Comments on document CCCTB\WP\042
Common Consolidated Corporate Tax Base Working Group
– Dividends –

Introduction

In July 2006 the Commission issued a Working Paper dealing with dividend distributions under CCCTB. The UNICE Task Force on CCCTB is grateful to have the opportunity to express its view on this issue. As in previous comments, the positions taken may be subject to revision as other areas of the CCCTB are explored.

General remarks on “dividend distributions”

Avoiding double taxation on dividend income is in line with the considerations of the EU Treaty and will contribute to the achievement of the Lisbon objectives. To reach these goals, the rules need to be attractive for business and the avoidance of double taxation should be allowed to be as simple as possible.

The Parent-Subsidiary Directive is and continues to be legally binding. However, to ensure a competitive CCCTB, the content of the Parent-Subsidiary Directive must only set the minimum standard. With this minimum standard in mind, the CCCTB rules should offer a common approach to avoid double taxation on distributed income in order to eliminate tax obstacles to cross-border investments and thereby increase competitiveness of businesses in the EU.

We would like to stress – in agreement with the Commission – that consolidation is a central aspect of the CCCTB. The concept of consolidation, i.e. the elimination of all transactions for tax purposes between members of the consolidated group, must be maintained also with respect to dividend distributions.

We recommend to consider/discuss specific anti-avoidance rules for dividend distributions at a latter stage when more pieces of the CCCTB have been put together. At the moment the crucial objective is to create a simple, attractive system also for distributed income. Once such a system is in principle set up, it could be analyzed whether there is a need for anti-avoidance rules.

Principles of tax treatment for dividends

The Dividends Paper discusses both the tax treatment of dividend payments by the distributing company as well as the tax treatment of dividends received. In the hands of the distributing company, we recognize that the dividends do not constitute a deductible expense. At the same time, the Member States must not levy any withholding tax on dividends. For dividends received, CCCTB should include a common approach where they are exempted in the hands of the recipient. This is in line with the objective of a consolidated tax base where intra group transactions are eliminated for tax purposes.

We also support the proposal to align the treatment of capital gains to the treatment of dividends, as described in the point above. A comprehensive approach will enhance clarity for MS as well as business. However, failure to agree on such cases should not hold back the requirement to come to a simple and common system for dividend distributions. We would propose to include a dividend definition in the CCCTB. The CCCTB should also describe who will decide whether a payment qualifies as a dividend or not as well as include tie-breakers in case there is a discrepancy of qualification between the distributing and the receiving company.

Scenarios proposed in the Commission's paper

Following the Commission's paper, we would like to briefly comment on the following four scenarios for dividend distributions. All situations presume an intra-EU distribution.

1. Distributions between members of the same CCCTB group
2. Distributions between two companies belonging to different CCCTB groups
3. Distributions from a company not applying CCCTB rules to a company applying the CCCTB rules
4. Distributions from a company that applies CCCTB rules to a company that does not.

Scenario 1: Distributions between members of the same CCCTB group.

As mentioned above, under consolidation rules all intra group transactions should be irrelevant for tax purposes. This principle should also apply to dividend distributions. That is, under the consolidation mechanism intra group dividend income would be eliminated. Income allocation should not be influenced by the dividend distributions.

Scenario 2: Distributions between two companies belonging to different CCCTB groups

We support the proposal to include the tax treatment of dividends received by a company in a CCCTB group from a company in another CCCTB group (as well as from a company outside a CCCTB group – scenario 3) in the CCCTB rules. With the Parent Subsidiary Directive as a minimum standard, the exemption method should be proposed as the common approach to treating dividends received. A common point of view should also be included on the conditions to the exemption, such as the minimum shareholding. In order for the system to be attractive, the common view could not be more stringent than the local interpretations of the Parent Subsidiary Directive, i.e. the minimum shareholding should be 5% or lower and no minimum holding period should be required to get a full exemption.

Scenario 3: Distributions from a company not applying CCCTB rules to a company applying the CCCTB rules

See Scenario 2.

Scenario 4: Distributions from a company that applies CCCTB rules to a company that does not.

In such case, domestic rules based on the minimum requirements of the Parent Subsidiary Directive would apply to the company receiving the dividends. We agree with the proposal to include in the CCCTB rules that no withholding tax shall be applied by distributing CCCTB companies, also in scenario 4.

Treatment of losses and expenses

We are unclear about the proposal (par 21) to pro-rate the expenses relating to exempted income. However, we would like to stress the importance of the main objective, which is to set up a simple, common system, which makes sure that all business expenses are deductible somewhere. In doubt, shareholder expenses should be fully deductible in the country where they are incurred.. Today's imperfection of tax systems which disallow partly e.g. interest expenses or shareholder costs connected with tax exempt income should not be part of the CCCTB. There is no justification of a non-deductibility of legitimate business expenses. Again any rules in this respect in the Parent Subsidiary Directive should be the minimum standard.

On behalf of the UNICE Task Force on CCCTB

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December 4, 2006