



October 20, 2010

### **Workshop on the Common Consolidated Corporate Tax Base (CCCTB) Comments on document CCCTB/RD/001 Eligibility Tests for Companies and Definition of a CCCTB Group**

#### Introduction

The BUSINESSEUROPE Task Force on CCCTB is pleased to have been given the opportunity to provide some preliminary remarks in relation to the scope of the CCCTB. Since this is an area where we have provided comments earlier we will concentrate our remarks to specific issues. The positions taken by the Task Force may be subject to revision as other areas of the CCCTB are explored and discussed.

#### General remarks

The Task Force would like to congratulate the Commission Services for having produced a good outline for the definition of a CCCTB group and eligibility requirements for consolidation. From a general point of view, we would like to have the reach of the CCCTB as wide as possible. This includes making the system attractive also in relation to SMEs. However, we find this an important aspect that perhaps has not received enough attention.

Furthermore, we believe that the CCCTB intercompany transaction rules should be recognised for VAT purposes. Under no circumstances should transfer pricing issues in the VAT area be allowed to undermine the benefits achieved regarding income taxation within the CCCTB group.

Finally, we have found that the reference to third country companies sometimes is understood as companies outside of the CCCTB area rather than outside the EU. A clear and consistent definition is required. We therefore recommend that this is clarified in the paper.

#### Detailed remarks

**Para. 3** – We find that the content in the brackets could potentially be misleading, giving the impression that there are two kinds of CCCTB; with or without consolidation. For this reason we strongly suggest that the bracket is deleted.

**Para. 4** – In order to avoid unnecessary updates, the Directive should be applicable to each new form of companies which is recognised by the legislation of a Member State.



**Para. 9** – We have some difficulties with the proposed 3 part test. First of all, we believe that the reference to “main factors” should be deleted to make clear that the proposed factors are exclusive in determining eligibility. Regarding the group definition (i.e. the level of ownership required to qualify for participation) the suggested level of 75 % is obviously a compromise between the need to be in control of the entities, the right of minority owners, tax revenue aspects etc. To widen the scope of the CCCTB, a threshold of 50 % or else close to 50 % would be preferable.

Furthermore, the word “profit” is not entirely clear. To avoid misinterpretations we suggest that is replaced by “dividends or a right to liquidation distributions”. A right to liquidation distributions indirectly refers to all profits during a lifetime of a company and should be equivalent to rights to dividends.

Finally, we would like to stress that a key feature of any eligibility test is that it is clear and that it gives no room for different interpretations.

**Para. 13** – As stated in our comments to paragraph 9 above, we suggest that “profits” be replaced by dividends and liquidation distributions.

**Para. 14-18** – We fully endorse the suggested approach of including into the CCCTB all operations within the CCCTB-jurisdiction even where parts of the MNE are located outside this area (i.e. parent companies, subsidiaries and PEs). Such an approach is crucial if the system is to comply with reality as the vast majority of MNEs have operations not only within the EU.

In principle, the exchange of information requirement on request in relation third countries appears to be reasonable. However, it should be targeted only in relation to non-cooperative tax havens. As it stands, there may be a potential problem in relation to e.g. the U.S. Analyzing Article 26 of the U.S. Model Tax Treaty, it is not clear that the U.S. fully meets the standard of the Mutual Assistance Directive.

On behalf of The BUSINESSEUROPE Task force on CCCTB

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