

Annex to CCCTB/WP/060: Synthesis of possible apportionment rules

General principles

1. The entire consolidated tax base would be shared between each individual taxpayer of a group and each permanent establishment of a taxpayer situated in a Member State for each tax year in order to determine the taxable income to be liable to tax at the Member State's level. In the following articles the term 'taxable entity' includes each taxpayer of the group and each permanent establishment of a taxpayer of the group situated in a Member State. Group means all taxable entities of a consolidated group as set out in article [see consolidation part].
2. The sharing would be performed according to a uniform apportionment formula set out in articles below.
3. The consolidated tax base of a group would only be shared when it is positive.
4. The calculations for sharing the consolidated tax base would be done at the end of the tax year of the group.
5. The elements of the apportionment formula would be:
 - (i) the labour factor which would be composed of two equally weighted elements, the payroll and the number of employees,
 - (ii) the asset factor and
 - (iii) the sales factor.

The tax base of each taxable entity would be determined in accordance with the following formula where A is one taxable entity and the Group is the consolidated group¹:

$$\text{Tax Base A} = \left(\frac{1}{3} \left(\frac{1}{2} \frac{\text{Payroll}^A}{\text{Payroll}^{\text{Group}}} + \frac{1}{2} \frac{\text{Number of employees}^A}{\text{Number of employees}^{\text{Group}}} \right) + \frac{1}{3} \frac{\text{Assets}^A}{\text{Assets}^{\text{Group}}} + \frac{1}{3} \frac{\text{Sales}^A}{\text{Sales}^{\text{Group}}} \right) * \text{CCCTB}$$

6. The rules for sharing the consolidated tax base in the case of taxable entities belonging to the economic sectors of financial services, transportation services (including airlines and railways), television and broadcasting services would be subject to adjustments as described in articles 26ff.

Safeguard clause

7. If the outcome of the apportionment for a taxable entity does not fairly represent the extent of the respective business activity in a Member State the Principal Taxpayer or a competent authority where the group has activities could request in exceptional

¹ Equal weighting of the factors is assumed here – this is open to discussion in the appropriate forum.

cases the use of an alternative method to share the consolidated tax base. All the competent tax authorities where the group has activities would have to agree to the alternative method otherwise the normal method would apply.²

Special rules for taxable entities entering and taxable entities leaving the group

8. Taxable entities entering a group during a tax year and taxable entities leaving the group during a tax year would apply the apportionment formula using time apportioned factors. Time apportioned factors in case of the sales factor and the payroll element of the labour factor would mean all sales and all payroll of the period during which the taxable entity belonged to the consolidated group. Time apportioned factors in case of the number of employees element of the labour factor and the asset factor when a taxable entity enters the group would mean the result of taking the total number of employees and the total assets of the taxable entity in the tax year and applying a fraction 'months that the taxable entity belongs to the group' divided by twelve. Time apportioned factors in case of the number of employees element of the labour factor and the asset factor when a taxable entity leaves the group would mean the result of taking the total number of employees and the total assets of the taxable entity at the moment when the taxable entity leaves the group and – assuming that the number of employees and the assets will not significantly change in average during the remaining tax year – applying a fraction 'months that the taxable entity belonged to the group' divided by twelve unless the taxable entity substantiates different figures of the number of employees and assets at the end of its tax year.

Partnership in the participation chain

9. If part of a taxable entity's operations were conducted via a partnership with one or more other persons the taxable entity's payroll, number of employees, assets and sales in a tax year would include, in respect of the operations of the partnership, only that proportion of the total payroll, number of employees, assets and sales of the partnership in the tax year that the taxpayer's share of the partnership in the tax year is of the total profits or losses of the partnership in the tax year.

Labour factor

10. The payroll and number of employees elements of the labour factor would be calculated as follows:
 - 10.1 The numerator of the payroll element would be the total amount of all salaries, wages and other compensation of the taxable entity for its employees in the tax year, and the denominator of the payroll element would be the total amount of

² If this safeguard clause were included administrative rules on time limits and procedure for agreeing would be dealt with in the administrative part of the proposal.

all salaries, wages and other compensation for the group for their employees in the tax year.

- 10.2 The numerator of the number of employees element would be the number of all employees of the taxable entity in the tax year, and the denominator of the number of employees element would be the number of all employees of the group in the tax year.

11. Scope

- 11.1 For the calculation of the payroll and the number of employees elements [an average of]³ all employees employed by a taxable entity would be taken into account. An employee would be defined in accordance with the domestic legislation of the Member State where the employee works (these definitions would be mutually recognised among Member States). An employee working less than full time would be taken into account in proportion to actual hours worked as a proportion of hours worked by a full time equivalent employee.
- 11.2 Interim and/or temporary persons who are not on the payroll of the taxable entity but provide the same services that would normally be performed by the taxpayer's ordinary employees would be included in the calculation of the payroll element and in the numerator and denominator of the number of employees element.
- 11.3 Employees carrying out services on behalf of a company, where the taxable entity has outsourced the activity, would only be included in the payroll and number of employees elements of the taxable entity which has outsourced the activity and not the company employing them if both belong to the same consolidated group and article 14.2 applies. Outsourcing would mean the delegation of non-core operations from internal production to an external entity.
- 11.4 Payroll would include the cost of salaries, wages and all other employee compensation including related pension and social security costs borne by the employer which is a deductible expense in accordance with the rules for calculating the consolidated tax base.
12. **Valuation:** Payroll would be valued at the amount of the cost that is taken into account as a deductible expense for the employer in a tax year in accordance with the rules for calculating the consolidated tax base in relation to an employee, an interim and/or temporary person or a seconded employee.
13. [**Averaging:** The average number of employees would be determined by averaging the numbers of employees at the beginning and ending of the tax year.]

^{3 3} If the term 'average' in square brackets were included in article 11 depends on the inclusion of article 13 in the proposal.

14. Location

- 14.1 An employee would be included in the labour factor for the purpose of calculating the labour factor of the taxable entity which included the employee on its payroll.
- 14.2 Notwithstanding 14.1 where an employee performs his services other than at the place of business of the taxable entity which has included the employee on its payroll, the employee would be included in the labour factor of the taxable entity where the employee actually performs its services. If there is no taxable entity of the group situated where the employee actually performs its services, only article 14.1 would be applied.
- 14.3 Article 14.2 would only be applied if employees that would be included in the labour factor in accordance with article 14.2 represented more than 5% of all registered employees of the taxable entity.
- 14.4 Where employees provide their services for different taxable entities or non-taxpayers during a tax year, they would be included in the labour factor of the concerned taxable entities based on number of months.
- 14.5 Article 14.2 would only be applied if an employee who does not perform his service at the place of business of the taxable entity which has included the employee in its payroll has performed his service for an uninterrupted period of at least three months at one place.

Asset factor

15. The asset factor would be calculated as follows: The numerator of the asset factor would be the [average]⁴ value of all the taxable entity's fixed tangible business assets owned or rented/leased by the taxable entity in the tax year, and the denominator of the asset factor would be the [average] value of all the fixed tangible business assets owned or rented/leased by the group in the tax year.
16. **Scope:** Fixed tangible assets would mean land and buildings, plant and machinery, other fixture and fittings, tools and equipment. Intangible assets, financial assets and current assets would not be taken into account for the asset factor.
17. **Rented/leased assets:** Intra-group rented/leased fixed tangible business assets would only be included in the asset factor of that taxable entity where the rented/leased fixed tangible business assets are included in the asset factor in accordance with article 20. Fixed tangible business assets rented/leased from or by non-consolidated taxable entities or non-taxpayers would be included in the asset factor of the taxable entity when it is the lessor and when it is the lessee.

⁴ If the term 'average' in square brackets were included in article 13 depends on the inclusion of article 19 in the proposal.

18. Valuation

- 18.1 Land and other non-depreciable fixed tangible business assets would be valued at original cost.
 - 18.2 Individually depreciated fixed tangible business assets would be valued at their individual tax written down values at the end of the tax year.
 - 18.3 Pooled fixed tangible business assets would be valued at the tax written down value of the pool at the end of the tax year.
 - 18.4 The lessee would value rented/leased assets at eight times the net annual rental rate. Net annual rental rate would be the annual rental rate less any annual rental rate receivable from sub-rentals.
19. [**Averaging:** The average value of the fixed tangible business assets would be determined by averaging the values of the individual tax written down value at the beginning and ending of the tax year. The average value of the pool would be determined by averaging the value of the pool at the beginning and ending of the tax year.]

20. Location

- 20.1 An asset would be included in the asset factor for the purpose of calculating the asset factor of the taxable entity which has the right to depreciate the asset (economic owner).
 - 20.2 If an asset is not effectively used at the taxable entity which has the right to depreciate the asset, the asset would be included in the factor of the taxable entity where the asset is effectively used.
 - 20.3 Article 20.2 would only be applied if assets that would be included in the factor in accordance with article 20.2 represented more than 5% of the tax written down value of all fixed tangible business assets of the taxable entity.
 - 20.4 Where assets are included in the factor in accordance with the above rules at different taxable entities or non-taxpayers during a tax year, their tax written down value would be included in the asset factor of the concerned taxable entities based on number of months.
21. **Anti-avoidance measure:** Where a taxable entity sells an asset outside the consolidated group which has been transferred to it by a taxable entity within the same group in the same or previous tax year the asset shall continue to be included in the asset factor of the original taxable entity and not in the asset factor of the selling entity unless the taxable entities are able to demonstrate that the transfer was made for bona fide commercial reasons.

Sales factor

22. The sales factor would be calculated as follows: The numerator of the sales factor would be the total sales of the taxable entity in the tax year, and the denominator of the sales factor would be total sales of the group in the tax year.
23. **Scope:** Total sales would mean all proceeds of sales of goods and supplies of services (net turnover) after discounts and returns, without VAT, other taxes and duties. Exempt income, extraordinary income and passive income such as interest, dividends, royalties and capital gains would not be included - unless it would represent the income accrued in the ordinary course of trade or business. Intra-group sales of goods and intra-group supplies of services would also not be included.
24. **Valuation:** Sales would be valued in accordance with the normal rules for calculating the consolidated tax base.

25. Location

- 25.1 The inclusion of sales in the sales factor would be determined in accordance with the destination principle as set out in the following articles.
- 25.2 Sales of goods would be included in the sales factor of the taxable entity which is located in the Member State where the final place of the physical delivery of the good is located. If the final place of the physical delivery of the good is not identifiable, sales of goods would be located at the taxable entity which is located in the Member State where the last identifiable non-consolidated taxable entity or non-taxpayer in the sales chain receiving the physical delivery of the good is located.
- 25.3 Supply of services would be located at the taxable entity which is located in the Member State where the services are actually used or enjoyed.
- 25.4 The Council, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC of 28 June 1999, could delegate to the Commission the laying down of further detailed rules implementing the above rules concerning the determination of the destination principle regarding sales of goods and supply of services.
- 25.5 If the destination of sales or services is in a Member State where no taxable entity of the group is located or in a non-Member State, the sales or services would be included in the sales factor of all taxable entities of the group proportionally to their labour and asset factors (spread throw-back).
- 25.6 If the destination of sales or services is in a Member State where more than one taxable entity of the group are located, the sales or services would be included in the sales factor by all taxable entities located in this Member State proportionally to their labour and asset factors.

Sector specific formulae

26. **Definition of the economic sectors:** Not included in this document

27. **Adjustment to the factors:** Not included in this document