



European Commission
Taxation and Customs Union

CCCTB – Outline and State of play

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Corporate Tax in the Common Market: legislative work

- **First Tax Package (1990):** Parent – Subsidiary Directive, Merger Directive, Arbitration Convention.
- **Monti Package (1997):** political agreement to discuss Interest & Royalties Directive (2003) & Savings Tax Directive (2003); establishment of the Code of Conduct group.
- **Company Tax Study (2001):** Twin-track strategy for removing tax obstacles
 - targeted measures **to address tax obstacles to cross-border economic activity in the Internal Market: (i) directives; and (ii) non-binding initiatives (EU-guidelines, recommendations, codes of conduct, working parties, guidance on ECJ rulings, etc);**
 - **a comprehensive solution to provide companies in the long-term with one set of corporate tax rules for their EU-wide activities (CCCTB).**



Background

■ 16th March 2011:

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

All relevant documentation is available at:

http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm

■ Why March 2011?

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*



CCCTB - Core elements

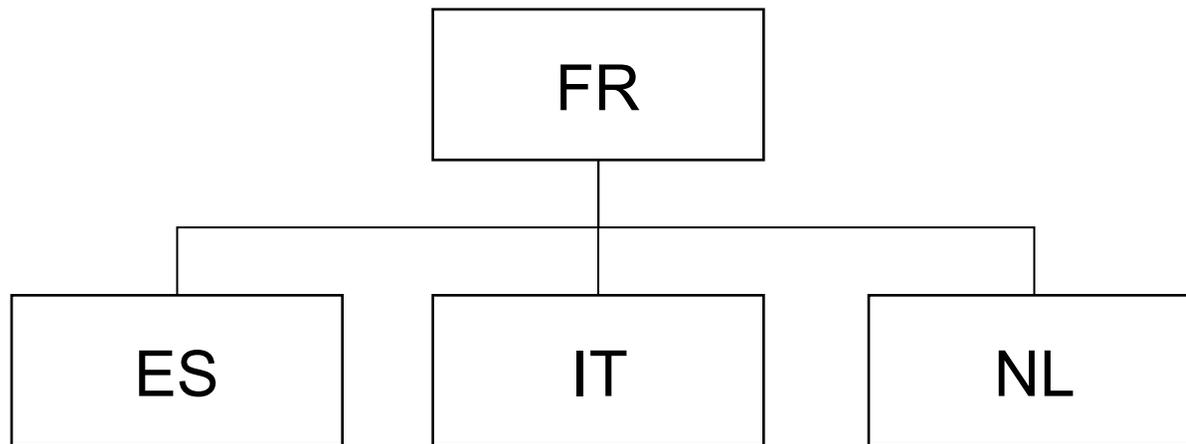
Common Consolidated Corporate Tax Base

▶ ▶ ▶ *To remove tax obstacles in cross-border operations*

- A common EU tax base that is available as an **option** for internationally active groups
- The **consolidation** of different tax bases
- Appropriate **apportionment** of tax base to MS
- Member States are **free to set rates** on their share of consolidated tax base

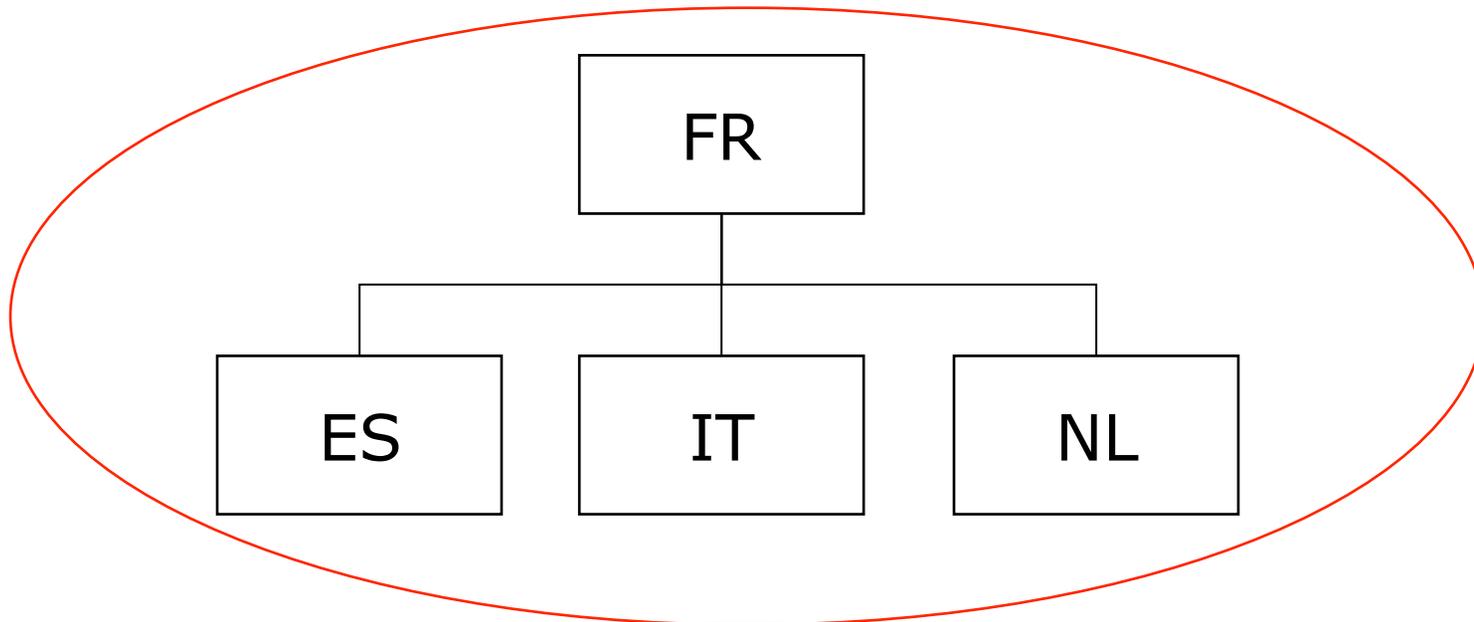


Corporate taxation in the EU World of today



- Separate taxation rules and tax assessments in each of the 27 Member States (MS)
- Strict separation of group companies in different Member States

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.

- 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’, ‘Group Member’.
 - Companies, fulfilling the requirements for forming a group, have to consolidate if they opt into the system of common rules (**‘all-in all-out’**) – exception: tonnage taxation.
 - Eligibility:
 - **company form** listed in Annex I;
 - subject to a **corporate tax** listed in Annex II;
 - **tax residence in a MS or**
 - may opt in respect of **EU-located PE** if subject to one of the corporate taxes listed in Annex II.
- *Companies established under the laws of a third country shall have a similar form to those of Annex I - (list to be published).

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 (Articles 10-13)
- Non-deductible expenses – exhaustive list (Article 14)
- Expenditure incurred for the benefit of shareholders in closed-end companies (Article 15)
- Rules on Timing & Quantification (Articles 17-31): accruals' principle, valuation, trading book, insurance, long-term contracts, stock & work-in-progress, provisions, pensions, bad-debt deductions.



Depreciation

- **Fixed assets** (Article 4(14)) are subject to depreciation –
if an asset used for the purpose of the business does not qualify as a fixed asset, its cost is deductible as an expense under Article 12 (e.g. self-generated intangible assets; cost of acquisition, construction or improvement are less than EUR 1,000; used in the business for less than 12 months);
- **Depreciable & non-depreciable fixed assets;**
- **Individually depreciable assets** (Article 36) – straight-line depreciation – (broadly, useful life of at least 15 years);
- **Pooled assets** (Article 39) – all fixed assets which qualify as depreciable and do not fall within Article 36 – declining-balance depreciation at 25% annually;
- Only non-depreciable fixed assets may be **exceptionally depreciable** if there is a ‘permanent decrease’ in value.



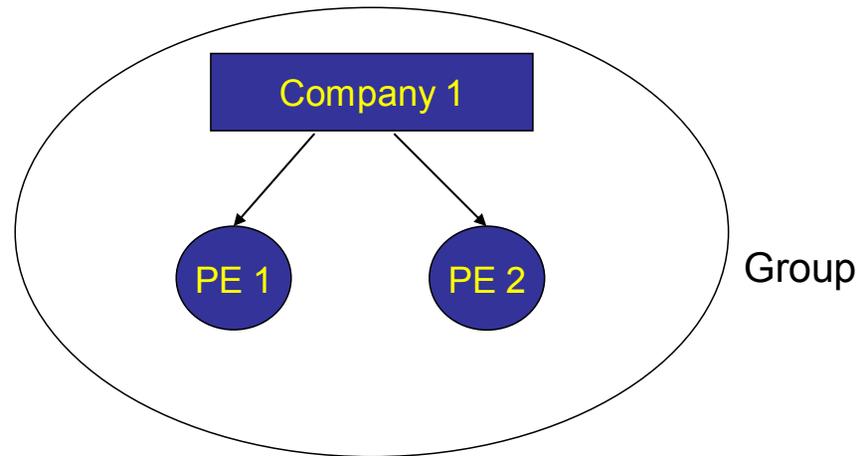
Consolidation (i) – Tests for Consolidation

- 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) – Article 54(1).
- **Indirect participation** (Article 54(2)): voting-right threshold, if reached, counts for 100%; capital holding or entitlement to profit are calculated by multiplying ***at each tier***.

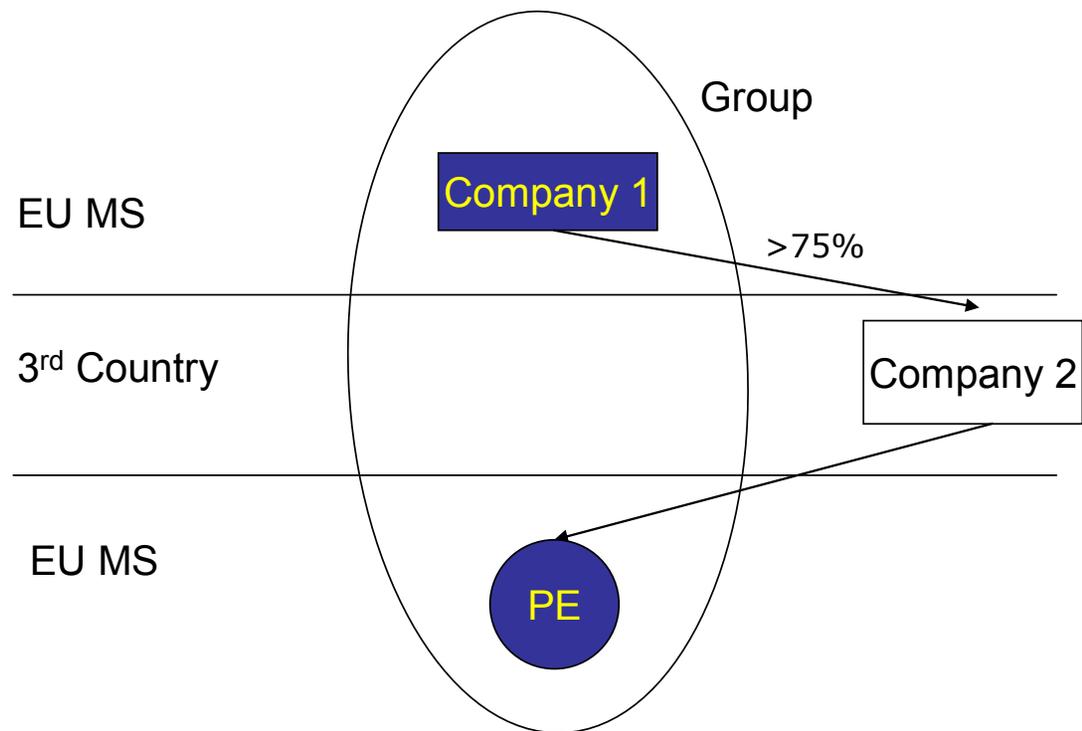
Consolidation (ii)

- 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 (Article 59).

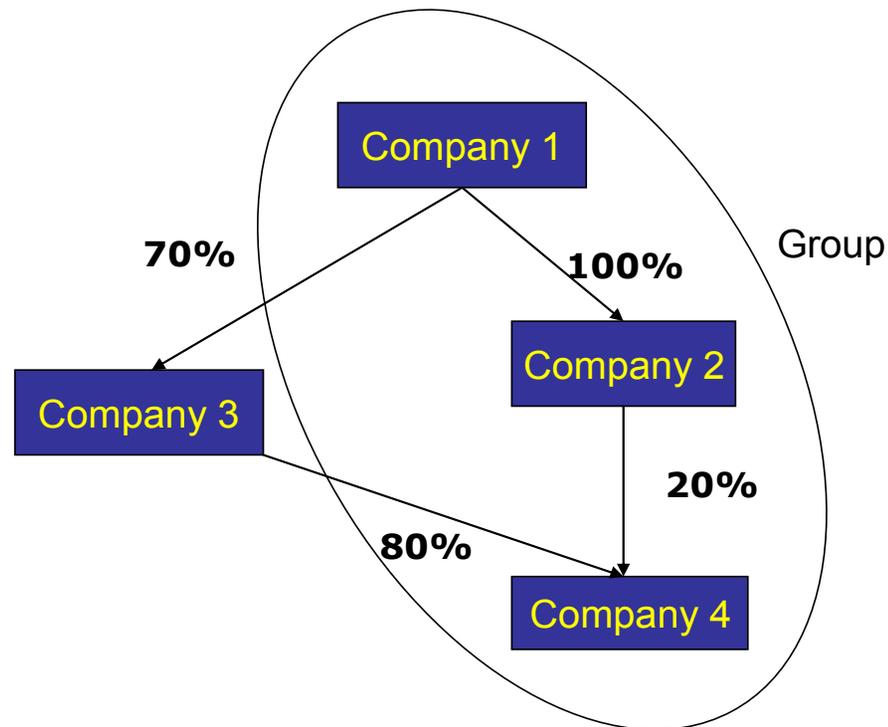
Forms of a Group

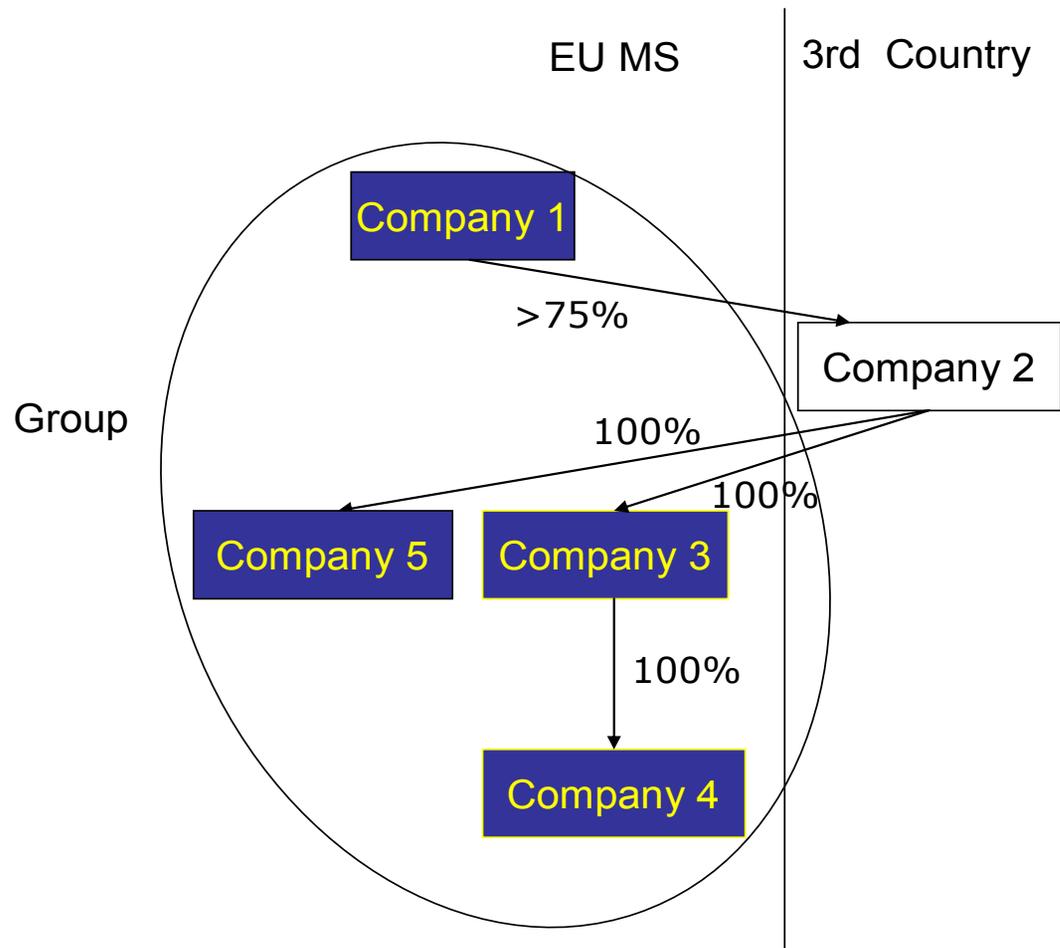


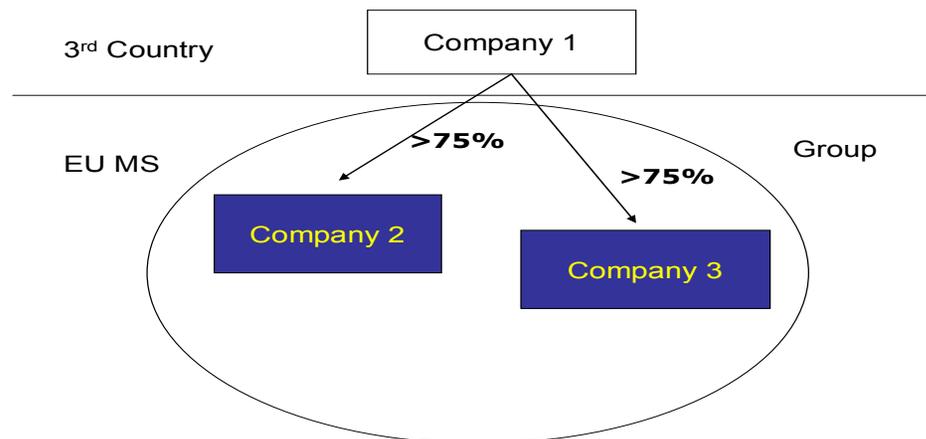
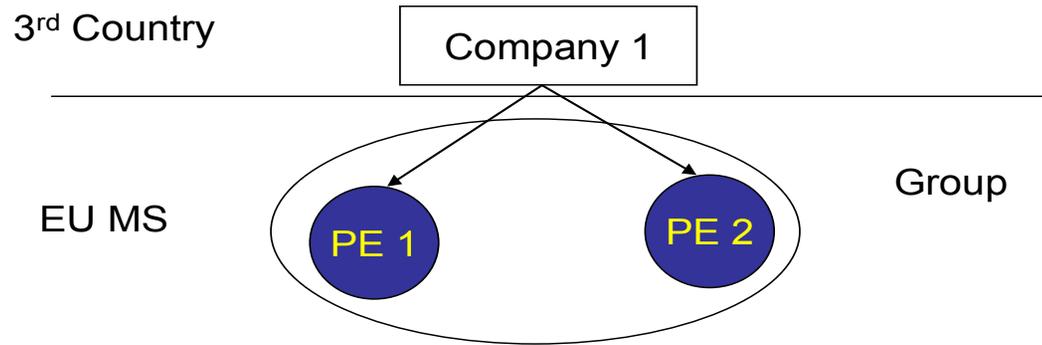
Each group member is located in a different Member State



All Companies are tax resident
in different MS







Trading Losses

- **CCCTB Losses - Unlimited carry forward** (art. 43)
- **Pre-CCCTB Losses:** ring-fenced; in a group, carried forward and set off against the apportioned share in accordance with the tax system under which they were incurred (Article 64)
- **CCCTB Losses:** treatment of company leaving a group & termination of a group.
- **CCCTB group losses:** automatic offset of profits and losses (due to consolidation) always at group level;



Dealings between the Group and Entities outside the Group

Key elements:

- **Exemption** of foreign income;
- **Switch-over clause** where income is taxed in a third country at a statutory corporate tax rate lower than 40% of the average EU statutory rate;
- **Disallowance of participation exemption** for share disposals (twin rule: **ex-post adjustment of the asset factor** of the transferring group member);
- **Relief by credit** for income not treated as exempt – primarily, interest and royalties and any other income taxed at source;
- **Withholding tax** on outbound payments of dividends, interest & royalties at national or DTC rate;
- **Associated enterprises:** adjustment of pricing of transactions between non-consolidated associated enterprises according to ‘arm’s length’ principle.



Anti-Abuse

- The anti-abuse elements of the CCCTB:
 - General Anti-Abuse Rule (**GAAR**) – Article 80
 - Disallowance of interest deductions – Article 81;
 - Controlled Foreign Company Legislation (**CFC**) – Article 82;
 - Switch-over clause – Article 73;
 - Disallowance of participation exemption for certain share disposals – Article 75;
 - Re-attribution of assets sold out of the group shortly after an intra-group transfer – Article 94(5).

The GAAR

- **Artificial** transaction (or series of transactions) carried out for the **sole purpose of avoiding taxation**;
- Target: practices **without economic substance** – ‘wholly artificial arrangements’;
- Outcome: to **ignore** the artificial steps (i.e. one or more transactions).
- Escape clause: possibility for the taxpayer to provide **commercial justification** for its activity. If tax planning incorporates elements of genuine conduct of trade, it is legitimate regardless of whether the scheme is designed to mitigate tax.

Disallowance of Interest Deductions

- Provision is meant to achieve the effects of Thin Capitalisation;
- Conditions for application:
 - (i) Interest is paid to an **associated enterprise**;
 - (ii) There is **no exchange of information** on request to the standard of the Administrative Cooperation Directive;
 - (iii) Associated enterprise is resident in a **third country** which applies :
 - a **statutory CIT rate at lower than 40%** of the EU **average**; or
 - a substantially lower level of tax on the basis of a **special regime**;

The rule is meant to cover not only cases of ‘definitive influence and control’ (Freedom of Establishment) but also extends to Free Movement of Capital.

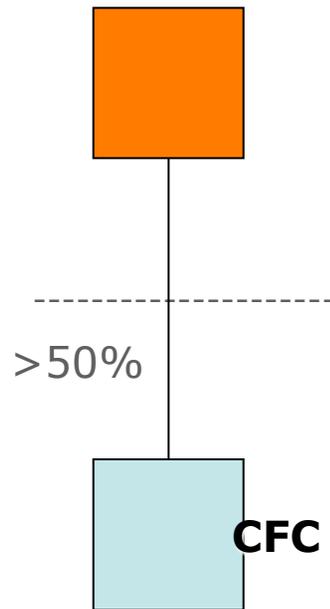
CFC Legislation (i)

Requirements for applying CFC legislation:

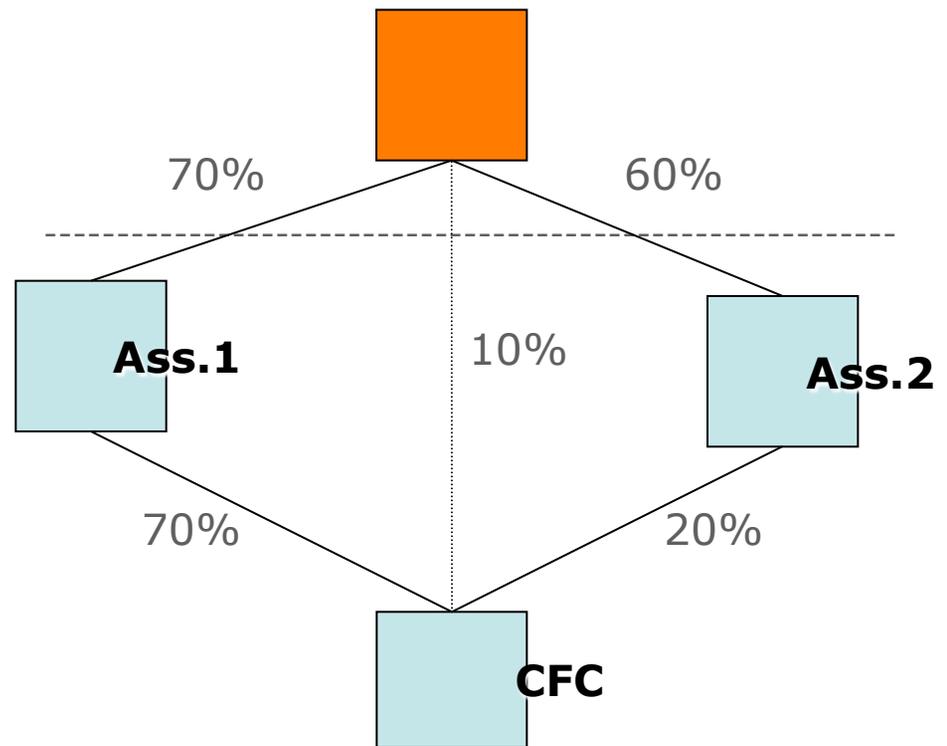
- (a) A company applying CCCTB rules,
by itself or together with its associated enterprises,
- controls more than 50% of the **voting rights**; or
 - owns more than 50% of the **capital**; or
 - is entitled to receive more than 50% of the **profit**;
- (b) The CFC is tax resident in a **low-tax third country**
(exception for EEA);
- (c) More than **30%** of the income accruing to the CFC is
'tainted';
The concept is defined by reference to the **type of income**
(mainly passive income) and the fact that **more than 50%**
must be derived from transactions between the CFC and
the taxpayer (or its associated enterprises);
- (d) Recognised Stock Exchange: escape clause

CFC Legislation (ii)

Direct participation



Indirect participation



$$49 + 10 + 12 = 71\%$$

Formulary Apportionment

- A formula is used for apportioning a tax share to each group member (Articles 86-102).
- 3 equally-weighted factors (Labour, Assets and Sales);
- Safeguard clause (Article 87);
- 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.

Since 16th March 2011 – Inter-Institutional Procedure

Legal basis: Article 115 TFEU

Council: decision-making power (requirement for unanimous vote)

European Parliament: ECON Committee passed vote in March (IMCO also gave Opinion) - Voted in plenary on 19 April 2012

ECOSOC: consultation – Opinion issued in October 2011

Committee of the Regions: issued Opinion on its own initiative in December 2011 (Article 307 TFEU)

National Parliaments: subsidiarity check – Commission sent out responses in early November 2011

The Political Perspective

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

- **February 2012 – DE & FR Green Paper on Business Taxation**

Presentation at the ECOFIN of 21st February

- **1st-2nd March 2012 – European Council Conclusions**

Council and Commission will **regularly report** on the state of play of ETD, CCCTB, FTT and Savings, starting in June 2012

- **2nd March 2012 - Treaty on stability, coordination and governance in the EMU** – signed by 25 MS



Technical Challenges

- Principles, rules, definitions and the level of detail;
- ‘Policy choices’ – e.g. Depreciation pooling / individual;
- Provisions – e.g. pensions and ‘legal’ liabilities;
- 3rd countries – Switch-over & DTCs;
- Interest deductibility;
- Losses – limits to deductibility of carried-forward losses;
- Anti-abuse – GAAR and CFC rule.



The Way Ahead

- Presidencies: Denmark, Cyprus, Ireland, Lithuania, Greece, Italy
 - No debate in ECOFIN – yet
 - CCCTB or CCTB
 - Enhanced Cooperation?
-
- **Political will to solve technical issues?**

