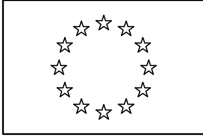

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COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP (CCCTB WG)

Report and overview of the main issues that emerged during the discussion on the sharing mechanism SG6 second meeting – 11 June 2007

Meeting to be held on 27/28 September 2007

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I. Background information and purpose of the document

1. This note gives an overview of the main issues that emerged during the discussion on the mechanism for sharing the Common Consolidated Corporate Tax Base (CCCTB) at the second meeting of the Subgroup on the sharing mechanism (SG6).

2. The topic of the mechanism for sharing the tax base was discussed at the ninth and tenth meetings of CCCTB WG (13 December 2006 and 13 March 2007, respectively) and in a subgroup meeting held on 1 and 2 February 2007.

3. The second meeting of SG6 was organised on 11 June 2007 in Brussels, chaired by the Commission Services. 17 Member States[1] attended the meeting[2]. The purpose of the meeting was to focus the analysis on a 'traditional formulary apportionment' approach as a mechanism to share the CCCTB (since in the previous meetings the other two possible mechanisms – apportionment based on macro factors and the Value Added key – had been put aside due to their important flaws). The Commission Services had prepared a slide show for the meeting focusing on the elements of a formulary apportionment mechanism, which was divided into five parts (payroll factor, property factor, sales factor, nexus and possible sector-specific formulae). This presentation was circulated to all members of the CCCTB WG before the meeting.

II. Key points discussed at the meeting

Preliminary comments

4. The Commission Services made a number of preliminary remarks, stressing that an apportioning formula should be enforceable, simple and cost effective. At the same time the factors to be chosen should not be prone to manipulation and should lead to a fair apportionment of the tax base.

5. It was also stressed that all taxable income determined as CCCTB should be subject to apportionment without any distinction, for the purposes of the sharing mechanism, between active (business) and passive (non-business) income[3], mainly because such an approach is the simplest one.

Payroll factor

6. The discussion indicated that a labour factor (payroll) should be included in a formula that aims at sharing the tax base among the various Member States in which a group is active on the basis of their respective contribution to the generation of income (in other words labour is a income-generating factor and as such it should be

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[1] Throughout the document the terms 'members', 'experts', and 'Member States' (MS) are used. In common with other documents these should be understood to refer to individual experts participating in the meeting. They do not indicate any formal position or view of a MS.

[2] Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Malta, Poland, Slovenia, Spain and Sweden.

[3] In the US, a distinction is made between 'business income' (earned in the regular course of trade or business) to be apportioned between the States and 'non business income' to be directly allocated to the state of source.

included in the formula). The Commission Services made clear that, in the context of apportionment, it is important to distinguish between the scope and the location of the payroll factor. Three elements were of particular importance for the measurement of this factor: the definition of an employee, the outsourcing of labour and the location of employees.

7. As regards the <u>definition of an employee</u> (*versus* a self-employed person), the Commission Services together with some experts favoured an approach based on 'mutual recognition' of national legislation. However some experts expressed concerns having in mind some conflicting interpretation of national law in cross-border situations and claimed that it would be very useful, and not so difficult in practical terms, to reach a common definition of what an employee is for apportionment purposes. Another concern was that if the approach of 'mutual recognition' of national (non-tax) legislation to define what an employee is for apportionment purposes was taken, it should be made clear in cross-border situations which MS legislation should prevail: that of the MS where an employee resides or where he/she works.

8. The Commission Services argued that it would be extremely burdensome, and probably impossible in the short term, to harmonise national legislation in order to reach a common definition of an employee. Similar to many other components of the tax base, when deductibility is linked to non-tax law, the 'mutual recognition' approach has been recognised as a valid criterion. The same should apply as regards apportionment factors such as the concept of employee and disguised employment. And in any case, probably differences in national (non-tax) labour legislation are not so material and relevant for the sharing mechanism.

9. The Commission Services also favoured the approach that, once the firm's employees are determined, the <u>value</u> to be taken into account <u>for the payroll apportioning factor</u> should be the amount which is tax deductible at the tax base level for these employees, in accordance with CCCTB rules on the calculation of the taxable income. This implies no significant compliance costs since the data would be known to companies and available for use. One expert pointed out that for the definition of what payroll costs could be considered for apportionment purposes (wages, bonuses, social security costs, etc) the 'mutual recognition' approach could also be of help.

10. As regards the <u>outsourcing of services</u> to a company which is not member of the consolidated group, the Commission Services together with some experts considered that the labour component of outsourced service should not be included in the payroll factor as it may be extremely difficult to distinguish between "outsourced labour" and the normal purchase of services from third parties. Other experts however maintained that the possibility of incorporating outsourced labour into the payroll factor should be seriously examined further. They claimed that the very nature of the contribution of labour services to the generation of income is alike, regardless of the legal status of the workers that provide the services (own workers or third party) and also that if it was excluded from the apportioning labour factor, the outsourcing of labour could be an easy tool for factor shifting used by

companies. It would also be unfair if two equally profitable companies were assigned different tax bases depending on whether they outsource most of their labour services or employ their own workers.

11. One expert explained that in his view different cases in the outsourcing of labour can be identified: 1) outsourcing to a CCCTB company; 2) outsourcing to a non-CCCTB company in the Internal Market and 3) outsourcing to a company in a third country; in his opinion, in cases 2 and 3 the outsourcing of labour should be incorporated into the payroll factor to prevent the use of this tool for fiscal planning. Some experts also introduced the concept of outsourcing of labour for the purpose of the 'core business' of the companies. The example was given of a car producing company which may outsource ancillary activities such as cleaning, accounting, etc but also 'core business' activities such as the production of some of the parts to be included in their final products. For these experts, a difference should be made between these two types of outsourcing and it would make sense to include in the formula the outsourced labour in relation with the core business of a company. The Commission Services expressed serious doubts on the practicalities, and need for such a distinction.

12. The Commission Services also mentioned that – as an exception to the general rule of no inclusion of outsourced services in the payroll factor referred to above - it could be envisaged to include interim/temporary staff (e.g. replacing permanent staff currently on leave) in the formula of the company where these members of staff are effectively working, because in this second scenario the interim staff are effectively participating in the generation of profit for the company where this staff works. However, one expert stressed that the inclusion of interim staff in the labour factor would not only include payroll but also profits and return on capital of the interim staff agency. He raised also the concern that by including interim staff in the payroll factor there could be a risk of double accountability, if these people were also included in the labour factor of the companies that formally employ them. Other experts mentioned that they would be in favour of the approach of incorporating 'interim staff' performing exactly the same activities that would have normally been performed by the firm's employees, as long as it is clear that this staff received instructions from the firm's management, as a normal worker would.

13. As regards the issue of location of labour to define the apportioning factor, it was confirmed that the effective place of work should be the rule for all employees (ie, the place where labour is supposed to have contributed to the generation of income). In the vast majority of cases this would coincide with the place where the employer is established and deducts the costs for the employees. In particular cases the employer may be located in a different MS from that where the employees provide their services (for example, in case of a cross-border secondment of workers within a group or intra-group outsourcing). In such a case the payroll factor should be accounted for in the place of effective work by these workers, but it is likely that companies have data concerning where employees are effectively working and therefore compliance costs should not be significant.

14. An expert also stressed that the rules for the measurement and allocation of labour costs for apportionment purposes should be the same as those used at the tax base level (where labour costs have already been measured and allocated to each group entity, before consolidation). Another expert claimed however that the issues related to the correct location of the payroll factor for apportionment purposes are different from the issues in relation to the place of deductibility of labour costs at the tax base level, and therefore the location rules of both elements should not necessarily be the same.

15. Another expert mentioned that a different rule for the location of the payroll factor could be 'the place where companies withhold income taxes of employees'.

16. A final area of discussion in relation with the labour factor was the possibility of adjustments to correct differentials in wage levels across EU countries. Some evidence was presented on the current divergence between hourly labour costs across EU countries and also on the convergence over time across some countries. Different points of view appeared between experts from some of 'new Member States' calling for some adjustment to take into account the lower average level of wages in those countries and avoid an unfair apportionment. In contrast experts from some 'old Member States' favoured a simple approach only based on the amount of wages paid without any inclusion of a correction based on headcounts. The experts from the 'old Member States' stressed that this adjustment would not be justified, because the differences in the level of wages reflected differences of productivity, because there should be a convergence in the medium term and because of the complexity and distortions that such an adjustment could imply (for example, an expert mentioned that if 'number of employees' was the compensating factor there could be manipulation of this factor depending on the difficulties/easiness of the national labour markets to fire/hire someone). However, if an adjustment were made it could rely on the number of employees (or full-time equivalent) and should only be applied for a transitional period of 5 to 10 years.

17. The Commission Services insisted on the necessity to come up with some rules that are sufficiently simple and pragmatic, having in mind at the same time the difficult areas in relation to this factor. Apportionment does not aim at identifying a hypothetical scientific truth but at achieving a 'rough' (although fair) approximation of the income-generating factors. In this respect, the apportionment should follow as much as possible the treatment given in the tax base and rely as much as possible on the mutual recognition of social legislation in force in the MS (as is generally accepted as regards the deductibility of environmental or social costs for the calculation of the tax base). Some adjustments may be necessary but the general rules for the apportionment should be based on simple principles.

Assets factor

18. The discussion revealed that a capital factor (assets) should be included in the formula, as capital is a key income generating factor. The Commission Services suggested focusing the analysis of the capital factor on the ‘stock’ approach to

measure it, discarding the 'flow' approach due to its practical difficulties, which was generally accepted.

19. As regards the scope of the factor, i.e. which assets should be taken into account in the formula, it emerged that most experts would favour the inclusion (as a general rule) of fixed tangible assets. The discussion on the inclusion/exclusion of current assets (inventory) was however inconclusive. Stocks are rather mobile and therefore their inclusion could be prone to manipulation, but their exclusion altogether could also be inappropriate, as they represent for certain sectors a very important component of the assets. It was also generally agreed that all assets belonging to the companies, including idle assets (i.e. assets not in use anymore although still in the books of the company) should be taken into account.

20. It was also the common view that financial assets (fixed and current) should be excluded from the factor, due to their mobility and therefore potential manipulation in terms of location for tax planning. It was however remarked that they should be in the asset factor of any possible specific formula for the financial sector (banking and insurance industry). Another expert mentioned that another reason to exclude financial assets is that, depending on the rules for delineation of the CCCTB, in some cases the income from these assets may not be part of the apportionable tax base anyway (e.g. dividends or capital gains on shares), thus it is logical that financial assets are not taken into account for apportionment.

21. With respect to intangible assets, the Commission Services suggested also their exclusion from the apportioning factor, due to the difficulties in terms of their valuation, location and their potential of manipulation. Also, when payroll, tangible assets and sales were in the formula, it was argued that intangibles would be indirectly taken into account in other factors such as researchers' salaries, research assets etc. Some experts supported excluding intangibles from the asset factor, arguing that intangibles are in most cases developed and kept by the head company, though actually used by subsidiaries, but it would be very difficult to allocate their proportional value to the later. Other experts however expressed some reluctance arguing that intangibles (especially those acquired from third parties) should be part of the apportioning formula. The reason for this was that the generation of income arising from this type of asset would not necessarily be systematically reflected in the sales factor. For example, the owner of a trade mark is not necessarily the company allowed to use it to generate sales.

22. As regards the valuation of assets, it emerged that for some experts the tax written down value (historical cost of the assets minus the tax depreciation) seemed probably more relevant than the gross historical cost. From an economic point of view it is more likely to reflect the market value of the asset (eg a vehicle bought 20 years ago should not be included at original purchase price, because its value will have depreciated over time). From a practical point of view, the potential differences in a group with long-existing entities (with mainly fully depreciated assets) and newly created entities (with mostly new assets and thus at the beginning of their useful life) would, so it was argued, tend to disappear progressively if the tax written down value was the relevant criteria. Some experts however remarked

that when an asset is still in use and thus still generating income it should be taken into account to apportion the base no matter whether this asset is entirely depreciated or not. Other experts were in favour of using the historical costs for the valuation of the assets for reasons of simplicity.

23. As regards the location of assets - for the apportionment of the tax base purpose - the Commission Services suggested a parallel between the position as regards the labour factor and the one on assets: the factor has to be attributed to the Member State with the entity effectively using either the employee or the asset, thus to the place where they are generating income (which also prevents the risk of manipulation). As with labour, in the majority of cases this would coincide with the place where the owner is established and deducts the asset depreciation.

24. Such a rule would have implications in the cases of rented/leased assets. It would mean that intra-group leased/rented assets would be located for factor purposes where they are used, rather than with reference to the legal owner, or the company depreciating them for tax purposes. Third party leased/rented assets should be taken into account by both the lessor and lessee, the first valuing it as any other assets (historical cost or tax written down value) and the second valuing it at a fixed rate, say 8 times the net annual rental rate (which means a constant valuation in line with the historical cost approach, rather than tax written down value, as pointed out by one expert). One expert suggested a different approach: the general rule should be to attribute assets to the legal owner and only provide special rules for intra-group leasing. Other experts mentioned that in the vast majority of cases the company depreciating the asset would be the one using the asset and therefore the analysis should not focus on the exceptions. An expert however stressed that in respect of financial leases the consequences could be more complex and lead to a double counting: in a financial lease contract although both the lessee and the lessor have an asset they are of a different nature (the former has a tangible asset whereas the latter has a financial one). Just as with other financial assets, the latter should exclude it from its apportioning factor. However it was highlighted that it is not a problem *per se* if an asset appears in two different formulae where the two parties of the leasing contract do not belong to the same CCCTB group (no risk of double (non) taxation), because the two assets indeed generate two different types of income.

Sales factor

25. The sales factor has been the most controversial one because it is not generally accepted that a sales factor should be included in the formula. For some experts it should be dropped altogether; for other experts it should be included, but whether sales should be included 'at origin' or 'at destination' is open.

26. A general concern about a sales factor is that the rationale is to remunerate the income generating factor 'demand'. However, it is arguable whether 'demand' is an income generating factor and 'demand' is currently not taken into account as a criterion for assigning taxing rights between jurisdictions in an international context.

27. While sales (by destination) are used in existing formulary apportionment systems (in the USA and Canada), some experts pointed out that this argument should not be over emphasised as the situation in the EU and in the USA is not fully comparable. For example, 'demand' is already taxed in the EU via VAT and the sales taxes in the USA are lower and not comparable.

28. As with the other two factors, valuation and location of sales were the issues that had to be analysed to define this apportioning factor. With respect to valuation, the question of which type of revenues should be included in the sales factor was presented by the Commission Services. In that regard, it was mentioned that the factor could include either (i) only the amounts realised from transactions in the regular course of trade or business (ie from sales of goods/supply of services) or (ii) it could encompass gross receipts (ie including revenues from dividends, interests, royalties, capital gains, etc). The view of two of the experts was that financial revenues such as dividends or interests received should not be included in the sales factor, just as financial assets were commonly agreed to be excluded from the assets factor. Also one expert argued that since a large proportion of capital gains are tax exempted (excluded from the tax base), the revenues from these sales should not be in the sales factor either to avoid strange apportioning results. Thus, the approach that only revenues from the sales of goods and services should be in the factor seemed mostly accepted by participants.

29. Another question of interest for the valuation of the sales factor is the treatment of intra-group sales. The Commission Services' view is that such sales have to be excluded from the sales factor: first of all, because only third party sales have contributed to the CCCTB that the factor seeks to apportion (intra-group sales have been eliminated at the consolidation stage) and secondly, because if intra-group sales were included, they would have to be priced at arms length and the incentives to manipulate their value for tax minimisation purposes (now through the sharing mechanism) would re-appear, as would the need for costly transfer pricing methods to value them. Despite these arguments, for some experts intra-group transactions should be included in the factor, since by eliminating them the distribution of tax bases among the various members of a consolidated group could change considerably: the sales factor would assign tax bases only to the group members shipping sales to third parties, whereas the group members producing goods for intra-group deals would receive no tax base on the account of this factor, even if they actually produce a large value added to the group. Ideally, according to one expert, intra-group sales should be in the factor and be measured in an easy way (but no ideas of how to do that were provided).

Location of sales: Origin versus destination

30. Sales by origin. The Commission Services reviewed the arguments in favour of 'sales by origin'. Conceptually, the grounds for this factor could be in principle to take into account the different use of intermediate inputs (as other income-generating factors) and the different efficiency or productivity of the various group companies. However it was argued that 'sales by origin' would only correctly locate these if intra-group sales were taken into account, which as mentioned above, re-

introduces transfer pricing problems. It was also argued that ‘sales by origin’ duplicate or increase the weight of payroll and property as factors to distribute income. Finally, the location of ‘sales by origin’ can be easy to manipulate by arrangements across group members (since intra-group sales are eliminated), although transportation costs would have to be taken into account. One expert considered that 'sales by origin' is the correct criterion in line with current taxing practice although he acknowledged the problem of transfer pricing. Another expert expressed his agreement with the view that ‘sales by origin’ duplicates the features of payroll and capital and is a factor easy to manipulate.

31. Sales by destination. The Commission Services first of all recalled the argument that the mere production of a product does not by itself generate profits unless the product is also sold (at a price above cost). Thus the justification for a ‘sales by destination’ factor is to reflect the contribution of demand to the generation of income, whilst the contribution of the producing states is already recognised by the payroll and capital factors. Thus, the Commission Services expressed the view that, if a sales factor were included in the formula, it might be preferably counted for at destination.

32. Some experts expressed their opposition to a ‘sales by destination’ factor because the allocation effect would be a strange one in the context of corporate taxation. They believed that the function of corporate taxation is to tax production and not consumption, which is already taxed by VAT in the EU.

33. On the issue of a supposed "double taxation" of sales (through VAT and then corporate tax through the inclusion of a sales factor in the formula) the Commission Services replied that all the elements of the formula were on the same footing in this respect: it is often the case that property taxes are levied on assets and payroll taxes are levied on wages. Moreover, the inclusion of a factor in the formula does not imply a new taxation of this factor but the allocation of taxing rights among taxing jurisdictions on the consolidated tax base (the individual tax bases would be taxed in any case).

34. Some possible rules for the location of sales at destination were provided, inspired by the (existing and/or proposed) VAT location rules (which are measured at destination in most cases). In general it was mentioned that to avoid manipulation or routing of the place of delivery to minimise taxation, the location rule should look at the place where the goods are physically delivered. And in any case, the place of ultimate destination for the sales of movable property should prevail (if known). Concerning the destination of the supply of services, the Commission Services presented various options. For the supply of services unrelated to immovable property, sales could either be attributed to the Member State where the activities are physically carried out (origin principle) or to the Member State where the service is actually used or enjoyed (destination principle). Two experts mentioned some concerns on how the final destination of Internet sales, that will become even more common in the future, could be established.

35. The Commission Services also presented the various options for dealing with situations where sales by destination arise in countries where the group is not taxable (so-called "nowhere sales"), for example as the presence of sales is insufficient for establishing a taxable nexus (see below). The profits attributed to such sales would thus potentially escape taxation. The experts did not express clear preferences for either of the two main options for dealing with such a situation, (i) 'throw-back' ("nowhere sales" are attributed either to the state of origin or to all the MS where the group is taxable on the basis of the other apportionment factors) and (ii) 'throw-out rules' ("nowhere sales" are completely excluded from the sales factor).

36. The Commission services also presented an example and possible solutions that may occur with a sales by destination factor when there is more than one group company or permanent establishment (PE) in the destination State: the question was how to assign tax bases to individual group companies on the basis of a sales by destination factor in these cases? Or in other words, which group company/PE should be responsible for paying the corresponding tax to the destination State? In reaction to a slide on this issue, presenting the particular situation of a sale of goods by a group entity in a MS to a third party in another MS where the group has two subsidiaries (but without any of these subsidiaries taking part on that sale), some scepticism on the sales by destination factor was expressed. Some considered that even though sales by destination seemed to be conceptually superior to sales by origin, and that a formula including sales by destination as the third factor would apportion the tax base among producing countries (via the factors assets and payroll) and marketing countries (via the factor sales), a situation like this illustrates the numerous practical difficulties and conceptual concerns that this factor may cause.

37. In previous meetings a concern had been expressed that sales by destination can be easily manipulated by shifting the place where goods are sold to an independent buyer and avoiding creating a taxable presence in the country of ultimate destination. The Commission Services presented some numerical examples showing that by looking at the effective place where goods are actually shipped (assumed to be the ultimate destination) and by requiring the physical delivery of goods such tax planning would be discouraged due to the existence of transportation costs. Furthermore, due to the involvement of an (intermediate) independent buyer, there would be a reduction in the profit margin for the seller. These additional costs and profit margin erosion would reduce the attractiveness of any such manipulation of the sales factor.

Taxable presence/nexus

38. The Commission Services also raised the question of what creates the liability to tax in a Member State. Is a "physical presence" in the form of a subsidiary or permanent establishment required or is an "economic presence" in the form of a minimum presence of at least one of the factors in the allocation formula sufficient? In this context, the Commission Services described a recent development in the USA, where there appears to be a movement towards attributing taxing rights to a

jurisdiction where the taxpayer does not have a physical presence in the form of a subsidiary or a permanent establishment, but has a significant economic presence of one of the apportionment factors (significant means above a certain threshold).

39. Revolutionary as it may look at first sight, this concept: (i) is coherent with the idea that 'demand' is one of the income generating factors (thus, demand, beyond a certain threshold, would give to the marketing jurisdiction the rights to tax part of the corporate income of the selling company); (ii) would make any attempt from companies to manipulate the place of shipment less effective in terms of factor shifting; (iii) would reflect the increasing economic importance of e-commerce and trans-border provision of services and (iv) would eliminate or at least significantly reduce the need for 'throw-back' or 'throw-out rules'. Several reservations were raised concerning this concept. The chair remarked that while such a concept would be new for direct taxation, it would not be so revolutionary as it is currently applicable within the framework of VAT. Besides, a minimum threshold would guarantee companies selling only a small amount of goods in another country would not become liable to tax in that country.

40. The question was raised whether this concept was generally implemented in the USA. The Commission Services explained that each US State has a different legal situation and the formula is specific to each state. However, the US multi-state tax commission (MTC) has recommended such an economic approach and a few States have begun to apply it. It was stressed that the development of electronic commerce has made it necessary to review the traditional concepts to ensure that they are still relevant for the current economic situation.

Sector-specific formulae

41. On the issue of sector specific formulae, there was a general agreement that they should be as limited as possible. Among the sectors to be specifically examined, the financial sector and the oil sector were mentioned by some experts. There was support for the idea of trying to adapt the measurement of the factors in a general formula to the specificities of a particular sector rather than opting for a completely different formula for the relevant specific sectors. Such an approach would indeed have significant advantages in the case of groups active in different economic sectors (conglomerates).

Escape clause

42. On the opportunity to introduce a safeguard or 'escape' clause in cases where the outcome of the apportionment for a specific company would not fairly represent the extent of business activities carried out in the various countries concerned (thus allowing for – on request of the company and/or by authorisation from the tax administration – the use of an alternative method to share the base) the experts remained rather sceptical. The inclusion of such a clause has been strongly advocated by US State tax experts, arguing that it is practically inevitable that specific individual cases would arise where the standard allocation formula would lead to results that would be perceived to be "unfair". In the EU context as the

apportionment formulae would be common across the EU any such adjustment would have to be commonly agreed and could not be granted unilaterally by a single Member State. It was pointed out however, that in the case of an optional CCCTB there was to a certain extent less need for such an escape clause to the extent that a group fearing an unfair distribution of its tax base would not opt into the CCCTB.

SUMMARY AND PRELIMINARY CONCLUSIONS

The exchange of views held so far in the meeting of the plenary groups of December 2006 and March 2007 and of SG6 in February and June 2007 seems to show that all the main issues concerning the sharing mechanism have been touched upon. The discussions seem to have reached a point where the various possibilities have been explored and all pros and cons analysed. Experts have expressed their initial preferences for one solution or the other (for example as regarding correcting the impact of existing difference in the wage levels across the EU or not).

On the basis of the discussions so far, the following picture seems to be emerging:

Assets and payroll are such important factors that their inclusion in the formula is necessary. There are still some issues to be decided, where a trade-off is to be made between simplicity and accuracy, and also concerning fairness. However, such concerns are not insurmountable and should not stop those factors from being taken into account in the sharing mechanism. The measurement of these two factors should be relatively clear-cut. If a temporary adjustment of the payroll factor were to be introduced in order to compensate for significant differences in average wage levels between Member States, the inclusion of "number of employees" as an additional apportionment factor would seem the most preferable.

The factor 'sales' requires further reflection. While many experts have expressed sympathy for the inclusion of such a factor, taking into account the stability it is likely to introduce into the allocation mechanism, views differ widely on whether sales should be measured "at origin" or "at destination". If a sales factor were included, sales by destination would appear to be conceptually superior but could raise a set of practical complications (e.g. throw-back rules). In principle, the information should be relatively easy to collect for most companies as they would need it in any case for their VAT statements. While an approach based on "economic presence" may have conceptual appeal and would be the most coherent one when a ‘sales by destination’ factor was introduced, it may at this point in time be a step too far. Taxable nexus might at least initially therefore continue to be based on a physical presence in a MS (ie a subsidiary or PE) to attribute a share of the tax base to that MS.

Some sector-specific formulae will be required, but their number should be as limited as possible both in terms of number and in terms of necessary adaptations. Ideally, sector-

specificities should be reflected in the measurement of the standard factors rather than in a formula with different factors.

There may be a more limited need for an "escape clause" if the CCCTB is optional for companies. If it were to be introduced in the EU system, it should be agreed by all the involved MS.

Questions for discussion

Do the members of the CCCTB WG have any further suggestions concerning the possible factors to be included in the apportionment formula?

Do the members agree that the most important technical questions concerning the choices to be made for the design of a sharing mechanism have been sufficiently analysed? If not, which other issues should be further examined?

Do any members have contributions to make as regards the further technical examination of sector-specific formulae?