



European Commission
Taxation and Customs Union

Common Consolidated Corporate Tax Base (CCCTB)

Tallinn, 11th November 2011

Background

■ 16th March 2011:

College adopted Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB);

■ Why March 2011?

9th May 2010 - Monti Report – A New Strategy for the Single Market

27th October 2010 – CCCTB included in the Commission Work Programme for 2011 and the Communication on a Single Market Act

24th/25th March 2011 – European Council - '***Euro Plus Pact***' annexed to the Conclusions - all Member States signed except for UK, SE, HU and CZ Republic - *Acknowledgement that Tax is on the agenda*

17th August 2011 – Merkel–Sarkozy Letter addressed to **van Rompuy**

There will be a report from Finance Ministers and the Commission to European Council **later this year** – with update on CCCTB



EU Institutions for Consultation or Notification

■ European Parliament

'Lead' Committee: ECON; IMCO will also issue an Opinion.

■ Economic and Social Committee

Opinion already approved – positive about the fundamentals of the proposal – comments on certain detailed matters.

■ Committee of the Regions

Rapporteur – Mr Graas (LU); draft Opinion – discusses impact on regional and local revenues from taxes

All 3 institutions are traditionally positively disposed to tax proposals.

■ National Parliaments

18th May 2011: CCCTB deadline for reasoned opinions –
Commission received: 13 votes from 9 Parliaments – BG 2, IE 1, MT 2, NL 1, PL 1, RO 1, SK 2, SE 2, UK 1.



Impact Assessment

- Examined the implications of **4 policy alternatives** in connection with the status quo scenario: optional & compulsory CCTB, optional & compulsory CCCTB.
- Based on the **quantified economic impacts**: optional & compulsory CCCTB are preferred to the alternative options given the savings in compliance costs which they generate;
- **Macroeconomic evidence** points to the optional CCCTB as the **overall preferred option**; welfare results are underestimated; dynamic modelling is missing and, as a result, the long-term effects of reduction in uncertainty and costs cannot be captured.
- 5 Studies: European Tax Analyser, PWC Study, Deloitte Study on tax compliance costs, Orbis database and CORTAX Study, Amadeus and Orbis database; changes in administrative costs for national tax administrations.
- [This presentation will not discuss the impact assessment in detail]

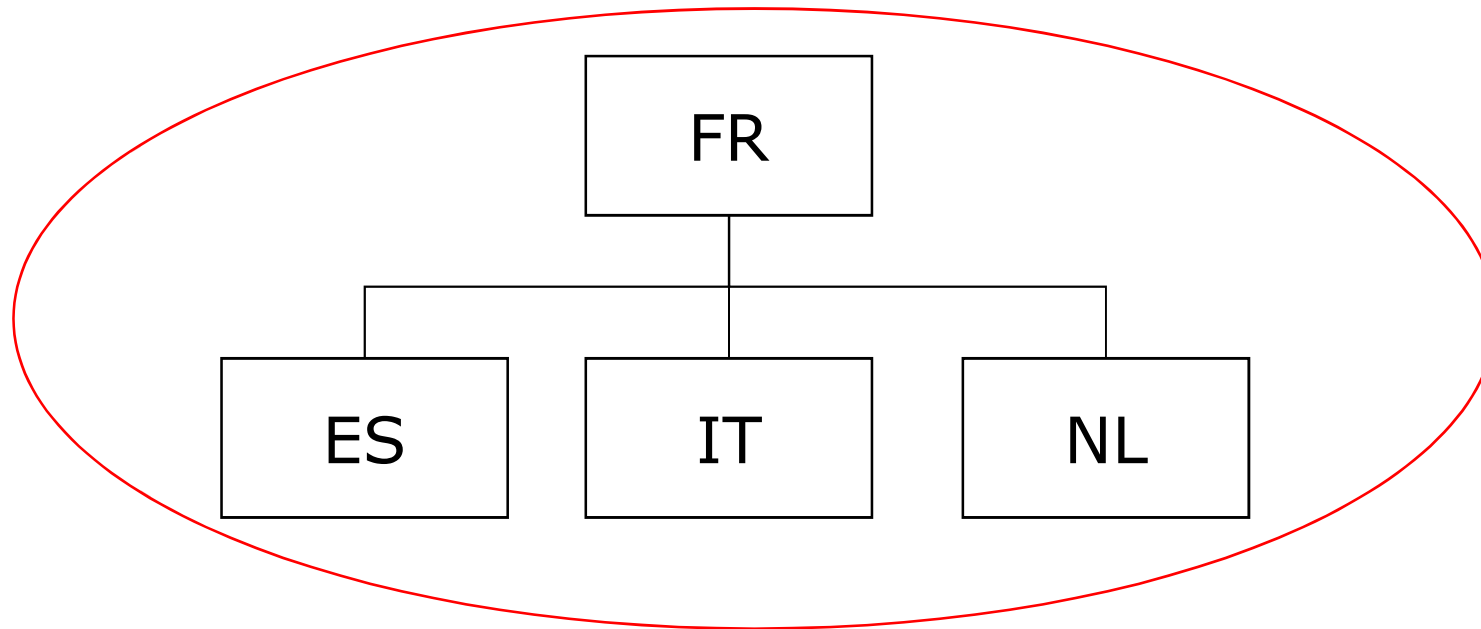


CCCTB Benefits in Figures

- Savings in compliance time and costs: current compliance costs to be **reduced by 7%** - this is equivalent to €0.7 billion across the EU
- Consolidation (=cross-border loss offset) brings savings of €1.3 billion for companies
- Tax-related benefits for companies to establish in another Member State – to be reduced by 62% for large enterprises and 67% for SMEs
- If 5% of SMEs expanded on this basis - €1 billion of overall savings



The CCCTB World



- Tax declaration in one MS (**'one stop-shop'**);
- **No transfer pricing** within the Group;
- Automatic cross-border **loss-offset** within the Group;
- MS are **free to set rates** on 'their shares' of the consolidated tax base
- **Optional** system



Scope

- The CCCTB provides for a **common base** for the taxation of certain **companies** and **groups of companies** and lays down rules relating to the **calculation** and **use of that base**.
- 'Single Taxpayer', 'Group'.
- Companies, fulfilling the requirements for forming a group, have to consolidate if they opt into the system of common rules ('**all-in all-out**').
- The CCCTB will only apply to the **company types** listed in Annex I which are subject to one of corporate taxes listed in Annex II.
- EU-located PEs of third country companies are only eligible to opt in if they are subject to one of the corporate taxes (listed in Annex II) and their head office has a company form meeting the requirements of Annex I - (list to be published).
- Transparent entities of any type (e.g. partnerships) cannot participate as taxpayers in the CCCTB.



Optionality

Optional common tax base

- This is an **optional** scheme - EU-resident companies or EU-located PEs of third country resident companies may continue to apply national rules;
- Single companies or groups which opt in have to apply the common rules for **5 years** (+ extension for successive terms of 3 years).
- Commission does **not** propose that **MS change their existing national CIT rules** (incl. patent boxes, R&D schemes, notional interest deduction, Estonian profit distribution tax system, notional interest deduction, etc);
- However, companies which opt in the CCCTB **shall cease to be subject to national corporate tax** arrangements in connection with matters regulated in the Directive.



Structure of Tax Base

- Revenues
 - less
 - Exempt revenues,
 - Deductible expenses
 - Deductions for depreciation
- Non-deductible expenses – exhaustive list
- Expenditure incurred for the benefit of shareholders in closed-end companies
- Rules on Timing & Quantification: accruals' principle, valuation, trading book, insurance, long-term contracts, stock & work-in-progress, provisions, pensions, bad-debt deductions.



Depreciation

- **Fixed assets** are subject to depreciation;
- What is a fixed asset?
- If a fixed asset is neither **individually depreciable** (buildings, long-life tangible assets, intangible assets)
- nor an **asset not subject to depreciation,**
- it will be depreciated in a **pool** (25% annual rate)
- Rollover relief for replacement assets
- Exceptional depreciation
- Special treatment of R&D



Losses – General Principle

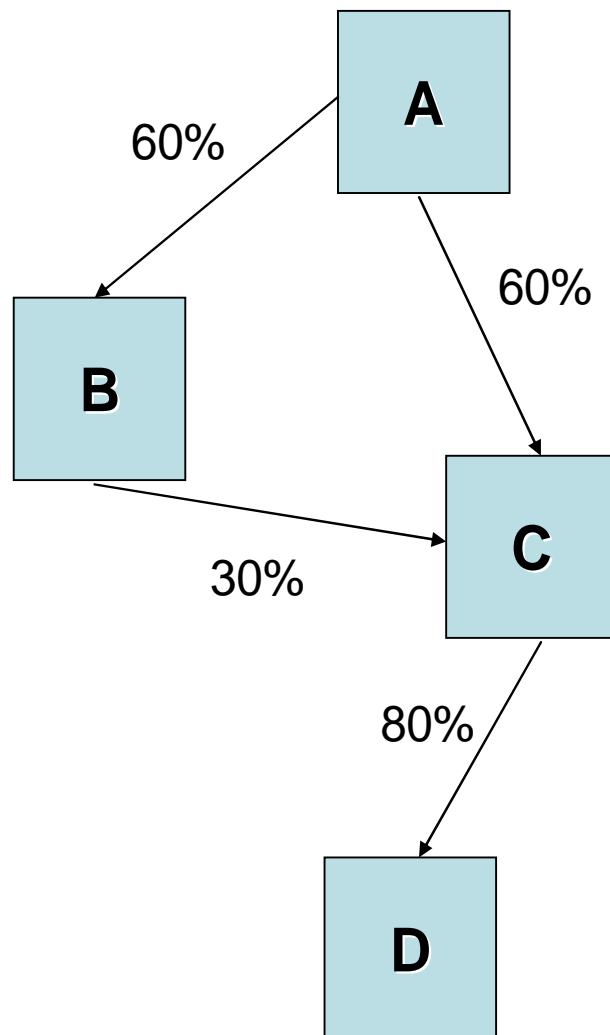
- **Losses incurred under the system of the Directive:**
unlimited carry-forward; no carry-back
 - If a single (non-consolidated) taxpayer leaves the system, unrelieved losses will be treated according to the rules of the system it is moving to (i.e. national law).
- **Unrelieved losses incurred under national law:** ring-fenced - If a single (non-consolidated) taxpayer starts applying the common rules, any unrelieved losses may be deducted against its tax base but only to the extent allowed under national law



Consolidation I – Tests for Consolidation

- There is a **2-part test** for consolidation based on **control** (more than 50% of voting rights) **and ownership or entitlement to profits** (more than 75% of capital or profit).
- **Indirect participation:** voting-right threshold, if reached, counts for 100%; capital holding or entitlement to profit are calculated by multiplying ***at each tier***.
- Intra-group transactions shall not give rise to a profit/loss for tax purposes – profit realisations reserved for transactions with companies outside the group.
- Absence of withholding taxes and source taxation within the group.





Consolidation II

- Outcome of **adding up together the tax results of the bases** of the individual group members
- Consolidation is effectively the sum of the profits/losses of the members. The tax base is the result of adjusting a company's P&L account to the common rules - There is no Tax B/S
- Profit or loss from intra-group transactions is ignored. No transfer pricing adjustments apply within the group
- Member States may **adjust their share** of the base where the **Directive explicitly permits** (ring-fenced losses, local taxes, some insurance provisions).



Underlying Gains & the CCCTB Group

- Upon transitioning either into or out of a CCCTB Group, there are capital gains related implications for the following:
 - Fixed assets &
 - Self-generated intangible assets
- Rationale: capital gains shall be taxed when realised and – to the extent possible – we should ensure that the Member States where those gains were built retain a right to tax them.



Losses & the CCCTB Group

- **Losses incurred under another system before entering a CCCTB group:** ring-fenced - deductible against the apportioned share only to the extent allowed under national law
- **CCCTB group losses:** automatic offset of profits and losses (due to consolidation)
 - If a group member leaves the group: no loss allocation
 - If a group is terminated: loss allocation to group members



Exemption & Switch-over Clause

■ **Exemption** for foreign income:

- third-country located PEs;
- inbound dividend distributions; and
- proceeds from the disposal of shares.

■ **Limits to exemption – Switch-over clause:**

- (i) income that has not been subjected to tax at source (aim: to prevent double non-taxation);
- (ii) income earned in a low-tax third-country jurisdiction (aim: to ensure that low-tax countries remain penalised) - where income is taxed in a third country at a statutory corporate tax rate lower than 40% of the average EU statutory rate or a special regime in that third country allows for a substantially lower level of taxation than the general regime.



Disallowance of Participation Exemption for Share Disposals

■ Disallowance of exempt share disposals:

Gain on **fixed assets** leaving the group

- if transferred intra-group to the leaving company
- in the present or previous tax year

■ Escape clause: valid commercial reasons

➤ 'Twin' rule where assets leave the group by 'direct' sale:

- **ex-post adjustment** of the asset factor of the transferring group member (for the period between the intra-group transfer and the sale outside the group).



Credit Relief

- **Relief by credit** for income not treated as exempt – primarily, interest and royalties and any other income taxed at source;
- Credit is **shared** amongst the members of a group according to the formula of that tax year;
- Credit is limited to **ordinary credit**;
- In calculating the credit, the gross income subjected to WHT in the state of source should be reduced by 2% to account for expenses – possibility that the taxpayer proves otherwise.



Withholding Tax

- If a group member charges **withholding tax** (WHT) on:
 - (outbound) **interest and royalties**, the WHT is shared, without being included in the consolidated tax base, among the Member States according to the formula of that tax year;
 - (outbound) **dividend** distributions, the withholding tax is not shared.
- **Note:** WHT is **not** chargeable where the Parent-Subsidiary or Interest & Royalties Directive is applicable.



Associated Enterprises

Transactions between Associated Enterprises

- Adjustment of pricing of transactions between non-consolidated associated enterprises according to 'arm's length' principle;
- Definition: follows the **OECD principle** coupled with **specific requirements** for **control** (>20% of voting rights), **ownership** (>20% of capital) and **management** (significant influence in the management of the associated enterprise);
- Value of the transactions is measured according to best practice in International Tax Law.



Anti-Abuse (i)

- The anti-abuse elements of the CCCTB:
 - General Anti-Abuse Rule (**GAAR**)
 - Disallowance of interest deductions;
 - Controlled Foreign Company Legislation (**CFC**);
 - Switch-over clause;
 - Disallowance of participation exemption for certain share disposals;
 - Re-attribution of assets sold out of the group shortly after an intra-group transfer;



Anti-Abuse (ii) - CFC Legislation

Requirements for applying CFC legislation:

- (a) A company applying CCCTB rules,
by itself or together with its associated enterprises, must control the **voting rights** or own **capital at more than 50%** or be entitled to receive more than 50% of the **profit**;
- (b) The CFC is tax resident in a **low-tax third country**;
- (c) More than **30%** of the income accruing to the CFC is '**tainted**' – the concept is defined by reference to the **type of income** and **more than 50%** of the income must be derived from transactions between the CFC and the taxpayer (or its associated enterprises);
- (d) **Escape clause**: if the CFC's principal class of shares is regularly traded on a recognised stock exchange.



Formulary Apportionment

- A formula is used for apportioning a tax share to each group member.
- 3 equally-weighted factors (Labour, Assets and Sales);
- Safeguard clause;
- Treatment of intangibles;
- Sector-specific formulae for (i) Financial Institutions; (ii) Insurance Undertakings; (iii) Oil and Gas and (iv) Shipping, Inland Waterways Transport & Air Transport.



Estonia & the CCCTB

- **29th September 2011** – Estonian government approved a **preliminary statement supporting the proposed CCCTB** as an optional system which would run in parallel to the national corporate tax system;
- Support was made conditional upon a number of factors - the CCCTB shall:
 - have a broad tax base;
 - be clear;
 - be uniformly applicable;
 - involve low administrative costs;
 - increase competitiveness;
 - not have a negative impact on the Estonian corporate tax revenue;
 - simplify business activities in Europe.

