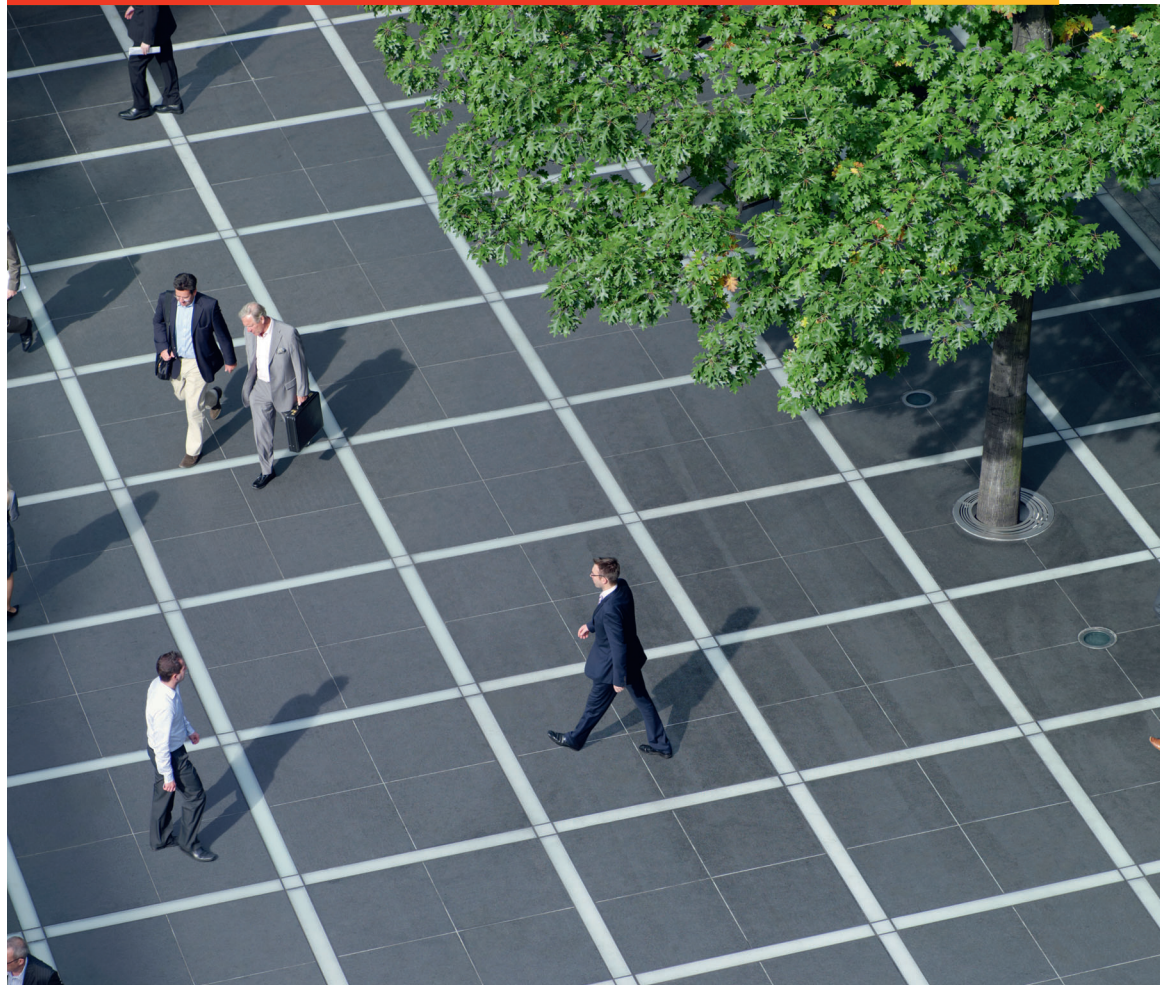


*A harmonised  
corporate and  
consolidated tax  
base for companies  
in Europe?*  
What you should know  
about the CCCTB

March 2011



# CCCTB - what is it?

*On 16 March 2011, the European Commission proposed a directive for a common system for calculating the tax base of businesses operating in the EU: the Common Consolidated Corporate Tax Base (CCCTB). This is a single set of rules which companies operating within the EU could opt to use to calculate their taxable profits. In other words, a company, or group of companies, would have to comply with just one EU system to compute its taxable income, rather than with different rules in each of the Member States in which it operates. Under the CCCTB, companies active in more than one EU Member State would only have to file a single tax return for all their activities in the EU (i.e. a ‘one-stop-shop’). Cross-border loss relief would be possible and there would be no transfer pricing rules in the CCCTB area. After the tax base has been calculated, it would subsequently be redistributed or apportioned to the relevant Member States participating in CCCTB, according to an agreed pre-set formula. The tax rates which are applied to the allocated tax base are not covered by the proposal, as they would continue to be determined at a national level.*

## **Towards a new EU tax strategy for companies**

If the proposal is adopted by the Member States in Council – either by all of them or by at least nine Member States under a special procedure – multinational companies (MNCs) would need to rethink their EU tax strategy. Companies would have to consider under what circumstances they would wish to opt-in and use the common tax base. This requires a proactive approach and a possible change in their EU tax strategy.

## **Will it happen?**

The CCCTB has been identified as an important initiative of the Barroso II Commission in the context of the Europe 2020 Strategy. It has also been mentioned in a series of major EU policy documents that aim to remove obstacles to the Single Market and stimulate growth and job creation within the EU (Single Market

Act and Annual Growth Survey). In the “Pact for the Euro” of 11 March 2011, the 17 Heads of State or Government of the Euro area (who are also EU member states) said that developing a common corporate tax base could be a revenue-neutral way forward to ensure consistency among national tax systems, while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses.

Following the Commission’s adoption of the legislative proposal, there are a number of EU procedural steps to be followed. These include:

- The Commission must ask the EU Council Presidency to add the proposal to its formal work agenda. Once this is done, the 27 EU Member States can start formal negotiations on the proposal in the Council’s Working Party on Tax Questions.
- The Commission’s proposal must be sent to the European Parliament and

the Economic and Social Committee (ECOSOC) for their consultative (non-binding) opinions to Council.

- The Commission may have to make non-substantive amendments to the proposal, as a result of requests from the Council (the Member States) and the European Parliament.
- The 27 national parliaments of the Member States must also be notified of the Commission’s proposal, under the new Lisbon Treaty rules, for an EU “subsidiarity and proportionality” test to be carried out. This is to ensure that the CCCTB proposal can only be dealt with at EU supranational level. Technically, a one-third minority of national parliaments could stop and delay the legislative process at EU level, but this seems unlikely.
- If the Council Working Party on Tax Questions can reach agreement on the technical and planning aspects, the proposal moves up to COREPER, the Council’s standing political voting assembly composed of the permanent representatives of the 27 EU Member States. But, if no political agreement can be reached in COREPER, the proposal is moved to the Finance Ministers in the ECOFIN Council.
- The ECOFIN Council can adopt the proposed directive only if it’s acting unanimously. If there’s no unanimous support among the Member States, the CCCTB proposal may be discussed under the enhanced cooperation procedure as a ‘last resort’. The decision authorising enhanced cooperation may be adopted by the ECOFIN Council acting with a qualified majority and provided that at least nine Member States participate. In the current economic and political climate, this is not impossible.

It should be stressed, however, that it's hard to assess how much support there really is among the 27 Member States for CCCTB, even under the enhanced cooperation procedure. This makes it difficult to predict the likelihood and timing of the CCCTB being adopted. Companies need to be aware that although the political process may take at least another year or so, a smaller group of Member States may want to implement CCCTB as a last resort via enhanced cooperation possibly in 2013/2014.

### **How PwC can help you**

We have a working group which has been dedicated to the CCCTB for the past three years, and which is also part of PwC's EU Direct Tax Group of EU tax law experts. This group closely monitors all EU developments of importance to business and has carried out one of the impact assessments and two other studies for the European Commission in relation to the CCCTB. We can provide you with more detail on the provisions of the proposed Directive and evaluate the potential impact on your business using a proprietary software tool.

We will also keep you up to date with CCCTB as the proposal finds its way through the political process.

### **CCCTB at a glance**

#### **Opting in and out of the CCCTB**

Companies would have to opt-in to the CCCTB for a minimum of five years and in respect of all qualifying subsidiaries (i.e. 'all-in' or 'all-out'). Following the expiry of that initial term, the single taxpayer or the group would continue to apply the system for successive terms of three tax years, unless they give notice of termination.

Non-EU companies with branches or subsidiaries in a Member State would also be able to opt-in to the CCCTB in relation to their EU activities. This would be on an 'all-in' basis, along with qualifying subsidiaries, as long as they met the same qualifying criteria required from EU companies.

#### **Profits and losses**

The tax base would be calculated as revenues minus exempt revenues, deductible expenses and other deductible items. In principle, revenues, expenses and all other deductible items would be recognised in the tax year in which they accrue or are incurred. Deductible business expenses include all costs relating to sales and expenses linked to the production, maintenance and securing of income. Deductibility is extended to costs of research and development and costs incurred in raising equity or debt for business purposes. Domestic corporate income tax credits for research and development are available only if companies have not opted-in for the CCCTB.

#### **Dividends, interest and royalty payments**

Income consisting of dividends, proceeds from the disposal of shares held in a company outside the group, and profits from foreign permanent establishments will be exempt. Income consisting of interest and royalty payments will be taxable, with credit for withholding tax paid on such payments.

#### **Depreciation of fixed assets**

Fixed assets will be depreciable for tax purposes, subject to certain exceptions. Long-life tangible and intangible assets are

depreciated individually, while others are placed in a pool (25% per annum declining balance method).

#### **Loss carry-forward**

The CCCTB group will be allowed to carry losses forward indefinitely, but no loss carryback will be allowed.

#### **Entry and exit from the CCCTB system**

When a taxpayer opts-in to the CCCTB system, all assets and liabilities will be recognised at their value, as calculated according to national tax rules, immediately prior to the date of opting in. Where a taxpayer incurred losses before opting into the system - which could be carried forward under the applicable national law, but had not yet been set off against taxable profits - those losses may be deducted from the tax base allocated to that taxpayer to the extent provided for under national law.

When a taxpayer leaves the CCCTB system, its assets and liabilities will be recognised at their value as calculated according to the rules of the system.

#### **Consolidation**

Eligibility for consolidation (group membership) is determined in accordance with a two-part test based on (i) control (more than 50% of voting rights) and (ii) ownership (more than 75% of equity) or



rights to profits (more than 75% of rights giving entitlement to profit). The two thresholds should be met throughout the tax year. There's also a nine-month minimum requirement for group membership. The tax bases of the members of a group will be consolidated.

In calculating the consolidated tax base, any profits and losses arising from transactions carried out directly between members of a group would be ignored.

No withholding taxes or other source taxation would be charged on transactions between members of a group.

The proposal contains detailed rules which cover joining and leaving the group.

### **Business reorganisations**

A business reorganisation within a group, or the transfer of the legal seat of a taxpayer which is a member of a group, would not give rise to profits or losses for the purposes of determining the consolidated tax base.

### **Transactions between associated enterprises**

Transactions between a taxpayer and an associated enterprise, which is not a member of the same group, are subject to pricing adjustments in line with the 'arm's length' principle.

Interest and royalties paid by a taxpayer to a recipient outside the group may be subject to a withholding tax in the taxpayer's Member State according to the applicable rules of national law and any applicable double tax convention.

### **Anti-abuse rules**

The proposal includes a general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures include limitations on the deductibility of interest paid to associated enterprises resident, for tax purposes, in a low-tax country outside the EU which does not exchange information with the Member State of the payer.

### **Tax treaties**

With respect to intra-group transactions between members of the CCCTB group, we understand that the proposed Directive would apply notwithstanding any provisions concluded between individual CCCTB group Member States. For transactions between a CCCTB group member and a non-CCCTB group member, the relevant Double Tax Treaty between these two enterprises will, we understand, apply - at least insofar as the transaction is concluded prior to the Directive coming into force.

### **Formulary apportionment**

The formula for apportioning the consolidated tax base comprises three equally weighted factors: labour, assets and sales (see diagram below). The labour factor is computed on the basis of payroll and the number of employees (each item counting for half). The asset factor consists of all fixed tangible assets. Intangibles and financial assets are excluded from the formula. Finally, sales should be taken into account in order to ensure fair participation of the

Member State of destination. These factors and weightings are aimed at ensuring that profits are taxed where they're earned.

As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

The apportioned tax base is taxed at national level under the applicable national tax rate.

### **One-stop-shop**

Groups of companies will be able to deal with a single tax administration ('principal tax authority'), which should be that of the Member State in which the parent company of the group ('principal taxpayer') is resident for tax purposes.

The proposal also provides for an advance ruling mechanism.

Audits will be initiated and coordinated by the principal tax authority, but the authorities of any Member State in which a group member is subject to tax may request the initiation of an audit.

Disputes between taxpayers and tax authorities will be dealt with by an administrative body which is competent to hear appeals at first instance according to the law of the Member State of the principal tax authority.

$$\text{Taxbase Company A} = \frac{1}{3} \left[ \frac{\text{Labour}^A}{\text{Labour}_{\text{Group}}} + \frac{\text{Assets}^A}{\text{Assets}_{\text{Group}}} + \frac{\text{Sales}^A}{\text{Sales}_{\text{Group}}} \right] * \text{CCCTB}$$

## **Who to contact at PwC**

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