



European Commission  
Taxation and Customs Union

# ***Eligibility Tests for Companies and Definition of a CCCTB Group***

***Workshop on the CCCTB  
20<sup>th</sup> October, 2010***



## *Outline*

- Eligible Companies
- Conditions for Consolidation
  - Tests of Eligibility for Consolidation
  - Group structures eligible for Consolidation



## ***Eligible Companies***

- A company eligible to become a taxpayer under the Directive will be:
  - A company established under the laws of a MS and takes a form listed in an Annex to the proposal and is subject to a Corporate Income Tax (CIT) system or similar system in a MS which will be detailed in a separate Annex
  - A third country company, which would fulfil the conditions for consolidation if it were resident in the EU, with a similar form to companies established in MS and is subject to a CIT listed in a further Annex as they maintain a Permanent Establishment (PE)



# *Residence Rule*

## **Residence Rule**

Where a company has its registered office, place of incorporation or place of effective management in a MS and is not , under the terms of an agreement concluded by that Member State with a third country, regarded as tax resident in that third country shall be considered tax resident in that Member State.

## **Tie Breaker**

Where a company is resident in more than one MS the place of effective management will determine tax residency.



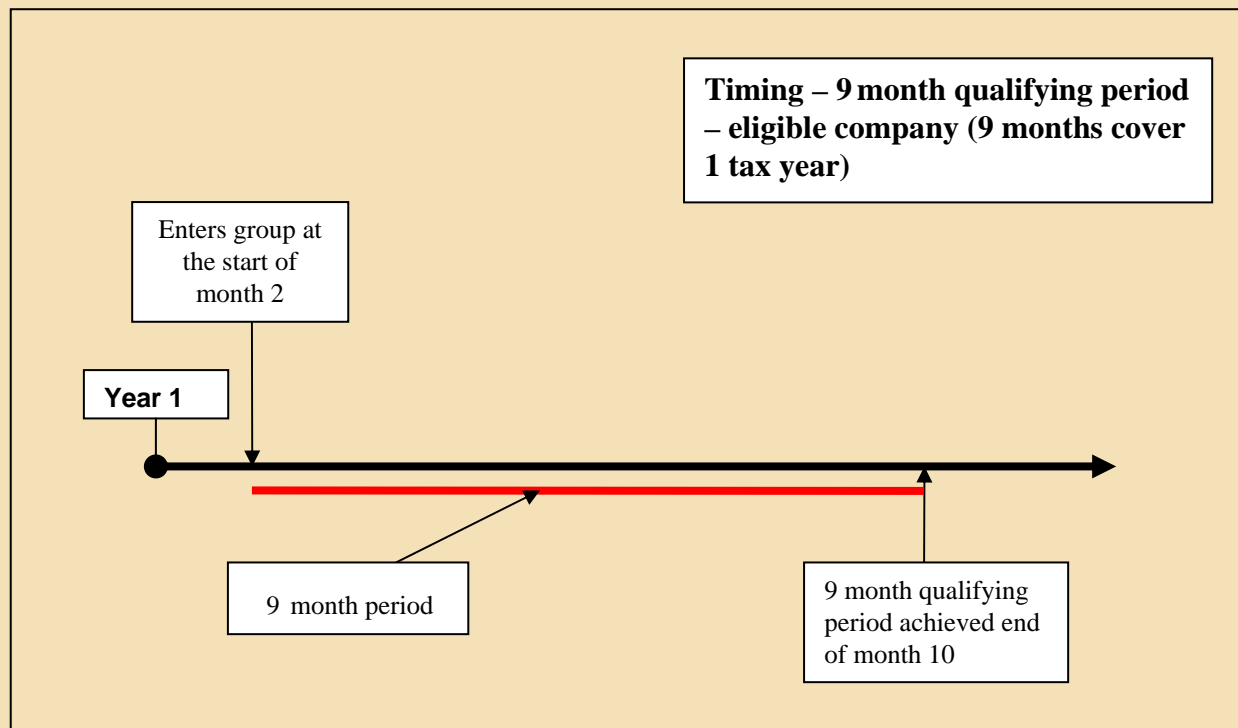
## ***Conditions for Consolidation (i) Tests of Eligibility for Consolidation***

- Three part test for consolidation based on;
  - Ownership (>75% of capital)
  - Control (>50% of voting rights); and
  - Profit entitlement (>75% of rights giving entitlement to profit).
- On **first** entering the Consolidated Group the three thresholds will have to be met for **nine consecutive months** otherwise the taxpayer would be considered never to have been part of the group (therefore not able to avail of time apportioned share). Thereafter all three thresholds have to be maintained throughout the tax year.
- Once the three thresholds are met full consolidation applies.
- Where a company leaves a group during the year it will be out of the CCCTB group.



## ***Conditions for Consolidation (ii)*** ***Tests of Eligibility for Consolidation***

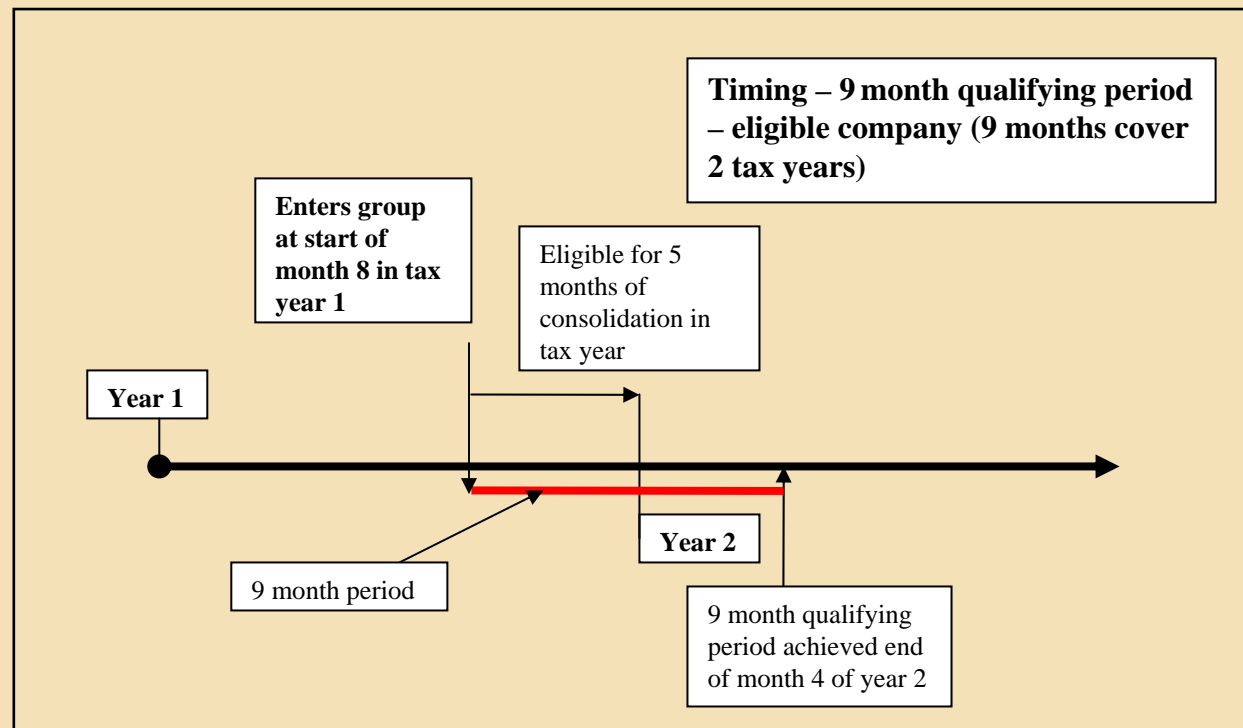
- Example 1: 9 month qualifying period – eligible company (9 months cover 1 tax year)





## ***Conditions for Consolidation (iii)*** ***Tests of Eligibility for Consolidation***

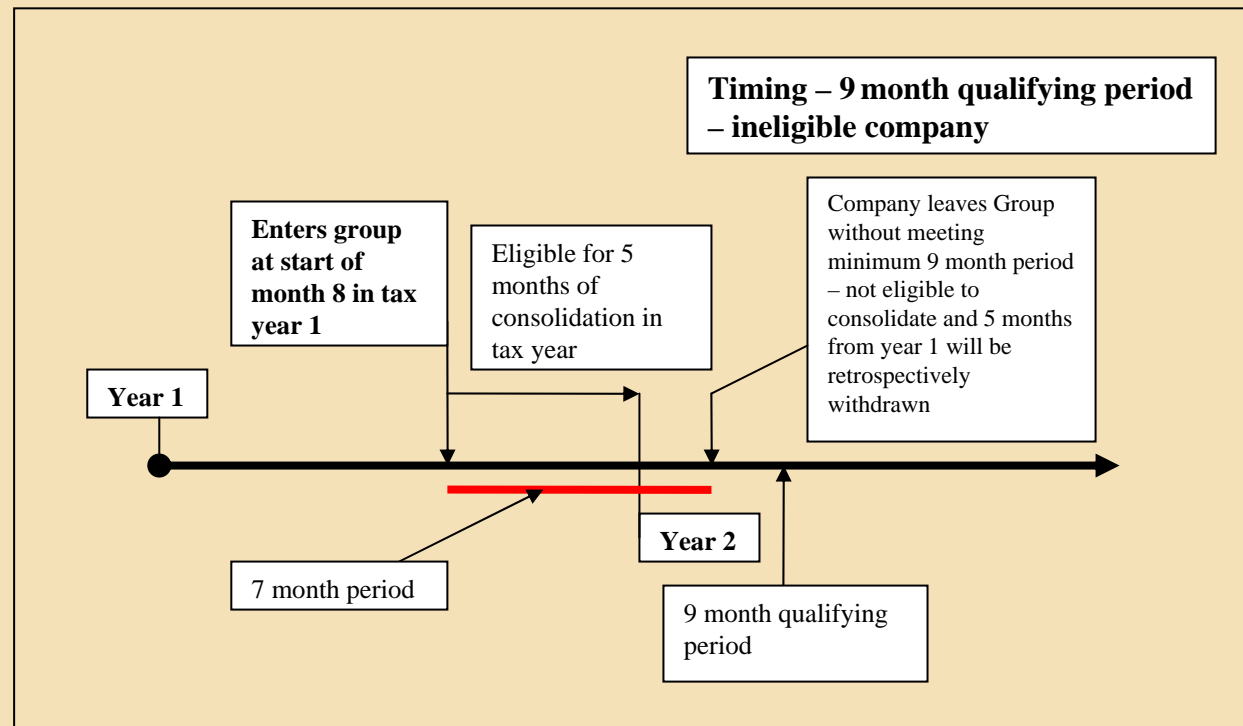
- Example 2: 9 month qualifying period – eligible company (9 months cover 2 tax years)





## ***Conditions for Consolidation (iv) Tests of Eligibility for Consolidation***

- Example 3: 9 month qualifying period – ineligible company

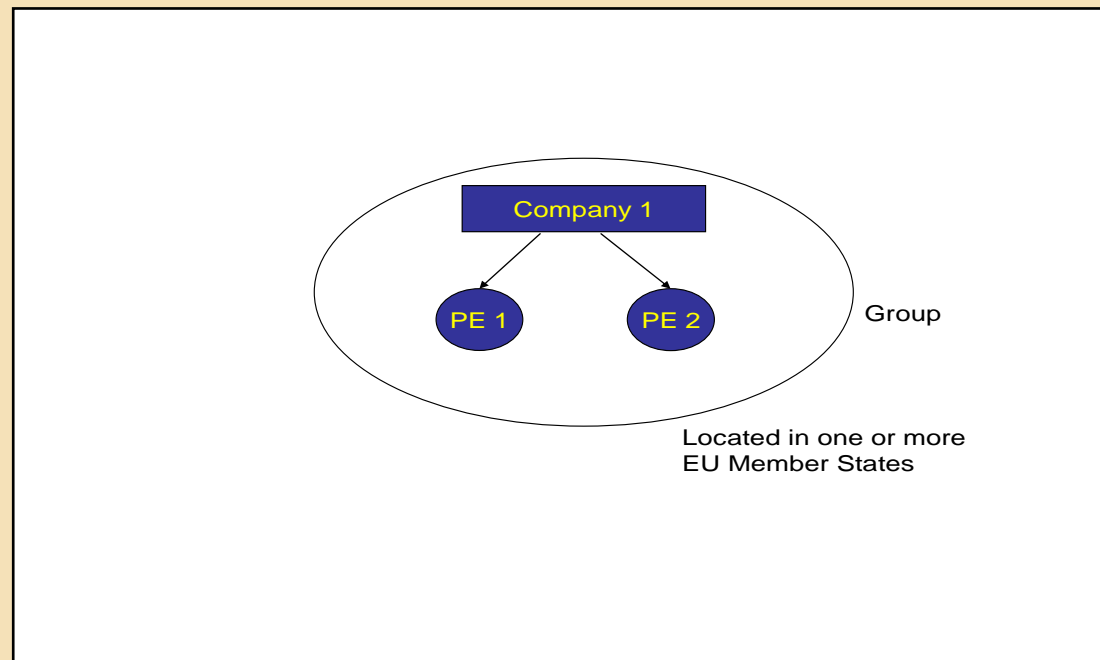






## ***Conditions for Consolidation Eligible Group Structures (i)***

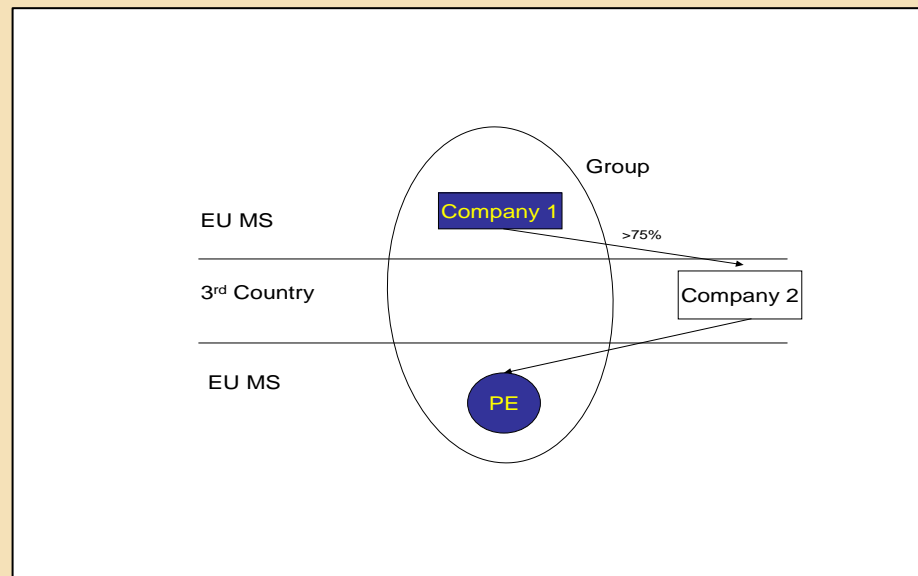
- In this example an EU resident taxpayer (Company 1) and its two PEs (PE1 & PE2) located in other Member States form a CCCTB group.





## ***Conditions for Consolidation Eligible Group Structures (ii)***

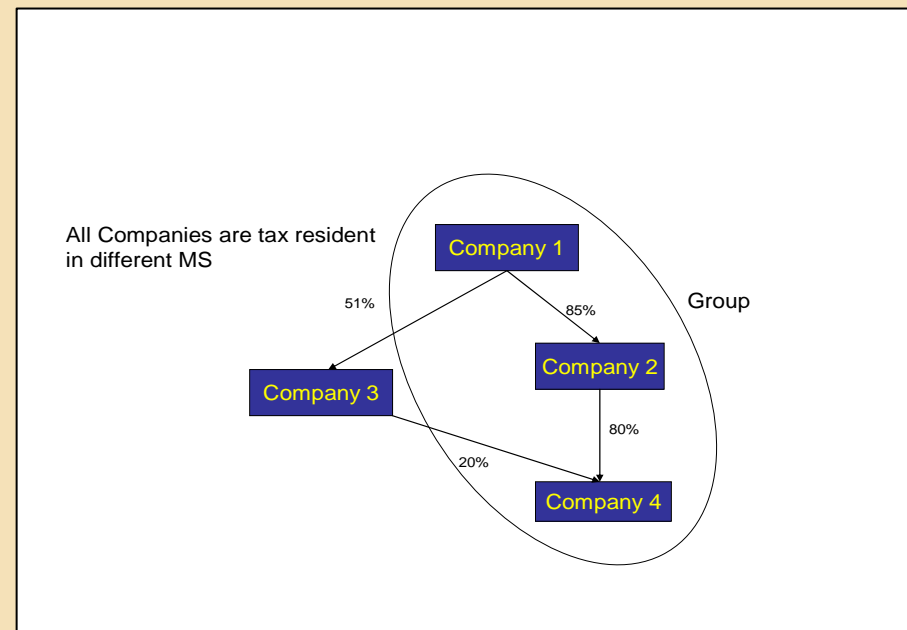
- An EU resident taxpayer (Company 1) with a >75% subsidiary located in a cooperating third country (Company 2) is eligible to form a CCCTB group with EU-located PE of Company 2. The critical test is that Company 2 would fulfil the conditions for consolidation if it were resident in the EU.





## ***Conditions for Consolidation Eligible Group Structures (iii)***

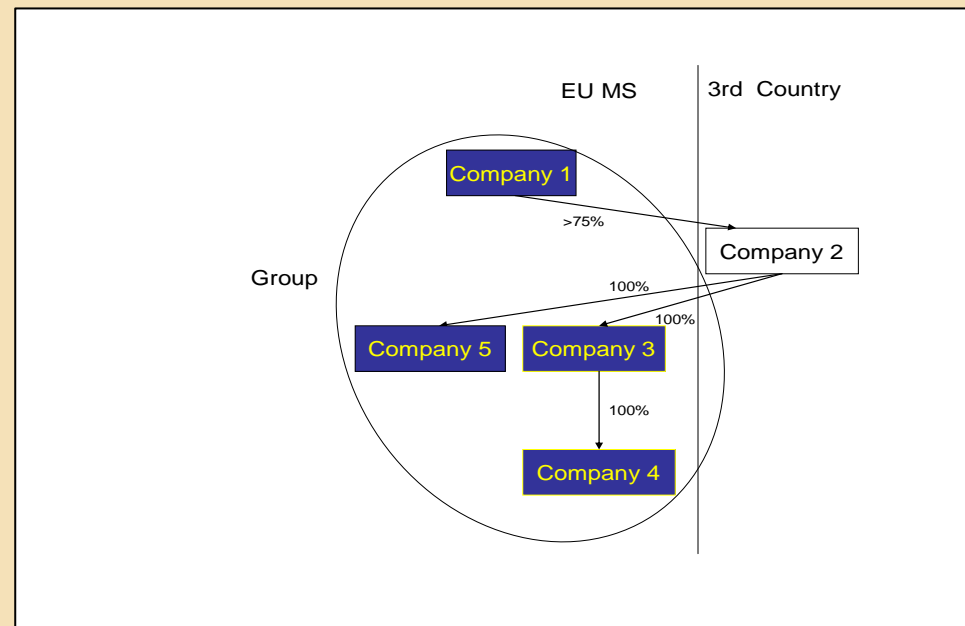
- In this scenario 3 EU resident taxpayers (Companies 1, 2 & 4) are eligible to form a CCCTB group. In calculating Company 1 holding in Company 4, both Company 2 and Company 3 have to be taken into account.





## ***Conditions for Consolidation Eligible Group Structures (iv)***

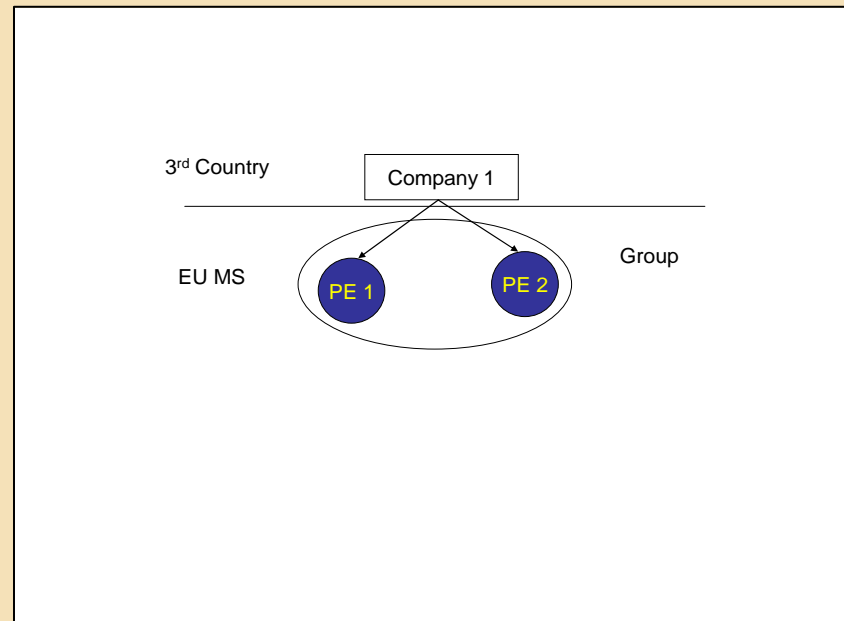
- An EU resident taxpayer (Company 1) holds a >75% subsidiary located in a cooperating third country that in turn has 3 wholly-owned subsidiaries (Companies 3, 4 and 5) located in the EU.





## ***Conditions for Consolidation Eligible Group Structures (v)***

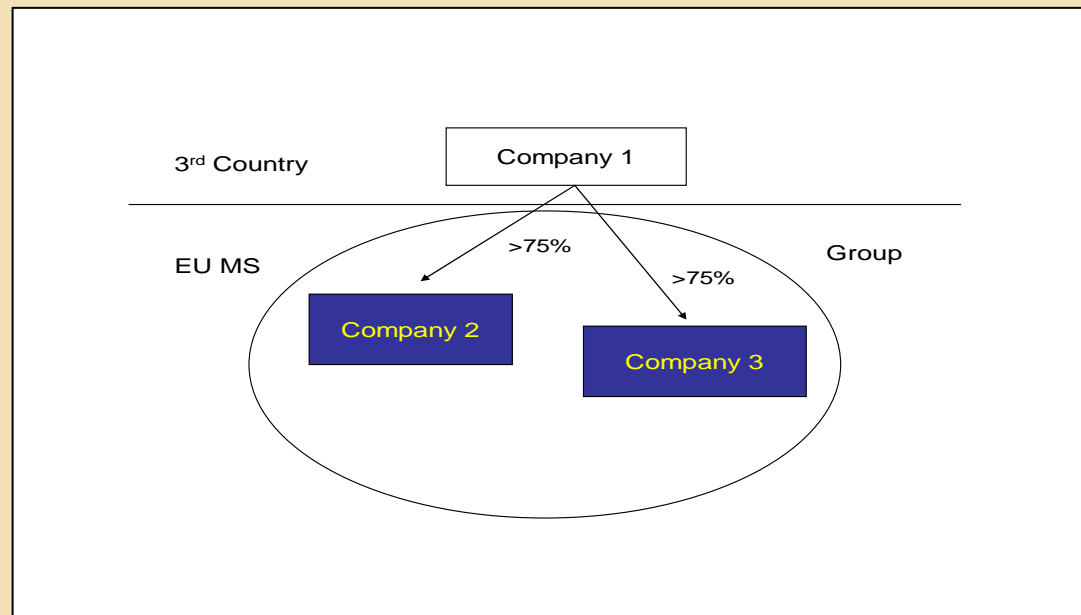
- A non-resident taxpayer (Company 1) has two PEs in the EU. Both PE1 and PE2 are eligible to form a CCCTB group.





## ***Conditions for Consolidation Eligible Group Structures (vi)***

- A non-resident taxpayer (Company 1) holds a participation of  $>75\%$  in two EU-resident subsidiaries (Companies 2 and 3). Company 2 and Company 3 are eligible to form a CCCTB group.



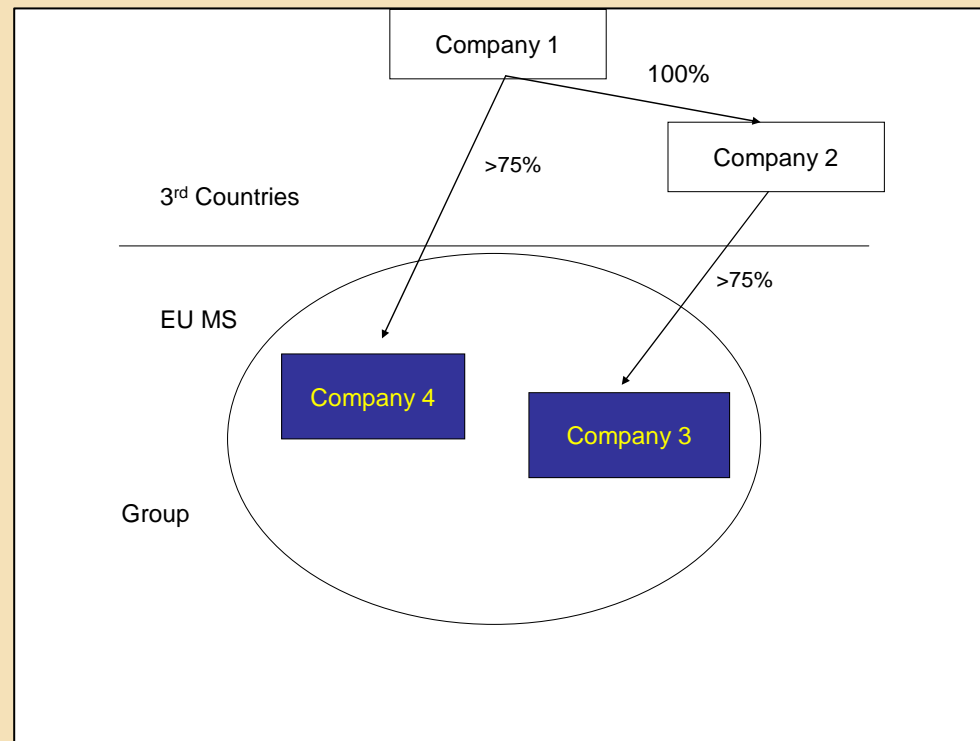


## ***Conditions for Consolidation Eligible Group Structures (vii)***

- A non-resident taxpayer (Company 1) with a wholly owned EU-resident subsidiary (Company 4) also has a wholly owned subsidiary (Company 2) which is located in another cooperating 3<sup>rd</sup> Country. Company 2 has a >75% participation in Company 3 which is EU located.
- The result of this is that the consolidation is fulfilled and Companies 3 and 4 are eligible to form a CCCTB group.



## ***Conditions for Consolidation Eligible Group Structures (vii)***

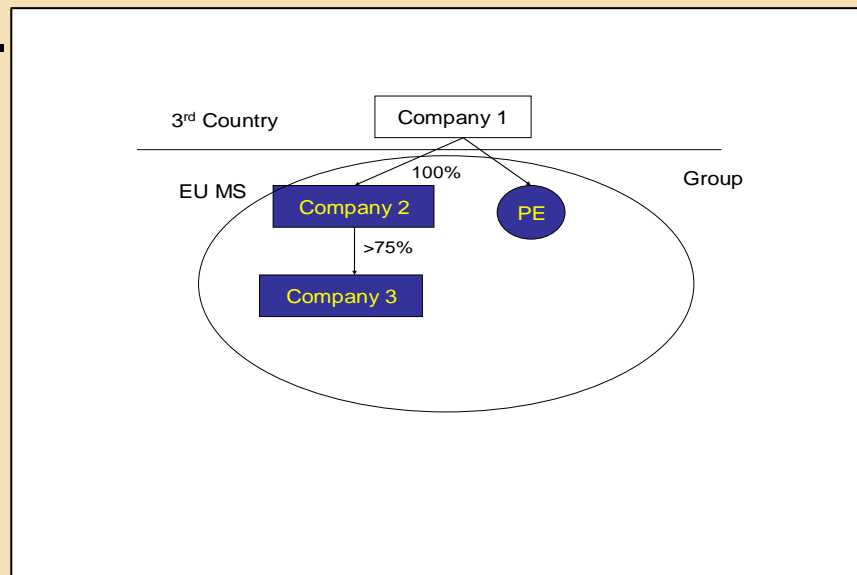






## ***Conditions for Consolidation Eligible Group Structures (viii)***

- A non-resident taxpayer (Company 1) with an EU located PE holds an EU-resident wholly-owned subsidiary (Company 2) through which it also maintains a participation of  $>75\%$  in another subsidiary (Company 3). Companies 2 and 3 and the PE are eligible to form a CCCTB group.





## ***Conclusion***

- Questions raised in the paper:
  1. What are your views on the eligibility requirements?
  2. What is your view of the 3 part test and the nine month initial qualifying period?
  3. What are your views of the thresholds for participation?
  4. Have you any comments on the proposed three part test, linked to an EOI requirement in relation to 3<sup>rd</sup> country companies?