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**COMMON CONSOLIDATED CORPORATE TAX BASE
WORKING GROUP (CCCTB WG)**

CCCTB: possible elements of the administrative framework

Meeting to be held on 10, 11, 12 December 2007

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WORKING DOCUMENT

Executive summary

Based on work done in the CCCTB Working Group, by the Commission Services, and comments from experts, this paper presents for discussion and comment some possible elements of the administrative framework for the CCCTB.

- Formalities for opting for the CCCTB, including a principal taxpayer giving notice on behalf of a group of companies, for a minimum period of 5 years
- Principal taxpayers to submit a consolidated self-assessment tax return giving details by individual taxpayer and Member State to a principal tax authority
- Time limits for returns and audits and enquiries to be common; additional enquiries or inspections to be jointly determined by tax authorities
- Amended assessments to be issued by principal tax authority in agreement with the other concerned tax authorities, to be enforced by individual tax authorities
- Disputes between tax authorities to be decided by an arbitration panel made up of three to five experts from a list drawn up by common agreement of the Member States
- Taxpayer appeals in first instance to be made by the principal taxpayer against the consolidated assessment to an administrative appeals body, made up of representatives from Member State administrative appeals bodies or suitably qualified experts
- Taxpayer judicial appeals to be made by the principal taxpayer against the consolidated assessment to be governed by the existing national rules of the Member State of the principal tax authority who would handle the appeal in close consultation with the other competent authorities, including any reference to the European Court of Justice (ECJ)

I. Purpose of the paper

1. This paper sets out the possible elements of the administrative framework for the Common Consolidated Corporate Tax Base (CCCTB). It is based on work done to date in the CCCTB Working Group (WG) and by the Commission Services, comments from Member State experts and seeks to take account of discussions with business and academics.
2. This paper should be read in conjunction with the Commission Services Working Document on '*CCCTB: possible elements of a technical outline*' (hereinafter: CCCTB/WP/057)¹.

¹ Commission Services Working Document CCCTB\WP\057 can be found at the following address: http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm. That document began to bring the various structural elements of the base together into a coherent set of rules and was presented at the CCCTB WG meeting on 27-28 September 2007.

3. The purpose of the paper is to prompt comment and discussion on key issues in order to assist the Commission Services in taking the work forward and to highlight a number of areas on which further guidance from the WG would be helpful.
4. The paper merely represents work-in-progress and does not purport to be comprehensive. Guidance from the WG on outstanding matters would be welcome. The ideas presented in this paper are meant for discussion and do not in any way pre-judge the contents of a possible future Commission proposal.

II. Scope of the paper

5. The paper covers possible basic rules for the administration of the CCCTB. It covers for an individual company, or a group of companies:
 - the option to apply the CCCTB (Section III)
 - the submission of the individual company's or the group's self-assessment tax return (Section IV)
 - the concepts of principal taxpayer and principal tax authority (Section V),
 - the form of self assessment returns and procedures for the agreement of the tax base of an individual company or the consolidated tax base (analysed by individual company and permanent establishment (PE) as applicable) (Section VI)
 - the procedures for resolving 'disputes' between tax administrations (Section VII)
 - the procedures for amendments and a central data base (Section VIII)
 - the procedures for resolving disputes between the taxpayer and tax administration via administrative appeals (Section IX)
 - the procedures for resolving disputes between the taxpayer and tax administration via judicial appeals including eventual appeal to the European Court of Justice (Section X).
6. The paper follows the 'one stop shop' approach to administration as discussed in the March 2007 Working Group meeting. The introduction of consolidation and a sharing mechanism requires a high degree of coordination and cooperation between tax administrations and the concept of a 'principal taxpayer' and a 'principal tax administration' seems the best way of providing this. This includes providing for common time limits as the shares of all the Member States in the common consolidated tax base cannot be finalised until all the procedures in all Member States have been completed. Applying different time limits, for example for the finalising of tax audits, would seem to be impracticable.
7. The extent to which the 'one stop shop' approach should apply is important and the paper seeks to establish a fair balance. The aim is to combine the efficiency of a single consolidated return to a single tax authority with the provision of data to all concerned tax authorities and a jointly determined audit approach, which for obvious reasons of practicality, would be partly carried out by local tax administrations. Provision is made

for resolving disputes between tax authorities. The degree of commonality of the judicial framework is also important. This paper suggests a single administrative appeal process and suggests that judicial appeals should be made by the principal taxpayer in the state of the principal tax authority (subject to reference to the European Court of Justice). It therefore introduces a common administrative process and panel but makes use of the existing judicial architecture and does not suggest establishing a new centralised judicial process.

8. The extent to which such commonality is required for those individual companies who opt for the CCCTB, or groups which operate in only one Member State is less clear. It could be argued that in such cases the existing national administration rules should continue to apply. This could also apply to companies who are part of a group, but are not consolidated (ie those in common ownership between >50% and 75%) but here the arguments for including them within the CCCTB rules for administration are much stronger. For a group of companies to continue to have to file returns to several different administrations by, for example, several different dates in different forms would be unnecessarily burdensome. Comments are particularly welcome on this.
9. In addition to the detailed suggestions outlined in the paper consideration could also be given to whether it would be useful to give taxpayers the right to request a statement of the tax authorities' interpretation of the Directive on a detailed point not explicitly covered by the Directive. This could be referred to a central body of representatives of all Member State administrations for publication and possible general reliance by taxpayers, although such statements of interpretations could subsequently be withdrawn (without retrospective effect). This could be helpful in establishing common interpretations, particularly when the CCCTB is first introduced, but such a body could potentially receive too many requests to deal with in a timely manner. If the issuing of such administrative notices were left to individual national administrations, without coordination, then clearly the concept of a 'common' base could soon disappear. Comments on this are particularly welcomed.
10. In several areas reference is made to Article 5 of Council Decision 1999/468/EC – 'comitology'. This is consistent with CCCTB/WP/057. It is suggested that the detailed implementation of the measures laid down in the main CCCTB Directive could be delegated by the Council to the Commission and be agreed via the comitology process and a subsequent Commission Directive. Such measures would clearly be limited to those implementing the provisions within the CCCTB Directive and could not introduce new provisions.
11. The main assumptions in CCCTB/WP/057 are assumed to apply in this paper, for example, those concerning ownership requirements for opting and for consolidation are that companies commonly owned by >50% are a group for the purposes of opting, but only companies commonly owned by at least 75% are consolidated. However, having these two thresholds creates complexity. For example:

(i) In group structures where the whole group is owned by an ultimate parent with an interest of between 50% and 75% it would be inappropriate for the ultimate parent company to be the principal taxpayer as it would not be part of the consolidated group.

(ii) Where within a chain of companies there were an intermediate holding company held with an interest between 50% and 75% this would raise the possibility of a 50% group effectively having two or more consolidating 75% groups within it. There could then be a principal taxpayer for the purposes of opting, and a principal taxpayer for each of the 75% consolidating groups.

(iii) In group structures with some companies owned by >50% and 75% (opted but not consolidated) and some companies of 75% or more (opted and consolidated) it may make sense to have a Principal Taxpayer and Principal Tax Authority for the purposes of ensuring that the option has been correctly applied and includes all qualifying companies. However, for those companies who are not consolidated (and whose transactions with other group companies would therefore need to be at arm's length) the relevant tax authority for the purposes of issuing assessments would not necessarily be the Principal Tax Authority of the 'opting' group.

No specific comments have been received from experts yet on whether two different thresholds - one for opting and one for consolidation - should be established but a single threshold, such as 75% for both opting groups and consolidation would clearly provide for simpler administration and would avoid such complexities. Comments on this are particularly welcome.

III. The option to apply the CCCTB

12. Taxpayers would opt for the CCCTB by providing notice to their competent authorities in due form at least three months before the beginning of the relevant tax year. In the case of a 50% group of companies the principal taxpayer would give notice on behalf of all taxpayers in the group to the principal tax authority, which would inform the other competent authorities. An option would only be valid if it covers all 50% group companies. This would be effectively an 'all in'/'all out' approach, with companies having the responsibility for ensuring that the formalities of obtaining the necessary consents from all subsidiaries etc were satisfied.
13. The option would be valid for a period of 5 years and be automatically renewed for successive periods of 3 years unless notice to the contrary is given by a taxpayer or, in the case of a 50% taxpayer group, by the principal taxpayer to their competent authorities within 3 months of the end of the period of validity. Where a company becomes part of a 50% group which has opted for the CCCTB it would be deemed to opt for the remainder of the period of validity of the option. Notice would be given to the principal tax authority.
14. Where a taxpayer or 50% taxpayer group becomes part of a 50% group of companies which has not opted, its option would remain in force until the end of the period of validity of the option without automatic renewal. The other members of the enlarged group could opt immediately for the remainder of the validity period. At the end of that period the enlarged group would have to choose whether or not to opt and, if it chooses to opt, the rules governing an initial option would apply.

15. Where a taxpayer or 50% taxpayer group becomes part of another 50% taxpayer group or forms such a group and the validity periods do not coincide, the longer validity period would apply to the whole of the enlarged group. At the end of that period the normal rules on automatic renewal of the option apply.
16. The notice to opt would include at least the following information
 - identification of the taxpayer;
 - in the case of a 50% group, the principal taxpayer and all taxpayers in the group together with full details of the ownership structure, including shareholdings and voting rights, of all associated companies, whether or not eligible to opt for the CCCTB;
 - registered seat, legal form and place of effective management of all taxpayers
 - identification of taxpayers, including PEs, subject to consolidation and the sharing mechanism,
 - tax year to be applied by the group.

The Council,, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of further detailed rules relating to the notice to opt.

17. The principal tax authority would reject the notice to opt if the requirements for opting are not met or if the option does not extend to all relevant companies. The principal taxpayer is under a particular duty to make full disclosure of all the relevant facts related to correctly identifying 50% taxpayer groups and taxpayers subject to consolidation.
18. Unless the notice to opt is rejected by the principal tax authority within 6 months of its receipt, it would be deemed to have been accepted.
19. Providing that the taxpayer has made full disclosure in accordance with paragraph 16 above, subsequent determination that the list of taxpayers is incorrect would not invalidate the option. However, the notice to opt would be corrected from the beginning of the tax year when the discovery is made. Where there has not been full disclosure, the principal tax authority, in consultation with the other competent authorities, could instead depending on the circumstances decide to invalidate or correct the original option.

IV. The submission of the individual company's or the group's self-assessment tax return

20. Administration would be based on a system of self-assessment. A taxpayer would be responsible for filing its own tax return unless it is a member of a consolidated group. Where the taxpayer has one or more permanent establishments in other Member States, it would file a consolidated return reporting the consolidated tax base, the share of the

base of the head office and every permanent establishment broken down between Member States and the tax liability in each State.

21. A 50% group would appoint a principal taxpayer, which would be responsible for complying with the provisions concerning the notice to opt and annual information on group structure.
22. In the case of a consolidated group the principal taxpayer would also be responsible for filing a consolidated tax return for all members of the consolidated group, which would report the consolidated tax base, the share of the base of each taxpayer and every permanent establishment broken down between Member States and the tax liability in each State.

V. Principal Taxpayer and Principal Tax authority

23. The principal taxpayer would be
 - the ultimate parent company of the group providing it is resident in a Member State;
 - where the ultimate parent company is not resident in a Member State, the parent company resident in a Member State of the EU subgroup;
 - where there is more than one EU subgroup, the parent company resident in a Member State chosen by the group;
 - where there is no EU subgroup, the company resident in a Member State chosen by the group or, if there is no such company, the permanent establishment situated in a Member State chosen by the group.
24. The designated principal taxpayer would remain such for as long as the group remains within the CCCTB or until such time as it ceases to qualify as the principal taxpayer under the above rules. If the principal taxpayer ceases to qualify, a new principal taxpayer would be designated in accordance with the above rules. Where following a re-organisation there are two or more designated principal taxpayers which continue to qualify, the group would choose one of them as principal taxpayer.
25. The competent tax authorities of the taxpayers of a group could in exceptional circumstances decide that a taxpayer other than the designated taxpayer would be the principal taxpayer instead. The Council, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of further detailed rules relating to such a decision.
26. Where there is a principal taxpayer it would have primary responsibility for ensuring that the group complies with the administrative requirements laid down by this Directive.
27. '*Competent tax authority*' would mean the authority designated by a Member State for the purposes of this Directive. The '*competent tax authority of a taxpayer*' would mean a competent tax authority of a MS where the taxpayer in question is tax resident or, if it is not resident in a Member State, where it has a permanent establishment. '*Principal tax*

authority' would mean the competent tax authority of the Member State in which the principal taxpayer is resident or, where the taxpayer has one or more PEs in a Member State other than that of its head office, the competent authority of the head office or, where the principal taxpayer is not resident in a Member State, the Member State where the PE which is the principal taxpayer is situated.

VI Form of self-assessment returns and procedures for agreeing the base

28. Each taxpayer would be required to keep records and supporting documents in sufficient detail to ensure proper application of this Directive and to allow audit by the competent tax authorities.
29. *'Audit'* would mean any activity such as inquiries, inspections or examinations conducted by a competent tax authority to verify compliance with the Directive by a taxpayer or group of taxpayers.
30. The Council, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of more detailed implementing arrangements relating to in particular the detailed arrangements for electronic filing and assessment and the form and content of the notice to opt.
31. The tax return or consolidated tax return would be filed within 9 months of the end of the tax year.
32. The Council,, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of the form of the tax return and consolidated tax return.
33. The tax return would in any event include the following details:
 - Tax year for which the tax return is submitted
 - Details of the calculation of the tax base
 - Tax liability of the tax payer
34. The consolidated tax return would in any event include the following details:
 - Identification of the principal taxpayer or taxpayer not belonging to a consolidated group but having one or more permanent establishments in other Member States
 - Identification of all taxpayers and permanent establishments in the group
 - Tax year for which the tax return is submitted
 - Details of the calculation of the consolidated tax base of the company or group
 - The calculation of the share of the consolidated base by Member State of each taxpayer

- Tax liability of each taxpayer by Member State
35. The Council,, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of the information required to support the tax return or consolidated tax return.
 36. The taxpayer or principal taxpayer would on request provide its competent authority in a timely manner with such further information as could be necessary for proper assessment of the consolidated tax base or tax liability of each taxpayer.
 37. The rules and procedures concerning assessments and appeals for taxpayers not belonging to a 50% or consolidated group would continue to be determined by national law.
 38. The principal tax authority would have primary responsibility for verification of the consolidated tax return. It would also have responsibility for issuing assessments or amended assessments concerning a consolidated tax return.
 39. An assessment or amended assessment issued by the principal tax authority would be directly recognised and automatically treated as an instrument permitting enforcement of tax liability in the relevant Member State. Such an assessment or amended assessment could nevertheless, in accordance with the provisions in force in the relevant Member State, be replaced by an instrument authorising enforcement in the territory of that State. Such instrument would always correspond to amounts stated in the assessment or amended assessment issued by the principal tax authority. Appeals against such an instrument would be governed by the law of the relevant Member State. Such appeals would relate solely to the instrument permitting enforcement and not to the underlying assessment.
 40. The principal tax authority and other competent authorities would jointly determine what additional enquiries or inspections are necessary and which authority is to carry them out, having regard to the location of the activities and records of the taxpayer group.
 41. The principal tax authority would be responsible for compiling the results of any such additional enquiries or inspections and, in agreement with the other competent authorities, issuing any amended assessment of the consolidated tax base, individual taxpayer shares and liabilities.
 42. The principal tax authority could issue amended assessments during or after the conclusion of any additional enquiries or inspections and in any event not later than 3 years after the final date for filing of the consolidated return. Where there is a dispute under consideration by the arbitration panel the three year period could, upon notice being given to the principal taxpayer or taxpayer's head office, be extended so as to allow, where appropriate, an amended assessment to be issued in accordance with the decision of the arbitration panel.

VII Disputes between tax authorities

43. Where there is a dispute between two or more competent authorities as to the validity or scope of a notice to opt or the necessity or content of any proposed amended assessment of a consolidated tax return, the dispute would be referred to an arbitration panel, which would issue its decision within 6 months.
44. Arbitration panels would comprise one expert from either three or five Member States and would be taken from a list drawn up by common agreement of the Member States. In the event that the experts are unable to reach unanimous agreement each would be given one vote and a decision would be taken by majority vote.
45. The Council,, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of further detailed rules relating to the detailed arrangements governing the formation and functioning of panels.

VIII Amendments and central data base

46. Notwithstanding paragraph 42 above, amended assessments could exceptionally be issued after expiry of the 3 year period where a misstatement resulting from a wilful act or gross negligence on the part of a taxpayer is discovered within 6 years of the final date for filing of the consolidated return. The 6 year period for discovery of the misstatement would be extended to 12 years where the misstatement is the subject of criminal proceedings. Such amended assessments would be issued within 12 months of the discovery of the misstatement unless a longer period is objectively justified by the need for further inquiries or investigations. Any such amended assessment would relate solely to the misstatement.
47. Amended assessments could also be issued after expiry of the 3 year period in order to take account of the results of an uncompleted mutual agreement procedure with a third state. Such assessments would be issued within 6 months of completion of the procedure.
48. The self-assessment made by the principal taxpayer would be deemed to be an assessment issued by the principal tax authority. There would be no appeal against the assessment. If the principal taxpayer discovers that the consolidated tax return was inaccurate, it would notify the principal tax authority of the error. The principal tax authority would, where appropriate, issue an amended assessment in accordance with the procedure below.
49. Where the principal taxpayer has failed to file the consolidated return by the due date, the principal tax authority would by administrative act issue an assessment based on an estimate taking into account such information as is available. The principal taxpayer could appeal against such an assessment.
50. The consolidated tax return and supporting documents filed by the principal taxpayer would be stored on a central data base to which all the competent authorities of the taxpayers would have access. The central data base would be regularly updated with all further information and documents filed by the taxpayer and all decisions and notices issued by the principal tax authority or other competent authorities.

51. All information to which a competent tax authority has access under this Directive would be used only for the purposes of this Directive and would not be divulged to any other authority or person. This is without prejudice to the use and divulging of information which the competent authority would have received and could lawfully have divulged if the relevant taxpayer had not opted and were subject to the domestic regime. It is also without prejudice to the use and divulging of information received from another Member State under the provisions of the Directive 77/799/EEC subject to the conditions laid down in that Directive.
52. Amended assessments could include one or more adjustments to the consolidated tax return and would normally be issued no more than once every 12 months.
53. No amended assessment would be issued to correct the consolidated tax base if the difference between the consolidated tax base declared in the tax return and the corrected consolidated base does not exceed the lower of 5,000 EUR or 1% of the tax base.
54. Where the declared consolidated tax base is correct but there is an error in the calculation of Member State shares, no amended assessment would be issued unless the share of at least one Member State is under-declared by at least 0.5% of the declared share of the tax base for that State.

IX Appeals by taxpayers - Administrative

55. A principal taxpayer could appeal against a decision rejecting a notice to opt, a notice requesting the disclosure of documents or information or an amended assessment concerning a consolidated tax return within sixty days following the day of receipt of the decision or notice.
56. An appeal would not have suspensive effect. An amended assessment could be issued to give effect to the result of an appeal notwithstanding the expiry of the three-year period for issuing amended assessments.
57. Appeals would in the first instance be heard by an administrative appeals body.
58. The administrative appeals body would comprise a member of the administrative appeals body of each Member State whose competent authority was involved in the issue of the decision subject to appeal. If a Member State has no administrative appeals body it would appoint a suitably qualified person to the body.
59. The body could sit in plenary session or as a panel comprising a smaller number of members. The appeals body or panel would issue a single decision and could, if necessary, take its decision by simple majority.
60. The Council,, according to the procedure laid down by Article 5 of Council Decision 1999/468/EC, could delegate to the Commission the laying down of detailed rules concerning the setting up and functioning of the appeals body and panels.
61. The appeals body could confirm the decision of the principal tax authority, vary it or annul it and remit the matter back to the principal tax authority for a new decision. The

principal taxpayer could appeal against any such new decision under the normal rules or could choose to appeal direct to the courts within 60 days following receipt of the decision.

62. Where the appeals body varies the decision of the principal tax authority the varied decision would replace the decision of that authority.
63. The appeals body would take a decision on the appeal within 6 months of the appeal being lodged. Where no decision is received by the principal taxpayer within that period, the decision of the principal tax authority would be deemed to have been confirmed.
64. Where the appeals body confirms, is deemed to have confirmed or varies the decision, the principal taxpayer could appeal to the courts of the principal tax authority against the decision of the principal tax authority within 60 days of the date on which the decision is received or expiry of the 6 month period, whichever is earlier.

X Appeals by taxpayers - Judicial

65. Judicial appeals against decisions of the principal tax authority would be governed by the domestic rules of the Member State of that authority, subject to the provisions set out below.
66. The principal tax authority would handle the appeal and in particular make its submissions to the courts, including where appropriate submissions to the European Court of Justice in the framework of any reference for a preliminary ruling made by a national court, in close consultation with the other competent authorities.
67. A national court hearing the appeal could, where appropriate, ask the principal taxpayer and principal tax authority to provide evidence concerning the factual situation of group taxpayers and other associated companies, wherever situate, and where necessary, local law and practices. The other competent authorities would have a duty to provide all necessary assistance to the principal tax authority for the purposes of the appeal.

XI Comments and observations

68. Written comments and observations are invited from all interested parties on the overall general approach and individual points of detail.