

Comments on Document CCCTB/WP061
Common Consolidated Corporate Tax Base Working Group
Possible Elements of the Administrative Framework

Introduction

On 10-11 December 2007, the Working Group held a meeting in Brussels to discuss the outline of a system for a Common Consolidated Corporate Tax Base. I was asked to participate in the meeting as a representative of one of the states of the United States which has had extensive experience with the division of a Consolidated (Combined) Tax Base of groups of affiliated entities that operate across jurisdictional borders.

The comments offered herein are my own and may or may not coincide with other representatives at the meeting from the United States. I have also included responses to some of the comments offered by the BusinessEurope Task Force on CCCTB dated December 7, 2007 and distributed at the meeting.

General Remarks

The recommendations by the Commission staff are to be commended. The recommendations are thoughtful and constructive and address most of the problems that can be anticipated.

The proposal is to have the use of a CCCTB to be elective. Political realities may require that the use of a CCCTB be elective but it would be fairer to the business community overall, and would reduce the collective revenue loss to member states, if it was required with respect to all companies and all member states.

The "one-stop shop" approach will be beneficial to taxpayers and ultimately to the tax administrators of the Member States.

The proposal contains provisions for the ultimate resolutions of disputes between the tax authorities of the Member States and between the taxpayer and any individual member state is commendable and an improvement over the process in the United States where the sovereignty of each state is maintained and there is no tribunal to provide a uniform determination that is applicable in all jurisdictions.

Detailed Remarks

Par 9 There should be a central authority that can issue interpretations that are binding on all Member States. While the report is detailed and thoughtful it is impossible to cover all eventualities. To the extent there is not a central authority to deal with minor or issues or issues that were not covered there will be non-uniformity. The goal of the proposal is to prevent that result. More than final adjudicatory authority is needed to implement that goal.

Par 11 It is recommended that single threshold for consolidation be established at more than 50%. The dual structure proposed with different rules dependent on ownership level is complex and will lead to disputes. The difference between 75.1% ownership and 74.9% ownership is operational insignificant. The differences between 50.1% and 49.9% is very likely to be significant. A simply voting stock ownership appears to be the least susceptible to disputes.

Par 12 The "all in/all out" approach is necessary. The fact that the use of CCCTB is elective may lead to some level of tax gamesmanship. Allowing it to be elective as to Member States will exacerbate the problem.

There should be no special rules for a transitional period. The fact that CCCTB will be elective, at least initially, is sufficient for a transitional period. Allowing further choices to be made will only increase the opportunities for manipulation and will increase the tax revenue losses to the Member States.

There may be a need to address the situation where group action has not been coordinated, that is the parent makes the election but the subsidiaries are not aware of it and file differently in their home country.

Par 13-15 There should not be a shorter initial period. Groups should be making this election as matter of principal and administrative convenience not as an experiment for tax planning purposes.

Provision must be made for situations where a group decides not to continue an election. There will be significant administrative and accounting issues to deal with when an election is being unwound. Intra-group transactions among electing members will have been disregarded and will now have to be taken into account or significant amounts of income might escape taxation.

It may also necessary to deal with merger situations allowing the election of the predominate group by some criteria to control if they have not elected.

Par 38 It may be necessary to allow the primary authority for auditing a tax return to be shared or delegated to another Member State.

Par 43 and 44 It might be wise to provide more detail as the make-up of the arbitration panel, for example, could it, must it, include an individual from one of the Member States or would it necessarily exclude such individuals. See **Par 58** which deals with this question in a different context. This is cited as an example that the problem was recognized and not for purpose of suggesting that this should be the preferred solution.

Par 63 Deemed acceptance after the expiration of 6 months does not appear to be the best solution. Better it should be discharged for consideration by some other body.

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