I. OPENING OF THE MEETING

1. The second meeting of the Commission Working Group on the Common Consolidated Corporate Tax Base (hereafter the "Group") was attended by experts from all 25 Member States (hereafter MS) and was chaired by the Commission Services.

2. The Chair welcomed the participants and gave an overview of documents for the meeting that had been distributed before the meeting. He apologised for the late distribution of some of the documents.

II. ADOPTION OF AGENDA

3. The Chair presented the draft agenda to the participants and it was adopted by consensus.
III. REPORT BY THE COMMISSION SERVICES ON THE WRITTEN COMMENTS RECEIVED FROM MEMBER STATES ON THE REVISED GENERAL PRINCIPLES

4. The Commission Services informed the Group that all comments received on the Commission Working Document 'General Tax Principles' (CCCTB/WP/001Rev1) were compiled in the Room Document (CCCTB/RD/001) in order to make the comments available to all members of the Group. The Commission Services expressed the intention not to repeat the discussion on this issue in detail at this stage. The Commission Services re-confirmed that the Working Document on General Tax Principles would not be amended at this stage. The Group was invited to take note of the comments and to refer to them and the principles themselves as appropriate in the ongoing discussions on individual structural elements. Any further written comments would be welcome.

5. None of the members commented on this issue at the meeting.

IV. REPORT AND DISCUSSION ON PROGRESS OF SUBGROUP ON ASSETS AND TAX DEPRECIATION (Working Document 'An overview of the main issues that emerged at the first meeting of the subgroup on tax depreciation of assets' CCCTB/WP/007)

6. The Chair invited the member from the MS who organised and chaired the first meeting of the subgroup on assets and tax depreciation (hereafter SG1) on 27 and 28 January 2005 to give the Group a brief report of this meeting. The Chair of the subgroup went through the whole catalogue of issues discussed by the subgroup and indicated where additional guidance from the plenary was requested. He presented the summary record of the meeting prepared by the Chair of the SG1 and asked members of the Group to comment on the proposals in the document, which had been made by the Chair of the SG1, in writing, before Easter.

7. The Commission Services thanked the member for the report as well as for hosting and organising the SG1’s meeting. They proposed that the Group concentrate today on discussing in more detail the main issues that emerged at the first meeting of the SG1 as summarised in the Commission Document CCCTB/WP/007, ie

- The role of options in the CCCTB
- Substance over form (in relation to who is entitled to claim tax depreciation)
- The level of detail
- Pooling of assets

8. One member of the Group stressed that, while they were prepared to contribute to technical discussions in the Group and comment on some of the technical issues raised, neither those comments and contributions nor their absence should be construed as an expression of agreement as to what should be included in or excluded from a CCCTB, or as an expression of support for a CCCTB. The member from a second Member State expressed a similar position.
9. First it was discussed whether any optional treatment should be available to taxpayers within the CCCTB (eg compulsory or optional depreciation, the choice of the method). Several members expressed the opinion that depreciation should be compulsory in both profit and loss years. Some felt that without compulsory depreciation there would be no guarantee of uniformity in the application of the 'common' consolidated tax base. Some thought that as for the applicable methods some options should be left open in order to let taxpayers, from the companies' perspective, reflect the reality in a proper manner. However, the exceptions should not be too many to prevent increasing the complexity of the system.

10. Some members thought that the issue of compulsory depreciation is closely related to, and therefore should be discussed in conjunction with, the carry forward of losses. They felt that this issue is related to the fact that the assessment of companies' economic performance for tax purposes should be viewed over a longer period rather than only on a yearly basis. Others were of the opinion that the allocation of the asset's acquisition price over the asset's useful life and the treatment of losses in the subsequent years are technically two distinct problems. Several members of the latter group stressed the importance of the proper reflection of reality and pointed out that the asset is subject to wear and tear in loss years as well as in profit years.

11. One member, from a MS where depreciation is not compulsory, explained that this ensures that depreciation relief is effective. An optional system allows tax depreciation to function, where appropriate, as an investment incentive – if a company were making losses there would be no incentive in forcing the company to claim tax depreciation. The system of group taxation in this MS is also such that optional, rather than compulsory, depreciation is needed to ensure that depreciation relief is effective at the level of the group.

12. Several members mentioned that the tax depreciation charges should be treated in the same way as any other business expenditure; one explicitly rejected the concept of tax depreciation as an incentive. Another took the view that the main concern of the tax administration is to ensure that a company does not report too low profits. There was no reason why, subject to clear rules, a company should not report higher profits by not claiming tax depreciation in a particular year. Others were concerned that the tax base should accurately reflect the performance of the taxpayer and therefore tax depreciation should be compulsory. One member pointed out the purpose of company taxation was to raise funds for governments and options could be construed as giving companies the opportunity to reduce tax payments which he did not support. The Commission Services concluded that they were not yet convinced that options should be completely ruled out of CCCTB and the Group would come back to this issue again.

13. Substance over form was the next question addressed by the Group. Most members found it useful to examine this general principle in relation to the question ‘Who shall be eligible to depreciate an asset?’. Almost all members agreed that the economic owner should be allowed to depreciate an asset under specific conditions. Two members stressed that assets must not be depreciated by more than one taxpayer at the same time. Several members thought that the ownership rule is a useful general rule, but as an alternative the person bearing the risks, even if different from the legal owner, should
be allowed to depreciate an asset under specified circumstances. Many members agreed that it will be necessary to reach a common understanding of the terms economic ownership and financial leasing. Some members thought it would be necessary to have a clear common definition of cases when the economic owner can depreciate an asset. One member pointed out that there could be problems with simply saying that the legal owner received the tax depreciation, subject to some specified exceptions. MSs currently have different definitions of 'legal owner' and the specific criteria for legal ownership in the CCCTB would need to be defined, as well as the exceptions for such transactions as financial leases.

14. Finally members of the Group gave their views on the application of individual or pooling depreciation of a plant, machinery and equipment in the light of the question of how much detail should be laid down in the CCCTB. One member currently using the pooling method had prepared a document summarising the main features of this method as it is applied in his member state. The document was distributed to all members before the meeting. This member briefly introduced the document and emphasised that the method has been applied for many years without any material change and without any difficulties. Another member of the Group added that a very similar method is also applied in his MS and expressed satisfaction with the pooling method. The member who chaired the first meeting of SG1 invited these two members to make a more detailed presentation of their systems at SG1's next meeting. A third member of the Group explained that the pooling method is also applied in his MS, with some variations, and claimed that it is not only simple and efficient but that it gives the right result over the useful life of an asset. The Commission Services invited this member to also provide the Group with more detail in writing on the system and the member agreed to do so.

15. Several members of the Group expressed regret that they had not had the chance to study the document on the pooling system before the meeting and asked additional questions. One member of the Group pointed to the need to deepen the knowledge about the pooling method. He urged for an objective presentation of all arguments on the two approaches and was especially interested in how what he considered as problems connected to the pooling method could be overcome. He stressed that his MS would strongly insist on individual depreciation unless major counter-arguments were presented. Two members asked questions concerning the disposal of a pooled asset to the related party. One member expressed reservations about the pooling method but suggested that a pool with various sub-categories could potentially be a solution. Another member stressed that simplicity was necessary for the CCCTB to be successful.

V. DISCUSSION ON INTANGIBLE ASSETS AND TAX DEPRECIATION (WORKING DOCUMENT CCCTB/WP/005)

16. The Commission Services introduced the Working Document and invited members of the Group to comment on it. It was pointed out that the paper complements the Working Document 'Assets and tax depreciation' and should be read in conjunction
with it. The Chair encouraged the participants to comment on the paper section by section and drew their attention to the questions at the end of each section. The Commission Services also raised the idea of referring the issue to SG1. Members were also asked to provide the Commission Services in due course with comments and corrections in writing on the Annex1 to this Working Document which summarises existing national regimes.

17. The member who chaired the SG1 meeting encouraged all members of the Group to comment on the paper before Easter. He pointed out that it would enable the SG1 to discuss the paper in conjunction with received comments at SG1’s next meeting planned for 6 and 7 April 2005. One member of the Group expressed the opinion that only acquired intangible assets should be depreciable. Another member of the Group thought that the issue of goodwill should be discussed in connection with business combinations.

18. Two members of the Group mentioned the issue of intangible assets which have no permanent changes in value. They thought that there should be a differentiation between (i) the probable (not definitive) loss of value of an intangible asset that could be regained (ie it could be a temporary loss of value) and (ii) the definitive loss of value over time of an intangible asset.

19. One member said that the basic principles applied to depreciation of tangible and intangible assets should be same, but the straight line method was the most appropriate for intangible assets. This member also stressed the importance of the distinction between intangibles subject to specific legal protection (eg. patents, trademarks) and goodwill. The former represents the intellectual property of the company whereas the latter represents the value (added) of the company. Several members agreed that the treatment of goodwill should be separated from that of other intangibles.

20. One member of the Group found the creation of a generic definition of intangibles difficult and proposed defining instead the ‘capital expenditure’ that would qualify for the deduction. Only assets the value of which is reduced in time should qualify for such a deduction (eg not goodwill).

21. Another member raised the question of the distinction between taxation and accounting treatment also in the area of intangibles (ie tax and accounting dependency). He feared that if the tax solution deviates too much from the accounting one, the tax base would differ too much from the actual accounting profit, which is not reasonable if the latter is already meant to reflect economic reality of the companies. He thought it would be convenient to differentiate between three categories of intangible assets when considering their fiscal treatment: goodwill, intangibles with a limited life, and intangibles with an unlimited useful life.

22. One member of the Group pointed out it was important that only actual expenditure made on an intangible asset is included in the depreciable base. Any revaluation to fair value should have no tax effect.
23. One member of the Group explained that although plant, machinery and equipment is currently depreciated in a single pool under the current system applicable in his MS, intangibles are depreciated on an individual basis. He explained that this is because of the specific character of these assets and referred to Para 3 of the Commission Working Document.

24. The Chair asked all the members of the Group to comment on the Working Document, especially the questions at the end of each section, in writing, as soon as possible preferably until 23 March 2005.

VI. DISCUSSION ON RESERVES, PROVISIONS AND LIABILITIES (Working Document CCCTB/WP/006)

25. The Commission Services introduced the Working Document and the accompanying Room Document with contains further examples of reported treatments in MS. The Commission Services explained that members were not expected to complete or correct the examples in the Room Document. However, they were invited to comment on the main Working Document section by section.

26. Two members of the Group expressed some difficulties about dealing with provisions and reserves under the same heading. They thought that whereas provisions and liabilities represented expenditure, reserves should be dealt together with tax incentives. Moreover, technically both categories are distinct in the sense that the provisions and liabilities are part of establishing the taxable profit whereas reserves concern the subsequent use of the profit.

27. Another member was of the opinion that the two issues should be dealt together, because not all the reserves have to be by definition incentives and some reserves even if credited against the equity should be treated as tax deductible. The example was given of directors' and employee profit participation schemes which might sometimes require a provision to be established while by definition, due to the technical link to the profit, this was not possible. It is important to make a 'demarcation line' between tax deductible and non deductible items, regardless of whether they are provisions, liabilities or reserves.

28. The Commission Services agreed that it may be useful to look at both together in the beginning, and that only after further work, might it be possible to separate the two.

29. Several members of the Group did not agree with the suggestion made in the Working Document that if a reserve or a provision was created because the law required a company to create one, it should be automatically tax deductible. These members thought that the general rule should be the opposite. All reserves and provisions should be in principle tax non deductible and only exceptionally should some of these qualify for tax deductibility. One of them added that reasons for deductibility of some items as exceptions to the general rule have often little to do with the corporation tax system and may vary from MS to MS (eg pensions, labour law). Besides that, provisions and reserves created on non deductible items should never qualify for the deduction. The Commission Services agreed that non tax legislation will play an important role in this
area and pointed out that an important part of the work on the CCCTB would involve dealing with these existing national exceptions, which unless they were changed, may have to be subject to mutual recognition by all MS in order to achieve the CCCTB.

30. The Commission Services suggested to the Group that a new subgroup could be created in order to elaborate further on the issue of reserves, provisions and liabilities.

31. One member of the Group, who expressed support for this idea, volunteered to organise the first meeting of the subgroup on reserves, provisions and liabilities (hereafter the SG2). The member suggested the first meeting should take place by the end of April 2005. This would allow SG2 to make an initial report back to this main Group at the next plenary meeting.

32. Some delegates suggested that some parts of the Working Document should be redrafted before the meeting of the SG2. One suggested the questions should be more precise and the distinction between debt and own capital (equity) should be clearer.

33. Another member remarked that the document on reserves provisions and liabilities had been received by them very recently and asked for more time to reflect on it. He expressed concern that the work of the Group was being rushed. He considered that the working document needed more work so that clearer guidance could be given to the second subgroup. In addition, he expressed concern about the implications of a number of subgroups on resources of Member States.

34. A few other members also called for less ambitious progress and justified this by referring to insufficient resources being available at the national level. One member would much prefer subgroups to be created consecutively rather than concurrently, i.e. there should only be one subgroup at any given time and only when that subgroup had finished its work should another be formed.

35. The Commission Services referred to the importance of the project, the 3-year mandate of the Group and the wide range of issues that needed to be addressed within this time limit. The Chair reminded members of the Group that the main role of subgroups was to analyse particular problems and technical details and that subgroups were not designed to agree on the final solutions for the CCCTB. The Chair stressed that not all members of the Group were expected to work in all subgroups. The working method is very transparent; all subgroups' documents are available to all members of the Group, not only to those of them who participate in a particular subgroup. Members not participating in the subgroup can provide the subgroup with their comments or observations at any stage. Furthermore, each item subject to discussion in a subgroup is first raised in the plenary of the Group and is again discussed in the plenary of the Group after the discussion in the subgroup. In view of that, he expressed the opinion that a second subgroup should be established now and that a third might be needed by the end of the year.

36. Several members expressed their support, specifically with reference to the creation of a second subgroup and pointed out that working through subgroups is a good way to
elaborate on the work and look for answers to the questions raised in the Working Documents.

VII. ANY OTHER BUSINESS AND CONCLUSIONS

37. The Commission Services summarised what was discussed and what was agreed as the follow up of the work of the Group and subgroups.

38. Members interested in participation in the second meeting of the SG1 were invited to express their intention to the Commission Services by 24 March 2005.

39. Members interested in participation in the new SG2 were invited to inform the Commission Services by 24 March 2005. The Commission Services in agreement with the member who volunteered to organise the first meeting of the SG2 would communicate as soon as possible the date of the SG2's first meeting.

40. Members were reminded to provide the Chair of the SG1 and the Commission Services with their comments on the 'Summary record by the Chair of the first meeting of the SG1' before 24 March 2005.

41. Members were reminded to provide their comments and answers to the questions raised in the Working Document 'Intangible assets and tax depreciation' as well as potential corrections to the Annex 1 to this document as soon as possible to the Commission Services, by 23 March 2005 at the latest. Their answers will form the basis for additional input to the SG1’s second meeting.

42. Members were reminded to provide their comments and answers on the questions in the Working Document 'Reserves, provisions and liabilities' in writing to the Commission Services by 4 April 2005.

43. The next session of the Group is planned for the end of May 2005. The Commission Services will prepare a new Working Document on the issue of capital gains for the next meeting of the Group.