



EUROPEAN COMMISSION

DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION

ANALYSIS AND TAX POLICIES

Direct tax legislation

Brussels,
Taxud-D1

CCCTB\20101020 summary

SUMMARY RECORD BY THE CHAIR OF THE COMMON CONSOLIDATED CORPORATE TAX BASE WORKSHOP

held in Brussels on 20 October 2010

B-1049 Brussels / Belgium.

Telephone: central (32-2) 299.11.11; direct line (32-2) 295.03.22. Fax: (32-2) 295.05.51

E-Mail: taxud-d1@ec.europa.eu.

I. OPENING OF THE MEETING

The workshop on the CCCTB (Common Consolidated Corporate Tax Base), chaired by the CS (Commission Services), was attended by experts from all MS (Member States), invited representatives from the business organisations and academics. An attendance list is attached as annex. The Chair welcomed the participants and opened the meeting. The Chair outlined the four papers that would be discussed over the course of the day:

- (i) Eligibility tests for companies and definition of a CCCTB group (WP CCCTB/RD\001);
- (ii) Business reorganisations in the CCCTB (WP CCCTB/RD\002);
- (iii) Transactions and dealings between the group and entities outside the group (WP CCCTB/RD\003);
- (iv) Anti-abuse rules in the CCCTB (WP CCCTB/RD\004).

II. UPDATE FROM THE COMMISSION SERVICES ON THE PROGRESS MADE

The Commission Services (CS) gave an overview of the work on the CCCTB since the last formal meeting in April 2008. The reference working documents remain CCCTBWP57 (outline of the tax base and the consolidation), CCCTBWP060 (sharing mechanism) and CCCTBWP061 (administrative framework), but there was a need for clarifications on the issues addressed in the four above working papers. The work on the legislative drafting is in progress and is expected to lead to a proposal for the first quarter of 2011.

Business Europe (BE) were given the floor and indicated that they were pleased that the technical work on the CCCTB had resumed. One MS¹ indicated that in the intervening period Governments have not made progress on alleviating double taxation and providing cross-border loss relief. There is a challenge to European growth from Brazil, Russia, India and China. A well functioning corporate tax system is a key factor for growth. This MS is hopeful that a Regulation or Directive on the CCCTB will be published as soon as possible next year.

III. WORKING PAPER I - ELIGIBILITY TESTS FOR COMPANIES AND DEFINITION OF A CCCTB GROUP

The CS gave a PowerPoint presentation summarising the main features of this paper.

Discussion on this paper focussed on the following main areas:

- Three eligibility tests – a number of speakers indicated a preference for a two part test and suggested that the thresholds should all be the same and possibly lowered to 50% to allow for joint ventures. There was not however an overwhelming view in favour of reducing the eligibility to two tests and lowering the thresholds with one speaker noting that the US has a threshold of 80% for consolidation.

¹ Throughout the document the terms 'members', 'experts', and 'Member States' (MS) are used. In conformity 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.

- Entering and leaving rules- there was a general view of those speakers that took the floor that the rules on entering and leaving the group should be simplified. A possible approach would be entering the group at the start of a fiscal year and possibly leaving at the end of a fiscal year.
- Definition and listing of an eligible taxpayer and third country entities with a similar form, exchange of information and the applicability of the Council Directive on Mutual Administrative Assistance. Some discussion of pros and cons of a listing approach followed. When the top company opts, it is going to have to deliver a listing of the group. There will be an element of checking.
- One MS made a political intervention re-iterating its position that it does not favour an optional approach to the CCCTB but rather a mandatory approach.

The CS thanked the speakers and indicated that as a proposal has not yet been made the CS was still open to input from everybody and encouraged written comments.

IV. WORKING PAPER II - BUSINESS REORGANISATIONS IN THE CCCTB

The CS gave a PowerPoint presentation summarising the main features of this paper.

Discussion on this paper focussed on the following main areas:

- Entering rules - Ring-fencing of pre-consolidation trading losses: ring-fencing is considered as a good solution. But for one representative from business, the pre-consolidation trading losses should be available for offset against the consolidated tax base in some circumstances.
- Entering rules - Unrealised gains on fixed assets - 5-year rule for adjustment: a number of speakers suggested that this rule does not take into account the specific situation of real estate and could be too long for short term assets.
- Entering rules - Proxy for self-generated intangible assets: this proposal is seen as a good compromise, avoiding too much work for the evaluation of intangible assets and useless evaluations inside the group. But a number of speakers said that self-generated intangibles would not be captured in full and that it will be difficult to evaluate the costs incurred if there is no transfer pricing mechanism any more. One speaker raised a problem of partially deductible R&D costs and considered that they should be only partially taken into account for tax purposes in the CCCTB. This speaker also mentioned that, conversely, where totally deductible R&D expenses get tax credits, a double dip may appear.
- Reorganisations between two or more CCCTB groups: one MS asked for further clarification on the apportionment of losses when no taxable presence is left in a Member State.

V. WORKING PAPER III - TRANSACTIONS AND DEALINGS BETWEEN THE GROUP AND ENTITIES OUTSIDE THE GROUP

The CS gave a PowerPoint presentation summarising the main features of this paper.

Discussion on this paper focussed on the following main areas:

- International agreements and CCCTB: a number of speakers addressed issues concerning the treaty to be applied and the calculation of profits according to arm's length principle or to the CCCTB rules. When OECD rules are to be

observed, comments were made on situations where the amount to be taxed under OECD rules is different from the one under the CCCTB rules. A suggested solution was that the CCCTB will apply even if it leads to a greater taxable amount. And when the taxable amount under the CCCTB rules is smaller than the one calculated under the OECD rules, the taxpayer should get a credit only for the tax which has been paid.

- Relief for double taxation - Exempt income: one speaker queried what happens to foreign losses and recapture rules, suggesting relief should be available.
- Relief for double taxation - Relief by credit: some speakers proposed allowing the carry forward of outstanding credits. One MS spoke against this proposal.
- Withholding tax in the MS of source: one speaker considered that the proposal would consist in adding new reporting requirements, which would not be a simplification.
- Associated enterprises: one speaker addressed an issue concerning the OECD approach dealing with PEs and Head Offices as separate entities and considered that this OECD approach should not lead to splitting general enterprises into two parts. This speaker simply suggested ignoring head offices in this context.

VI. WORKING PAPER IV - ANTI-ABUSE RULES IN THE CCCTB

The CS gave a PowerPoint presentation summarising the main features of this paper.

Discussion on this paper focussed on the following main areas:

- General Anti-Abuse Rule: a number of speakers mentioned that there is no need for a GAAR in the CCCTB regime. Three MS considered it on the contrary as important to have a broad general anti abuse rule and proposed to replace the “*sole purpose*” by “*main purpose*” or by the notion of purely artificial arrangement.
- Disallowance of third-country source interest deduction: one MS asked for a listing of recognized stock exchanges and for criteria in order to recognize them.
- CFC Legislation: two speakers asked for an exemption in case of active trade and business, particularly as regards developing countries. One MS considered that the thresholds proposed in the working paper already deal generously with these situations.
- Rules to tackle double deductions in the so-called 'sandwich cases': one MS asked for an explanation on how the double deduction will be avoided.

VII. CLOSING OF THE MEETING

The CS closed the meeting with the following comments:

- a proposal is expected to be brought forward for the first quarter of 2011;
- concerning the definition of the group members and the coverage, some speakers were looking for a wide and others for a narrow scope. In addition, there is probably a need for simplification. These are issues that will be reflected on;
- concerning the business reorganisations, speakers expressed concerns about the use of a proxy for the valuing of intangibles. The answer will have to be pragmatic and simple;
- concerning the entities outside of the group, there is an interaction with double tax conventions. An accommodation on that will have to be found;

- concerning the GAAR, the CS will continue to reflect on this issue and also on specific anti-abuse issues;
- written comments are still welcome, in particular on any of the detailed technical points raised which were not addressed in full during the meeting.

The CS thanked the participants and closed the meeting.

ANNEX

Attendance List

| Last Name | First Name | Company's/Organisation's Name |
|------------------|-------------------|--------------------------------------|
| MORRIS | William | AmCham EU - GE |
| PENNELLS | Geoff | AmCham EU - Citigroup |
| ANDERSSON | Krister | Business Europe |
| BARENFELD | Jesper | Business Europe |
| LENON | Chris | Business Europe |
| KEIJZER | Theo | Business Europe |
| KERSCH | Guy | Business Europe |
| BAUMGÄRTEL | Martina | CEA |
| OSTREICHER | Andreas | CEPS |
| ARBAK | Emrah | CEPS |
| O'BRIEN | Cora | CFE |
| RICHELLE | Isabelle | CFE |
| REIBEL | Rudolf | CFE |
| LANG | Michael | EATLP |
| WIMAN | Bertil | EATLP |
| VAN RAAD | Kees | EATLP |
| GARCIA PRATS | Alfredo | EATLP |
| STARINGER | Claus | EATLP |
| MARINO | Giuseppe | EATLP |
| LITWINCZUK | Hanna | EATLP |
| VAN DER MADE | Bob | EBIT |
| CUSSONS | Peter | EBIT |
| PATER | Krzysztof | EESC ECO Section |
| VEKEMANS | Ludo | ETUC |
| WIESELTHALER | Karin | EUROCHAMBRES |
| CAMPI | Giovanni | EUROCHAMBRES |
| KAISER | Roger | FBE |
| MORRISON | Rachel | FBE |
| RÖDLER | Friedrich | FEE |
| WEYMÜLLER | Petra | FEE |
| BENNETT | Mary | OECD |
| ROY-CHOWDHURY | Chas | UEAPME |
| BRANDSTAETTER | Michael | UEAPME |
| PARASCANDOLO | Paola | ASSONIME |
| FARGAS | Lluis | TEI |
| SCHWENKER | Jörg | BStBK |
| HERZIG | Norbert | University of Cologne |
| FALK | Torsten | Bundesrat |
| AUJEAN | Michel | Personal invitation |
| RAUTENSTRAUCH | Gabriele | Personal invitation |
| WERNER | Philippe | BELGIË/BELGIQUE |
| GOMBEER | Jacques | BELGIË/BELGIQUE |

| | | |
|--------------------------|-------------|----------------|
| ZHIVKOV | Vassil | BULGARIA |
| ZDENEK | Petr | CZECH REPUBLIC |
| HRDINKOVA | Milena | CZECH REPUBLIC |
| NORDLAND | Ivar | DANMARK |
| VESTERGAARD | Jesper Leth | DANMARK |
| BAUMGARTNER | Hans J | DEUTSCHLAND |
| FEHLING | Daniel | DEUTSCHLAND |
| BECKER | Katherina | DEUTSCHLAND |
| Name withheld on request | | DEUTSCHLAND |
| TOBIN | Gary | ÉIRE-IRELAND |
| O'CONNELL | Patrick | ÉIRE-IRELAND |
| TALUR | Marko | ESTONIA |
| MADRUS | Kristo | ESTONIA |
| SANTAELLA | Manuel | ESPAÑA |
| POZA | Roberta | ESPAÑA |
| ANDRÉ | Aurélie | FRANCE |
| HAMADI | Hakim | FRANCE |
| PALAT | Olivier | FRANCE |
| FAUARA | Fotini | FRANCE |
| DI MEGLIO | Maria | GREECE |
| MASSAI | Simona | ITALIA |
| MANTI | Irene | ITALIA |
| KALANE | Astra | CYPRUS |
| KOKENBERGS | Andis | LATVIA |
| KVEDYTE | Zivile | LATVIA |
| LINKEVIČIUS | Vaidotas | LITHUANIA |
| SCHROEDER | Guy | LITHUANIA |
| ESPEN | Alain | LUXEMBOURG |
| VINCZE | Enikö | LUXEMBOURG |
| SIEGLER | Zsófia | HUNGARY |
| BORG | Mario | HUNGARY |
| FARRUGIA | Aldo | MALTA |
| BUTTIGIEG | Matthew | MALTA |
| STOLK | Thomas | MALTA |
| van der TORREN-JAKMA | Keetie | NETHERLANDS |
| EMMINK-GRANNEMAN | Laura | NETHERLANDS |
| SCHOUW | Oscar | NETHERLANDS |
| NOLZ | Wolfgang | NETHERLANDS |
| MAYR | Gunter | ÖSTERREICH |
| ROSNER | Margarete | ÖSTERREICH |
| ZASADA | Dariusz | ÖSTERREICH |
| TABORSKI | Grzegorz | POLAND |
| PINTO | M. | POLAND |
| SANTOS | Pedro | POLAND |
| TUCULAN | Luiza | PORTUGAL |
| NUTU | Adriana | PORTUGAL |
| ANDREJASIC | Ingrid | ROMANIA |
| SINKOVEC | Meta | ROMANIA |
| HERKOVA | Jana | SLOVENIA |
| ROMAN | Branislav | SLOVENIA |
| | | SLOVAKIA |
| | | SLOVAKIA |

JÄRVIKARE
MALMGREN
SHEIKH
WIBERG
ROOTS
VITKOVITCH
DE LIMA

Terhi
Marianne
Elisabeth
Magnus
Christine
Stephen
Sanu

SUOMI-FINLAND
SUOMI-FINLAND
SVERIGE
SVERIGE
UNITED KINGDOM
UNITED KINGDOM
UNITED KINGDOM

KERMODE
NEALE
IHLI
MITROYANNI
KELLY
CHAPPUIS
LOPEZ RODRIGUEZ
TUOMINEN
FATICA
LYAL
MOELLS
OSTROVSKIS

Philip
Thomas
Uwe
Ioanna
Declan
Laurent
Juan
Ivar
Serena
Richard
Walter
Valerijus

COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES
COMMISSION SERVICES