



EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
Analyses and tax policies
Analysis and Coordination of tax policies

Brussels, 21 January 2005
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SUMMARY RECORD OF THE MEETING OF THE COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP

held in Brussels on 23 November 2004

I. OPENING OF THE MEETING

1. The meeting of the Commission Working Group on the Common Consolidated Corporate Tax Base (hereafter the "Group") was attended by representatives of all 25 Member States and was chaired by Commission Services.
2. The Chair welcomed the participants and having recalled the informal ECOFIN conclusions from 11 September 2004 he highlighted the expert and technical character of the Group. The Group should concentrate on the technical substance of a common consolidated tax base. The political views of Member States on the issue should be discussed in a different setting. The Chair reminded the meeting that the Group is to cover the question of the common consolidated tax base and will not discuss Home State Taxation.
3. Commission Services explained that a list of participants would be circulated and participants were kindly asked to put down their names and e-mail addresses in order for the Commission Services to be able to create a list of contact persons for the Group. This should facilitate and speed up the distribution of information and relevant documents amongst participants for future meetings.

II. ADOPTION OF AGENDA

4. The Chair presented the draft agenda to the participants and it was adopted by consensus.

III. PRESENTATION OF DRAFT TERMS OF REFERENCE & RULES OF PROCEDURE (DOCUMENT CCCTB/WP/002)

5. The Chair presented the Commission Services discussion document Draft Terms of Reference & Rules of Procedure (CCCTB/WP/002). He informed participants that if necessary a formal Commission decision would be sought in order to formalize the Group.

6. The Chair gave an overview of the document and commented on its main issues. He mentioned the potential participation of non-governmental experts and particularly the fact that the Commission Services consider it to be useful to hold some meetings in an extended format and therefore benefit from the input of academic and other non-governmental experts. He stressed that the Group is to provide the Commission Services with technical advice and assistance on the issue of common consolidated tax base and therefore participation in the Group does not represent any political commitment by a Member State to the idea of a common consolidated tax base.

7. Next he explained that it is necessary to deal with the transparency issue, because the Commission is legally obliged to give access to the documents in accordance with Council Regulation 1049/2001. The Chair proposed that documents should be made available after the meeting unless there is a specific, justified objection. The Commission Services will also produce a concise summary of each meeting of the Group, that would not take up personal comments in a way that individual persons or Member States can be identified, unless a particular expert so requires. This draft summary will then be sent to all participants for their agreement, prior to publication on the Commission's web-site.

8. The Chair then moved on to the issue of subgroups. He remarked that Commission Services see them as a useful tool in the Group's work, since certain technical details are easier to explore in smaller groups. He highlighted that subgroups' work would be of preparatory character to the work of the plenary and subgroups will report back to the plenary. He referred to the similar practice of the Joint Transfer Pricing Forum and the good results. Then he offered participants the opportunity to express their opinion, comments and suggestions.

9. Governmental experts from many Member States (fourteen of twenty five) took the floor with most of them welcoming the creation of the Group. Most expressed active support for the project and some emphasised in particular the potentially positive effect of a common consolidated tax base on the EU economy and the competitiveness of EU companies.

10. Two Participants stressed that there has to be a clear distinction between the political and technical aspects of the whole project. They were prepared to contribute to the work of the Group at the technical level only. Their respective governments had clearly expressed their political opposition to the idea of a common tax base.

11. Many of participants expressed a willingness to participate in subgroups. They thought that subgroups are an effective tool for finding solutions on complex technical issues and developing rules for CCCTB. One participant suggested that subgroups should provide the plenary with drafts for actual solutions and another participant suggested that these drafts could go back to the subgroups for the second or further rounds of examination after a first discussion at a plenary meeting. The role of the plenary would thus be one of "steering" the work.

12. Participants raised several additional questions on practical modalities of subgroups such as whether it is planned for several subgroups to work in parallel, whether summary minutes of the meetings will be taken, and how the decision on which countries will participate in subgroups will be taken.

13. One participant stressed that it is important that those delegations not participating in subgroups are kept informed on the progress of the work of the subgroup, so that they (although not participating) can still contribute with further ideas. Another participant noted that the main working group was in fact a technical group, that it was important that the views of all were heard and that sub-groups when necessary were given clear mandates and created only after there had been a discussion by the full technical group as the need arose..

14. Commission Services addressed the questions. It was anticipated that although in principle several subgroups will probably work in parallel, practical and resource reasons would probably permit only a limited number of subgroups to co-exist any given time.

15. In line with the draft terms of reference Commission Services reconfirmed that subgroups should report on their work to the plenary at each meeting since it is unlikely that all MS will be in practice be present in all subgroups, although subgroups will be in principle open to participants from an unlimited number of Member States. Both participants and Commission Services were of the opinion that final solutions and conclusive statements should be sought only at the plenary after all delegations were allowed to express their views on a particular issue and that it is necessary to have the relevant output of subgroups circulated in good time for consideration at the plenary.

16. It is planned to have four meetings of the Group a year, the number of the meetings of subgroups will depend on practical details such as available resources etc. Subgroups do not have to be chaired by the Commission Services nor do they have to be organised by Commission Services in their premises, but Commission Services should be present at all of them and the modalities have to be agreed with the Commission Services.

17. Commission Services and participants agreed that subgroups should be established to facilitate the work of the Group and that they should be asked to deal in detail with

very technical issues. There was broad agreement that any Member State that wishes to participate in a subgroup, should be allowed to do so. They also stressed the importance of 'good representativeness', i.e. that states with different views on a particular issue should be present in each subgroup.

18. Participants asked what will be the status of subgroups' documents and minutes of their meetings especially whether they will be disclosed to the public. Commission Services agreed that it would not be productive for evolving drafts of documents to be made available to the public at every stage of the discussion process. Minutes of subgroups' meetings will be in principle taken and available for all participants, the Chair however called for flexibility in this respect since the draft working documents themselves may be more useful than minutes in some cases.

19. One participant referred to a "step by step" approach and asked whether the solution for a common tax base will be sought first and the one for a consolidated tax base at later stage. Commission Services confirmed that from the point of view of timing the rules for calculation of tax base and solutions for structural elements will be discussed first and consolidation second. However, the Chair highlighted that Commission had always shown a clear preference for the consolidated tax base approach as also expressed in the "non paper" discussed at informal ECOFIN on 11 September 2004. The two elements of the discussed solution (common and consolidated) have an equal relevance for Commission Services.

20. Participants were rather hesitant about the participation of non governmental experts in the Group on a regular basis. Some of them suggested postponing this issue to a specific moment. There was a general fear of a negative impact on the work of the Group caused by the presence of non-governmental experts at an early stage of the discussion.

21. Some participants were afraid that if non governmental experts are invited to join the Group permanently, tax administrations will be put under pressure and the discussion will not be open and clear. They also referred to the possibility of each tax administration to consult business experts at the national level or providing lists of national experts. One participant was of the opinion that it is important for states to listen to business, but it is not necessarily useful for business to listen to discussions between Member States. Another participant said that non governmental experts may be consulted if need be for specific information or analyses and that such consultations should be launched on a separate basis (not within the regular meetings of the Group). The role of the experts should be auxiliary. One participant expressed a preference for free, wide-ranging discussions within the Group, which could when necessary draw on the expertise of non-governmental experts; but that the drawing of conclusions should necessarily be carried out only by the Group, without non-governmental input. One participant also asked whether a list of individual experts will be established and called for a balanced composition. One participant also asked whether the Commission would draw on a list of experts supplied by individual Member States and called for balanced composition. The delegate in question asked why Commission Services suggest having 20 experts and thought that 25 may be more appropriate figure in order to have a balanced mix of individual experts from the Member states.

22. Commission Services saw it as important to find a good balance (small/large MS, geographical balance, professional experience etc.) on the question of participation of non governmental experts and sought for some flexibility on this issue. The Group should be able to benefit from the expertise of academics and business experts, but the Commission Services accept the constraints felt by some participants and would not like to disrupt the work of the Group. It followed from the above discussion that non governmental experts may be invited on specific occasions for clearly defined purposes. The Commission Services emphasised maximum flexibility in respect of individual experts should be sought; in particular it is important not to restrict any contacts to the domestic or national level. Commission Services explained that their current understanding of internal procedural rules was that 20 experts is the maximum. They reiterated that it is in the interest of the Group to have a balanced compositions of experts but this could be achieved with 20 experts although it would not be helpful to 'fix' a list of 20 experts in advance, as already discussed earlier.

23. Some Participants underlined their appreciation that preserving national legitimate financial interests is mentioned as a guiding objective of the Group. They also proposed to elaborate further on this issue (the fourth bullet of the third paragraph of the document CCCTB/WP/002) in particular they wished to include the issue of tax avoidance in the guiding objectives of the Group. One participant was especially concerned about the avoidance issue and believed that it should be included as one of the guiding principles if the Group aims to develop work on the basis of internationally accepted principles.

24. Another participant pointed out that the anti-avoidance issue depends on how detailed and rigid the final solution for the common corporate consolidated tax base will be. If there is no possibility for Member States to deviate from it, then it should be as safe as possible and anti-avoidance rules should then be included. In addition one participant supported by another was of the opinion that it should be made explicit that the main goal of tax is to fund public expenditure.

25. Commission Services agreed that participants' concerns in respect of anti-avoidance are legitimate, but were hesitant about making an explicit reference in this document. It could bring too much subjectivity and lead to unacceptable ambiguity since the borders between legitimate tax planning, avoidance and evasion may be sometimes unclear. They reminded the Group that it is planned to cover specific anti avoidance issues later and this is already mentioned in the draft work programme.

26. Several participants elaborated on the transparency issue and asked for further explanations. Some of them voiced reservations about the proposed procedures as they feared that they may jeopardise the effectiveness of the Group's work. Commission Services repeated that there is an obligation imposed by Council and the European Parliament to disclose working documents. It was agreed that the documents will be posted on the Commission website only after the meetings and with a disclaimer similar to that used in relation to the Joint Transfer Pricing Forum. [Working papers are the

sole responsibility of the Commission Services and do not necessarily reflect the views of participants or their governments etc].

27. One participant asked the Commission to look again at the Terms of References in the light of the debate and make some changes and referred particularly to the issues of a mandates for subgroups and the involvement of individual experts. The participant asked whether there would be a further round of discussions after any re-drafting.

28. Commission Services did not foresee further consultations on the document as based on the discussion only several minor changes of the document will be necessary.

29. On the issue of avoidance Commission Services clearly stated that they do not intend to change the drafting and pointed out that it is in any case unusual for a Commission group to decide its own terms of reference. Normally it is the Commission who decides on the terms of reference and not the group itself. The Draft Terms of References were presented to the Group to in an effort to have a broad consensus but insisted that the institutional prerogatives of the Commission must be preserved. There is currently no common definition of tax avoidance and therefore to include it in the Terms of Reference would require a debate now on avoidance/evasion etc. The Commission Services preferred that any such debate should take place when work on the actual tax base had progressed further as indicated in the draft Work Programme.

IV. DISCUSSION OF DRAFT WORK PROGRAMME (WORKING DOCUMENT CCCTB/WP/003)

30. The Commission Services presented the document pointing out that it was a draft working plan and that it was not envisaged at this stage to agree on a final document with a fixed working program. The working plan should be updated regularly. It should enable the Group to plan its work rather than constrain it. Four main areas, general principles, traditional structural elements of a corporate tax base, additional elements of a common consolidated tax base and application issues were identified. The order of traditional structural elements of a tax base listed in the second section is tentative and the Group may decide to follow a different order, but it is not necessary to set up a final order at the moment. The second and third sections could in principle be addressed at the same time depending on how subgroups work and how many resources each Member State will devote to the project. The fourth section is flagged as important issues that will have to be dealt with, but it is not intended to enter into detailed discussions now.

31. Some participants elaborated further on the possible sequencing of the work of the Group with most of them agreeing that the most important issues were mentioned in the work program under II (structural elements of the tax base).

32. Another participant thought that it was important to consider some elements of the possible legal framework and issues covered in the third and the fourth section (eg. legislative measures, the question whether the scheme should be optional, etc.) at an earlier stage, because the solutions in these areas may influence the views of

Participants on each structural element (eg if it were to be optional they might have a different view on a particular element than if it were compulsory). The delegate in question also suggested a modification to the proposed timetable; he thought it may be useful to have a two phase procedure for structural elements while the discussion on general principles could be launched in-between them.

33. Participants also mentioned the importance of the relation and dependency between accounting and tax rules that may be dealt with in the first group of issues. They pointed out that this issue as well as general principles should be also revisited at later stages in connection with finding solutions for each of the structural elements of the tax base.

34. One participant was of the opinion that tax accounting principles should not cause major problems because there is a high level of tax bases' dependency on accounting result in most of the EU Member States. The participant preferred to devote more time to the discussion on structural elements of the tax base.

35. Commission Services agreed that some sequencing of the work will be necessary and that it will probably not be possible to work on all the issues in parallel. The Chair also shared with the participants the opinion that revisiting of some issues (e.g. general principles) will probably be necessary at different stages of the discussion. He stressed that the working plan should be as flexible as possible.

36. Accounting principles and IAS seemed to be the natural starting point for discussion for several participants. They expected in the medium-term most of companies' accounts (consolidated or not) would implement these rules.

37. One participant made a point about the role of SMEs in the project. The participant mentioned that while these companies constitute the majority of companies in the EU it will not be easy for them to fully adapt to IAS. The Group should aim to look for a solution for as wide range of companies as possible and not only for a few listed companies.

38. Participants in principle agreed that the Draft working plan is a good basis for structuring the work of the Group as well as that the approach taken by the Commission Services under which IAS are considered as a starting point and further examined for how useful proposed solutions can be for taxation area, is useful. It will allow the Group to use a unified language and working method. The Group should not however be guided solely by the solutions and principles given in IAS because the original purpose of them is rather different from the purpose of tax.

V. DISCUSSION OF GENERAL TAX PRINCIPLES (WORKING DOCUMENT CCCTB/WP/001)

39. Commission Services introduced the working document and invited the participants to comment on it. It was pointed out that it is the first substantive tax paper, but may differ from future papers on structural elements and that its purpose is not to come up

with conclusions on relevant principles at the meeting, but to identify issues that could be reviewed at later stages together with particular structural elements. The first section of the working document dealing with general principles draws heavily on the Company Tax Study produced by the Commission Services in 2001. Some of the general principles may be difficult to apply only to the tax base as the Group is not going to be concerned with the tax rate or the personal taxation. The second section of the working paper elaborates further on the IAS accounting principles that may be useful for the tax area.

40. Several participants commented on the paper, some of them agreed that it will be useful to come back to the issue of general principles also at later stages and see how the proposed principles can be employed in practical cases, rather than going into a detailed discussion of the principles now when that necessarily would have to be rather abstract.

41. One participant was of the opinion that a link to tax avoidance should be made at Para 17 of the working document since it is important to give a clear signal to the stakeholders that it is one of the objectives of the Group to deal with this issue.

42. An extensive discussion was launched on Para 25 (Materiality principle). Some participants had difficulty with the application of this principle in the tax area and they felt that the drafting in the working paper may be too general. One participant mentioned that the thresholds based on materiality principle may have impact on civil and criminal sanctions and he felt that the Group should not deal with the issue at this stage.

43. A specific function of the principle of Materiality in taxation should be demonstrated according to several participants. They saw it as important to specify how the materiality principle should be applied in taxation and to make sure, that the principle will not be applied in an extensive and subjective way (e.g. it shall not be applicable in consideration of whether the income is high enough to be taxable). Some participants could not agree on the materiality principle based on subjective judgement. After Commission Services explained and elaborated further on this issue it was agreed that some changes and clarifications will be made in Para 25

44. One participant suggested the presentation of the options in Para 26 could usefully be extended to include questions. Participants would be invited to express their views on them in writing, indicating for example what the current position was in their Member State and to what extent they could consider perhaps moving towards one of the other options in order to arrive at an improved EU-wide approach (ie as an element of a common base). This would allow the Group to have a general idea of approaches across the EU and of the likely solutions emerging from the answers of Member States. Such an approach, options and questions, could also perhaps be adopted in a number of other areas in the paper.

45. One participant gave some examples of the application of substance over form principle from its own national legislation and administrative practice (economic ownership, thin capitalisation rules).

46. Another participant felt that removing the reference to the different treatment of large businesses in Para 25 would avoid a lot of confusion in respect of the materiality principle.

47. Participants discussed the issue of dependency of tax rules on accounting treatment. They mentioned various points, in principle they agreed that a certain degree of dependency can be identified in most EU Member States, but some special rules for tax area are always necessary.

48. Another participant referred to the OECD work in the area of principles applicable in international taxation and expressed the view, that any set of principles needed to be firmly rooted in this work and in generally accepted international tax principles, and commented that some of the principles mentioned in the document (e.g. capital export and capital import neutrality) are theoretical doctrines that do not have direct application in practice. The delegate concerned questioned the value of trying to agree such a paper and emphasised that it would be better not to draw firm conclusions from it.

49. Other participants were more optimistic and it was clearly stated that principles currently applied by MS in the tax area are not in practice so different and the working document in general summarizes most of them. Therefore it should not be so difficult to agree on them already at this stage taking into account the fact that this issue will be revisited also at later stages in connection with specific structural and additional elements of a tax base.

50. Other participants took the view that the objective of a tax system to raise revenue to fund public expenditure and the desirability of having as wide a base as possible should be included in the guiding principles.

51. One participant was of the opinion that the document should explicitly mention as principles the need to respect specific EU Treaty elements such as the four freedoms and the State Aid rules as well as the European Court of Justice jurisprudence and the Code of Conduct and State Aid rules.

52. The Commission Services agreed that they will redraft the respective paragraphs of the working documents in order to clarify some of their content and resolve any potential ambiguities by 10 December 2004. They would also consider how to incorporate some more specific questions for Participants to then respond to by 14 January 2005.

VI. DISCUSSION OF ASSETS AND TAX DEPRECIATION (WORKING DOCUMENT CCCTB/WP004)

53. Commission Services introduced the document and invited participants to comment-; not only on the tax depreciation of assets as such, but also on the working method used in the document. Participants were also asked to provide the Commission

Services in due course with comments and corrections on the annex to the working document with tables summarising national regimes in writing.

54. Twelve participants took the floor and commented on both procedural and material aspects of the problem. Most of those participants believed that the issue of tax depreciation of assets should be referred to a subgroup as it is a very technical question. Most of the participants agreed that the working document is a good starting point for future work as well as the method used in it.

55. One participant expressed the opinion that if the accounting depreciation charges reflect reality then there is no justification for any different (accelerated) tax treatment otherwise it is simply a fiscal incentive to business.

56. Another participant appreciated the structure of the annex to the working document as a good example how IAS solutions should be approached since it compares currently applied regimes with the ones adopted by IAS. The annex makes the currently applied regimes much more transparent.

57. Two participants found the issue of tax depreciation of assets very difficult not only from a technical point of view but also because they see depreciation as an important issue for social policy and generally politically sensitive. They pointed out that in the Commission document the most difficult issues such as treatment for intangibles and financial assets and revaluation are postponed to a later stage.

58. One participant explained that his Member State, in recent years has consulted extensively with the business community at a national level on the issue of whether to align its tax treatment of capital assets with commercial accounts. Overall business appeared to prefer to remain with their current tax depreciation rules (which according to them offer the benefits of both flexibility and certainty) and favour a 'pooling' system for plant and machinery rather than an 'individual asset' system.

59. Some participants expressed preliminary views on the questions asked at the end of the paper, most of them from a point of view of their national legislation. Participants reiterated that potential solutions for tax depreciation of assets should be explored in more detail by a subgroup.

60. Participants were asked to provide their answers on all the questions asked at the end of the working paper in writing by the end of the year 2004 as well as any corrections and additions to the annex. The answers will be tabulated by the Commission Services and will create a basis for the discussion of a subgroup. It should allow the subgroup to elaborate further on the document in the light of the views and additions expressed by participants.

VII. ANY OTHER BUSINESS AND CONCLUSIONS

61. Commission Services undertook to send the participants an e-mail with a brief summary of the agreed follow up of the work of the Group and the establishment of a subgroup on tax depreciation of assets directly after the meeting. Participants interested in joining the subgroup were invited to reply to the e-mail by 26 November 2004.

Depending on how many participants express their interest the practical modalities of a subgroup will be arranged afterwards. Participants were reminded to provide their answers to the questions raised in the documents, including potential corrections to the summary table, in writing (as an input to the sub-group work). One participant offered to organise the meeting of a sub-group on Assets and Tax Depreciation in the capital of his Member State.

62. The next session of the Group was forecast for the end of February/ beginning of March 2005. Participants were asked to reply to the invitation early enough so that Commission Services can take care of necessary security formalities.

63. Commission Services will prepare at least one new discussion paper for the second meeting, possible topics are intangibles or capital gains. Participants were also invited to provide Commission Services with their own proposals for issues to be discussed at the next plenary meeting.