax returns should be submitted within the same deadline (in the region of 6-month time after the end of the taxable period). Finally, entities should make use of harmonised forms.

#### **D Issues related to the assessment of the consolidated tax base**

16. Initially, the term 'assessment' used in this room document should be explained. At domestic level, an assessment is the quantification of the tax base and/or tax liability and can be done either by the tax authorities on the basis of the tax return filed by the taxpayer or by the taxpayers themselves: the so-called self-assessment. In both cases, the tax authorities notify a notice of assessment (within a certain deadline) which accepts (or

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<sup>5</sup>This MS does not necessarily have to be the MS of residence of the controlling company; it could be another MS identified according to another criterion, such as the MS where the books are kept, or even a MS at choice.

corrects) the tax return and indicates the amount of tax due<sup>6</sup>. This may be without prejudice to a possible future audit.

17. The assessment which is relevant for CCCTB purposes is the calculation of the consolidated base of the group and its apportionment to the various members. The next step, i.e. the calculation of the individual tax liability of each entity after apportionment, will remain a matter for individual MS to deal with.

18. Again there seem to be two main possibilities (with variations):

a) The authority of the MS where the tax return on the consolidated tax base has been filed (for example, the MS where the controlling entity is resident for tax purposes) assesses the consolidated tax base and apportioned bases (or accepts the self-assessment prepared by the group) notwithstanding that the participating tax administrations would probably wish to have the right to object if they thought the apportionment mechanism was not applied correctly; or

b) a new centralised method should be established (such as a multinational exercise carried out by a 'European' unit as mentioned in the Paragraph 7).

19. Even if the consolidated tax base is assessed and apportioned by one MS, some common rules for this procedure will be necessary in order to reach an acceptable level of uniform treatment for all CCCTB groups. These rules will need to determine the role of all participating administrations, the way how they communicate among themselves and participate at this stage of the tax procedure. For example if one tax administration assesses a consolidated tax base, apportions it and passes on the relevant data to other respective tax administrations it will need to be clear (and common in all participating MS) how the latter tax administrations proceed if they do not agree with the apportionment or need to check data that created a basis for an apportionment.

20. How additional assessments will be dealt with in the CCCTB will also have to be considered. The CCCTB rules should determine in which situations a taxpayer will be allowed or obliged to initiate an additional assessment (e.g. a company finds an error in their books) and when a tax administration (and which one) can re-assess the consolidated and/or apportioned tax base (e.g. as a result of a tax audit). Solutions for these situations should be examined very prudently since the consequences are not the same as in case of existing national tax bases. Any additional assessment of a consolidated tax base should always be communicated to all tax administrations. But, it is an open question whether every amendment should always require a complete recalculation of all MS shares of the consolidated tax base. Attention should be paid to the need to keep the CCCTB simple. One could envisage, for example, a mechanism whereby adjustments are deferred to future tax years, or a threshold below which adjustments to the tax base need not be 'shared'.

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<sup>6</sup> In case of self-assessment, since the quantification of the tax liability is done by the taxpayer, the notice of assessment can be omitted (if the tax authorities do not react within a fixed deadline, the self-assessment is deemed to be accepted).

## **E Audit**

21. Every MS has rules concerning the carrying out of investigations and audit on companies' tax returns, books and premises. The purpose of such rules is to set rights and obligations for the tax inspectors and for the taxpayers during the audit. Such rules include timing (which tax years are covered by the audit), modalities (where the audit takes place, how long it lasts, which documents can be examined and which premises can be inspected etc), methodologies<sup>7</sup> etc. The goal of an audit is to verify whether the taxable base shown by the taxpayers in their tax return corresponds to their actual situation.

22. Who conducts an audit and how the respective administrations collaborate during the audit has to be clear in the CCCTB context. The common solutions for when an audit is/ has to be commenced (an audit could be started by a MS on its own initiative or on request of another participating MS) would also be desirable. The procedural aspect of an audit itself (how does the competent authority actually proceed) can be covered by existing national rules. The comfort of the CCCTB taxpayers could be increased by agreeing on a common approach to some elements of the audit procedure, for example, a common maximum length of the audit or common statute of limitation. Such a measure would at the same time decrease the scope for tax planning by choosing an administration with the most generous procedural rules. A common statute of limitation is particularly important for tax administrations in order to avoid being blocked by too generous legislation in one participating MS.

## **IV Interpretation and rulings**

23. To assist in the application of tax legislation most MS tax administrations produce documents (e.g. letters, circulars) explaining the tax legislation, sometimes giving examples illustrating the legislation etc.. Administrations can issue these documents either as individual acts (e.g. responses to taxpayers' inquiries or as a formalised advanced ruling requested by a taxpayer) or as a general explanatory note, usually as a reaction to a number of similar inquiries by taxpayers. These documents are not always binding for the taxpayers, however they represent an interpretation of the law that is followed by the tax administration in the tax procedure and the tax administration is in most cases bound by it. The actual situation in different MS varies.

24. For the CCCTB it will be important to create an efficient mechanism that will ensure smooth functioning of the common system and avoid tax administrations issuing different interpretations of the same issue. Some inspiration could be taken from the VAT area. Article 29 of the Directive 77/388/EEC provides for the creation of a Committee

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<sup>7</sup> For example, some MS admit that if corporate taxpayers fail to submit a tax return within the deadline, or the data contained in the tax return or in the records are considered as not reliable due to multiple, significant errors, the tax base can be presumed to be a certain amount 'x' calculated by tax authorities according to their best knowledge, i.e. regardless the figures shown in the tax return. Some MS have calculated a 'minimum' income for certain categories of taxpayers (based on the average income derived by business operating in a specific economic sector or other statistical tools) and expect taxpayers to submit a tax return showing 'at least' such a minimum taxable amount, etc.

composed of representatives from MS, who propose issues to be examined and their conclusions have an advisory character. Similarly, Directive 92/12/EC has established a Committee for the area of excise duties, however its competences are broader. Actual arrangements, functioning and competences of a potential similar body responsible for the CCCTB area would have to be elaborated in detail, if MS think this is the right direction.

25. Another possibility would be to leave the interpretation of the CCCTB rules primarily to national tax administrations with an obligation for mutual recognition of interpretations. If two different interpretations of the same issue were given at the same time the respective administrations would have to agree on which of them will apply under a mutual agreement procedure. Taxpayers in good faith should not be made responsible for potential increase of their tax base following from such a situation.

26. Establishing procedure for the interpretation of the CCCTB rules is particularly important because the CCCTB will be designed as a new system and MS will not be able to rely on existing jurisprudence and case law. It is fundamental that new practices and interpretation of common rules and principles lead to the same or at least very similar results in all 25 administrations.

## **V Dispute resolution**

27. Procedures for appeals are established in each MS legislation. As far as the CCCTB is concerned, there is no need to harmonise these domestic rules except for cases that are specific for the CCCTB. It will have to be decided which authority is competent for these cases and how the taxpayer (and which taxpayer) should proceed, if the whole group is concerned (e.g. competent authority of the controlling entity or each individual company in a case where the application of a company to join a CCCTB group is rejected because of a failure to meet requirements such as the minimum threshold of ownership).

28. It should also be considered whether any action should be taken in the pre-litigation phase (before going to Court) if a MS considers that an issue has significant implications for the consistency of the CCCTB and it needs to co-ordinate its position with other MS, via for example the committee mentioned above in relation to interpretation issues. If the tax authorities of a MS adjust the tax return because for example some transactions have simply been omitted, there is no particular CCCTB specific issue. On the other hand, if the tax authorities of a MS adjust the tax return because the CCCTB legislation can be read as not allowing the deductibility of certain expenses, but this interpretation is not clear, an exchange with other MS tax authorities would be useful, at least to ensure that all MS tax authorities understand the CCCTB in the same way. As an alternative the resolution of CCCTB related disputes could be subject to binding arbitration procedures.

29. As regards court litigations, national courts will be the competent appeal body of the next stage in many cases, however as the CCCTB legislation will be Community legislation to be transposed by MS via national laws, the European Court of justice (ECJ) will be competent to give preliminary rulings concerning the validity and interpretation of this EC legislation.

## **VI Exchange of information and mutual assistance**

30. International procedures ensuring exchange of information and mutual assistance among MS exist already both at bilateral level (for instance the clause contained in article 26 of the OECD model convention) and at community level (the Mutual Assistance directive<sup>8</sup>). The general impression is that such instruments provide a robust legal base for an effective co-operation among MS, however the actual application and use in practice may need to be reinforced.

31. In the CCCTB context the exchange of information will be essential to build a transparent and trustful system where MS can rely one on each other. Information concerning one corporate group acquired by one tax administration should be accessible to other respective tax administrations as well. The exchange of information on request or even the spontaneous exchange of information might not lead to desirable results and MS might wish to consider an automatic exchange of information. The scope of information exchanged by this means would have to be defined prudently.

32. Similarly mutual assistance will be an invaluable tool for tax administrations of MS participating in the CCCTB. Although the Mutual Assistance directive contains a number of provisions which enable MS to co-operate in the field of direct taxation, it would be necessary to analyse which provisions of the directive could be further enhanced and their application promoted in practice.

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<sup>8</sup> Council Directive of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums (OJ L 336, 27.12.1977, p.15), as lastly amended by Council Directive 2004/106/EC of 16 November 2004 (OJ L 359, 4.12.2004, p. 30)