



EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
Analyses and tax policies
Company Taxation Initiatives

Brussels, 30 August 2010
TaxuD1/

CCCTB/RD\001\doc\en
Orig. EN

WORKSHOP ON THE COMMON CONSOLIDATED CORPORATION TAX (CCCTB)

Eligibility Tests for Companies and Definition of a CCCTB Group

20th October 2010

Charlemagne

Rue de la Loi 170 – 1040 Brussels

ROOM DOCUMENT

Disclaimer

This paper has been prepared to facilitate discussion on possible rules to be included in a possible proposal for a CCCTB Directive. For convenience, use is often made of phrases such as "the rule will apply", "interest will be deductible where..." etc. It should however be noted that such wording is meant to represent only the latest technical expert views which may be subject to change and in no way pre-judges the contents of a possible future Commission proposal.

Eligibility Tests for Companies and Definition of a CCCTB Group

I. Introduction

1. Following on from the work of the CCCTB Working Group and from Working Paper 57 this paper sets out a possible outline for the definition of a CCCTB group and eligibility requirements for consolidation.
2. Under the Directive a taxpayer¹ opting to apply the common rules will be obliged to participate in a CCCTB group if it fulfils the requirements for consolidation (i.e. the 3 part test). This is commonly referred to as the "all-in all-out" approach. In the event that the test for consolidation is not "successfully" passed, a taxpayer may still apply the Directive only for the purpose of determining its individual tax base according to the common set of rules.
3. The purpose of this paper is to explore:
 - a. The eligibility requirements for taxpayers who opt to apply the Directive (with or without consolidation)
 - b. The threshold levels for subsidiaries that qualify for consolidation

II. Eligible Companies

4. An eligible taxpayer will be: (i) a company established under the laws of a Member State which (a) takes one of the forms listed in an annex to the Directive and which (b) is subject to a corporate income tax system (or other similar tax) in a Member State as listed in a further annex² or to a similar tax introduced subsequently. (ii) A third country company which has a similar form to companies established under the laws of a Member State and which will be subject to one or more of the corporate income taxes listed in the further annex due to the fact that they maintain a presence qualifying as a Permanent Establishment (PE).
5. For the purposes of the Directive a company that is not tax resident in a Member State but which the Directive would apply would be eligible to opt for the CCCTB in respect of any PE in a Member State.
6. A company that has its registered office, place of incorporation or place of effective management in a Member State and is not, under the terms of an agreement concluded by that Member State with a third country, regarded as tax resident in that third country shall be considered tax resident in that Member State.
7. The place of effective management of a company will be the determining factor for tax residency where the company is resident in more than one Member State.

What are your views on the eligibility requirements?

¹ Where the term 'taxpayer' is used in this paper it refers to companies who have opted for the CCCTB.

² This is a similar procedure to that under the Parent/Subsidiary Directive, Interest and Royalties Directive and the Merger Directive where a list of companies that qualify for benefits is Annexed.

III. Conditions for Consolidation

8. Some of the main benefits of CCCTB are considered to arise from consolidation. By freeing companies from compliance with intra-group transfer pricing rules and allowing cross-border loss consolidation within the group, a consolidated base would contribute to creating a highly attractive area in which to do business in Europe and would help to secure a stable tax base in a competitive world environment.

(a) Tests of Eligibility for Consolidation

9. Entitlement to consolidation by a group will be based upon a 3 part test. The main factors being considered are (i) **ownership**, with a threshold set at >75% capital, (ii) **control**, where >50% of the voting rights are required and (iii) **rights to profit** >75% rights giving entitlement to profit. The 3 part test addresses the three main aspects of economic ownership of a company.
10. Initially the thresholds outlined would have to be met for **nine months** otherwise the taxpayer would be considered to have never been part of the group. Thereafter the thresholds need to be maintained throughout the tax year. In circumstances where a company leaves a group during the course of a tax year it will be out of the CCCTB group³.
11. *Capital*
The level of ownership exercised over a subsidiary by a company would be set at a threshold of 75% of the capital of a company. Once the threshold has been reached, it counts for 100% of the shareholding when calculating whether the threshold for capital has been reached in lower tier subsidiaries. The inclusion of a capital participation requirement would bring the CCCTB into line with the Parent/Subsidiary Directive⁴.
12. *Control*
In order to be considered as a qualifying subsidiary for the purposes of consolidation a parent company would have to have the right to exercise more than 50% of the voting rights in a subsidiary. As with the *capital* threshold once the threshold has been reached, it counts for 100% of the voting rights. When a direct holding is 50% or less it would count as zero (all or nothing approach). This ensures group control of any companies in the indirect ownership chain.. Again the rights in lower-tier subsidiaries that do not reach these thresholds would be calculated by multiplication, also taking account of holdings in subsidiaries resident in a third country (i.e. a third country company does not necessarily "break the chain").
13. *Profit entitlement*
The third part of the test for consolidation concerns the entitlement to profit. The parent company must be entitled to more than 75% of any profits available from the immediate and lower-tier subsidiaries in order to qualify for consolidation. Such a test would, for instance, take account of a right of usufruct for shares.

³ For further discussion on this point, see Room Document CCCTB/RD\002\doc\en on 'Business Reorganisations in the CCCTB'.

⁴ Council Directive (EEC) 90/435 of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States [1990] OJ L225;

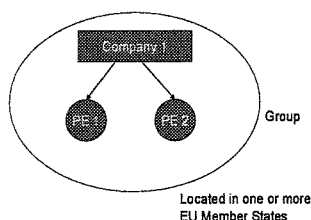
What is your view of the 3 part test and the nine-month qualifying period?

What are your views of the thresholds for participation?

(b) Group Structures eligible for Consolidation

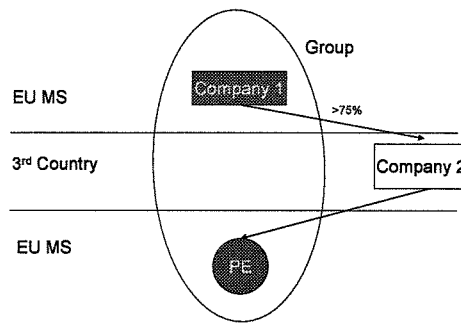
14. For the purposes of consolidation it is important to define the eligible group structures.
15. A resident taxpayer (i.e. company resident in an EU Member State) may form a group with: (i) its PE(s) located in (an)other Member State(s); and/or (ii) the EU-located PE(s) of its qualifying subsidiaries resident in a third country; and/or (iii) its directly or indirectly held qualifying subsidiaries resident in one or more Member States; and/or (iv) one or more other resident taxpayers, if they are all directly owned by the same company in a third country once that company has a form similar to that set out in the Annex to the Directive.
16. A non-resident taxpayer (i.e. company resident in a third country which participates in a CCCTB group through its EU-located PE) will be entitled to form a group: (i) in respect of its PEs located in two or more Member States and/or (ii) consisting of its directly or indirectly held qualifying subsidiaries resident in one or more Member States and its EU-located PE.
17. The Directive will also introduce an anti-abuse provision regarding third countries. Where a third-country company is involved in a group structure, either as a taxpayer through its EU-located PE or as an interposed entity in the shareholding tree, the group structure may only be eligible for consolidation under the CCCTB rules if the third country exchanges information on request to the standard of the Mutual Assistance Directive⁵.
18. Examples of eligible group formations: (percentage of shares are assumed to be of all three tests: capital, voting and right to profit)

In this example an EU resident taxpayer (Company 1) and its two PEs (PE1 & PE2) located in (an)other Member State(s) form a CCCTB group.

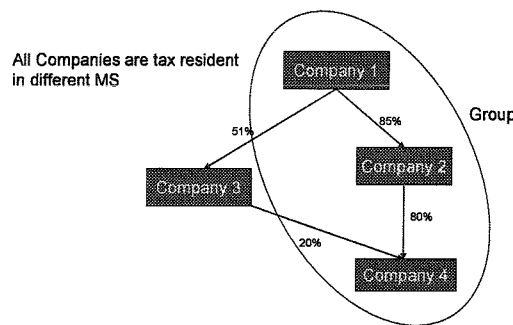


An EU resident taxpayer (Company 1) with a >75% subsidiary located in a third country (Company 2) is eligible to form a CCCTB group with Company's 2 EU-located PE. The critical test is that Company 2 would fulfil the conditions for consolidation if it were resident in the EU.

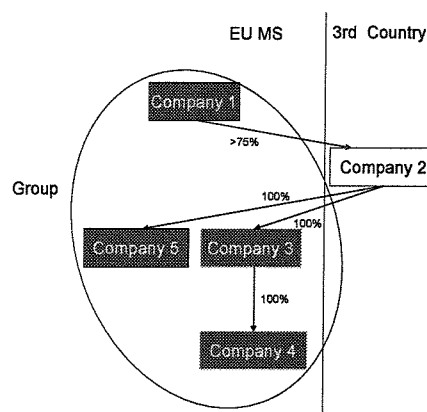
⁵ Council Directive (EEC) 77/799 of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation [1977] OJ L336.



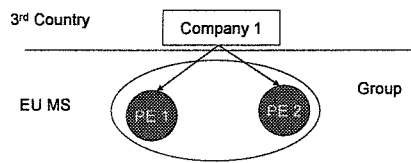
In this scenario 3 EU resident taxpayers (Companies 1, 2 & 4) are eligible for forming a CCCTB group (i.e. Company 1 owns Company 2 at 85% and Company 4 at 78%). In calculating Company's 1 holding in Company 4, both Company 2 and Company 3 have to be taken account of. Company 3 itself does not meet the conditions for consolidation but adds to Company's 1 level of holding in Company 4.



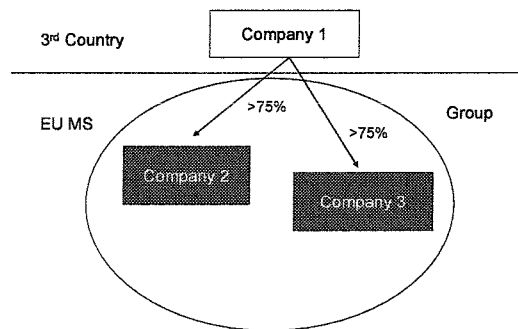
An EU resident taxpayer (Company 1) holds a >75% subsidiary located in a third country that in turn has 3 wholly-owned subsidiaries (Companies 3, 4 and 5) located in the EU. Company's 1, 3, 4 and 5 are eligible to form a CCCTB group since Company 1 owns Companies 3, 4 and 5 at >75%. But, the country where company 2 is located must have an exchange of information agreement in place.



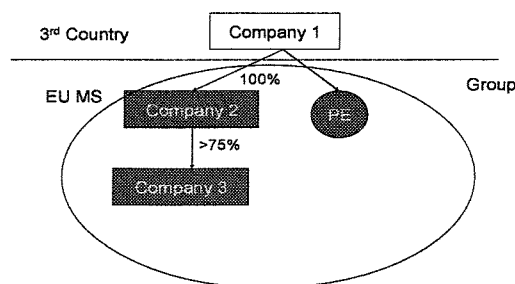
A non-resident taxpayer (Company 1) has two PEs in the EU. Both PE1 and PE2 are eligible to form a CCCTB group.



A non-resident taxpayer (Company 1) holds a direct participation of >75% in two EU-resident subsidiaries (Companies 2 and 3). Company 2 and Company 3 are eligible to form a CCCTB group.



A non-resident taxpayer (Company 1) with an EU located PE holds an EU-resident wholly-owned subsidiary (Company 2) through which it also maintains a participation of >75% in another subsidiary (Company 3). Companies 2 and 3 and the PE are eligible to form a CCCTB group.



The definition of the group attracted a great deal of interest in previous meetings – do you have any comments on the proposed three part test; linked to an exchange of information requirement in relation to 3rd country companies?