NFTC 2008 Tax Committee Fall Meeting

Common Consolidated Corporate Tax Base (CCCTB) Update

October 10 2008

Tom Neale
Head of CCCTB Task Force
DG Taxation and Customs Union
European Commission

Summary

- Introduction to CCCTB
- Technical Outline, Administration and ‘Sharing’
- Anti-abuse & ‘special measures’
- Progress in 2008
- Q & A
**CCCTB – What is it?**

- Common – same rules in all Member States
- Consolidated – automatic cross-border profit and loss offset, no intra group transfer pricing
- Corporate – for specified companies and corporate forms
- Tax Base – rules for base not rates, so sharing mechanism required

**CCCTB – Why?**

- Aim is to remove tax obstacles to companies operating cross-border in the EU (27 jurisdictions) and
- Contribute to the Lisbon Strategy of growth, competitiveness and jobs

- An Internal Market policy – an additional option for companies
- Assist Member State administrations in maintaining a simple, competitive and legal set of company tax rules
History

- Quarterly Working Group Meetings since late 2004 – experts from all Member States (MS)
- Six sub-groups
- Two Commission Communications
- Three annual meetings with MS, business and academics
- 60+ working papers

Key Documents

- Commission Communication - May 2007
  - ‘Further Progress during 2006 and next steps towards a proposal on the Common Consolidated Corporate Tax Base (CCCTB)’
- DG Taxud Working papers
  - CCCTB: possible elements of a Technical Outline
  - CCCTB: possible elements of the Sharing Mechanism
  - CCCTB possible elements of the Administrative framework
  - All available on web-site, & discussed in CCCTB Working Group September & December 2007 & April 2008
Communication

Communication (May 2007)

• Broad
• Optional
• Consolidated
• Simple
• Financial Services Sector
• NOT RATES

Technical Outline

• General Approach
• Income & Expenses
• Depreciation of assets
• Consolidation
• Foreign Income – relief from double taxation
• Anti-abuse/protective measures

• ie – all the ‘normal’ aspects of a tax base
Income, Expenses & Depreciation

- Business Purpose ‘Test’/Assumption
- ‘Public policy’ – eg Entertaining expenditure
- Individual depreciation of long term assets
- Pooling of other assets

Consolidation and Foreign Income

- Group definition – 50%+ voting and 75%+ capital/profits
- Joiners and leavers (CCCTB and Group) – hidden reserves, timing and historic values (depreciation, losses etc)
- Local taxes – local deduction or consolidated deduction
- Foreign Income (subject to existing Tax Treaties) exempt but a switch over clause to credit relief for ‘low tax’ jurisdictions
Administration (i)

- ‘One stop shop’
- Principal Tax Payer (PTP) and Principal Tax Authority (PTA)
- Consolidated Return PTP to PTA
- Common strict time limits
- Judicial Appeals against consolidated assessment to Courts in the country of the PTP and PTA
- ECJ final Court of Appeal

Administration (ii)

- Interpretation of the Directive – eg ‘circulars’
- ‘Disputes’ between tax administrations
- Level of cooperation between tax administrations
- Exchange of information
Sharing

Formula Apportionment

- Labour
- Capital – excluding intangibles
- Sales by destination – excluding intra-group

Anti-abuse and ‘special’ measures

- General principle – wholly for tax avoidance etc?,
- Interest deductions – limited when subject to low tax?,
- Controlled Foreign Companies – deemed distributions?,
- Financial Services – credit institutions, insurance and 'in-house' equivalents;
  - Trading Book
  - Bad Debts
  - Technical Provisions
  - Factors for sharing
Progress

- Some very detailed technical areas still need further work
- No ‘artificial’ deadline
- When proposal and impact assessment properly ready Commissioner Kovacs will present them to the College
- Ongoing work to include continuing discussions and consultations with outside experts

Summary

- Introduction to CCCTB
- Technical Outline, Administration and ‘Sharing’
- Anti-abuse & ‘special measures’
- Progress in 2008

- Q & A
A non EU company between EU parent and EU subsidiaries

H1

H2

H3

S1

H1, H3 and S1 to consolidate?

H1, PE(H2), H3 and S1 to consolidate?

PE (H2)

A non EU parent holding EU subsidiaries via an EU PE

H1

PE (H1)

S1

S2

PE, S1 and S2 to consolidate?
A non EU parent with EU subsidiaries

H1

S1

S2

100% 100%

S1 and S2 to consolidate?