



EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
Analyses and tax policies
Analysis and Coordination of tax policies

Brussels, 31 August 2006
Taxud E1 RP/

CCCTB/WP/037/ /en
Orig. EN

**SUMMARY RECORD OF THE MEETING OF
THE COMMON CONSOLIDATED
CORPORATE TAX BASE WORKING GROUP**

Held in Brussels on 1 June 2006

I. OPENING OF THE MEETING

1. The seventh meeting of the Commission Working Group on the Common Consolidated Corporate Tax Base (hereafter the 'WG') was attended by experts from all Member States (hereafter MS) but Malta, plus observers from Bulgaria and was chaired by the Commission Services. The Chair welcomed the participants and opened the meeting.

II. ADOPTION OF AGENDA

2. The Chair presented the draft agenda and provided Members¹ of the WG with an overview of documents distributed before the meeting.

3. The agenda was adopted by consensus.

III. REPORT AND DISCUSSION ON PROGRESS OF SUBGROUP ON ASSETS AND TAX DEPRECIATION (Working Document 'An overview of the main issues that emerged at the fourth meeting of the subgroup on assets and Tax Depreciation' CCCTB/WP/032)

4. The Chair of the subgroup on assets and tax depreciation (hereafter 'SG1') presented his report of the fourth meeting of the SG1 that took place in Berlin on 3rd and 4th April 2006 and was attended by experts from 13 MS, plus an observer from Romania.

5. The Chair of SG1 reported that the meeting dealt with the treatment of capital gains and losses on financial assets, examining whether they should follow the general treatment established for other capital gains and losses. In general, the MS agreed that the realised capital gains or losses in financial assets should be taxed in the same way as those on ordinary assets, although a number of MS seem to be open to rather generous participation exemptions. The Chair of SG1 suggested that the scope of a participation exemption for capital gains on shares should be the same as the participation exemption for dividends as the capital gain represents an accrued dividend, although not all experts had agreed. The views differed more when dealing with unrealised capital gains and losses. For unrealised capital gains some MS considered that they should not be taken into account, although others thought that for extremely liquid assets or for assets held for trading unrealised capital gains could be taxed and losses relieved. The way to differentiate between these two types of assets was also analysed. Some MS considered that the distinction should be made following the IAS and others that it was better to establish a list of assets.

6. In SG1, some MS referred to the problem that may arise if non-taxed gains are distributed, although the Commission Services pointed out that the problem of how the profit for distribution is defined could be resolved by MS in their commercial law.

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 Member State.

7. The SG1 also analysed financial leasing and some issues related to intangible assets. Financial leasing represents one situation when an economic owner is different from a legal owner and the former should depreciate the asset. MS considered that the criteria determining when the economic ownership is established in case of financial leases for the CCCTB purposes could in principle follow the IAS 17.

8. As for intangible assets it was discussed whether a more detailed definition of intangible assets was needed and whether further specification of when the ownership of an intangible is established would be useful. The Chair reported that a number MS agreed that internally developed intangibles should not be capitalised for tax purposes.

9. Additionally the SG1 agreed that the depreciation should be deductible only to the extent that the asset was used for business purposes. And finally the capitalisation of subsequent expenditure which represents an expansion or significant improvement of an asset was discussed.

10. After the Chair of SG1's report the Commission services then presented the working document 'An overview of the main issues that emerged at the fourth meeting of the subgroup on assets and Tax Depreciation' (CCCTB/WP/032). They identified several issues for additional debate, such as financial assets, leases, intangibles and the participation exemption and outlined a pro-forma structure for future CCCTB rules.

11. In the ensuing discussion one expert referred to the need of analysing the reorganisation of companies as well as some provisions for the value of the assets that first enter the CCCTB. The Commission Services answered that these aspects should be dealt with at a later stage.

12. One expert mentioned that the tax base should not be too different from the economic result, and thought it was necessary to determine how different the two results could be.

13. Another expert pointed out that the method of depreciation and the taxation of unrealised capital gains should be consistent and he also thought that the application of the pooling method was not consistent with the taxation of unrealised capital gains.

III. REPORT AND DISCUSSION ON PROGRESS OF SUBGROUP ON TAXABLE INCOME (Working Document 'An overview of the main issues that emerged at the third meeting of the subgroup on taxable income' CCCTB/WP/034)

14. The Chair of the subgroup on taxable income (hereafter 'SG3') presented his report of the third meeting of the subgroup that took place in Paris on 3rd May 2006 and was attended by experts from 15 MS.

15. The Chair reported that the meeting started by deepening the discussions on several issues that had been touched upon in previous meetings, such as the definition

of taxable income or the list of exempted income. It was discussed whether the subsidies granted by public authorities should be taxable or exempt.

16. The SG3 meeting continued with the discussion of the recognition and timing of the sales of goods and of services rendered, where the MS considered that the IAS 18 was the most useful guidance and that the rule must in any case be fully consistent with the work in SG1.

17. The possibility that the costs associated with the acquisition of assets were considered as part of the asset itself was also discussed in the sub-group. MS agreed that the financial expenses should be fully deductible, for other types of expenses probably a list of related expenses was needed.

18. In relation with expenses the aim was to come up with a definition that could be symmetrical establishing a link between the deductibility of expenses and the taxable income, ie the approach could be similar to the one used for income. Dividends were identified as the main category of non-taxable income. MS also discussed the deductibility of VAT and the local taxes and one MS pointed out that it was necessary to look carefully at the local taxes because their treatment can be a way to indirectly subsidise the local authorities. Some MS considered that it might be useful to list the local taxes and the Commission Services had agreed to raise this at the main Working Group.

19. The SG3 discussion on social contributions confirmed that national systems vary substantially. It was agreed that additional information was necessary and the Commission Services agreed to organise a suitable questionnaire on social contributions and similar costs incurred by companies. The meeting of SG3 continued with the discussion of gifts and luxury expenses that should not be deductible according to some MS, entertainment expenses that most considered as deductible and the link between these expenses and the remuneration of managers.

20. The Chair of the SG3 concluded by announcing a further meeting and suggested some issues to be discussed, for example the timing of the expenses, the methods to determine the net profits and the treatment of losses.

21. After the Chair of SG3's report the Commission Services presented the Working Document 'An overview of the main issues that emerged at the third meeting of the subgroup on taxable income' (CCCTB/WP/034), including the 'Questionnaire on social contributions and charges' and MS were invited to provide written comments.

22. One expert considered that it is not necessary to make a choice between the two methods to determine the taxable income: Tax Balance Sheet and the Profit and Loss Account because the two methods will necessarily lead to the same results. The Commission Services explained that although the result should be the same further analysis is necessary. If different practices remain in MS the level of uniformity would be decreased and groups would still be faced with a range of different requirements. So if one single method could be agreed the compliance burden would be decreased.

23. Another expert made some comments on the definition of taxable income. He disagreed that the CCCTB needed a detailed definition of taxable income and thought that it would be simpler to state that any income is taxable complemented by a list of non-taxable income, and set up rules for recognition and timing for different types of income. Additionally subsidies or state contributions should be looked at carefully, in order to make sure that they are not deducted twice. The problem can be solved looking at the purpose of the contribution; i.e. if it covers a cost that is deductible or an asset that will be depreciated.

24. One expert considered that it could be a good idea to coordinate at Community level the payment of subsidies and the local taxes to avoid a subsidy to local authorities by national authorities. The Commission Services pointed out, that it is not possible to harmonise local taxes together with the CCCTB. Implications for the sharing out of the tax base will have to be examined in general for various elements of the tax base. In addition they suggested further work on subsidies when incentives are discussed, although they agreed to prepare some further information on local taxes for the next sub-group meeting.

25. Another expert considered that the actual definition of taxable income is problematic, that a broad definition is needed and then the different types of income should be looked at one by one, basically, applying the business test. The local taxes should not be deductible.

26. One expert considered that gifts could be partially deductible, and also pointed out that the problem with the business test is that the administration is not in the best position to analyse it; probably a good general principle would be a 'for the needs of the activity' test in relation to companies in which shareholders/owners play the role of managers as well.

IV. REPORT AND DISCUSSION ON PROGRESS OF SUBGROUP ON INTERNATIONAL ASPECTS (Working Document 'An overview of the main issues that emerged at the second meeting of the subgroup on international aspects' CCCTB/WP/035)

27. The Chair of the subgroup on international aspects (hereafter 'SG4') presented his report of the second meeting of the subgroup that took place in Madrid on 27th and 28th April 2006 and was attended by experts from 15 MS.

28. The meeting had started by discussing the necessity of definitions on tax residence and permanent establishment in the CCCTB. Most of the experts agreed that a definition of tax residence was desirable, several methods were analysed and the place of effective management was the one considered most appropriate. A definition of a permanent establishment may also be needed; MS agreed that the OECD work is a good starting point.

29. The Madrid meeting continued with the treatment of income earned by residents of CCCTB jurisdictions from sources outside the CCCTB, several experts discussed a number of options: solutions with a common treatment for taxation of tax residents'

income or solutions combining worldwide taxation of tax residents and territoriality principle. For the application of some of these solutions there is a need to determine the income attributable to the permanent establishments and MS agreed that common attribution rules in the CCCTB would be desirable.

30. The SG4 meeting also discussed the treatment of income not attributable to permanent establishments, specifically the treatment of dividends and the need to avoid double taxation of the dividends in the CCCTB.

31. Finally the SG4 meeting started the discussion of income earned by non-residents from sources in the CCCTB jurisdictions, giving some examples, but discussion in more detail is needed in this area.

32. The Chair concluded saying that the next SG4 meeting will take place during the first half of October.

33. After the Chair of sub-group 4's report the Commission Services introduced the Working Document 'An overview of the main issues that emerged at the second meeting of the subgroup on international aspects' (CCCTB/WP/035) highlighting several major issues such as the possible problems that MS may have with the tax treaties when changing from one method to avoid double taxation to another, the need of common definitions of residence and permanent establishment in the CCCTB and of rules to allocate the income to a permanent establishment or the income earned by non-residents.

34. No experts spoke on these issues.

V. DISCUSSION ON ISSUES RELATED TO GROUP TAXATION (Working Document CCCTB/WP/35)

35. The Commission Services introduced the Working Document on issues related to group taxation (CCCTB/WP/35) explaining how it is necessary to start the work on group taxation even if consolidation were not to be introduced immediately.

36. The Commission Services also explained that in the Document there are several questions addressed to experts and that in the Commission Services' opinion the subject should be referred to a SG for study in more detail.

37. One expert pointed out that the problems in the document were well identified and agreed that a SG was probably a good idea as the problems were very technical and a discussion in detail was needed. Another expert referred to the particular problem of losses which it was important to consider.

38. One expert said that even with the CCCTB transfer pricing will continue to be applied and asked for some clarification of the Document and the possible implications of the proposed Commission Communication on cross border loss compensation. He also asked about when work on the sharing mechanism would begin. The Commission Services outlined the distinction between work on cross border losses (targeted measure) and work on the CCCTB (comprehensive approach)

and explained that work on the sharing mechanism would start after some progress had been made on consolidation.

39. One expert underlined the need for care in defining the term 'group' to ensure CCCTB participants were not extremely vulnerable to tax avoidance. For instance, mixing entities regarded as opaque in one and transparent in another could potentially increase tax planning opportunities; faulty consolidation rules could result in a company outside a group being able to sell a big loss to the group leading to a substantial loss of tax revenue; and particular risks could arise from intra-group arbitrage between financial and non-financial companies. CCCTB participants would also need to think very carefully about how to deal with 'leavers' and 'joiners', if they were not to be vulnerable to tax planning and washing of profits and losses. As far as the treatment of intra-group transactions were concerned, they would presumably want to consider carefully the different effects which might arise: for instance, the treatment of buildings - with an intra-group sale of a building within a property group - provided a simple example. The Commission Services agreed that such issues should be examined in the sub-group. Another expert referred to the problem that the intra-group transactions will necessarily have one effect on the base and on the share of the base attributed to each MS. The expert also referred to the need to determine a 'responsible company' within the group.

40. The delegate from Denmark volunteered to organise and chair a new SG5 and announced that a first meeting could be held on the June 22nd and 23rd in Copenhagen. Members of the Group agreed that the working document on group taxation together with experts' comments (oral and written) will create a good basis for the work of the SG5.

VI. DISCUSSION ON ISSUES REALATED TO ADMINISTRATIVE AND LEGAL FRAMEWORK (Working Document CCCTB/WP/36)

41. The Commission Services introduced the Document 'Points for Discussion on 'Administrative and legal Framework' (CCCTB/WP/36) reminding the experts that this subject had already been discussed briefly at the last plenary meeting, on 9 March 2006, where the Commission Services presented the Working Document 'Administrative and Legal Framework/Questionnaire' (CCCTB/WP/30). Some experts have provided the Commission with written comments to the Questionnaire and with that input the new document complements the questionnaire and further elaborates the main areas to analyse.

42. One expert said that the CCCTB has to be applied the same way in all the MS and considering that the introduction of new procedures is always very difficult care should be taken when designing them. The procedures should be simple but at the same time avoid possible abuses. A high level of coordination is desirable. It first needs to be decided what type of system we want to introduce.

43. Another expert considered that the Document introduced by the Commission Services is useful but at the same time it cannot be studied in detail until more details

about the base itself are available and that the discussion of the administrative and legal framework should be postponed.

44. One expert mentioned the possible problems in this area that may derive from consolidation and the transitional problems that need to be looked at carefully. The Commission Services commented that the base should be focused on first and only later should the transitional problems be examined.

45. One expert said that extreme care is required when defining the group that is going to consolidate, and the different types of companies in different MS need to be considered. He also pointed out the complexity of the treatment to give to intra-group transactions, where examples are probably needed. It will be important to look how the relations between companies within the group are organised (most likely via some form of contractual arrangement) and how this affects the tax procedure, for example how the sanctions should be imposed if a mistake in the profit/loss account of one company affects other companies within the group and the apportionment. Another expert agreed that this is a complicated matter that needs to be analysed in detail.

VII. ANY OTHER BUSINESS AND CONCLUSIONS

The Chair informed Members of the WG that the next meeting of the WG is planned for 12th September 2006 and concluded the meeting with details of forthcoming sub-group meetings and deadlines for the receipt of written contributions.