Comments on document CCCTB\WP\061

Common Consolidated Corporate Tax Base Working Group
– Possible elements of the administrative framework –

Introduction

On 13 November 2007, the Commission issued a Working Paper setting out the possible elements of the administrative framework of the CCCTB. The BusinessEurope Task Force on CCCTB is grateful for the opportunity to give some remarks on this issue, which constitutes one of the key areas for achieving a simple and efficient tax system. Comments have previously been submitted on an earlier working paper issued by the Commission on this topic (CCCTB\WP\036). The main conclusions from that response are reaffirmed below.

To best facilitate the discussion, the current paper is divided into two main parts – the first giving some general remarks on the fundamentals of the CCCTB and the second providing more detailed comments on specific issues. As usual, the positions taken by the Task Force may be subject to revision as other areas of the CCCTB are explored.

General remarks

The importance of adopting well functioning administrative rules for the CCCTB cannot be overemphasized. Companies' administrative burdens are huge and are taking increasingly more resources. As stated previously, an administrative framework based on a 'one-stop-shop' is therefore of fundamental importance for the support from the business community for the CCCTB. Correctly designed, a 'one-stop-shop' regime would allow for single compliance in a single location, and thereby:

- promote simplicity in the interaction between a group and the tax authority,
- reduce compliance costs, and
- allow for timely and coordinated audits which ensures a coherent interpretation/application of the CCCTB.

The Task Force is pleased to see that the Commission is proposing an administrative system which follows the basic concept of a 'one-stop-shop'. The Task Force would, nevertheless, like to make some detailed remarks with respect to the approach suggested in the working paper (CCCTB\WP\061).

Detailed remarks

Para. 6 – We agree on the importance of providing for common (and strict) time limits for all CCCTB Member States.

Para. 7, 28 – The concept of a single consolidated self-assessment to be submitted to a principal tax authority by the principal taxpayer appears promising ('one-stop-shop'). The Commission does, however, indicate that audits might be determined jointly with local tax administrations. The meaning of this is somewhat unclear and would need some further clarification. Obviously, the principal tax authority may lack the capacity needed to carry out the audits in other Member States. Thus, the local authorities may, on the request of the principal tax authority, need to provide support in an audit. An audit should, however, always be authorized and coordinated by the principal tax authority.

Para. 9, 64 – To ensure a common application of the CCCTB, it is crucial to provide for an approach which allows for coordinated and authoritative interpretation. Thus, we support a mechanism that allows for an advance and authoritative interpretation of the Directive from a central body. It appears advisable that such a body (as suggested) comprises of representatives of the tax administrations of all Member States concerned and that its decisions are published to allow for a general reliance by taxpayers. Given the impact that such a decision would have on taxpayer's business decisions, a decision should only be withdrawn based on a change in the underlying rules.

For this institute to be efficient, the central body must be given enough resources to give guidance in a timely manner. To ensure this, a time limit for when the taxpayer should get a response should be considered.

A request for an interpretation decision must obviously not prevent "normal" judicial procedures on how to interpret a given rule as this would interfere with constitutional rights in many Member States. To ascertain a common legislative interpretation throughout the entire CCCTB-jurisdiction, a common judicial appeals court should be considered (as a supreme instance above the domestic court/s). By way of example, this could be a new and designated part of the ECJ, which deals exclusively with CCCTB-matters. To enable a reasonably speedy process, it is advisable that the domestic courts are obligated to refer a question to this common CCCTB-body in case of doubt. Such a decision is then authoritative for CCCTB-purposes through the CCCTB-jurisdiction, much like what is currently the case with ECJ-case law.

Para. 11 – The proposed double ownership threshold (>50% for opting in and >75% to get consolidation) appears to give rise to considerable complexity. The Task Force therefore strongly advice that the two thresholds be aligned. To make the CCCTB as widely applicable as possible, the Task Force proposes a threshold of >50%. Apart from reducing complexity, a single threshold of >50 % would provide for two additional advantages. First, the issue of transfer pricing within the CCCTB-jurisdiction would be eliminated also with respect to shareholdings between >50 % and 75% and therefore potentially apply with respect to all controlled companies. Second, IAS/IFRS-companies would not have to use two different consolidation thresholds, i.e. one for IAS/IFRS purposes (basically >50 %) and another fore CCCTB purposes (of >75%). This would be a significant administrative simplification.

Para. 12 – The suggested 'all in/all out'-approach appears suitable as a general principle. During a transitional period, however, it should be considered to allow limited parts of larger groups to opt for CCCTB-treatment. This would enable groups to test the system in a smaller scale until the performance of the CCCTB is better known and the system is further explored. It would also allow groups to successively enter into the CCCTB. This would most likely make the CCCTB more attractive in the initial phases and thus promote the adoption of the system. It would also allow tax administrations to get acquainted with the new system in a reasonable scale (in particular with respect to the system of self-assessment for those Member States that do not have such a system at present).

Para. 13 – The suggested time frame of a 5 year validity period with an automatic renewal for successive periods of 3 years appears appropriate. However, at an initial stage, a shorter term should be considered as taxpayers might be hesitant to opt into a completely new and uncertain system with the obligation to stay therein for a full 5 years. Therefore, a 3 year time frame is suggested during a transitional period. This shorter time frame could be amended once the performance of the CCCTB is better known and the taxpayers are more familiar with the system.

Para. 17, 55 – Given the potential benefits of receiving CCCTB-treatment, the Task Force agrees with the proposal to allow the taxpayer to appeal against a decision of rejecting a CCCTB application. To give the taxpayer necessary information about the prospects and merits of such an appeal, the reasons for a rejection should be disclosed. This would also enable the taxpayer to take the correct actions to be eligible for CCCTB-treatment.

Para. 20 – The Task Force agrees that the CCCTB should be based on a self-assessment system.

Para. 23 – The definition of the principal taxpayer seems appropriate.

Para. 28 – The concept of a 'one-stop-shop' based on a self-assessment means that the principal taxpayer is responsible for creating a single consolidated tax return for the entire CCCTB-group. Certainly, each member of the group needs to keep documents (receipts, invoices etc.) necessary to support the correctness of its input into the consolidated tax return. The individual group member must, however, not be required to produce any documentation other than what follows from the ordinary course of business (recognizing that intra-group transactions should be eliminated for CCCTB-purposes). The meaning of the paragraph needs to be clarified.

Para. 38, 39 – As indicated above, the Task Force agrees with the approach that the principal tax authority should have the primary responsibility for the verification, assessment and amendment of the consolidated tax return (i.e. no independent initiatives from local tax administrations). This is a crucial part of the 'one-stop-shop'-approach and thus for the support of the CCCTB. With this in mind, the approach suggested in paragraph 39 is unclear and needs further elaboration.

Para. 42, 46 – The Commission is suggesting a 3 year time limit for amending assessments after the date for filing the consolidated return. In exceptional cases, an extended period of 6 years (for a wilful act or gross negligence) or 12 years (for criminal proceedings) is considered. The latter two time limits appear reasonable in an international setting. The first one is, however, too long given the need of legal certainty and given the fact that the assessment work has already been done by the principal taxpayer (self-assessment). A 2 year period appears more appropriate.

Para. 43 – Given the great need for a prompt treatment of intra-state disputes, the proposal of a mandatory arbitration procedure is promising. However, to achieve this in practice, the 6 month time limit suggested in the paragraph (for which the arbitration panel must reach a decision), must be accompanied with a strict time limit for when the competent authorities must refer a dispute to arbitration (no longer than 12 months after filing the return).

Para. 50, 51 – The concept of a central database appears appropriate provided that it will only include data necessary for the tax return. As suggested, it is important that the information therein is not divulged to any other authority, person or third state. In this respect, it is important to investigate further the implications of the exchange-of-information articles provided in most double tax treaties. Given the potential sensitivity of the information collected, it is important that it is only used for the purposes of the CCCTB-Directive (recognizing the provisions of the Directive 77/799/EEC on exchange of information within the EU).

Para. 63 – A 6 month time limit for the appeals body to make a decision appears reasonable. It is suggested, however, that a lack of response from the appeals body (within 6 months) should be deemed to confirm the position of the principal tax authority. This

would mean that passivity or delays (possibly due to lack of sufficient resources) would confirm the position taken by the tax administration. Clearly, this is not acceptable.

Para. 64 – It is doubtful whether the suggested time limits are in line with the taxpayer's constitutional rights to appeal an administrative decision in the various Member States. This issue requires further analysis.

On behalf of the BusinessEurope Task Force on CCCTB

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