Comments on document CCCTB/WP\004 – COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP – Asset and Tax Depreciation

It is a very impressive document, with extensive coverage of Member State (MS) detailed rules. We believe it is important to discuss the rules in a structured way with a starting point in basic tax principles. Since many MS have very close links between accounting and taxable profits, it is natural to compare with the International Accounting Standards and International Financial Reporting Standards (IAS).

Tax depreciation on assets is an important element of the tax code. The rules of depreciation have a substantial impact on the tax burden on business activities. Considerable efforts should therefore be made to draw up rules that are acceptable for MS and that foster economic activity in the union.

In general, the rules should be simple and make it possible to depreciate assets over the economic life time. We would prefer that the term 'economic life time' is used rather than the term in the paper 'the length of an asset's useful life'. In most cases the terms are synonymous but to avoid uncertainty the useful life should be the economically useful life. MS allow for accelerated depreciation and this is an important element of any tax system promoting growth. Assets of smaller value should be expensed.

We share the view expressed that the CCCTB aims to provide MS with a complete solution for the tax depreciation of assets and should not in principle be subject to any modifications made by national laws. The demand for a business purpose test (only assets acquired and used for business purposes shall be depreciable for tax purposes) should therefore also be equal across countries and in general acquired assets should be depreciable. The issue is only relevant for unquoted closely held companies and the test could preferably be based on general principles, rather than explicit and very detailed wording in the tax code.

Regarding the question whether only the legal owner shall be entitled to depreciation of an asset, we believe it is necessary to let the MS look into this matter more carefully and to discuss it with the business community. There are different rules among the MS and even though the price in leasing arrangements would reflect the agreed principle, there is a need for a thorough analysis. Many contracts are of a long-term nature and are not easily renegotiated.

It brings us to a general point, we believe it is necessary to already now discuss the coverage of any new rules. In order to achieve simplification, it would be necessary to include all assets, also existing depreciable assets into the new tax code. This is particularly the case with fixed assets, given their long economic life span.

It seems likely that the pooling method is simpler for the business community and also for national tax authorities. Given that existing assets should be included, and some MS use the pooling method and therefore do not have records of the value of individual assets, it is hard to see that any other method other than pooling method would be workable.

Paragraph 45 gives the impression that extreme accuracy deciding the useful [economic] lifetime of the asset is desirable. The principle of prudence should override the principle of accuracy. One should also remember that even the best estimation is made ex ante and the ex post outcome will be very different. It is more important that adjustments to the depreciation amount can be made during the lifetime of the asset than spending excessive time judging

what the future will hold. Also here, the pooling method and cost recognition when the asset is no longer economically viable, are important. It would be valuable to bring up the ex ante – ex post issue in this context. It should be recognized that MS presently differ in their tax treatment of proceeds from sale of assets. This is an important element that needs to be discussed.

The tax depreciation rules for the acquisition year are especially important for the overall tax burden. We would like to stress that it is simpler to allow depreciation irrespective of when during the year the asset was acquired. In a pooling system it would be natural to allow for full depreciation, as some MS already do. This would also contribute to making Europe more competitive.

The issue of pooling is explicitly addressed in paragraph 49. However, the paragraph gives the impression that complicated sub-division of groups of assets would be desirable. We question this, and would advise against such complexity. It inevitably leads to border cases which often end up in the court system. The only division that may be necessary is between movable and immovable assets. However, there is another topic not discussed in the paper, intangible assets. They may also require special attention and a set of rules.

Paragraph 51, stating that 'To the extent that the rules for accounting deprecation charges across the EU accounting depreciation charges should be tax non deductible." is somewhat unclear. Is this the view for existing national tax regimes or is it intended to cover the situation under CCCBT? We believe that the accounting rules can be a starting point for making generally acceptable tax rules, and these tax rules will then be applied irrespective of any deviations in the accounting rules.

The purpose of paragraph 52 needs to be elaborated upon. Surely, tax depreciation should be done in a transparent and open way. It is important to agree on the tax rules for depreciation.

We welcome the opportunity to express our view on this document. If clarifications are needed, we will of course be happy to clarify our comments. We would also like to follow the work as it progresses and would welcome the possibility to give comments during the course of the process.

On behalf of the UNICE Task Force on CCCBT

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