



October 20, 2010

Workshop on the Common Consolidated Corporate Tax Base (CCCTB) Comments on document CCCTB/RD/002 Business Reorganisations in the CCCTB

Introduction

The BUSINESSEUROPE Task force on CCCTB is pleased to have been given the opportunity to provide some preliminary remarks in relation to Business Reorganisations in the CCCTB. The paper addresses a number of questions. Since this is an area where we have provided comments earlier we will limit our remarks to the specific issues raised by the Commission. The positions taken by the Task Force may be subject to revision as other areas of the CCCTB are explored and discussed.

General remarks

Attractive and internationally competitive tax rules for business reorganisations which do not hamper economically driven restructurings play an instrumental role in the design of the CCCTB. The CCCTB rules should offer a broad scope for tax neutral transactions and be flexible in order to eliminate tax obstacles to further enhance competitiveness of business within the EU.

All in all, the paper sets a promising outline on the tax treatment of trading losses and hidden reserves in relation to business reorganisations.

Responses to the questions posed by the Commission

What are your views about the ring-fencing of pre-consolidation trading losses?

Para. 4-5 – In principle, the ring-fencing of pre-consolidation trading losses appears reasonable. CCCTB should however provide for a flow back clause. If the company is unable to utilize the losses domestically within 5-years of entering the CCCTB, the losses should be offset against the consolidated tax base.

What are your views about the 5-year rule for adjustment?

Para. 6-7 – We understand and recognize Member States' interest to avoid the loss of tax revenue due to cross border business reorganizations. We acknowledge that MS may have a legitimate right to tax hidden reserves built up under their tax sovereignty. Such a right to tax must be exercised in compliance with the basic freedoms of the EC Treaty, i.e. deferred until actual sale to third party or disposal of the assets in question and recognition of declining values. A 5-year rule of adjustment in relation to sales outside CCCTB does not seem unreasonable even though an alignment with the proposed 3-year rule when leaving the group seems more adequate.



What do you think of the proposed proxy as a response to the difficulties of including pre-CCCTB intangibles in the asset factor for sharing purposes?

Para. 8-9 – It seems like a reasonable and simple enough solution to solve the difficult issue of identification and valuation of self-generated intangible assets. We interpret the rules outlined as addressing how taxable profits upon realisation should be allocated between countries.

What do you think of the leaving rules?

Para. 10-13 – We find the principles regarding the leaving rules acceptable. However, in relation to paragraph 13, we believe some further guidance on the practical application is necessary given that cost allocation under CCCTB does not need to adhere to the arms length standard.

What is your opinion about the way that trading losses are ring-fenced?

Para. 14-17 – In principle, we find the treatment of trading losses reasonable. There should however be a flow back clause in relation to losses incurred under a national tax system prior to consolidation (see comments on para. 4-5).

What are your views of about the 5-year re-attribution rule?

Para. 18-21 – We understand that Member States' wish to safeguard taxation of hidden reserves. However, based on ECJ decision on Cadbury Schweppes, it is not abusive to do business in EU MS with lower levels of taxation unless the activity constitutes a *wholly* artificial arrangement. Therefore, in line with the ECJ we are against any anti-avoidance measures, like the one suggested by the Commission, which seems to go beyond what is required to retain Member States right to hidden reserves.

What are your views about the entering and leaving rules when 2 or more CCCTB reorganise?

Para. 22-32 – Apart from the fact that the reference in paragraph 32 should be to paragraph 13 instead of paragraph 15, we endorse the leaving rules proposed by the Commission.

On behalf of The BUSINESSEUROPE Task force on CCCTB

Krister Andersson