European Commission
Taxation and Customs Union

Workshop on the Common Consolidated Corporate Tax Base

Business Reorganisations

20 October 2010

Introduction (i)

What is meant by the term **‘reorganisation’**:

- A company joins a group (‘entering rules’);
- A company leaves a group (‘leaving rules’);
- Restructuring within a group;
- Restructuring between 2 or more groups.

Introduction (ii)

A number of adjustments have to be made to accommodate the implications of reorganisations. Those normally affect:

- trading losses; and
- hidden reserves.

Underlying principle: losses and profits will be treated by the Member State(s) in which they were incurred or generated.

Entering Rules (i)

(i) Pre-consolidation losses:

Losses incurred **prior to group entry** stay outside the CCCTB system ('ring-fenced');

Those losses are deductible by a taxpayer against its apportioned share according to domestic rules on loss carry forward.

Entering Rules (ii)

(ii) Hidden reserves:

a. Fixed assets:

Capital gains are taxed when realised & the proceeds form part of the consolidated tax base.

Exception: fixed assets **owned by a company that joins a group,** if sold outside the group **within 5 years of their entry,** the proceeds increase the share of the group member having been economic owner on entry.

b. Self-generated intangible assets:

Unless registered, they are difficult to identify and value –

Proxy (for profit expected to be earned): costs incurred for R&D, marketing and advertising over 5 years prior to a taxpayer’s entry into the group – added to its asset factor for a period of 5 years.

Leaving Rules (i)

(i) Group trading losses:

A loss-making group carries its losses forward to be set off against future group profits – nothing is attributed to leaving taxpayers.

(ii) Hidden reserves:

a. Fixed assets:

Capital gains are taxed when realised – proceeds from assets' disposals which take place after a company has left the group are taxable under the tax system that the company moves to.

Exception: fixed assets sold within 3 years after a company has left the group – proceeds are added to the group tax base as it stands in the year of disposal – Note: difficulties to keep track of the assets after a company has left the group.

Leaving rules (ii)

b. Self-generated intangible assets:

Proxy: costs incurred for R&D, marketing and advertising in the previous 5 years are added back to the group tax base of that year (in practice: *ex post* disallowance of those business expenses) – **ceiling:** the value of the assets leaving the group (for situations where the costs have not yet generated profit).

These costs should be deductible by the 'leaving' company pursuant to the rules of the system it moves to.

Reorganisations within a Group (i)

(i) Trading losses

a. Group trading losses:

Remain unaffected – losses are carried forward by the group.

b. Pre-consolidation losses:

'Ring-fenced' – If, following a reorganisation, a group member with pre-consolidation losses ceases to exist and:

- a PE is left, the losses will be deductible under national law against the share apportioned to the PE.
- no taxable presence is left, a PE will be deemed.

Reorganisations within a Group (ii)

(ii) Hidden reserves:

Underlying principle: tax neutrality – no tax implications

Limit: If,

as a result of a **reorganisation** or a series of intra-group transactions over 2 years,

substantially all assets have been transferred to another MS and

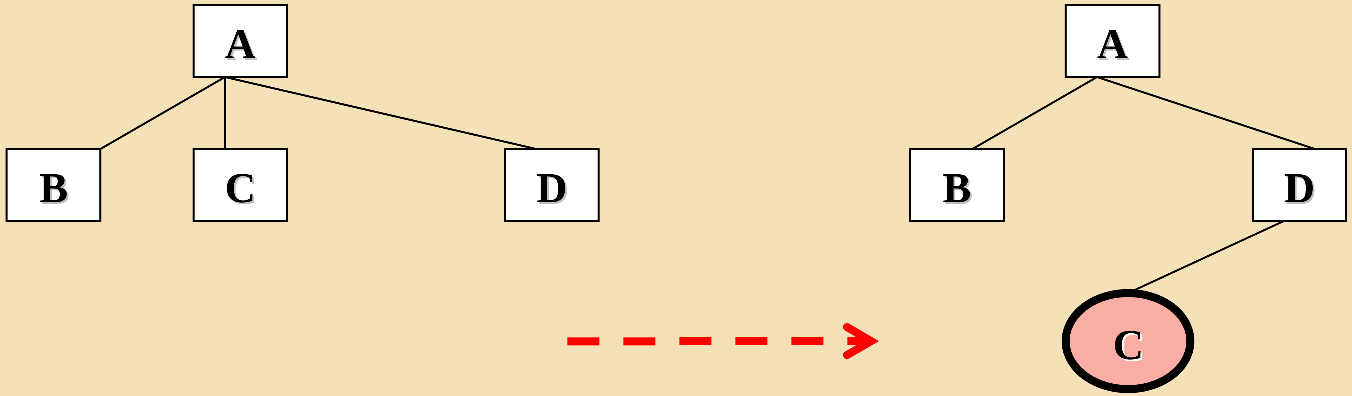
the **asset factor** of the transferring taxpayer has **substantially changed**,

►►►the transferred assets will be **attributed to the asset factor** of the transferring taxpayer for a period of 5 years.

Objective: the departing MS can tax the profit generated from hidden reserves built in its territory.

Reorganisations within a Group (iii)

- **If no PE** of the transferring company is left behind, it will be **deemed** for the attribution of the **asset factor** and the **sales by destination** apportioned to that MS.



Reorganisations between 2 or more CCCTB groups (i)

(i) Trading losses

a. Pre-consolidation losses:

'Ring-fenced'

b. Group trading losses:

The treatment mainly concerns a group (or part of a group) which **becomes part of another group** by way of an **acquisition of shares or merger**.

►***Acquisition:*** Losses are allocated to each group member using the formula as it stands at the time of the reorganisation.

►***Merger*** (absorption or creation of new company):

- *pre-reorganisation group losses:* allocated to each group member of the absorbed group or both groups (if NewCo).

Reorganisations between 2 or more CCCTB groups (ii)

(ii) Hidden reserves:

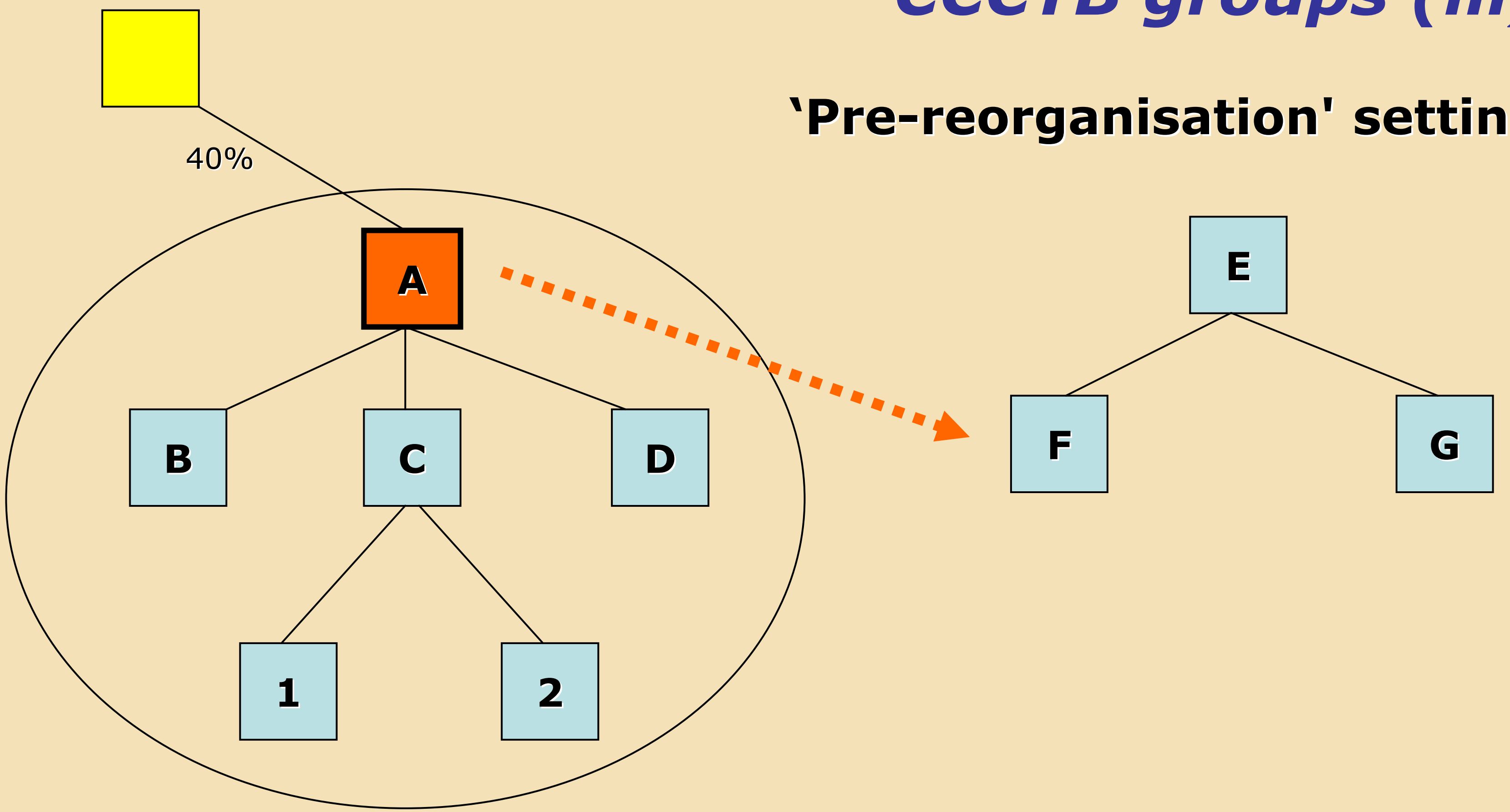
Merging group members receive tax-free treatment under the Merger Directive;

Non-merging group members of a non-surviving group are subject to the rules on ‘entering’ and ‘leaving’.

Assets held by entering group members, if **disposed of within 3 years** of the reorganisation, the gain is allocated to the ‘pre-reorganisation’ group (as it stands in the year of disposal).

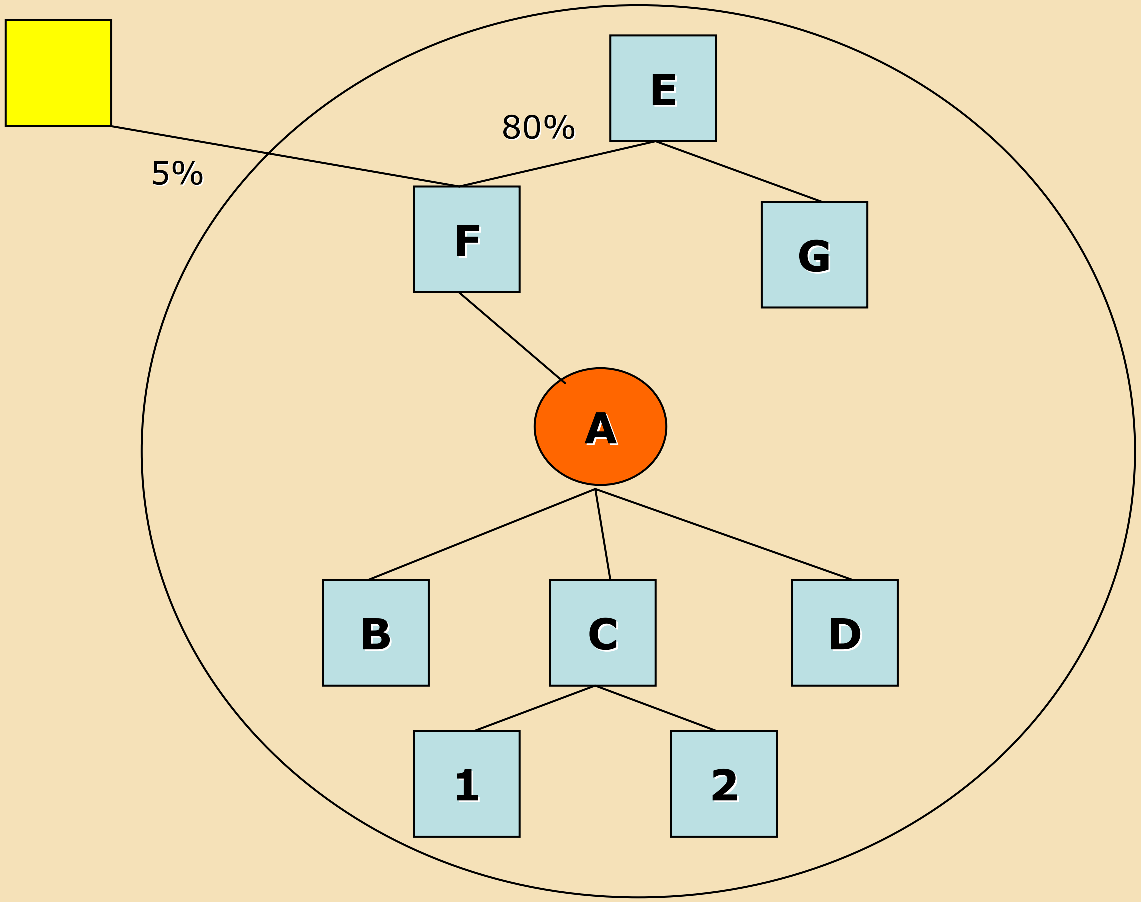
Reorganisations between 2 or more CCCTB groups (iii)

'Pre-reorganisation' setting



Reorganisations between 2 or more CCCTB groups (iv)

'Post-reorganisation' setting



Conclusion

Questions raised in the paper:

1. What are your views about the ring-fencing of pre-consolidation trading losses?
2. What are your views about the 5-year rule for adjustment?
3. 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?
4. What do you think of the 'leaving' rules?
5. In reorganisations within a group: what are your views about the 5-year re-attribution rule?
6. What are your views about the 'entering' and 'leaving' rules when two or more CCCTB groups reorganise?