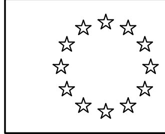

EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
Analyses and tax policies
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SUMMARY RECORD OF THE MEETING OF THE COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP

Held in Brussels on 13 March 2007

I. OPENING OF THE MEETING

1. The tenth meeting of the Commission Working Group on the Common Consolidated Corporate Tax Base (the WG) was attended by experts from all Member States (MS) and was chaired by the Commission Services.

II. ADOPTION OF AGENDA

2. The agenda was adopted by consensus.

III. REPORT AND DISCUSSION ON PROGRESS OF THE SUBGROUP ON SHARING MECHANISM (Working Document 'An overview of the main issues that emerged during the discussion on the mechanism for sharing the CCCTB' CCCTB/WP/052)

3. The Commission Services presented to the WG members[1] a summary of the main points that were discussed at the subgroup meeting on the sharing mechanism (SG6) in Brussels on 1 and 2 February 2007 and a general discussion followed.

4. A remark was made that if the consolidation and apportionment element of the CCCTB proposal brings more complexities and disadvantages than the expected benefits, it should be considered whether it would be better to work just on a common tax base (ie no consolidation) and consequently more work should be done on examining the benefits of consolidation before embarking on work on the sharing mechanism. However, it was pointed out that the Commission Services have consistently stressed the benefits of consolidation, arguing that there are significant benefits and it would be counterproductive to pursue at this stage a common tax base without consolidation and apportionment.

5. As a general comment, one expert felt that the Commission Services were steering the WG towards the FA approach by describing the other methods as 'complex' or 'prone to manipulation'. He also noted that the traditional apportionment factors of the FA (labour, assets etc.) seemed outdated and not reflecting the income generating factors of innovative economies based on knowledge. However, the Commission Services maintained that none of the possible options were definitively dismissed and that the apportioning factors can take and will take into account the economic reality.

6. Further clarification was requested on the meaning of 'fair' and 'unfair' distribution of the tax base and if the benchmark for the 'fairness' was the current distribution of profit based on separate accounting (SA) and arm's length principle

[1] Throughout the document the terms 'members', 'experts', and 'Member States' (MS) are used. In common with other documents these should be understood to refer to individual experts participating in the meeting. They do not indicate any formal position or view of a MS.

(ALP). The chair gave an example of what could be perceived as 'unfair': a macro approach based on GDP would attribute most of the tax base of a multinational enterprise with operations mainly in small MS but with a presence in a large MS to the large MS.

7. Concerning the question whether the apportioning factor '**labour**' should take into account differences in price/wage levels across MS, and therefore be measured: (i) only by 'payroll'; (ii) only by 'number of employees'; (iii) by a combination of 'payroll' and 'number of employees'; or (iv) by an 'adjusted number of employees' (that is calculated as payroll/average wage rate in each country), different views were expressed.

8. The majority of those who spoke about the apportioning factor 'labour' were in favour of taking into account only the payroll due to (i) the simplicity of such an approach, (ii) the fact that in the long term wage levels will tend to converge in the EU, (iii) the fact that each factor taken individually may require some form of adjustment but the interaction of two or more factor contains an element of self-adjustment and (iv) that different wage level often correspond to higher productivity that should be remunerated.

9. On the other hand, those in favour of adjusting the payroll stressed the negative consequence for MS with a low level of salaries in terms of tax base distribution, and also for the competitiveness of the EU as a whole. In particular it was mentioned that it would take many years for wage levels in the EU to be comparable, whereas the consequences on the tax base distribution would be immediate. It was also suggested that the use of unadjusted payroll would effectively reward high wage economies with a larger share of the tax base which could have implications for international competitiveness. The preferred method to adjust the payroll seemed to be number of employees. It was also mentioned that further work is necessary as regards, for example, the measurement of wage costs.

10. Concerning the apportioning factor '**property**', the Commission Services wondered whether there was enough support on the following features: (i) for the purpose of apportionment assets would be located in (ie assets will be counted for by) the entity that depreciates those assets for tax purposes (even though those assets are used by another entity e.g. if they are rented; (ii) assets would be valued at their tax written down value (tax costs minus tax depreciation); and (iii) financial assets would not be taken into account.

11. The features referred to above met with some agreement, however the following remarks were made: as regards intra-group dealings some anti-avoidance rules should be introduced to avoid that the group member depreciating the assets is different from the group member actually making use of that asset. As regards financial assets some experts commented that it seemed inconsistent not to consider them, since their income is to be included although those experts acknowledged the potential risk of factor shifting if financial assets are to be taken into account, due to their mobility. Financial assets should be taken into account at least in the financial sectors (i.e. banks and insurance).

12. Concerning the apportioning factor '**sales**' the Commission Services invited MS to express their views on whether (i) sales should be included in the formula and accounted for by origin or by destination, (ii) sales should be included in the formula but adjusted according to a macro-factor (GDP) or (iii) not included at all.

13. In this respect, three main views were expressed. The first was to include the sales by origin factor (the only one reflecting the economic activity of a company) and mixing it with some macro-based stabilising factors. The second was to include sales without any adjustment (adjusting sales by means of a macro-factor would be inconsistent with the idea that the tax base should be apportioned 'fairly'). The third was to analyse more in depth the consequences of any adjustment based on macro factors. No expert spoke in favour of sales by destination.

14. The discussion ended with the conclusion that a second meeting of SG6 is necessary.

IV. REPORT BY THE COMMISSION SERVICES ON THE WRITTEN COMMENTS RECEIVED FROM MEMBER STATES ON THE WORKING DOCUMENT "PERSONAL SCOPE" AND RELATED DISCUSSIONS IN THE SUB-GROUP ON GROUP TAXATION (Working Document 'Personal scope of the CCCTB' CCCTB/WP/040)

15. Concerning the entities included in the scope of CCCTB, the reference to tax liability arising from the domestic legislation of the MS as a basic requirement to determine whether an entity is 'in' or 'out' of the personal scope of the CCCTB seemed to be generally accepted. However, to ensure certainty it was recommended to establish a **list of entities** (similarly to existing EU legislation in the direct taxation field) having in mind that the drafting of the list should be flexible enough in case of national reforms of company law for example. It was also remarked that entities not carrying out business activities such as associations and foundations should not be included in the scope of the CCCTB.

16. As regards **Permanent Establishments** (PE) located in the EU of non-EU entities or of EU entities, the view was expressed that such PEs should be included in the scope and that no discrimination should apply between PEs of non EU entities and PEs of EU entities. One expert on the contrary would prefer not including PE of 'foreign' companies due to the potential lack of appropriate information exchange, in particular with certain third countries.

17. As regards **transparent entities** (TE) the Commission Services clarified that CCCTB rules should not interfere with taxation of individuals (e.g. partners of a partnership). However, even if TE are excluded from the scope of the CCCTB, if the owners are entities covered by CCCTB rules, the income of the TE would be taken into account for calculating the tax base of the owners subject to CCCTB. Some experts would recommend not including these entities in the personal scope of the CCCTB but thought there would be need to agree on the treatment of the income of

such entities if their owners were entity(ies) belonging to a CCCTB group. Despite the exclusion of TE from the personal scope, some experts agreed that the income of such entities should be consolidated. The opposite approach would be to take this income into account only after apportionment; but that approach would increase the complexity of the system.

18. Beyond the abstract principle (including or not including TE in the scope of the CCCTB), some practical aspects of this question should be assessed such as the definition of the group when such an entity is involved in the chain of participation, applying CCCTB rules for the calculation of the income if it were to be consolidated, the impact on apportionment, and full versus proportionate consolidation. For example a TE in the middle of a chain of companies that belong to a CCCTB group (a 'sandwich' situation): The income of the TE could be taxed in accordance with domestic rules at national level, or it could 'flow-through' the owners and be taxed in accordance with CCCTB rules (this solution, adopted in several consolidation systems, illustrates how 'tax transparency' can be a form of consolidation.

19. The preferred approach seemed to be that the income of TEs should be included in the scope of the CCCTB if the owner(s) of those TEs were entity(ies) belonging to a CCCTB group, also taking into account that several multinational groups have TE in their structures. The risk that such entities are considered transparent in accordance with the legislation of one MS and opaque in accordance with the legislation of another MS could be overcome by applying a mutual recognition principle and in particular by accepting the legal interpretation given by the MS where the entity is resident. One expert mentioned that in the tax legislation of his MS TE located 'abroad' are considered PE and taxed accordingly. He suggested applying the same principle in CCCTB and focusing on the income of the TE and how it should be apportioned rather than discussing whether TE should be 'in' or 'out'.

20. Two further views were expressed on the topic of TE: one expert suggested distinguishing between TE subject to corporate income tax (CIT) (to be included in any case) and TE non subject to CIT, to be included if fully owned (100%) by an entity applying CCCTB rules. One expert on the contrary would prefer to exclude TE from the scope of the CCCTB.

21. Finally, one expert stressed that the CCCTB work should not concentrate on the definition of personal scope and that it should remain at the level of MS to define which entities would be entitled/covered by the common base.

V. REPORT AND DISCUSSION ON PROGRESS OF SUBGROUP ON GROUP TAXATION (Working Document 'An overview of the main issues that emerged at the third meeting of the subgroup on group taxation' CCCTB/WP/053)

22. The Chair of the Sub-group 5 made a short oral report noting that the Commission Services had highlighted the main remaining issues in their working document. He referred briefly to the discussions on: (i) the optional nature of the CCCTB (coupled with a mandatory consolidation) which represented the preferred Commission Services' approach but which did not meet with the favour of most MS, due to the complexity of managing two separate systems (and also because it was considered to be a political issue); (ii) the practical modalities for exerting such an option (within a group, who should apply? To which tax administration? For how long? Should the other Group's members agree? etc.), which was seen as part of the administrative and legal framework; (iii) the treatment of overall losses incurred by a group and the question of whether they should be shared out or should remain at the level of the group for further offsetting with consolidated profit; and (iv) the issues of entities entering/leaving the group in relation to the principle that a group could be considered as a single entity or a series of entities[2]. He mentioned that although one expert strongly preferred the approach of considering a group as a single entity this view was not shared by the majority. At the end the group should reach a single view on this issue, whatever it was.

23. The Commission Services introduced their working document and there was a general discussion on a number of points. As regards the criteria for inclusion of a company in a group one expert queried paragraph 13 of CCCTB/WP/053 asking whether the Commission Services' thinking was to use percentage of voting rights as a sole criterion without regard, for instance, to the size of shareholding. One expert expressed a preference for simple and straightforward rules such as a fixed percentage of voting rights or shares ownership (with some experts preferring voting rights), to be maintained for the entire tax period. In addition, all transactions with non-consolidating entities should be at arm's length prices (ALP) to avoid circumventions and abuses.

24. It was mentioned that splitting a tax period in two parts when an entity enters (or leaves) a group was considered to be inconsistent with the idea that the requirement for consolidation should be maintained continuously during the tax period, and it was also considered to be complex from an administrative point of view, Therefore it was suggested that any entries should start to consolidate at the beginning of the following tax period and any leaves should stop consolidation at the end of the previous tax period.

25. The Commission Services proposed that an entity should not be excluded from consolidation if the threshold (voting rights) goes below the required threshold (75%) for some days – provided that it never goes below 50% and that at the end of the year the required threshold is met again. This proposal was considered inconsistent because there would be different rules depending on whether the required threshold is not met at end or in the middle of the tax period; therefore it was proposed to require an average threshold combined with a minimum threshold (50%).

[2] In the first case an entity leaving the group could be considered as a 'sale of assets' from the group viewpoint, which would eliminate any arbitrage that groups could put in place if they wanted to sell companies instead of the underlying assets to avoid taxation of capital gains (assuming a participation exemption regime for the sales of shares).

26. One expert asked whether the Commission Services yet had a view on the likely impact on administration costs of rules to prevent exploitation of an opt-in time limit for companies. Another expert commented that the concerns expressed illustrated certain diffidence towards consolidation which was seen as a tax optimisation tool to be countered. However, such an approach could make the CCCTB less attractive for business and reduce support for the CCCTB. As an anti-avoidance measure one could envisage a minimum opt in period but he thought that although some of the tax planning techniques experts were concerned about were possible in theory but in practice were unlikely to be used because the costs of the necessary business re-organisations would outweigh any tax advantages.

27. As regards **losses**, the preferred approach that losses should remain in the group, when a company leaves the group met with the following concern: if within a group of profit making companies a loss making company opts out and the loss remains in the group, the MS where the profit making companies are located would be worse off, which was considered to be unfair. To avoid this, a loss-making entity leaving the group should 'compensate' the other entities for such losses. An inconsistency was also noted between the termination of the group in its entirety (losses are 'shared out') and just one entity leaving the group (losses remain at the level of the group).

28. As regards elimination of intra-group transactions due to consolidation, one expert could not see the need for eliminating internal profit instead of internal transactions and wondered whether that was feasible, particularly as regards intra-group services. However the consolidated result of a group cannot take into account intra-group income or expenses and therefore those should be excluded, although services provided by a group member to another group member could pose practical difficulties of definition and measurement.

29. Finally, as regards business re-organisations and the opportunity to consider an entity leaving the group as a set of assets sold at the same time, this approach did not meet with general consensus. The preferred approach would be to keep the sale of shares and the sale of assets separate, because the sale of shares should not trigger taxation of capital gains if participation exemption rules are introduced in the CCCTB, while the sales of assets would be taxed. To avoid an intra-group, cross-border (and tax exempt) transfer of assets and a subsequent sale of the shares representing the capital of the company holding those assets, one could envisage a taxation of the underlying capital gains at the time when the company leaves the group. Double taxation should be avoided as well as double non taxation. Consequently, the MS in which the leaving entity is located should take into account that capital gains of assets are already taxed, i.e. the MS should acknowledge the increased book value of the assets.

30. It was remarked that the existence of different tax rates among MS constitute an incentive to transfer assets where the subsequent capital gains would be taxed at a lower rate. This could be avoided if the CCCTB were accompanied by rate harmonisation or at least a minimum rate. However, in a consolidated system the gains would normally be shared out in any case.

31. One expert noted that if the sale of the shares of a company owning the intra-group cross-border transferred assets is considered to be equivalent to the sale of assets themselves the following problem may arise: a company generally owns several assets, not all of which originated from an intra-group cross border transfer. Treating the sale of shares as a sale of the underlying assets may trigger taxation of the capital gains from all the assets owned by the company and not only from the assets that were transferred tax free intra-group. Therefore, whenever a company leaves a CCCTB group, one should ensure that the capital gains on assets that were previously exempt are separated from the gains on the other assets which have not been subject to an exempt transfer. One should also examine the price that the members of the group set for their transaction to avoid that the value of the asset is stepped-up tax-free and subsequently no capital gain is recognised when the asset leaves the CCCTB group.

VI. Discussion on the Administration of the CCCTB – possible outline and related discussions in the sub-group on Group Taxation

32. The Commission Services gave a detailed presentation of some elements of the administrative and legal framework. It focused on a possible 'one-stop-shop' approach whereby the CCCTB group of companies would deal with only one tax administration for all tax procedural steps (registration, filing of tax returns etc.). Those activities that can only be performed by local tax administrations (such as on the spot audits) would be an exception.

33. The working hypothesis that a group of companies should opt for the CCCTB by filing a single application raised the question of possible disputes between taxpayers and tax administrations over the eligibility of the group to opt for the CCCTB. To make the system as simple and straightforward as possible the scheme as presented relies on 'self assessment' by the taxpayer, which includes the self assessment of whether the conditions to opt for the CCCTB are met by the group of companies. However, a dispute settlement procedure is provided for to deal with any disagreements between administrations.

34. As regards the content of additional information and annexes to be included in the tax returns, the Commission Services asked MS to take the lead on specifying the sort of information required as they manage on a daily basis tax returns and know what information is necessary. One expert asked about the Commission Services' plans to consult business on their ideas on administration of CCCTB. Another expert noted that different rules applicable in different MS may trigger a 'race-to-the-bottom' as regards tax formalities to attract companies thanks to a 'business-friendly' administrative framework (forum-shopping).

35. As regards re-assessment, one expert asked for clarification as to how all the administrative activities (including the checking of the apportionment) could be left to

one tax authority. The Commission Services explained that without a common administrative and legal framework administered for each group by a single tax administration, the coexistence and interaction of up to 27 administrative systems could make the system unworkable. In this context it could be envisaged that the ultimate parent company of the group (or another elected company) the principal taxpayer' would file the consolidated tax return to the tax authority of the MS of residence, the 'principal tax authority' containing information on the consolidated tax base, its sharing and also the calculation of the individual tax liabilities of the various members of the group. Such a principal tax authority would have overall responsibility for reassessment, although any necessary audits of group companies would in practice be carried out by the respective tax administrations.

36. Members were asked to provide comments in writing on the various parts of the presentation (registration, tax returns, assessments, audits, re-assessments, appeals).

VII. Report by the Commission Services on the written comments received from Member States on the Room Document "Related parties in the CCCTB" (CCCTB/WP/041) and on the Working Document "Report and discussion on progress of the sub-group on International Aspects" (CCCTB/WP/049)

37. Due to time constraint these two items on the agenda could not be dealt with. MS who have not yet sent their written comments were invited to do so if they so wished.

IX. ANY OTHER BUSINESS AND CONCLUSIONS

38. The Chair informed Members of the WG that the next meeting of the WG is planned for September 2007. SG6 (sharing mechanism) will meet in June 2007 to continue its work. The Commission plans to issue a Communication to the Council, the European Parliament and the Economic and Social Committee on further progress and final steps towards the CCCTB in May 2007.