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DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
Analyses and tax policies
CCCTB Task Force

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COMMON CONSOLIDATED CORPORATE TAX BASE WORKING GROUP (CCCTB WG)

Various detailed aspects of the CCCTB

Meeting to be held on 14 and 15 April 2008

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WORKING DOCUMENT

I. Introduction and purpose of the paper

1. Since the presentation and discussion of the paper: CCCTB/WP/057 'CCCTB: Possible elements of a technical outline' at the Working Group Meetings in September and December 2007 work has continued on various aspects of the CCCTB. The purpose of this paper is simply to indicate some of the detailed issues which the Commission Services believe it would be useful to discuss at the meeting on 14 and 15 April 2008.
2. Several experts have already stated that they find it difficult to comment on detailed issues without seeing the 'whole proposal'. However, until this is available comments and discussion on individual details are still welcome, indeed they will provide input into the 'whole proposal'.
3. This list of subjects is not meant to be exhaustive, nor is it presented in any order of 'priority'. It is simply a sample of some of the issues on which further input is requested. Experts are encouraged to suggest additional subjects for discussion at the meeting. The Commission Services will introduce each subject at the meeting explaining the issue in some detail.
4. **Tax Principles:** CCCTB/WP/057 envisaged that as a last resort reference should be made to national GAAP for interpretation where the CCCTB legislation proved to be incomplete or insufficiently clear. However, this approach has met with little support from those experts who have commented and accordingly the alternative of providing within the legislation some explicit tax principles has been examined. These would be included to assist in the interpretation of the legislation and remove the need for reference to any external national legislation or practice.
5. A suggested clause could be as follows:

TAX PRINCIPLES

The tax base shall be computed in accordance with the following general principles unless otherwise stated.

 - (a) The accruals principle
 - (b) Profits and losses shall only be recognised when they are realised.
 - (c) Transactions and taxable events shall be measured individually.
 - (d) The calculation of the tax base shall be carried out in a consistent manner unless exceptional circumstances justify a change.
6. Experts are invited to comment on this possible formulation.
7. **'Joiners and Leavers':** The issue of how to deal with companies who join the CCCTB, either when they, or their group, initially opt for the CCCTB, or when they become eligible because they have been purchased by, or merged into, an existing CCCTB group has not been covered in any depth to date. Similar issues arise when a company leaves the CCCTB, either because they do not renew their option at the end of the suggested 5 year minimum term, or because they are sold to, or merged into, a group which has not opted for the CCCTB. As the CCCTB proposal will be addressed to all twenty seven Member States the Commission Services do not intend to examine the theoretical situation of some Member States remaining outside the CCCTB. It should be noted that the issue of 'Joiners and Leavers' is closely linked to 'reorganisations' in general.

8. The following questions could be considered when a company enters a CCCTB group:
- **With which values should the assets of the company enter the CCCTB?** (i) The assets of the company could enter with their tax written down values calculated according to the domestic tax law, or (ii) the assets of the company could enter with their fair market values. Currently, the Commission Services prefer alternative (i).
 - **How to treat the underlying capital gains/losses that have been built up in the MS jurisdiction before entering the CCCTB group?** (i) There could be no special treatment of the underlying capital gains/losses. They will be taxed in accordance with the CCCTB rules and shared according to the formula. A reason for that solution would be its simplicity to apply; (ii) there could be a deferral of the underlying capital gains/losses until the respective asset/liability is realised. The underlying gains/losses will be attributed to the MS where the underlying capital gains/losses have been built up and will be taxed with the domestic tax rate of that MS. The realised capital gain of the CCCTB tax base must be adjusted in the amount of the taxed capital gain/loss at the MS level; and/or (iii) there could be company's option of a pro-rata taxation of the underlying capital gains/losses over a given period (no direct relation to the realisation of the respective asset/liability). Currently, the Commission Services prefer alternative (ii).
 - **How to treat assets/liabilities with a different recognition/qualification/valuation in the two jurisdictions (domestic tax law and CCCTB)?** Special rules for (i) changes in the qualification of an individually depreciated or pooled asset; (ii) domestic assets that do not qualify as CCCTB assets, e.g. R&D expenses; (iii) long-term contracts if MS apply a completed contract method; (iv) a different recognition or valuation of provisions would be necessary.
9. The following issues should be considered when a company leaves the CCCTB group:
- (a) Level of the company selling the shares of its subsidiary
- **Sale of major shareholding:** participation exemption and possible application of the anti-abuse rule if a transfer of assets took place in the year of the sale or the preceding year
 - **Sale of portfolio shareholding:** taxation of capital gains
 - **Non-renewal of the CCCTB option:** possible application of the anti-abuse rule if a transfer of assets took place in the year of the non-renewal or the preceding year.
- (b) Level of the leaving company
- **How should the assets of the company enter the domestic law:** same treatment as for companies entering the CCCTB
 - General rule: assets should enter with the CCCTB tax written down value.
 - How should the CCCTB asset pool be treated in the domestic law if a pooling method is not known in the domestic tax law?
 - **Old underlying capital gains/losses** (that belong to the MS where the company was located when entering the CCCTB): should be transferred back to MS (assuming that no transfer of seat of the company took place), taxation according to domestic rules
 - **New underlying capital gains/losses** (accrued during the CCCTB time): calculation of the underlying capital gains/losses as for companies entering the CCCTB; attribution of the underlying capital gains/losses in accordance with the formula applicable on the date when the company is leaving the CCCTB;

assessment of the respective tax liabilities and tax repayments for each qualified asset. Information exchange between MS where the asset is located and the (former) principal tax authority necessary in order to inform about the sale (realisation) of the asset.

10. **'Local Taxes'**: When these were discussed in September 2006 most experts seemed to prefer that 'local' taxes should be deducted not from the consolidated tax base, but be deducted from each individual Member State's share of the consolidated tax base. Working Papers CCCTB/WP/043 'An overview of the main issues that emerged at the fourth meeting of SG3' and CCCTB/WP/45 'Summary Record of 12 September 2006 meeting' (paragraphs 15 to 25) include further details.
11. The Commission Services can understand the theory behind wanting to treat local taxes in this way. However, in order to include this in a legislative proposal a clear definition of these 'local' taxes is necessary, and most importantly the separate identification of such items by companies must be practical and not disproportionately expensive in terms of compliance so further discussion would be helpful.
12. **Gifts**: On several occasions experts have requested clarification of the suggested treatment of gifts in CCCTB/WP/057. The Commission Services plan to explain in detail what the Working Paper suggests, highlighting areas where alternative treatment could be envisaged (see table summarizing working document 057).

**TAX TREATMENT OF GIFTS
CCCTBWP057**

| | | Taxable income | Deductible expense | Remaining issues / Clarification |
|------------------------------------|--------------|---|---|---|
| GIVER | Monetary | No (not an income) | No (para 25) | |
| | Non monetary | Yes (para 45) Market value disposal of assets, goods or services | Yes (para 45) | "The cost of making the gift would remain deductible" refers to the TWD value of an asset (only the net capital gain is taxable), the cost of the purchased goods or the production cost of manufactured goods or of a service. |
| RECIPIENT | Monetary | Yes (para 22) | No (not an expense) | |
| | Non monetary | Yes (para 22 & 47 / market value) | No depreciation (para 47) | |
| GIFT TO A "CHARITABLE BODY" | | | | |
| GIVER | Monetary | No (not an income) | Deductible (para 25) | Common criteria for charities needed. |
| | Non monetary | No (para 46 : "deemed disposal at market value would not be taxed") | Deductible (para 46 : "cost would remain deductible") | |
| RECIPIENT | Monetary | Not in the scope of CCCTB | | |
| | Non monetary | | | |

NB: note that sponsoring and advantages granted to employees are not regarded as a gift.

NB 2: Business Europe suggests book valuation of non monetary gifts to aid business donations of, for example drugs.

