

A COMMON CONSOLIDATED CORPORATE TAX BASE FOR MULTINATIONAL COMPANIES IN THE EUROPEAN UNION: SOME ISSUES AND OPTIONS

*Christoph Spengel
Carsten Wendt*

A Common Consolidated Corporate Tax Base for Multinational Companies in the European Union

Some Issues und Options

Christoph Spengel

Carsten Wendt

Mannheim

June 19th 2007

Non-technical Summary

In its study on company taxation (European Commission, 2001b) the European Commission identified the main tax obstacles (e.g. increased compliance costs, double taxation) which hamper cross-border economic activity in the Internal Market. As a long-term strategy to tackle these tax obstacles, the European Commission proposed to provide multinational companies with a Common Consolidated Corporate Tax Base (CCCTB) for their EU-wide activities. In 2004 a working group was set up to elaborate the design of the CCCTB. A legislative proposal is expected to be released in 2008.

Against this background, this paper reviews options for some of the main issues that arise when considering the design of the CCCTB. First, the concept of the CCCTB and its underlying rationale are investigated. Second, issues regarding the definition of the consolidated group, the scope and technique of consolidation, the territorial scope of the CCCTB and some related issues are addressed.

Distortions to international economic activity are many induced by separate accounting under the arm's length principle and the coexistence of residence-based and source-based taxation. The CCCTB has the potential to reduce some of these distortions. It is based on the notion that a group of companies forms an economic unit. Consequently, it does not seek to allocate income to its economic source. The rationale behind is rather to provide a pragmatic solution for profit allocation among jurisdictions. Via consolidation, transfer pricing issues can be mitigated and neutrality regarding cross-border restructuring, the financial structure and legal form of investments can be promoted. The consolidated tax base is apportioned and finally taxed by the corresponding Member states. Thus, the CCCTB is based on the source principle. As a consequence, incentives and scope for profit shifting are probably going to persist.

The definition of the consolidated group should combine a legal ownership test and additional tests indicating whether there are other forms of control and economic interdependencies among the entities in the group. In order to avoid that the harmonisation of the corporation tax affects the personal income tax, the CCCTB should be restricted to corporations and permanent establishments. However, each Member state should have the option to extend the personal scope of the CCCTB to partnerships. The CCCTB has to be restricted to qualifying group entities located within the EU. In this

context, common definitions of tax residency and permanent establishment based on OECD principles are required.

Individual tax accounts should serve as a starting point for consolidation. These individual accounts should be consolidated, thus forming the consolidated tax base. Consolidation should encompass intra-group loss relief, deferred taxation of gains and losses realized on intra-group transactions, exemption of dividends paid between group companies and avoidance of withholding taxes. In order to ensure a symmetric treatment of profits and losses, a negative group income has to be apportioned and offset against a future positive share of the CCCTB using common rules. Income realized on intra-group transfers of goods and provision of services should be neutralized in a separate combined report, since separate accounting rules have to be maintained for individual accounts with respect to claims of minority shareholders and recapture of intra-group income. The consolidated tax base should include all categories of income of group entities irrespective of the ownership percentage. Regarding inbound and outbound investments involving third countries, separate accounting using arm's length prices will prevail. In relation to third countries common rules are necessary in order to avoid tax evasion. With respect to outbound investments an approach based on the source principle would be consistent with the concept of the CCCTB. On the other hand, residence-based taxation with respect to income from sources outside the EU would promote tax neutrality. Income of EU group entities, either subsidiaries or permanent establishments, which are ultimately controlled by a non-EU company, should be consolidated and apportioned. With respect to passive income, withholding taxes should be levied in accordance with current tax practice and shared by the member states involved.

Special rules are necessary with regard to companies joining and leaving the taxable group. As pre-consolidation losses and hidden capital gains do generally not belong to the group, they should be directly attributed to the respective company. Under this assumption, losses should be offset against the share of the CCCTB after apportionment and hidden capital gains should be deferred and only restored, if the asset leaves the group or in the course of depreciation. If a company leaves the group apportioned losses should remain with each company. Moreover, if a company involved in an intra-group transaction leaves the group this should be deemed as a restoration event. If the internal

purchaser afterwards leaves the group, the group is liable to tax with the deferred intra-group income. Instead, if the selling company leaves the group, this company is taxed on the deferred intra-group income.

Application of the CCCTB should be mandatory for all qualifying group entities. Otherwise, there would be scope for tax planning. The tax base of local profit taxes can be aligned to the apportioned income of the respective Member state. Local profit taxes, non-profit taxes and social security contributions should be deductible from the consolidated tax base after apportionment.

A Common Consolidated Corporate Tax Base for Multinational Companies in the European Union

Some Issues and Options

Christoph Spengel¹

Carsten Wendt²

Mannheim

June 19th 2007

Abstract

The European Commission proposed to provide multinational companies with a Common Consolidated Corporate Tax Base (CCCTB) for their EU wide activities. The main goal of this proposal is the removal of existing tax obstacles to cross-border economic activity which are mainly caused by the coexistence of 27 national tax systems. This paper reviews the European Commission's proposals and the underlying rationale. It addresses some of the key issues that arise when considering the design of the CCCTB. Among the issues under investigation are the definition of the consolidated group, the scope and technique of consolidation, the territorial scope of the consolidated tax base, the treatment of companies joining and leaving the CCCTB, and related issues.

JEL-Classification: H21, H25

Keywords: Corporation Tax, Group taxation, tax co-ordination, European Union

1 Christoph Spengel is Professor of Business Economics and International Taxation, University of Mannheim and Visiting Professor, Centre for European Economic Research (ZEW), (spengel@uni-mannheim.de).

2 Carsten Wendt is Research Fellow, Centre for European Economic Research (ZEW), (wendt@zew.de).

Structure

1	Introduction.....	8
2	Normative Criteria	11
2.1	Equity.....	11
2.2	Neutrality and Efficiency.....	12
2.3	Simplicity and Enforceability	13
2.4	Rationale of a Common Consolidated Corporate Tax Base.....	13
3	Implementation Issues of the CCCTB	19
3.1	Definition of the Taxable Unit.....	19
3.1.1	Legal Ownership	19
3.1.2	Additional Criteria	21
3.1.3	Personal Scope of the CCCTB	23
3.1.4	Territorial Scope	25
3.2	Consolidation.....	30
3.2.1	Intra-group Loss Relief	31
3.2.2	Adjustment of Intra-group Transfers	33
3.2.3	Other Adjustments	37
3.2.4	Distinction between Different Types of Income: Business and Non-business Income	37
3.2.5	Consolidation in Case of Less than 100%-owned Affiliates	39
3.2.6	Income arising on cross-border investments in third countries	40
3.2.7	Treatment of Companies Entering the Group	47
3.2.8	Treatment of Companies Leaving the Group	48
3.3	Related Issues	49
3.3.1	Optional or Mandatory?	49

3.3.2	Local Profit Taxes, Non-profit Taxes and Social Security Contributions	50
4	Summary	54
	List of References.....	58

1 Introduction

In its communication of 2001 (see European Commission, 2001b), the European Commission highlighted the main tax obstacles to EU-wide economic activities. Compared to purely domestic activities, cross-border activities are often subject to additional tax burdens and higher compliance costs, due to the co-existence of 27 separate tax systems within the EU. Each member state has its own set of rules for determining taxable profit, different kinds of taxes, and arrangements for the collection and administration of tax, and its own network of tax treaties. The need to comply with a multitude of different rules entails a considerable compliance cost and may in particular hamper cross-border activities especially of small and medium-sized enterprises. According to the Commission's European Tax Survey (2004), compliance costs amount to 1.9% of the tax payments in the case of multinational enterprises while they amount to 30.9% in the case of medium-sized enterprises (see European Commission, 2004).

Furthermore, the fact that each member state is a separate tax jurisdiction has a number of other negative consequences (see European Commission, 2001b). In particular

- cross-border relief for losses incurred by associated companies located in other member states is not permitted in many cases;
- the allocation of profits of multinationals to different jurisdictions on an arm's length basis by transaction-based transfer prices causes methodological problems and results in double taxation;
- in many situations cross-border reorganisations give rise to capital gains taxation and bear the risks of double taxation; and
- double taxation may occur as a result of conflicting taxing rights (e.g. thin capitalisation rules, deduction of headquarter costs).

As a long-run strategy to tackle these tax obstacles, the Commission proposed to provide companies with a common consolidated tax base for their EU-wide activities (see European Commission, 2001b). In this respect, four comprehensive concepts were introduced: Home State Taxation, Common Consolidated Corporate Tax Base, a European Union Corporate Income Tax and a Compulsory Harmonized EU Tax Base. At present, the Commission is only pursuing two of the above mentioned four models for

achieving a common EU tax base: that of Home State Taxation and that of a Common Consolidated Corporate Tax Base (CCCTB). Home State Taxation is considered to be particularly beneficial for small and medium sized businesses (SMEs). Therefore, the Commission is working on a pilot scheme which would apply this approach to SMEs. In the Commission's view, the CCCTB constitutes the best means by which companies in the Internal Market can overcome tax obstacles in a systematic way (see European Commission, 2003a: 4). Consequently, the CCCTB is one of the issues currently dominating the debate in the EU tax arena.

Three distinct steps are necessary in order to arrive at the tax base for each jurisdiction:

1. Each group member calculates its taxable profits separately but according to the same set of tax accounting rules;
2. These individual tax bases are aggregated, thus forming the consolidated tax base;
3. Finally, the consolidated tax base is apportioned between the different Member states using a formula.

Each member state has the right to tax its share of the consolidated tax base at its own tax rates. As a result, according to the concept of the CCCTB only the method by which the tax base is determined and allocated to different jurisdictions changes. In contrast, the responsibility for setting the tax rate remains a matter for individual Member states to decide.

The CCCTB is supposed to reduce the compliance costs of companies operating across the internal market significantly, resolve existing transfer pricing problems, allow for the consolidation of profits and losses, simplify many international restructuring operations, avoid various situations of double taxation and remove many discriminatory situations and restrictions (see European Commission 2001: 370-399).

Consolidation is considered as a key element of the CCCTB. Although ambitious, the Commission is convinced that this approach will bring the greatest benefits to the Internal Market (see European Commission, 2007c: 6). A common tax base without consolidation would not ensure cross-border loss relief, nor does it reduce difficulties of transfer pricing or obstacles to international restructuring operations.

There are a number of issues related to consolidation. First, a definition of what constitutes a group of companies for consolidation will be required. There are several different aspects to be considered in this context. In addition to defining criteria indicating whether a group of companies qualifies for consolidation, eligible entities and the spatial scope of the CCCTB have to be specified. Second, a technique in computing the income of the group has to be found. Issues to be discussed in this context are the treatment of intra-group transactions, the mechanism of loss-relief, distinctions between different categories of income and the treatment of income arising on cross-border investments involving third countries. In 2004, a working group was set up in order to work on these issues³. However, the Commission pointed out, that additional expert opinion from beyond the Commission and Member state administrations on these issues can be helpful (see European Commission, 2007a: 4).

Against this background this paper considers alternative options for the issues related to consolidation. The main design issues addressed are the scope and availability of the CCCTB and the techniques of consolidation. The paper is organised as follows: First, normative criteria and guidelines for the design of the CCCTB are presented. Those criteria considered are equity, neutrality as well as simplicity and enforceability. In this context, the rationale for the CCCTB and the underlying concept are reconsidered. In chapter three, implementation issues and options of the CCCTB are reviewed. First, different criteria for defining the consolidated group as well as the personal and territorial scope of the CCCTB are discussed. Second, issues regarding the methodology of consolidation are considered. Special interest is devoted to cross-border loss compensation, adjustments of intra-group transfers, distinctions between apportionable and non-apportionable group income, as well as income arising on cross-border investments involving third countries. Furthermore, rules regarding the treatment of companies entering and leaving the consolidated group considered. At the end of chapter three, questions of whether the CCCTB should be optional or mandatory and about consequences of the CCCTB regarding local taxes and social security contributions are addressed. The final chapter offers a summary.

3 For information on the discussions in the working groups see the web-site of the European Commission (http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm)

2 Normative Criteria

2.1 Equity

Tax legislation generally relies on the principle of individual equity. As a consequence, taxation is aligned to the taxpayer's ability to pay. Income is considered a good indicator for ability to pay. The equity principle has two dimensions: horizontal and vertical equity. Horizontal equity requires that incomes of equally well-off individuals should be taxed at the same level whereas according to vertical equity individuals with higher incomes should pay tax at a higher (average) rate.

Although the ability-to-pay principle is widely accepted, its concrete determination is by no means without difficulties (see Nobes, 2004: 37; Schön, 2005: 129). This applies, in particular, to the question as to what is to qualify as income – both composition and measurement – and who is the taxable entity. At the same time, the legislator has to ensure that the definition of income is such that the various different methods and evaluation processes employed in its determination are applied equally.

The principle of equity cannot be easily used for corporate income taxes, as profits are normally taxed irrespective of who the owners of capital are (see Devereux, 2004: 79). In the case of distributions the additional personal income tax can follow such principles. In the case of retained earnings, equity considerations cannot be considered without complicated imputation of profits to owners. However, since taxation at the corporate level influences the income flowing to the shareholders, the ability-to-pay principle can be also applied at corporate level (see Hey, 1996: 119).

The equity principle is not only applied at the individual taxpayer's level but also at the inter-nation level. Inter-nation equity involves the principle of source country entitlement. According to this principle, the source country has the prior right to tax profits generated within its jurisdiction (see Musgrave, 2000, 47; European Commission, 2001b: 26). In order to allocate taxing rights according to the generation of profits, the profits' source has to be identified. Since it is not possible to clearly identify the source of income under economic terms, it is defined by conventions the jurisdictions agreed on. Currently, the supply approach is the prevailing convention (see Schreiber, 2004:

221). Under the supply approach, the source of income is considered to be located where the company's income generating factors of production operate (see Musgrave, 1984: 234; Oestreicher, 2000: 179).

2.2 Neutrality and Efficiency

Efficiency is widely recognized as a fundamental economic principle of optimal taxation. This principle is also inherent to the EC Treaty. According to Article 2 and 98 EC, the promotion of an efficient allocation of resources is a fundamental economic goal of the EC Treaty. In order to reach efficiency, taxes should be neutral to economic agents' behaviour and not distort their decisions (see European Commission, 2001b: 26). There are different possible definitions of neutral and efficient taxation. One might be that a Pareto-optimal allocation of economic resources should not be changed by the presence of taxation (see Musgrave and Musgrave, 1989, 279-294). In contrast, if taxation causes an allocation of economic resources that is not Pareto-optimal, this implies production inefficiencies and welfare losses. Another definition focuses on the taxation effects on economic decisions from a firm's perspective. In this sense neutral taxation does not interfere with an entrepreneur's decision-making. Otherwise, business decisions might be driven by tax aspects and may result in a lower level of productivity and reduced international competitiveness.

Although these definitions of neutral and efficient taxation are based on different perspectives, they accomplice each other, as a tax system that does not interfere with business decision-making at firm level presumably implies production efficiency and thus, a Pareto-optimal allocation of economic resources (see Spengel, 2003: 224).

Levying taxes reduces the level of investment compared to an economy without taxation. However, this effect is generally not considered as a loss of efficiency. Instead, neutrality is rather defined with respect to different types of investment. In this sense, the principle of neutrality requires a tax system to impose the same (effective) tax rate across all sectors, asset types, modes of financing and organizational forms (see Neumark, 1970: 264; Jäger, 2001: 102-109).

Moreover, neutrality requires a certain degree of symmetric tax treatment of income and expenses when they have a similar nature (see Gammie et al., 2005: 13). For exam-

ple, if capital gains are subject to a special tax treatment, expenses related to these gains should be taxed in the same way. In addition, losses should be treated in the same way as profits.

2.3 Simplicity and Enforceability

The European Commission has stressed that simplicity is an important objective to be achieved by the introduction of the CCCTB (see European Commission, 2007: 5). The CCCTB should be simple in order to minimise the operating costs of the tax system for both, taxpayers and public authorities. Compliance costs of taxpayers arise from fulfilling tax reporting requirements and from the efforts made to evaluate the tax consequences of different business decisions (see Slemrod, 1996; Slemrod and Sorum, 1984). Administrative costs of public authorities include costs incurred to enforce the tax law, for example monitoring costs. These administrative costs should be in reasonable proportion to the tax revenues (see Nobes, 2004: 40). The criterion of simplicity is thus linked to cost effectiveness. A simple and cost effective tax system would promote the competitiveness of EU-companies as they can direct resources from administrative tasks to productive activities that promote growth.

Another aspect associated with the criterion of simplicity is enforceability. The CCCTB has to be enforceable in practice and opportunities for tax evasion and for tax avoidance have to be avoided. In order to ensure equal enforcement of tax law, a sufficient degree of simplicity is required. In contrast, imperfect law enforcement due to complex rules that can be easily avoided or evaded would violate the objectives of equity and neutrality to be achieved by the CCCTB.

2.4 Rationale of a Common Consolidated Corporate Tax Base

Tax law is generally tied to civil law. According to civil law, a corporation represents a distinct legal entity. As a consequence, each company belonging to a group of companies has to calculate its individual income on an entity by entity approach. Separate accounting, along with the arm's length principle is the prevalent method used to allocate profits between affiliated companies. Separate accounting in combination with the

arm's length principle is codified in paragraph 1 of Article 9 of the OECD Model.⁴ This approach is recognized by the international tax community and represents the international norm, since it has been adopted world-wide.⁵

Income or profits which result from international activities such as cross-border investment may be taxed in the source country or the residence country. The conflict or overlap between source and residence taxation may lead to double taxation. To prevent this double taxation, the OECD has developed model treaties that strike a compromise between source and residence taxation. The source country has the right to tax the business profits attributable to a permanent establishment of a foreign company, as well as the profits of a foreign owned subsidiary, and the residence country is required to relieve double taxation either by giving a credit for such source taxes paid, or by exempting the relevant income from its taxes. In exchange, the source country applies no, or only a low, withholding tax on payments to residents of the other country, such as interest on loans, dividends on shares, or royalties on intellectual property. As a result, whether the source principle or the residence principle applies, depends on the category of income and the method used by the residence jurisdiction to avoid double taxation.

According to the method of separate accounting using arm's length pricing, intra-group transfers of values and services provided have to be accounted for and priced in the same manner independent companies would do on the market. The intention behind is to treat affiliated companies as if they operate as independent entities.

Concerning economically integrated groups of companies, however, this transactional approach seems theoretically questionable. By setting up an integrated group of companies, coordination of transactions via markets is abandoned in favour of coordination using intra-organisational hierarchies (see Schreiber, 2004: 223). The aim is to generate economies of integration, for example, by means of lower transaction costs, improvement of information flow or managerial efficiency (see Berry et al., 1992: 737). As a result, the profits of an integrated group of companies are greater than the aggregate profits earned by its separate entities. Since the excess profits accrue at group level, it

4 See also the historical overview of the development and the justification of the arm's length principle in *Oestreicher*, 2000, pp. 8-29.

5 See *Li*, 2003, pp. 108, 109.

seems difficult to determine the source of these profits as they cannot be attributed to specific transactions either. Therefore, the comparison of controlled transactions with uncontrolled transactions – as the arm’s length principle implies – seems conceptually questionable and systematically inapplicable (see Jacobs, 2002: 857/876; Oestreicher, 2000: 20; Herzig, 1998: 285; McLure, 1984: 94, 105).

As the method of separate accounting under the arm’s length principle is conceptually inconsistent with the economic reality of integrated groups of companies, its application in practice is difficult and complicated. The OCED Transfer Pricing Guidelines (see OECD, 1995) provide guidance for determining comparability between transactions and several transfer pricing methods resulting in a range of arm’s length prices. This introduces the issue of income shifting. Affiliated companies may use the leeway in determining transfer prices in order to shift profits from countries with a high tax burden to those with a comparably low tax burden.⁶ The incentive to shift profits accrues mainly in case of taxation according to the source principle, because profits shifted to the source country are ultimately taxed according to the rules of the source country.

Since controlled intra-group transactions and uncontrolled transactions are often not comparable, it is increasingly challenging for governments to prove the appropriateness of transfer prices in order to detect profit shifting. As a consequence, companies are required to demonstrate that they established their transfer prices on an arm’s length basis by supplying documentary evidence. These transfer pricing obligations are costly both for companies to comply with and for tax administrations to monitor (see European Commission, 2001b: 255-283).

Another problem arising in the context of the arm’s length principle is that of double taxation. One tax jurisdiction may adjust a given transfer price because it is deemed not to be at arm’s length. If the other jurisdiction does not make a corresponding adjustment, there is a risk of double taxation (see Newlon, 2000: 220, 221; Herzig, 1998: 282-293, 286). There are mechanisms to resolve double taxation caused by transfer pricing.⁷

6 Empirical literature of recent years provides evidence of profit shifting (for the European Union see Huizinga and Laeven (2005) and Weichenrieder (2006)).

7 There are Mutual Agreement Procedures, the EU Arbitration Convention and Advance Pricing Agreements.

These procedures, however, are perceived to take too long and to take up too many resources (see European Commission, 2001b: 268).

Profit shifting may not only occur due to abusive transfer pricing. The separate entity approach and the coexistence of source-based and residence-based taxation facilitate additional tax planning strategies aimed to make use of the international differences of tax burdens. Multinational groups of companies may strategically choose the location of an investment or relocate functions and risks in order to benefit from comparably favorable tax rules in a certain country. These tax advantages can be achieved if profits are retained and reinvested in the source country or if distributed profits are tax exempt in the residence jurisdiction. In both cases, companies can generally benefit from a lower tax burden in the source country and avoid taxation in the residence country. Debt financing is favored over equity financing for investments in a high tax jurisdiction, since accruing interest is tax deductible in the source country and generally subject to residence taxation.

To protect their tax bases against these means of profit shifting, member states introduced provisions such as the denial of cross-border loss relief, exit taxes, thin-capitalization rules, and CFC-legislation. However, these tax provisions may violate the fundamental freedoms of the EC Treaty (see ECJ-judgements, e.g. *Marks&Spencer*, *X and Y*, *Lankhorst-Hohorst*, *Cadbury-Schweppes*).

Against this background, the current international tax system is inadequate with reference to the principles of equity, neutrality, as well as simplicity and enforceability. The arm's length principle ignores the differences between controlled and uncontrolled transactions and entails scope for abusive transfer pricing. It is incapable of fairly allocating profits to the countries involved according to their source and thus, is inconsistent with the principle of inter-nation equity (see Jacobs, Spengel and Schäfer, 2004: 272-273). At the same time, double taxation, arising if transfer prices are adjusted unilaterally, violates the principle of equity between taxpayers (see Li, 2002: 840). The coexistence of source and residence taxation and the separate entity approach cause distortions to the choice between debt and equity financing, the organizational form as well as the location of investments. These distortions violate the principle of neutrality and thus, fundamental economic goals of the EC Treaty (Art. 2 EC). Finally, the complex and

costly task of determining and monitoring transfer prices is not in line with the principle of simplicity and enforceability (see Jacobs, Spengel and Schäfer, 2004: 273-275).

A consolidated tax base as indented by the European Commission would address many of the shortcomings associated with the current international tax system (see Spengel and Braunagel, 2006: 47-48). This approach is based on the notion that integration of companies results in economic benefits that cannot be allocated according to arm's length prices. Although group companies are legal distinct entities they are regarded as an economic entity for tax purposes. Thus, the consolidation approach is in general theoretically more consistent with the economic characteristics of a group of affiliated companies.

Via consolidation gains or losses realised on intra-group transfers of assets are deferred until they are confirmed in a market transaction and expenses and corresponding income on intra-group transactions are netted out. Accordingly, the consolidation approach has the potential to overcome profit shifting and transfer pricing problems to a great extent. Furthermore, incentives to change the financial structure are eliminated as interest payments and dividends are eliminated (see Schreiber, 2004: 219; Spengel, 2006: G37). Tax neutrality is also promoted regarding cross-border relocation of functions and risks, because these activities are generally not subject to capital gains taxation in a consolidated tax base (see Spengel, 2006: G38).

However, according to the concept of the CCCTB, a group of companies forming an economic entity is not treated as a single taxpayer. In contrast, the consolidated tax base is apportioned to each group member according to a formula and each group member remains liable to tax with his share in the consolidated tax base (see Kahle, 2006: 1405). Since the income attributed to a jurisdiction is ultimately taxed according to this country's rules, the CCCTB is conceptually aligned to the source principle (see Devereux, 2004: 83; Wissenschaftlicher Beirat beim Bundesministerium der Finanzen, 2007: 28).

If the CCCTB is introduced, the arm's length principle as a means for the allocation of taxable income between jurisdictions would be replaced by formula apportionment. Formula apportionment does not seek to allocate income to its source. The rationale behind formula apportionment rather is to provide a pragmatic solution for profit allocation among jurisdictions in order to better cope with the issues of simplicity and en-

forceability. However, formula apportionment is not arbitrary. Depending on the choice of apportionment factors, this approach intends to allocate the consolidated tax base to the profit generating activities. Factors which are deemed to represent profit generating activities are typically property, payroll and sales. In this context it has to be kept in mind that in an economically integrated entity consisting out of separate legal entities it is not possible to determine the source of profits on an economic rationale.

According to the mechanism of formula apportionment, the effective tax rate applied to the consolidated tax base is a weighted average of the tax rates in the different jurisdictions in which group entities operate, with the weights given by the presence of the apportionment factors of the firm in each jurisdiction relative to its total factors.

Formula apportionment is not totally immune against strategic tax planning. If the apportionment factors are mobile across jurisdictions and the company controls them there is leeway for profit shifting. There might be an incentive for companies to relocate economic activities that comprise the factors to low tax jurisdictions in order to reduce the effective tax rate (see Agúndez-García, 2006: 59-69). Moreover, they may invest in companies which are resident in low tax jurisdictions even if these companies are not profitable because due to the investment the effective tax rate applied to the consolidated tax base and thus the overall tax burden would decline (see Gérard and Weiner, 2003).

To summarise, the introduction of a CCCTB has the potential to improve taxation of multinational groups of companies in the EU with respect to equity, neutrality as well as simplicity and enforceability. Whether and to what extent an improvement can be achieved depends on the definition of the consolidated group, the consolidation mechanism and on the design of the allocation formula.

3 Implementation Issues of the CCCTB

3.1 Definition of the Taxable Unit

The definition of a consolidated group is a major issue in designing the CCCTB. Criteria have to be determined according to which affiliated companies qualify for consolidation and formula apportionment. The fundamental question is whether to delineate the group in terms of legal criteria, economic criteria or a combination of both. In defining the group, the underlying rationale for the CCCTB has to be kept in mind. Accordingly, economic interrelationships among affiliated companies that make it impossible to determine the source of profits on the basis of separate accounting using arm's length pricing should lay the foundation for the definition of the consolidated group (see Hellerstein and McLure, 2004: 204). The definition of the qualifying group of entities is a key element of the CCCTB, since it implies the delineation of the income to be apportioned (see Agúndez-García, 2006: 10). In the following, alternative criteria for the definition of the consolidated group are considered.

3.1.1 Legal Ownership

Legal ownership is widely recognized as a key element in defining the taxable unit (see Agúndez-García, 2006: 11-15; European Commission, 2007b: 4). Currently, all member states providing a group taxation regime require qualifying group members to be aligned via ownership (see Endres et al., 2007: 85-88). The underlying theoretic rationale is that legal ownership entails the ability to govern and control an affiliate's business activities in order to obtain economic benefits. For example, the controlling company may gain access to the subsidiary's patents or production techniques or realise economies of scale or scope. These economic benefits are difficult to allocate based on separate geographic accounting since these do not exist if transactions are coordinated via markets. Thus, legal ownership constitutes a necessary prerequisite for the existence of an economic entity that justifies replacing the arm's length principle with formula apportionment.

In general, legal ownership can be defined either with reference to voting stock or equity. As control requires voting power, ownership of voting rights seems more appropriate than ownership of equity (see European Commission, 2007b: 4). However, the distinction between the ownership of voting rights and ownership of equity is only relevant where they deviate from each other. This may be the case due to none-voting shares. To what extent these differences exist, depends on the company law of the respective member state.

Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one half of the entity's voting power. Thus, a simple majority ownership of voting rights should be regarded as the minimum requirement. Alternatively, an ownership threshold of 75% or even 100% could be used to delineate the taxable unit. A high ownership percentage would correspond to member state's tax practice. In many member states the scope of group taxation currently includes only those entities where the parent entity owns 75% or even 95% or 100% (see Endres et al., 2007: 86). Moreover, it is argued that entities connected to a high shareholding relationship might be more likely to be economically interdependent (see Agúndez-García, 2006: 12). Therefore, a high ownership percentage might better indicate whether a group of companies forms an economic entity the CCCTB should be applied to. A high ownership threshold would also reduce the need for special provisions for minority shareholders (see Schön, 2007: 431). However, a threshold of 100% would be too restrictive, as the mere existence of a minority shareholder would cause an affiliate to fall out of the taxable unit (see Schreiber, 2004: 223).

A decisive disadvantage of a high-percentage ownership threshold delineating the taxable unit is its potential for tax planning strategies. Parent companies could adjust their ownership interest in other companies without losing control, depending on whether separate accounting using arm's length pricing or consolidation and formula apportionment is tax optimal. Furthermore, those subsidiaries that do not qualify for an application of the CCCTB but are still controlled via a simple or qualified majority ownership may still be used for profit shifting (see Agúndez-García, 2006: 12; European Commission, 2004: 6; Oestreicher, 2005: 89). In order to reduce the scope for tax planning, the ownership threshold should be set sufficiently low as to ensure that a further reduction would be associated with a substantial loss of control (see Schön, 2007: 431). Accord-

ingly, an ownership threshold of 50% or 75% seems appropriate for defining the taxable unit subject to taxation under the CCCTB (see Schön, 2007: 431; Schreiber, 2004: 232).

3.1.2 Additional Criteria

A definition of the taxable unit based solely on legal ownership has the advantage of administrative simplicity, both for taxpayers and tax administrations. It provides a clear cut solution and certainty regarding the entities to be included (see European Commission, 2004: 5).

On the other hand, this definition does not necessarily represent the economic substance of the relationship among group entities (see Martens Weiner, 2001: 383; Schreiber, 2004: 223). A subsidiary might be under control but economically independent. If this is the case and the CCCTB is applied, the consolidated tax base of these entities would be sourced using apportionment factors that would not have contributed to the production of the income in question (see Hellerstein and McLure, 2004: 205). Thus, although legal ownership is a prerequisite for economic integration, an extension of the definition of the taxable unit based on economic criteria seems conceptual more consistent with the concept of CCCTB (see Agúndez-García, 2006: 13; Jacobs, Spengel and Schäfer, 2005: 277-278; Martens Weiner, 2006: 71). For example, in economic terms, the delineation of the consolidated group could be based on entities of the company's organisational structure, such as organisational departments or value added processes (see Oestreicher, 2000: 208-217; 230). This approach may be appropriate where a group of companies is engaged in more than one activity.

Economic criteria may also be necessary to prevent tax planning strategies. These criteria could impede investments solely aimed to buy apportionment factors in a low tax jurisdiction in order to reduce the overall tax burden of the group.

However, economic criteria are less feasible, as they are rather subjective and do not provide legal certainty. Experience from the US state corporate income taxation has shown that problems exist in attempting to define what constitutes a unitary business (see Hellerstein and McLure, 2004: 203-206). There is no common definition of a unitary business, but tests are applied which are mainly based on economic criteria (see Oestreicher, 2000: 136-139). Against this background, reaching an agreement on economic criteria and applying them uniformly in the EU may become difficult and bur-

densome for taxpayers as well as tax authorities (see Agúndez-García, 2006: 14). Therefore, the definition of the taxable unit should rely on legal criteria or bright-line tests indicating whether there are economic interdependencies between affiliated entities rather than on economic criteria. Reference can be made to those bright-line tests developed by McLure (see McLure, 1984) and Hellerstein (see Hellerstein, 1982).⁸ Accordingly, the definition of a consolidated group could be based on a control test and tests determining whether there are economic interdependencies and a flow of value.

In addition to majority legal ownership, the test of control may be extended to cover arrangements that result in a different relationship of dependence as indicated by the ownership of voting rights. In this context, reference could be made to IFRS/IAS. The definition of control provided by IFRS does not refer to *de facto* control but only to legal arrangements indicating the power to control. According to IAS 27, control may arise through an agreement that gives the parent the right to control the votes of other shareholders, the power to govern the entity's financial or operating policies by agreement or statute, the right to appoint or remove the majority of the board of directors or other governing bodies or the power to direct their votes or a combination of factors such that control rests with the parent. However, consolidation of companies when the parent company owns only one half or less of a subsidiary's voting power seems not appropriate for tax purposes. This approach would be contrary to member states current tax practice and would intensify problems associated with minority shareholders. Therefore, a simple or qualified majority of ownership should be the minimum requirement. Additional legal criteria should only be used to prevent the application of the CCCTB to companies where the majority ownership of an entity's voting rights does not constitute control of it.

Whether economic interdependencies or a flow of values between affiliated companies exist should be determined based on objective and easily administrable criteria. For example, the percentage of turnover realized on intra-group transfers of goods or provisions of services might serve as an indicator (see Hellerstein, 1993; Hellerstein and McLure, 2004: 205). A flow of goods, services, or intangibles could indicate whether commonly controlled entities constitute an economically integrated business and

⁸ For a summary of test used to define a unitary business see Weiner, 1999: 29-34.

whether there is scope for profit shifting via transfer pricing. In determining the required turnover percentage attention has to be paid to the fact that the transaction volume may vary from year to year. Therefore, the threshold may be defined as a weighted average for a certain period of time. Furthermore, the application of the CCCTB could be restricted to group entities engaged in the same line of business. Thus, a test determining whether affiliated companies provide similar or a group of related products or services would have to be implemented.

3.1.3 Personal Scope of the CCCTB

The personal scope of the CCCTB should not be restricted to subsidiaries (i.e. corporations) as group members. Instead, it should also include permanent establishments (see Wissenschaftlicher Beirat beim Bundesministerium der Finanzen, 2007: 75-76). The difficulties caused by separate accounting if applied to an economically integrated group of companies are not only relevant for distinct legal entities but also for permanent establishments. In contrast, differentiating between subsidiaries and permanent establishments would entail scope for tax planning. Taxpayers could decide whether the CCCTB or separate accounting applies simply by choosing the legal form of an investment. With respect to the principle of neutrality, this scope for strategic tax planning should be avoided. In contrast, under paragraph 2 of Article 7 of the OECD Model, the currently favoured method for allocating profits to a permanent establishment is the arm's length principle. As opposed to the proposals of the European Commission, the OECD strives harmonising the profit allocation for subsidiaries and permanent establishments using the arm's length principle. Moreover, an exclusion of permanent establishments could violate the freedom of establishment laid down in Article 42 of the EC Treaty. However, one has to bear in mind that the authorised OECD approach of profit attribution to permanent establishments is the separate entity approach based on the arm's length principle. As opposed to the concept of the CCCTB, the OECD intends to harmonise the profit allocation of permanent establishments and subsidiaries using separate accounting under the arm's length principle.

An important issue regarding the personal scope of the CCCTB concerns the treatment of transparent entities. This issue was already addressed by the Working Group of the European Commission (see European Commission, 2007b: 5). The general view so far

is that transparent entities should not qualify as parent companies of a consolidated group. Although the principle of neutrality would call for an equal tax treatment of transparent entities and corporations, there are good reasons to exclude transparent entities from the application of the CCCTB. As outlined above, corporations are distinct legal entities which are taxed separately from their shareholders. In most countries the corporate income tax is not fully integrated into the personal income tax of the shareholders (see Endres et al., 2007: 20-21). The vast majority of Member states tax profits at the company level and the shareholder level. The shareholder is granted a partial relief in order to reduce double taxation on dividends. In contrast, partnerships are not regarded as distinct legal entities. Not the partnership itself but, according to the transparency principle, each partner is subject to tax with his share in the total profits. If transparent entities would qualify as a parent of a tax group for CCCTB purposes, the share of the CCCTB apportioned to the transparent entity would be allocated directly to the partners and would be subject to personal income tax. This would contravene the distinction between corporate income tax and personal income tax drawn by corporate tax systems. Therefore, transparent entities should be excluded from the personal scope of the CCCTB in order to prevent national corporate tax systems from being evaded in the context of the CCCTB. However, member states could be granted an option whether to extend the personal scope of the CCCTB to transparent entities.

An inclusion of transparent entities would also affect revenues from personal income tax. The fiscal effects of consolidation and formula apportionment could not be limited to corporate income tax. These effects are not intended by the European Commission, as the proposals for a consolidated tax base focus on corporate income tax rather than on personal income tax. According to the Commission, the personal income tax should remain in the sole responsibility of the member states (see European Commission, 2001a: 17).

Although transparent entities should not qualify for the application of the CCCTB, they are still relevant. If a corporation included in the personal scope of the CCCTB is a partner of a transparent entity, its share of the income of the transparent entity should be included in the CCCTB. Accordingly, the relevant percentage of the factors of such transparent entities should be considered with respect to formula apportionment (see European Commission, 2007b: 5).

When defining the personal scope of the CCCTB the question arises whether the mere existence of apportionment factors or a corporation or permanent establishment is required to attribute a share of the CCCTB to the respective country. From a theoretical point of view, it seems consistent with the method of formula apportionment to assign the taxing right to those jurisdictions in which at least one of the factors of the formula exists (see OECD, 2003: sec. 295). This approach would also prevent strategic tax planning such as splitting off activities in order to avoid a permanent establishment and thus, a taxing nexus in a certain country. Moreover, if the factor “sales by destination” is included in the apportionment formula, doing direct business would be taxed in the source country according to the supply-demand approach. This would promote tax neutrality because the intended allocation of the consolidated tax base to the profit generating activities would be applied irrespective of whether a company is doing direct business or doing business via a permanent establishment or a subsidiary.

However, assigning taxing rights to jurisdictions only due to the existence of an apportionment factor would be a very far reaching change, because according to current international tax practice a company becomes only liable to tax in the country in which it is resident or a permanent establishment exists. Furthermore, this approach is supposed to be difficult to administer (see OECD, 2003: sec. 295).

To conclude, the CCCTB should be applicable to subsidiaries and permanent establishments as group members. The decision whether transparent entities can qualify as parent companies or not should be left to the member states. Assignment of taxing rights on corporate income should not be based on the mere existence of apportionment factors. Instead the minimum threshold should be the existence of a permanent establishment in one country. As a response, member states might broaden their definition of a permanent establishment in order to extend their taxing rights. Therefore, a common definition of permanent establishment and nexus is needed.

3.1.4 Territorial Scope

An important issue to be analysed is the territorial scope of the CCCTB (see Agúndez-García, 2006: 20-30). This issue arises because the application of the CCCTB has to be limited to the territory of the internal market. With reference to the concept of unitary taxation in the United States this limitation of the territorial scope of the CCCTB is also

described as the “water’s edge”. The limitation of the territorial scope is necessary, because the OECD member states have chosen the arm’s length principle as the predominant method for profit allocation at the international level.

Due to the water’s edge approach, the traditional separate accounting under the arm’s length principle continues to apply for business activities with respect to third countries. Thus, profit-shifting opportunities will exist via relationships with affiliates outside the EU.

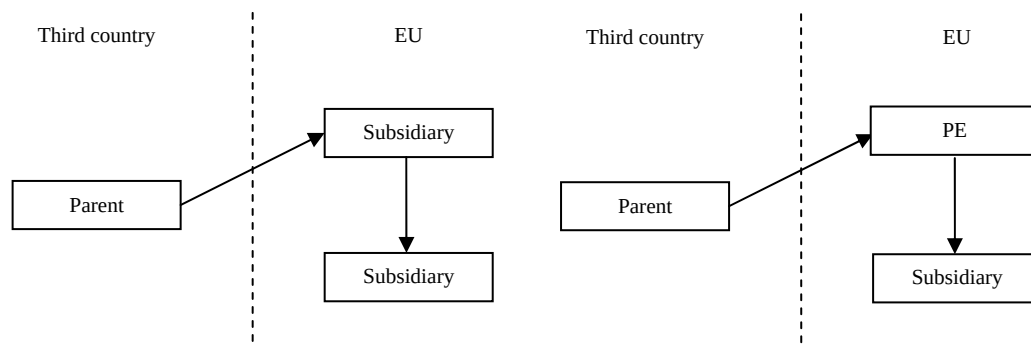
The first issue to be addressed in designing the territorial scope is to determine a corporation’s residence and the existence of a permanent establishment. A starting point could be current member state’s tax practice. However, the definitions provided by national tax law and tax treaties differ between member states (see European Commission, 2005). These differences may give scope for tax planning. Foreign companies resident in third countries could locate their subsidiaries in a member state with a restrictive definition of tax residency in order to avoid the application of the CCCTB. In addition, different definitions of residency and permanent establishment may contradict the objective of the CCCTB to introduce common tax rules in order to reduce compliance costs. Therefore, at least in the long run, common definitions of tax residency and permanent establishment should be introduced. This is also recommended by the European Commission (see European Commission, 2006: 4-5). In this regard, the work carried out by the OECD is supposed to be a good starting point (see European Commission, 2006: 5-6).

A second important issue is to determine which entities of a multinational group are eligible to apply the CCCTB, either as an option or as an obligation. As a general rule, the CCCTB should not encompass non-EU group entities. A parent company or subsidiary resident in a third country as well as a permanent establishment located outside the EU are not eligible. Although it is theoretically appealing to extend the scope of the CCCTB to all group entities irrespective of whether they are located in the EU or outside, an inclusion of non-EU group entities seems not realistic, at least in the short run. As mentioned above, at the international level separate accounting under the arm’s length principle is the agreed method for profit allocation regarding subsidiaries and permanent establishments. Therefore, the application of consolidation and formula ap-

portionment has to be restricted to corporations and permanent establishments located in the EU.

Despite the general rule that EU group entities should be eligible to apply the CCCTB, there are several issues that have to be addressed when designing the territorial scope of the CCCTB. An important question to be addressed in this context is whether the CCCTB should apply to EU group entities which are ultimately controlled by a corporation resident in a third country. Attention should be paid to several typical settings.

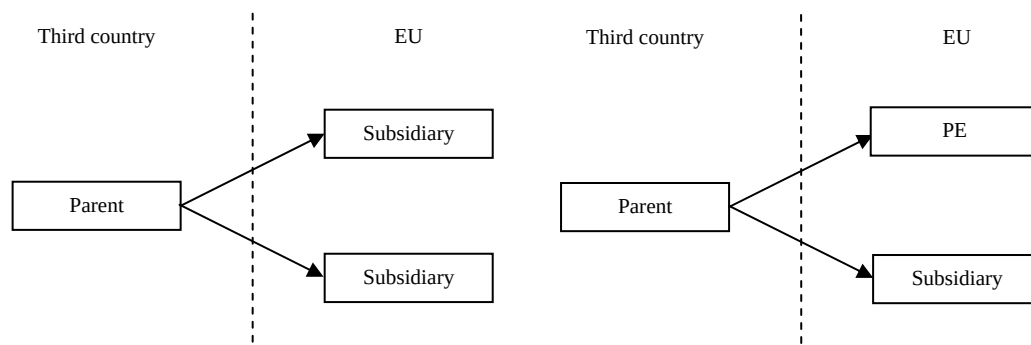
Figure 1:



A typical setting is a non-EU corporation that controls an EU subsidiary which in turn is the controlling head of an EU tax group. Alternatively, the non-EU corporation could maintain a permanent establishment that controls EU subsidiaries (see Figure 1). The issue in these two settings is whether the EU subsidiary and the EU permanent establishment respectively are eligible for the application of the CCCTB together with their EU subsidiaries. With respect to the criterion of neutrality, the application of the CCCTB to economically integrated affiliates located in the EU should not depend on whether the ultimately controlling parent company is resident in the EU or in a third country. Accordingly, the CCCTB should apply to an EU tax group with an EU entity at its head that is ultimately controlled by a non-EU corporation. Otherwise, there would be scope for tax planning. Companies could avoid the application of the CCCTB to EU group entities simply by moving the controlling entity in a third country (see Agúndez-García, 2006: 30). Moreover, a differentiating treatment of qualifying EU entities de-

pending on whether the parent company is resident in the EU or a third country might violate article 24 of the OECD model on non-discrimination. With respect to subsidiaries, article 24 Paragraph 5 of the OECD Model prohibits treating a subsidiary which is wholly or partly owned or controlled by a parent company of another country in a way which is other or more burdensome than the treatment of a similar subsidiary. An EU company controlled by a non-EU corporation and an EU company controlled by an EU corporation should be considered as similarly situated companies, if both have a relationship to another EU company that meets the requirements of the CCCTB. Therefore, at least in settings to which a treaty with a non-discrimination article is applicable, EU group entities which are ultimately controlled by a non-EU company should be eligible for the application of the CCCTB. Concerning permanent establishments, article 24 Paragraph 3 of the OECD Model could be relevant. According to this non-discrimination article, taxation of a permanent establishment of a foreign corporation shall not be less favourable than the taxation of an enterprise carrying on the same activities. Thus, a permanent establishment located in the EU should qualify as the head of an EU tax group subject to the CCCTB.

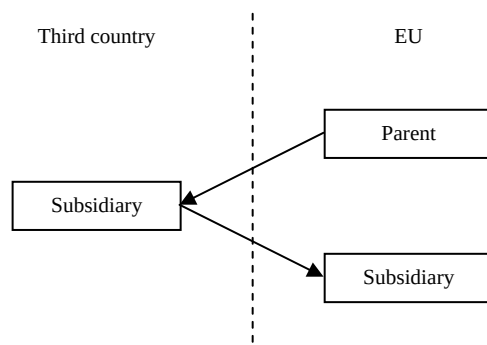
Figure 2



A different typical setting is a scenario involving a non-EU corporation controlling two subsidiaries resident in the EU or a non-EU corporation controlling an EU subsidiary and maintaining a permanent establishment located in the EU. These settings are illustrated in Figure 2. In both scenarios it has to be clarified whether those group entities located in the EU shall be able to apply for the CCCTB. With respect to tax plan-

ning it seems advisable to allow those EU group entities to apply the CCCTB. Otherwise companies may decide to avoid the application of the CCCTB simply by moving the controlling parent company outside the EU. Furthermore, as economies of integration may also occur between group entities on the same level in the ownership chain, they should be also consolidated from a conceptual point of view. Whether the non-discrimination article of the OECD Model is applicable to this setting, however, is questionable. Considering only those two entities located in the EU, there is no controlling relationship. In the absence of the controlling entity these two entities do not form an economic unit and thus, would not be eligible for the application of the CCCTB. As a consequence, if two entities controlled by a non-EU corporation are not eligible for the application for the CCCTB, this is not a case of discrimination because two sister companies controlled by an EU company would not be eligible either.

Figure 3



A final setting is an EU parent company controlling a non-EU subsidiary that in turn controls an EU subsidiary (see Figure 3). The question arising in this setting is whether the CCCTB is applicable to the EU parent company and its EU subsidiary without taking into account the non-EU intermediary. In order to decide on this issue, reference has to be made to the general definition of the consolidated group. As considered above⁹, the definition of the consolidated group should mainly rely on legal ownership. The required ownership threshold can be reached either directly or indirectly through subsidiaries. The same rules should apply in this setting. With respect to the criterion of neutrality, two EU group companies aligned via indirect ownership should be eligible

9 See chapter 3.1.1.

for the application of the CCCTB irrespective of whether the intermediary is a tax resident in a member state or a third country. Otherwise, there would also be scope for tax planning, since companies could prevent the application of the CCCTB by moving the intermediary outside the EU. However, consolidation of group entities without taking into account the intermediary may get complex.

3.2 Consolidation

A key element essential to the concept of the CCCTB is that of consolidation – i.e. cross border profit and loss offset and deferral treatment on gains (and/or losses) at the time of intra-group transfer. Since the EU-Regulation on consolidated accounts from 2002¹⁰ obliges companies listed on an EU stock market to establish their consolidated accounts based on IFRS from 2005 onwards, for reasons of simplicity and practicability, consolidated IFRS-accounts could be used as a suitable starting point for the determination of the CCCTB. This possibility was also considered by the European Commission (see European Commission, 2003a). There are, however, certain arguments against this strategy (see Spengel, 2004). Both, the definition as well as the territorial scope of the consolidated group are not satisfactory for tax purposes. Moreover, the method of consolidation is unlikely to be compatible with tax principles and current Member states' tax practice. Adjusting IFRS-group statements would be complex and is unlikely to reduce compliance costs, as intended by this approach. Therefore, consolidated IFRS-accounts cannot serve as a starting point for the CCCTB. By contrast, a tax-specific method of consolidation using the individual accounts as a starting point is preferable. This view follows Member states' practice with regard to consolidated taxation of domestic groups and has been shared by the European Commission (see European Commission, 2003b: 21).

All members of the taxable unit should calculate their own tax bases separately first. In this respect, common tax accounting rules should apply. Common tax accounting rules would reduce compliance costs and increase transparency. Entities that have a different currency from the group's currency have to translate their individual tax base into the group's currency. In this respect, the controlling parent's currency should be

decisive. In general, the exchange rate of the respective tax accounting date should be used to translate the taxable income.

Taxable income of group members can only be consolidated with the taxable income of other group members of a corresponding accounting period. Otherwise, companies could defer taxation changing their reporting period. Therefore, where the accounting periods of entities differ, adjustments are necessary. Two approaches can be distinguished. One alternative would be to align the tax accounting period of each group member to the accounting period of the parent company. By contrast, if the accounting period remains unchanged, the taxable income of each company has to be time apportioned. Adjustments could be restricted to situations where the difference in the accounting dates does not exceed a certain period, e.g. three months.

3.2.1 Intra-group Loss Relief

In their study on company taxation, the European Commission pointed out, that the current limits to cross-border loss relief within the EU, in particular as regards subsidiaries, can lead to double taxation and constitute significant obstacles to economic activity in more than one Member state (see European Commission, 2001b: 242-255). Therefore, the offset of losses and profits between members of the taxable unit is a key feature of the CCCTB. Loss relief is achieved via consolidation. Adding together the individual tax bases of each group entity, losses incurred by one group entity are automatically offset against profits of other group entities.

If the consolidated tax base is negative, the loss should be carried back to be offset against profits of prior years or carried forward to be offset against future profits. This is necessary to ensure taxation of the net income, a requirement inherent to the principle of equity. Two possible mechanisms for a loss carry over were discussed by the working group (see European Commission, 2006b: 12). The first approach would be to allocate the loss to each group member according to the apportionment mechanism. The allocated share of the group's loss may then be carried back or forward at the level of each individual group member and offset against shares of a positive consolidated tax base in

10 Regulation (EU) 1606/2002, OJ EU L 243/1 dated 11 September 2002.

prior or future years. The second approach would be to carry back or forward such losses at the group level.

The first approach seems to be more consistent with the concept of consolidation and formula apportionment. Although the approach of consolidation is based on the notion that a group of companies forms an economic unit, under the concept of the CCCTB each of the group members remains liable to tax for its apportioned share of the consolidated tax base on an individual basis. The first approach leads to a symmetric treatment of profits and losses. Not only a positive but also a negative consolidated tax base is apportioned to each group member. In contrast, the second approach results in an asymmetric treatment of profits and losses. Whereas a positive group income is subject to formula apportionment in the period it is earned, a negative consolidated tax base is carried forward at the group level and reduces future profits. As a consequence, losses are apportioned according to the allocation of apportionment factors in the period in which they are offset at the group level. This allocation of apportionment factors, however, may not lead to an allocating of the consolidated tax base to the loss generating activities as intended by formula apportionment.

Moreover, with respect to international aspects, the second approach may cause problems. These may occur, if the credit method to foreign income earned by resident group members from sources outside the EU is applied. Without apportioning a negative consolidated tax base, the tax burden caused by the foreign income may be too high as the compensating effect of the losses is disregarded at the level of the receiving company. Loss relief is only achieved at the group level in subsequent years.

A drawback of the first approach, however, is its leeway for tax planning. Companies may re-locate apportioning factors in order to allocate group's losses to those Member states with high tax rates. According to the second approach, the offset of a negative consolidated tax base does not depend on the apportionment mechanism. Therefore, possibilities for tax planning are reduced. However, the scope for tax planning occurs also in years with a positive consolidated tax base. Thus, these tax planning possibilities are inherent to the CCCTB.

Taking all these arguments together, a negative CCCTB should be apportioned to each group member, as this approach is in line with the concept of the CCCTB and could prevent problems concerning international aspects.

If a negative consolidated tax base is to be apportioned to the involved group entities and offset against shares of a positive consolidated tax base in prior or future years, common rules for loss carry-back or loss carry forward in the EU are necessary in order to reduce incentives for tax planning. At present, the vast majority of member states do not provide for a loss carry back (see Endres et al., 2007: 81). It seems therefore more realistic, to allow only for a loss carry forward. In order to prevent, that losses cannot be offset but get lost, there should be no restrictions to the loss carry forward with respect to time.

Special rules are required in order to prevent companies from utilizing losses more than once. Losses may not only be consolidated at the group level but also be carried over in previous or subsequent years to be offset against profits in the individual account of the respective group member. There are two alternative approaches to avoid this so called “double dip”. Either, any carry-forward or carry-back of losses at the company level is added back to the consolidated tax base at the group level or the separate taxable income before compensation for loss carry forwards of each group member enters the consolidation. Both approaches would ensure that once losses are offset via consolidation, these losses cannot be used at the company level.

3.2.2 Adjustment of Intra-group Transfers

A systematic elimination of tax obstacles to cross-border EU-wide activities requires not only loss relief but also a deferred taxation of gains and losses realized on intra-group transactions. Transfer pricing issues arising from separate accounting could be eliminated or would practically disappear for transactions between companies participating in the CCCTB. There would be considerably less scope for income shifting, if intra-group transactions are eliminated for tax purposes. Furthermore, the current complexity of Guidelines on Transfer Pricing would cease to exist for activities within the EU. This is considered one of the main potential advantages of the CCCTB (see European Commission, 2001b: 420). Moreover, deferred taxation of intra-group transactions would be a potential solution to high tax costs and international double taxation when

entering into cross-border business restructuring, for example in case of a merger, a division or a transfer of assets (see Spengel and Braunagel, 2006: 47-48).

Recapture of gains realized on intra-group transactions depends on the type of the respective asset. Gains and losses regarding intra-group transfers of non-depreciable assets should generally be deferred until the asset leaves the group, either by a sale or other disposition to a nonmember. Intra-group income regarding depreciable assets is either restored in the course of depreciation or if the asset leaves the group.

Special rules for recapture are required, if a group member moves its residence to another member state or assets and liabilities are transferred to an extent, that no permanent establishment remains in the transferring member state and thus, it loses its entitlement to tax a share of the consolidated tax base. In each case, taxing rights of member states are at risk.

According to the principle of inter-nation equity each member state should have the right to tax hidden capital gains built up in its territory. Therefore, recapture of deferred capital gains may be justified if taxing rights are at risk. However, a group member moving its residence or business restructuring do not represent realization events. Moreover, exit taxes may violate the fundamental freedoms of the EC Treaty. Therefore, an approach has to be found, which on the one hand ensures tax neutrality and on the other hand ensures that the transferring member state remains its right to tax deferred gains realized on previous intra-group transfers.

First, this approach would require the recording all gains and losses realized on an intra-group transfer in the individual accounts. Second, if taxing rights of a member state are at risk, the intra-group income attributable to this jurisdiction should be restored and apportioned to all involved member states. The share allocated to the receiving member states remains deferred. Similarly, the share of the transferring member state losing its taxing nexus to the CCCTB should not immediately tax the restored capital gains. Instead, the restored gain may be taxed pro rata over the useful lifetime of the respective asset or a certain period of time. It might be also reasonable to tax this income upon its actual disposal to a third party. However, one has to recognize that with this approach transfer pricing issues do not disappear. Companies may strategically determine transfer

prices taking into account the allocation of apportionment factors in the year of recapture.

There are several different techniques with respect to the adjustments necessary to neutralize intra-group transactions:

A first approach would be to ignore intra-group transactions for tax purposes. According to this approach, the seller's basis in the asset would carry over to the buyer in the intra-group sale. The company receiving the assets is obliged to compute any new depreciation and any gain or loss in respect of the asset transferred according to the seller's basis in the asset ultimately before the transfer. As a result, gains or losses realized on an intra-group transaction are not documented for tax purposes.

A second approach is to record intra-group transfers at their internal transfer price, both in the seller's as well as the purchaser's account. Any gain or loss realized on the transaction is recorded as a balance sheet item and thus neutralized for tax purposes in the seller's account. The acquiring company computes new depreciation or a capital gain on a subsequent transfer on the basis of the transfer price. If the intra-group gain or loss has to be restored because of a subsequent transfer or in the course of depreciation, the balance sheet item is dissolved.

According to a third approach, each group member computes its individual taxable income taking into account all gains and losses realized on an intra-group transfer. Thus, group member's accounts correspond to those of unrelated companies. Instead of adjusting the individual accounts of the group members involved in intra-group transfers, gains and losses realized on an intra-group transfer may be neutralized in a separate combined report. Taxable income of each group member is calculated as between unrelated companies. These individual results are combined and adjusted, eliminating intra-group gains or losses and any excess depreciation. This approach prevails in France and the United States for domestic group taxation.

The following example illustrates the effects of the three approaches.

Example: Company A and company B belong to the same tax group. Each company's annual profit amounts to 100,000 EURO. It is supposed now, that company A acquires a machine for 30.000 EURO. The machine has a useful lifetime of three years. The machine is depreciated according to the straight-line method over the course of the useful lifetime. At the end of period one, company A sells the machine to company B at a price of 30,000 EURO.

Approach 1: Intra-group income is ignored

	year 1	year 2	year3
Company A			
profits	100,000	100,000	100,000
depreciation	-10,000	-	-
capital gain	-	-	-
deferred intra-group gains	-	-	-
restored intra-group gains	-	-	-
adjusted separate income	90,000	100,000	100,000
Company B			
profits	100,000	100,000	100,000
depreciation	-	-10,000	-10,000
adjusted separate income	100,000	90,000	90,000
Consolidated Tax Base			
combined income	190,000	190,000	190,000
adjustments	-	-	-
consolidated tax base	190,000	190,000	190,000

Approach 2: Intra-group income is realized but adjusted in the seller's account

	year 1	year 2	year3
Company A			
profits	100,000	100,000	100,000
depreciation	-10,000	-	-
capital gain	10,000	-	-
deferred intra-group gains	10,000	-	-
restored intra-group gains	-	5,000	5,000
adjusted separate income	90,000	105,000	105,000
Company B			
profits	100,000	100,000	100,000
depreciation	-	-15,000	-15,000
adjusted separate income	100,000	85,000	85,000
Consolidated Tax Base			
combined income	190,000	190,000	190,000
adjustments	-	-	-
consolidated tax base	190,000	190,000	190,000

Approach 2: Intra-group income is realized but adjusted in a combined report

	year 1	year 2	year3
Company A			
profits	100,000	100,000	100,000
depreciation	-10,000	-	-
capital gain	10,000	-	-
deferred intra-group gains	-	-	-
restored intra-group gains	-	-	-
adjusted separate income	100,000	100,000	100,000
Company B			
profits	100,000	100,000	100,000
depreciation	-	-15,000	-15,000
adjusted separate income	100,000	85,000	85,000
Consolidated Tax Base			
combined income	200,000	185,000	185,000
adjustments	-10,000	5,000	5,000
consolidated tax base	190,000	190,000	190,000

It becomes evident from the example that all three approaches lead to the same consolidated tax base in each period (i.e. 190,000 EURO). Only the separate tax bases of each group member differ depending on the approach that is applied. According to the second and third approach, intra-group transfers are recorded at their transfer price in the individual accounts. This seems beneficial in cases where intra-group income has to be restored, for example if a company involved in an intra-group transfer ceases to be a group member or taxing rights of a member state are at risk due to business restructuring. The third approach has another advantage. As each group member's separate account is determined as though the company is independent, the separate accounts may remain the basis for the claim of minority shareholders. In contrast, the other two approaches require that adjustments take place in the separate accounts. On applying the second approach, all adjustments take place at the level of the transferring company. In contrast, the purchasing group member's account is determined as if it belonged to a nonmember. Both, the individual account of the seller and the purchaser have to be adjusted, if intra-group transactions are ignored for tax purposes. As a result, there are good reasons for adjusting intra-group transactions in a separate combined report and determining the individual accounts using the method of separate accounting (third approach).

3.2.3 Other Adjustments

In addition to the intra-group loss-relief and deferred taxation of gains realized on intra-group transfers, further adjustments are necessary to prevent double or minor taxation. Intercompany dividends are paid out of taxable income. In order to avoid double taxation, they should be tax exempt. Correspondingly, a write-down of an investment in a group member should not be tax deductible. Moreover, any withholding taxes on intercompany payments should be avoided. As a general rule, this is already achieved due to the Parent Subsidiary Directive as well as the Interest and Royalties Directive.

3.2.4 Distinction between Different Types of Income: Business and Non-business Income

A guiding principle for allocation of profits is to assign income to the source country. The source of profits is defined as the location where the profits are created (see Jacobs, Spengel and Schäfer, 2004: 270). If the source of certain categories of income can be

precisely determined, there is a strong argument to exclude this income from consolidation and apportionment and instead to assign this income to the tax jurisdiction having its source within its borders. The application of formula apportionment should be restricted to income arising from transactions and activities in the course of the economically integrated business, as the arm's length principle fails to allocate the benefits from economic integration.

A distinction between different categories of income is also made in the United States and Canada. In these countries the application of formula apportionment is restricted to the so called business income (see Weiner, 2005: 66). Business income is generally referred to as any income arising from transactions and activities in the regular course of the business. Non-business income typically includes income such as royalties, dividends, interest receipts and rents. Whereas business income is consolidated and apportioned, non-business income is directly assigned to a tax jurisdiction.

Despite that a distinction between different types of income seems justified from a theoretical point of view, there are some disadvantages to this approach (see Argúndez-Garzía, 2006: 17-20). Separation between categories of income can get difficult and might be subject to manipulations, as deciding whether activities and resulting income belong to the economic unit is not an easy task. Moreover, a consequent application of this approach would require a separation of expenses aligned to the different categories of income as well. Taxing interest and licenses according to the current member states practice would enable companies to maintain their strategies of shifting income thus assigning expenses to high tax countries and corresponding income to low tax countries. A final problem linked to the distinction approach is that it removes one of the advantages of consolidation, namely the fact that loss offset disregarding the categories of income. Instead, losses incurred from the non-apportionable categories of income, excluded from the consolidated base, would not benefit from general intra-group cross-border loss compensation and therefore an additional system of loss transfers might be required.

Taking all these arguments into account, it might be more apt not to differentiate between different categories of income.

3.2.5 Consolidation in Case of Less than 100%-owned Affiliates

If the parent holds less than 100% of the shares in a subsidiary, the question arises if consolidation should be limited to part of the profits and losses in proportion to the share ownership. This issue was already addressed by the European Commission (see European Commission, 2006c: 7; Argúndez-Garza, 2006: 14). From a theoretical point of view, full consolidation seems to be the superior approach. Economies of scale and scope and the excess profit associated with economic integration are not only realized in proportion to an ownership percentage. Instead, if control can be exercised and the affiliates are economically integrated all of the achieved excess profits should be allocated to the economic group (see Argúndez-Garza, 2006, 15). Furthermore, if group member's income should be consolidated in proportion to their ownership, transfer pricing as an income shifting device and compliance costs associated with transfer pricing would prevail. Therefore, a potential advantage of the CCCTB could not be achieved in case of proportional consolidation.

The idea of limiting loss-relief to the extent of the actual economic risk of bearing the loss does not justify proportional consolidation, because the economic risk of bearing a loss does not directly correspond to the ownership percentage but rather to the investment.

There is another issue related to the question whether to apply full or proportional consolidation. If the parent holds less than 100% of the shares in a subsidiary, consideration has to be given to the treatment of minorities (see European Commission, 2006c: 9). The question is how to ensure fair treatment of majority and minority shareholders if the tax paid by the companies they own is potentially determined by the companies' relationship with the group. As the consolidated tax base is apportioned, the tax liability of each group member may differ from the tax liability faced by the company if it were independent. If the tax liability according to formula apportionment is higher, minority shareholders might be entitled to compensation. However, this issue not only arises if all of the subsidiary's income is consolidated, but also if this applies only those parts of the subsidiary's income that corresponds to the majority shareholders' profits. The following example illustrates this issue.

Example: Suppose a taxable group consists of a parent company that owns 60% of a subsidiary. Based on separate accounting, the parent is earning a profit of 1,000. In contrast, the subsidiary is incurring a loss that amounts to 500

under separate accounting. Under the assumption that there are no intra-group transactions, the consolidated tax base is 500. Assuming furthermore, that the tax base is apportioned equally, the share in the group's tax base for each company is 250. If the subsidiary's income is only consolidated in proportion to the ownership percentage the consolidated tax base amounts to 700 ($1,000 + (-500 \times 60\%)$). Combining the share in the consolidated tax base of 350 with the loss that corresponds to the minority shareholders' income results in a tax base of the subsidiary of 150 ($350 + (-200)$). As a result, independent of whether full or proportional consolidation is applied, the tax liability faced by minority shareholders can be higher applying the CCCTB compared to separate accounting.

Therefore, the CCCTB has to be based on full consolidation and should be accompanied with rules concerning compensation for minority shareholders. The treatment of minority shareholders should be ignored for tax purposes and left to company law of the member states. Therefore, tax law would only have to deal with compensation of minority shareholders for any negative consequences arising from consolidation and the apportionment mechanism (see European Commission, 2006b: 12-13).

3.2.6 Income arising on cross-border investments in third countries

3.2.6.1 Necessity of Common Rules

The application of the CCCTB is limited to the boundaries of the EU (see European Commission, 2001b: 482-486, 498). For those cross-border business activities between member states and third countries, separate accounting using arm's length pricing remains.¹¹ With respect to third countries, outbound and inbound investments can be distinguished. Typical patterns for outbound investments are an EU parent company doing direct investment in a third country, i.e. an EU parent company maintaining a permanent establishment or having a subsidiary in a third country. Between parent and subsidiary different income flows may arise. The parent company may receive dividends, interest income, or royalties. Typical settings for inbound investments are a non-EU company doing either direct investment maintaining a permanent establishment or a subsidiary. Again, the non-EU parent company may receive dividend payments, interest income or royalties from its EU subsidiary.

A starting point for the tax treatment of inbound and outbound investment with respect to third countries is the current tax practice as codified in the national tax laws and

¹¹ Separate accounting under the arm's length principle would also have to EU affiliates resident in member states that do not apply the CCCTB and EU affiliates excluded from the consolidated group.

existing tax treaties. In contrast, any renegotiation or amendment to existing tax treaties is regarded as last resort solution (see European Commission, 2006: 3).

At present, tax rules concerning inbound and outbound investments differ to a substantial degree. Differences exist regarding various aspects. On the one hand, member states treat the same category of income differently. For instance, with respect to foreign permanent establishments some member states apply the exemption method either with or without loss relief while other member states apply the credit method to avoid double taxation (see European Commission, 2006d: 4). Similarly, dividends on shares in a foreign subsidiary are either tax exempt or taxed and foreign tax credit is granted. On the other hand, member states apply different approaches depending on the category of income. Interest on loans or royalties on intellectual property are subject to residence based taxation while source based taxation is rather applied to profits of a foreign permanent establishment or subsidiary. With respect to inbound investments, withholding taxes are levied at source with different rates. Furthermore, member states know different anti-avoidance rules in order to prevent the erosion of the tax base.

Due to these differences, it seems appropriate to exclude foreign income earned in third countries from the CCCTB and instead, to assign the taxing right solely to the jurisdiction of residence of the group member receiving the income. Otherwise, member states would have to accept each other's tax rules regarding cross-border investment. For example, if one member state grants cross-border relief of losses incurred by a foreign permanent establishment, foreign losses would be consolidated thereby reducing the apportionable consolidated tax base and thus, the share in the consolidated tax attributable to other involved countries. Similar conflicts may arise, if the exemption method is meant to relief double taxation in one member state while the credit method is applied in another member state.

Although, maintaining current tax practice seems attractive from a pragmatic point of view, there are good reasons to strive for common rules with respect to third country issues, at least in the long run. If different national rules are to be followed with respect to cross-border investments between EU group entities and non-EU group entities, this may facilitate strategic tax planning. EU companies might reorganize their business organization within the EU in such a way that cross-border investments in third coun-

tries are subject to the most beneficial rules provided by a member state. For instance, direct investment in a low-tax country via a permanent establishment or a subsidiary would be undertaken from a company resident in a member state providing the exemption method as a means to avoid double taxation. Similar tax planning strategies might occur with respect to non-EU companies investing in the EU. Therefore, a CCCTB maintaining differing current tax practice with respect to third country issues is not neutral.

As companies can reorganize their business in order to realize tax advantages, anti-avoidance rules applied by some member states are likely to be evaded. Thin-capitalization rules, for instance, could be evaded, if a non-EU company first grants a loan to a subsidiary resident in a country without thin-capitalization rules, and afterwards this loan is directed to the relevant company via intra-group transactions. This is facilitated by consolidation, as intra-group transactions are netted out and thus, are not subject to tax. As a consequence, it becomes difficult for member states to enforce their tax rules, especially if they are less favorable than comparable rules of other member states applying the CCCTB. Moreover, with different national tax rules regarding third country issues, multinational companies doing business not only within the internal market but also in third countries would still have to cope with 27 different tax systems.

To conclude, at least in the long run common rules for taxing inbound and outbound investments with respect to third countries are recommended (see also Hellerstein and McLure, 2004: 207; Mintz, 2004: 228).

3.2.6.2 Outbound Investments

Basically, there are two alternative approaches for the taxation of income which results from cross-border business activities: source-based taxation and residence based taxation.

According to the source principle foreign profits generated in the source country would have to be finally taxed according to the rules of the source country, since the income is exempted from taxation in the residence country. Thus, business profits attributable to a permanent establishment or a subsidiary located in a third country are not included in the CCCTB but exempt from taxation in the EU. The same should apply to other categories of income, such as interest on loans, dividends on shares, or royalties

on intellectual property. These categories of income should be exempt from taxation in those member states where the receiving company is resident. However, pure source-based taxation seems to be unrealistic, as it would contradict current tax conventions. According to the OECD Model, the right of the source country to tax interest income and royalties is only limited. Therefore, in order to prevent double non-taxation of these kinds of passive investment income the residence jurisdiction should maintain its right to tax these kinds of income received by a resident company and provide a credit for the underlying foreign taxes.

The residence principle calls for taxation of an investor's worldwide income according to the rules of the residence country, regardless of the geographical source of the income. This approach would imply that income earned through a permanent establishment or a subsidiary outside the EU, dividends on shares, interest income on loans, or royalties on intellectual property should be taxed by the residence member state. To avoid international double taxation, the residence jurisdiction grants a credit for taxes paid abroad. Similar to the source principle, pure residence based taxation seems not feasible as it would not be in line with current international tax practice. Two restrictions to a pure residence approach are necessary. First, taxation of profits attributed to a foreign subsidiary has to be deferred until the time of repatriation. Second, the foreign tax credit has to be limited to the amount of domestic tax payable on the foreign income.

There are two possibilities how to introduce the residence principle in conjunction with the CCCTB (see Argúndez-García, 2006: 23-26).

The first possibility is to include foreign income from sources outside the EU earned by EU-resident group entities in the consolidated tax base for later apportionment across the corresponding member states. A credit for taxes paid abroad is granted by those member states receiving a share of the foreign income. The foreign tax credit is limited to the amount of domestic tax payable on the share of the foreign income.

The second possibility is to exclude income earned outside the EU from consolidation and instead to attribute it to the EU group entity earning that foreign income. Thus, income earned outside the EU would follow the same attribution rules as at present and would be taxed in the particular residence jurisdiction. The foreign income is added to

the share in the consolidated tax base apportioned to the respective company. A foreign tax credit is granted by the member state where the group entity earning that foreign income is a tax resident.

The source principle is conceptually consistent with the concept of the CCCTB (see Hellerstein and McLure, 2004: 207). Under the CCCTB concept, the consolidated income is apportioned according to the distribution of the group's income generating activities and finally taxed according to the rules of the respective jurisdiction. A major difference, however, remains. While EU group entities are subject to consolidation and formula apportionment, non-EU group entities have to apply separate accounting using arm's length pricing. In contrast, application of the residence principle to cross-border investments involving third countries would imply not only a different method of allocating profits but also a different assignment of taxing rights compared to the concept of the CCCTB. If the taxing right of income earned in a third country is assigned to the particular jurisdiction in which the company earning the foreign income is resident, this would be conform to the traditional interpretation of residence taxation. In contrast, by including foreign income from non-EU sources in the consolidated tax base subject to formula apportionment, each member state having a nexus to the consolidated tax base would be deemed to be a resident jurisdiction (see Argúndez-García, 2006: 23). On the one hand, this seems theoretically questionable, as those apportionment factors located within the EU do not reflect the activities generating the income outside the EU. On the other hand, this approach would promote the intention behind the CCCTB to treat the EU as one internal market and to take into account that a group of affiliates forms an economic unit.

Although conceptually appealing, there are some shortcomings associated with the source principle in light of the principle of neutrality. As outlined above, the combination of the source principle and the separate accounting approach facilitates profit shifting either by abusive transfer pricing or relocation of functions and risks. Moreover, as source principle is probably not going to be applied to debt financing, incentives to modify the financing structure in order to gain a tax advantage remain.

To prevent an erosion of the tax base due to strategic tax planning, the EU could introduce common anti-avoidance rules in international situations in conjunction with

third countries (see European Commission, 2005: 13-15). Rules regarding controlled foreign companies (CFC) located in tax havens, and rules to cope with abusive transfer pricing could be taken into consideration. However, these rules would lead to distortions of business decisions which are not conform to the principle of tax neutrality.

Compared to the source principle, residence based taxation is rather supposed to promote neutrality, since the decisions where to invest as well as the decisions on the finance structure and the legal structure are unaffected by taxation (see Homburg, 2005: 17-27). However, also under the residence principle tax induced distortions of business decisions remain. Companies may move their residence to a low-tax country in order to escape a high tax rate applied to their world wide income. Moreover, companies may shift profits in order to avoid the limitations of the foreign tax credit. Furthermore, as retained profits of a foreign subsidiary are not subject to taxation in the residence country, an element of source based taxation remains even under the residence principle.

When evaluating the effects of the residence principle in light of the principle of neutrality, a distinction has to be made between attributing income earned outside the EU to the whole group or only to the group member doing business outside the EU. If foreign income is attributed to a particular group entity, the individual tax rate of the residence jurisdiction is applied. This approach will give a tax incentive for multinationals to change the residence of group entities doing business in a third country. Direct investments outside the EU would be relocated to affiliated companies in a low-tax member state or group companies investing in a third country may move their residence to a low-tax country. Additionally, if the tax rate in the residence jurisdiction is lower than the effective tax rate applied to the consolidated tax base, there is an incentive to shift profits in a third country, as these profits are subject to the lower tax rate in the jurisdiction of residence. Instead, if foreign income is consolidated and apportioned, it is subject to the effective tax rate determined by the allocation of apportionment factors and the tax rates of corresponding member states. Thus, the effective tax rate applied to the group's EU income determines the tax burden of foreign income, irrespective of where the company doing business outside the EU is a tax resident. This would eliminate incentives to move the residence of EU group entities investing in a third country. However, incentives to change the inter-jurisdictional allocation of apportionment factors

will increase, as the effective tax rate applied to the consolidated tax base will also determine the tax burden of the world wide income of EU multinationals.

To ensure a symmetric treatment of profits and expenses, source based taxation would require a distinction to be drawn between expenses associated with tax exempt non-EU income and expenses associated with EU apportionable income. Those expenses related to exempt income should not be tax deductible. A similar distinction is required, if the residence principle is followed and thus, foreign income attributed to the residence jurisdiction. Corresponding to the tax treatment of income, expenses associated with this income should be separated from the consolidated tax base and directly ascribed to the residence country. These presumably complex distinctions are not necessary, if income earned outside the EU is included in the consolidated tax base. The residence principle is generally supposed to require a higher administrative effort than the source principle. Therefore, with respect to the criterion of simplicity, the source principle should be favored.

To summaries, in order to reduce scope for tax planning and compliance costs, the EU should strive for common rules with respect to outbound investments of EU group companies in third countries. The application of the source principle would be consistent to the concept of the CCCTB and has administrative advantages. Regarding tax neutrality, however, income earned outside the EU should be included in the CCCTB and shared by the involved member states (see Gérard, 2006).

3.2.6.3 Inbound Investments

Taxable income of EU group affiliates which are ultimately controlled by a non-EU company should be consolidated and apportioned. This should apply to both subsidiaries and permanent establishments located in the EU. Between the non-EU company and the EU group entities, separate accounting under the arm's length principle should prevail to determine the individual tax base to be included in the CCCTB.

Regarding payments of dividends, interest, and royalties by EU group companies to a company resident in a third country existing tax treaties allow the imposition of a withholding tax. According to the OECD Model, the withholding tax rate is limited. Although, a consequent application of the source principle guiding the CCCTB would allow for an unlimited taxation of these kinds of passive income, withholding taxes

should fall in to the range agreed by the OECD. Pure source based taxation seems unrealistic.

When imposing a withholding tax, the question arises, whether the taxing right is assigned only to the jurisdiction in which the paying company is resident or to the whole EU group. This question is closely linked to the issue whether non business income should be excluded from consolidation. If a distinction between different types of income is refused, as favored here, the amount paid is deducted from the consolidated tax base and therefore reduces the income to be apportioned to member states. Accordingly, the withholding tax levied by the member state where the payer is a tax resident should be also subject to formula apportionment (see European Commission, 2006e: 3). Instead, if dividends, interest or royalties are excluded from consolidation, these payments are tax deductible only in the jurisdiction where the paying company is a resident. In this case, the withholding tax received by the member state should not be shared by other member states.

3.2.7 Treatment of Companies Entering the Group

Another issue that has to be discussed with respect to losses refers to pre-consolidation losses (see European Commission, 2007b: 6). In general, there are three approaches for the treatment of pre-consolidation losses. These losses can be treated as part of the group losses and offset against profits of other group members. Another approach is to exclude these losses from consolidation and to prohibit their compensation during the time group taxation applies. This is, for example, the current German approach for domestic group taxation. Thus, losses may only be used against profits when the company that has incurred these losses leaves the taxable group. An intermediate approach would provide that pre-consolidation losses do not enter consolidation but can be offset against the positive share of the consolidated tax base of the respective company.

As pre-consolidation losses of a company are not incurred by the taxable group, it seems reasonable to exclude such losses from consolidation. Since under the concept of the CCCTB each group entity remains liable to tax with its share in the consolidated tax base on an individual basis, such losses should remain with the company that has incurred them and offset on a stand-alone-basis (see European Commission, 2007b: 6).

This approach is consistent with the source principle inherent to the CCCTB and corresponds to current member states' tax practice (see Endres et al., 2007: 92). However, to deny the offset of these losses during the consolidation phase would be too restrictive. This might prevent companies with loss carry forwards from opting for the CCCTB. In order to separate these losses from consolidation, pre-consolidation losses should be carried forward and subtracted from the consolidated tax base after formula apportionment.

Another issue refers to the tax treatment of hidden capital gains build before a company joins the group. These gains do not belong to the group, but to the company and the country of residence. Taxing rights of the source country may be at risk since if these hidden gains are realized in a subsequent year they are apportioned to all group members. According to IFRS, all identifiable assets acquired, and liabilities and contingent liabilities assumed in a business combination are initially recorded in the consolidated financial statements at fair value (IFRS 3.36). For tax purposes, however, it should be avoided, that Member states tax companies applying the CCCTB the first time on the difference between the fair value of their assets and liabilities and their value for tax purposes. Should a company opt for the application of the CCCTB, this does not lead to a realization of hidden capital gains. Taxation of these gains would probable keep companies from applying the CCCTB. The difference between the fair value of assets and liabilities and their value for tax purposes could rather be treated like an intra-group transaction. Group members are not to be taxed at the time of the transaction. If the intra-group income is restored in subsequent years, an amount equal to the hidden capital gains assessed in the year the CCCTB is applied the first time should be directly allocated to the respective tax jurisdiction.

3.2.8 Treatment of Companies Leaving the Group

If a company leaves the group or the group terminates, losses apportioned to each group member during the group phase should remain with each company.

Moreover, if one of the group companies engaged in an intra-group transfer afterwards leaves the group, this should be deemed as a restoration event. If the internal purchaser of the asset afterwards leaves the group, not only the purchaser but also the asset leaves the group. Therefore, this event should be treated in the same way as a sale of the

asset to an unrelated party. Moreover, this approach would prevent tax planning strategies aimed to avoid taxation of capital gains by transferring assets into a subsidiary and selling the shares of the subsidiary with full participation exemption (see European Commission, 2007c: 9). If the seller leaves the group, a previously deferred intra-group gain or loss should also become subject to tax. As the seller and the buyer do not belong to the same group, the requirement for deferred taxation is not met anymore. Another reason for this provision again refers to tax planning. Companies might avoid taxation of capital gains in a certain country by joining the group, transferring assets into other group members and afterwards leaving the group. In order to ensure that taxing rights of the country of residence are not at risk, the leaving company has to be subject to tax on the gain which is assessed as the difference between the seller's basis in the asset and the arm's length price at the time of the original transfer.

An exception applies, if the seller of an intra-group transaction leaves the group. Subject to tax on the restored gain is the departing company, not those companies remaining in the group. Therefore these recaptured gains are not subject to formula apportionment.

3.3 Related Issues

3.3.1 Optional or Mandatory?

As a general rule, the CCCTB should be mandatory for those, companies belonging to the taxable unit. With respect to the principle of neutrality companies should have an option whether to be taxed according to the method of separate accounting or formula apportionment. Otherwise, there would be scope for tax planning which might also increase complexity (see Herzig, 2006: 162; Mintz, 2004: 226; Sorensen, 2004: 102; Weiner, 2003: 695). However, the European Commission intends to implement the CCCTB as an optional system (see European Commission, 2007b: 2). Their decision is based on the notion that the CCCTB provides companies with rules allowing them to benefit from the single market (see European Commission, 2007b: 2). Furthermore, the CCCTB is a very far reaching reform. Currently, consolidation including a deferred taxation of gains arising on intra-group transfers is only available in seven Member states (see Endres et al., 2007: 93). Consolidation and formula apportionment could be very complex and associated with high administrative costs. Therefore, companies

should have the option of remaining with the current tax system in order to avoid compliance costs associated with the CCCTB. If the CCCTB is applied as an optional scheme, the option should be obligatory for a certain period of time in order to prevent taxpayers from having the choice between the two systems each year (see European Commission, 2007b: 3).

Two contrasting approaches exist regarding the choice of members in the election. One requires an “all-in or all-out” treatment. If the group decides to apply for the regime, all members that meet the shareholding and other requirements must join. Another treatment allows “cherry-picking” of some members among the potential members that meet the shareholding requirements. If the application of the CCCTB is optional, all eligible entities should be consolidated. Cherry-picking as a means of tax planning should not be allowed.

The question of whether the application of the CCCTB should be optional or mandatory is closely related to the definition of the consolidated group (see Schön, 2007: 431). If the criteria used to define the consolidated group can be adjusted without costs, companies would have a factual option regarding the group entities to be included in the CCCTB. In this case, a compulsory scheme may not be effective. Similarly, if the application of the CCCTB is optional, the importance of a definition of the consolidated group resistant to tax planning would decrease.

3.3.2 Local Profit Taxes, Non-profit Taxes and Social Security Contributions

In most countries, companies are subject to taxes other than the corporate income tax. These taxes are either imposed on income (profit taxes) or business factors (non-profit taxes), such as payroll or property.¹² Additional profit taxes are levied in Germany, Hungary, Italy and Luxembourg. These profit taxes are generally only imposed on business activities carried on within the territory of a certain region. The tax base is basically aligned to a company’s income which is adjusted to a varying extent. The most common non-profit tax is the real estate tax on land and buildings. Real estate tax is levied in all member states except Estonia, Greece, Malta and Slovenia. A property tax

¹² This information is derived from International Bureau of Fiscal Documentaion, 2006.

on business assets is only imposed by Luxembourg. Non-profit taxes on a wage-oriented basis are levied in Austria and France. Moreover, France and Spain impose tax on a capital basis.

A CCCTB as proposed by the European Commission raises several issues regarding additional local profit and non-profit taxes. First, the consolidation and apportionment approach may affect the determination of the tax base of local taxes.

Local profit taxes would have to be levied on the share in the common tax base ascribed to the respective member state. This, however, will probably not cause conceptual problems, since both, the concept of the CCCTB and the determination of the tax base of national local profit taxes follow the source principle.

In some member states, certain items of income have to be deducted or added back in order to calculate the tax base of local taxes. For instance, in Hungary the taxable base is the net sales income decreased by the acquisition costs of goods sold, costs of mediated services and material costs. To provide information on these items of income, intra-group income may have to be taken into account. Similar issues may arise concerning non-profit taxes. The tax base may comprise business assets valued at their standard tax value. In this context, deferred taxation of gains realized on intra-group transfers would lead to a lower tax base. Therefore, it seems necessary to maintain separate accounting for determining the group member's individual accounts and to adjust them in a separate combined report.

Another issue to be considered refers to the deductibility of additional local taxes (see European Commission, 2006f: 4-7). At present, most member states allow companies to deduct additional taxes from the corporate income tax base (see European Commission, 2006f: 4).

Subgroup 3 on taxable income of the CCCTB Working Group has elaborated a definition of deductible expenses in general. Deductible expenses are defined as decreases in economic benefits in the form of outflows which are made for business purposes and are incurred during the taxable period (see European Commission, 2006g: 5). Exceptions to this definition are to be shown in a special list. Regarding taxes, there seems to be a consensus to exclude the corporate income tax and VAT (see European Commission, 2006g: 6).

Local taxes represent a mandatory cost incurred in the course of business. Thus, with reference to the definition of deductible expenses, these taxes should be deductible. There are two alternative approaches to deducting local taxes. They can either be deductible against the CCCTB before apportionment or they can be deductible against the share of the CCCTB after apportionment (see European Commission, 2006f: 6).

If local taxes are deducted from the CCCTB before apportionment, the share of all participating member states will decrease. Therefore, mutual recognition of the different national practices as regards the division of competences and the methods of raising revenues seems to be a prerequisite. However, member states may not accept to provide relief for taxes levied by another member state. Moreover, there is also an incentive inherent to this approach for funding public needs by imposing local taxes, because these taxes are effectively paid not only by the company resident in the respective jurisdiction but also by other participating countries.

In order to avoid mutual agreement of different national tax systems, local taxes should be deductible against the share of the CCCTB after apportionment. This approach would be also consistent with the source principle and the principle of inter-nation equity. Local taxes are generally used for funding of public goods, such as infrastructure. Therefore, these taxes can be characterised as costs for infrastructure that facilitates income generating activities conducted in a certain jurisdiction. As these taxes are closely linked to income generating activities in a certain jurisdiction, they can be directly attributed to the jurisdiction in which the group entity is resident. Accordingly, local taxes should be deducted from the share of the CCCTB after apportionment. This is especially relevant regarding local taxes levied on property and payroll, as these taxes are closely related to apportionment factors.

Similar issues regarding the deducibility of expenses arise in the context of social security contributions (see European Commission, 2006f: 4). Generally, these social security contributions should be tax deductible. However, it seems questionable whether member states would accept each other's practice and level of social security system. Member states may not accept to provide relief for higher social standards provided in other countries. Therefore, similar to local taxes, social security contributions should be deductible from the consolidated tax base after apportionment.

However, one has to bear in mind, that mutual recognition is already implied regarding different national levels of expenses such as wages or rental fees, since these expenses may be influenced by national regulations. Thus, it would make conceptual sense not to distinguish between different kinds of expenses and instead to deduct social security contributions as well as local taxes from the consolidated tax base before apportionment.

To conclude local profit and non-profit taxes as well as social security contributions should be tax deductible against the consolidated tax base. Whether these expenses reduce the CCCTB before or after apportionment mainly depends on the willingness of member states to except each others national practices concerning the level and methods of raising revenues. As regards the determination of the tax base of local taxes, the introduction of a CCCTB would not lead to serious problems. However, there might be a need to maintain separate accounting in order to provide information on certain income items needed for the determination of the tax base.

4 Summary

- (1) Consolidation and formula apportionment has the potential to reduce tax obstacles induced by separate accounting under the arm's length principle. It is based on the notion, that a group of companies forms an economic unit. Consequently, it does not seek to allocate income to its economic source. The rationale behind is rather to provide a pragmatic solution for profit allocation among jurisdictions. Thereby transfer pricing issues can be solved to a great extent and neutrality regarding cross-border restructuring, the financial structure and legal form of investments can be promoted. However, incentives and scope for profit shifting are probably going to persist.
- (2) A simple or qualified majority of ownership should be a key element in defining the taxable unit. Ownership should be defined with reference to voting power and can be reached both, directly or indirectly through subsidiaries. Additional legal criteria indicating whether there are economic interdependencies are preferable, although they may be difficult to enforce.
- (3) The CCCTB should be applicable to corporations and permanent establishments as group members. The decision whether transparent entities can apply for the CCCTB as parent company or not should be left to the member states. Assignment of taxing rights on corporate income should not be based on the mere existence of apportionment factors. Instead, the minimum threshold should be the existence of a permanent establishment.
- (4) The territorial scope of the CCCTB should be restricted to group entities located within the EU. Common definitions of tax residency and permanent establishment are required in order to avoid scope for tax planning and to reduce compliance costs. A group of EU entities ultimately controlled by a non-EU parent should be eligible for application of the CCCTB. The same should apply to situations where a non-EU intermediary exists in the ownership chain connecting EU group entities.

- (5) Individual tax accounts should serve as a starting point for consolidation. These individual accounts should be consolidated, thus forming the consolidated tax base.
- (6) Intra-group loss relief is a key feature of consolidation. A negative CCCTB should be apportioned and offset against a future positive share of the CCCTB. This approach, however, requires common rules regarding the loss carry-forward.
- (7) Deferred taxation of gains and losses realized on intra-group transactions is another essential element of consolidation. Instead of adjusting the individual accounts of group entities involved in the intra-group transfer, gains and losses realized on an intra-group transfer should be neutralized in a separate combined report. Individual accounts based on separate accounting are necessary with respect to claims of minority shareholders and recapture of gains in cases where group entities enter or leave the CCCTB group or group entities move their residence.
- (8) Pre-consolidation losses and hidden capital gains do not belong to the group. Therefore, these losses and gains should be directly attributed to the jurisdiction where they have been built up. Losses may only be offset against the share of the CCCTB after apportionment. Hidden capital gains are taken into account and taxation is deferred until the asset leaves the group or in the course of depreciation.
- (9) If a company leaves the group, apportioned losses should remain with each company. Moreover, if a company involved in an intra-group transaction leaves the group, this should be deemed as a restoration event. If the internal purchaser afterwards leaves the group, the group is liable to tax with the deferred intra-group income. Instead, if the selling company leaves the group, this company is taxed on the deferred intra-group income.
- (10) There should be no distinction between apportionable income and income excluded from formula apportionment, neither concerning different categories of income nor with respect to the ownership percentage.

- (11) Regarding inbound and outbound investments involving third countries, common rules are required. Source-based taxation would be consistent with the concept of the CCCTB. However, the source principle together with separate accounting would facilitate strategic tax planning. In order to protect the CCCTB against profit shifting, special rules could be introduced. Residence-based taxation would promote neutrality, if income earned outside the EU should be included in the CCCTB and shared by the participating member states. On the other hand, the residence principle would cause distortions of the concept of formula apportionment. Income of EU group entities, either subsidiaries or permanent establishments, which are ultimately controlled by a non-EU company, should be consolidated and apportioned. In contrast, withholding taxes should be levied in accordance with current tax practice shared with member states involved via formula apportionment.
- (12) The CCCTB should be mandatory for those entities belonging to an economic unit. Consolidation and formula apportionment is not an obstacle to levying local profit and non-profit taxes. However, separate accounting may have to be maintained to provide information on income items which are relevant for the determination of the tax base. Whether local profit taxes, non-profit taxes and social security contributions are tax deductible depends on the tax rules of the member state that levies these taxes and contributions.

List of References

- Argúndez-García, A. (2006), The Delineation and Apportionment of an EU Consolidated Tax Base for Multi-Jurisdictional Corporate Income Taxation: A Review of Issues and Options, Taxation Papers, Brussels.
- Berry, C.H., D.F. Bradford and J.R. Hines (1992), Arm's-Length Pricing: Some Economic Perspectives, Tax Notes 88, 731-740.
- Devereux, M. P. (2004), Debating Proposed Reforms of the Taxation of Corporate Income in the European Union, in: International Tax and public Finance, 71-89.
- Endres, D., A. Oestreicher, W. Scheffler and C. Spengel (2007) The Determination of Corporate Taxable Income in the EU Member states, Frankfurt.
- European Commission (2001a), Tax policy in the European Union – Priorities for the years ahead, Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM(2001), 260 final, Brussels.
- European Commission (2001b), Company Taxation in the Internal Market, Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, COM(2001), 582 final, Brussels.
- European Commission (2003a), An Internal Market without company tax obstacles – achievements, ongoing initiatives and remaining challenges, Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Brussels.
- European Commission (2003b), The Application of International Accounting Standards (IAS) in 2005 and the Implications for the Introduction of a Consolidated Tax Base for Companies' EU-wide activities, Consultation Document, Brussels.
- European Commission (2004a), European Tax Survey, Commission Staff Working Paper, SEC(2004)Ü, 1128/2, Brussels.
- European Commission (2004b), Summary Report of the Workshop on the Allocation Mechanism, Brussels.
- European Commission (2005), Common Consolidated Corporate Tax Base Working Group – International aspects in the CCCTB, Working Document, Brussels.
- European Commission (2006a), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – An overview of the main issues that emerged at the second meeting of the subgroup on group taxation (SG5 – 02&03 October 2006), Working Document, Brussels.
- European Commission (2006b), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – Progress to date and future plans for the CCCTB, Working Document, Brussels.
- European Commission (2006c), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – Issues related to group taxation, Working document, Brussels.

- European Commission (2006d), Tax Treatment of Losses in Cross-Border Situations, Communication from the Commission to the Council. The European Parliament and the Economic and Social Committee, COM(2006) 824 final, Brussels.
- European Commission (2006e), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – An overview of the main issues that emerged at the third meeting of the subgroup on International aspects (SG4), Working Document, Brussels.
- European Commission (2006f), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – An overview of the main issues that emerged at the fourth meeting of the subgroup on taxable income (SG3), Working Document, Brussels.
- European Commission (2006g), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – An overview of the main issues that emerged at the third meeting of the subgroup on taxable income (SG3), Working Document, Brussels.
- European Commission (2007a), Summary Record by the Chair of the Meeting of the Common Consolidated Corporate Tax Base Working Group, held in Brussels on 12 December 2006, Brussels.
- European Commission (2007b), Common Consolidated Corporate Tax Base Working Group (CCCTB WG) – An overview of the main issues that emerged at the third meeting of the subgroup on group taxation (SG – 05 & 06 February 2007), Working Document, Brussels.
- European Commission (2007c), Implementing the Community Programme for improved growth and employment and the enhanced competitiveness of EU business: Further Progress during 2006 and next steps towards a proposal on the Common Consolidated Corporate Tax Base (CCCTB), Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, COM(2007) 223 final.
- Gammie, M., S. Giannini, A. Klemm, A. Oestreicher, P. Parascandolo and C. Spengel (2005), Achieving a Common Consolidated Corporate Tax Base in the EU, Report of a CEPS Task Force, Brussels.
- Gérard, M. and J. Martens Weiner (2003), Cross-border loss offset and formulary apportionment: How do they affect multijurisdictional firm investment spending and interjurisdictional tax competition?, CESifo Working Paper No. 1004, Munich.
- Gérard, M. (2006), Reforming the Taxation of Multijurisdictional Enterprises in Europe: a Tentative Appraisal, paper presented at the Workshop of the General Directorate Economic and Financial Affairs on Corporate Tax Competition and Coordination in Europe, 25th September, Brussels.
- Hellerstein, J.R. (1982), Allocation and Apportionment of Dividends and the delineation of the Unitary Business, in: Tax Notes, Special Report, 155-168.
- Hellerstein, J.R. (1993), Federal Income Taxation of Multinationals: Replacement of Separate Accounting with Formulary Apportionment, in: Tax Notes, 1131-1145.
- Hellerstein, J.R. and McLure (2004), The European Commission's Report on Company Income Taxation: What the EU Can Learn from the Experience of the US States, in: International Tax and Public Finance, 199-220.
- Herzig, N. (1998), Globalisierung und Besteuerung, in: Die Wirtschaftsprüfung, 280-296.

- Herzig, N. (2006), Harmonisierung der steuerlichen Gewinnermittlung in der Europäischen Union, in: *Steuer und Wirtschaft*, 156-164.
- Hey, B. (1996), *Harmonisierung der Unternehmensbesteuerung in Europa*, Köln.
- Homburg S. (2005), Wohnsitzprinzip, in: Endres, D., A. Oestreicher, W. Scheffler, U. Schreiber and C. Spengel (Eds.), *Die internationale Unternehmensbesteuerung im Wandel*, Munich, 14-27
- Huizinga, H. P. and Laeven, L. (2005), *International Profit Shifting within European Multinationals*, Mimeo, University of Tilburg.
- International Bureau of Fiscal Documentation (2006), *European Tax Handbook*, Amsterdam.
- Jacobs, O.H. (2002), *Internationale Unternehmensbesteuerung – Deutsche Investitionen im Ausland, Ausländische Investitionen im Inland*, 5th edition, Munich.
- Jacobs, O.H., C. Spengel and A. Schäfer (2004), ICT and Profit Allocation within Multinational Groups, in: *Intertax* 32, 268-283.
- Jäger, C. (2001), *Die Körperschaftsteuersysteme in Europa: Eine europarechtliche und betriebswirtschaftliche Analyse*, Lohmar / Cologne.
- Kahle, H. (2006), Harmonisierung der Konzernbesteuerung in der EU, in: *Die Wirtschaftsprüfung*, 1401-1409.
- Li, J. (2002), Global Profit Split: An Evolutionary Approach to International Income Allocation, in: *Canadian Tax Journal*, 823-883.
- Martens Weiner, J. (1999), *Using the Experience in the U.S. States to Evaluate Issues in Implementing Formula Apportionment at the International Level*, Office of Tax Analysis Paper 83, Washington, DC.
- Martens Weiner, J. (2001), The European Union and Formula Apportionment: Caveat Emptor, in: *European Taxation*, 380-388.
- Martens Weiner, J. (2006), *Company Tax Reform in the European Union. Guidance from the United States and Canada on Implementing Formulary Apportionment in the EU*, New York.
- McLure Jr., C. E. (1984), Defining a Unitary Business: An Economist's View, in: McLure Jr., C. E. (Ed.), *The State Corporation Income Tax: Issues in Worldwide Unitary Combination*, Stanford, 89-124.
- Mintz, J. M. (2004), Corporate Tax Harmonization in Europe: It's All About Compliance, in: *International Tax and Public Finance*, 221-234.
- Musgrave, P. B. (1984), Principles for Dividing the State Corporate Tax Base, in: McLure Jr., C. E. (Ed.), *The State Corporation Income Tax: Issues in Worldwide Unitary Combination*, Stanford, 228-252.
- Musgrave, P. B. and R. A. Musgrave (1989), *Public Finance in Theory and Practice*, 5th edition, New York / St. Louis et al.
- Musgrave, P. B. (2000), Interjurisdictional Equity in Company Taxation: Principles and Applications to the European Union, in: Cnossen, S. (Ed.), *Taxing Capital Income in the European Union: Issues and Options for Reform*, Oxford, 46-77.

- Neumark, F. (1970), Grundsätze gerechter und ökonomisch rationaler Steuerpolitik, Tübingen.
- Newlon, T. S. (2000), Transfer Pricing and Income Shifting in Integrating Economies, in: Cnossen, S. (Ed.), Taxing Capital Income in the European Union: Issues and Options for Reform, Oxford, 214-242.
- Nobes C. (2004), A Conceptual Framework for the Taxable Income of Business, and How to Apply it under IFRS, Association of Chartered Certified Accountants, London, January.
- OECD (1995), Transfer Pricing guidelines for Multinational Enterprises and Tax Administrations, Paris.
- OECD (2003), Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce?, Paris.
- Oestreicher, A. (2000), Konzern-Gewinnabgrenzung: Gewinnabgrenzung – Gewinnermittlung – Gewinnaufteilung, Munich.
- Oestreicher, A. (2002), Konzernbesteuerung in Europa. Zum Vorschlag einer konsolidierten körperschaftsteuerlichen Bemessungsgrundlage für die grenzüberschreitende Unternehmenstätigkeit in der EU, in: Steuer und Wirtschaft, 342-356.
- Oestreicher, A. (2003), Entwicklung und Rechtfertigung des Arm's length principle im Rahmen der Gewinnabgrenzung internationaler Konzerne, in: Oestreicher, A. (Ed.), Internationale Verrechnungspreise, Herne / Berlin, 1-51.
- Oestreicher, A. (2005), Gewinnaufteilung, in: Endres, D., A. Oestreicher, W. Scheffler, U. Schreiber and C. Spengel (Eds.), Die internationale Unternehmensbesteuerung im Wandel, Munich, 73-91.
- Schön, W. (2005), The Odd Couple: A Common Future for Financial and Tax Accounting?, in: Tax Law review, 111-148.
- Schön, W. (2007), Perspektiven der Konzernbesteuerung, in: Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht, 409-445.
- Schreiber, U. (2004), Unternehmensbesteuerung im Binnenmarkt. Angleichung der Gewinnermittlung und des Satzes der Körperschaftsteuer?, in: Steuer und Wirtschaft, 212-226.
- Slemrod, J. (1996), Which is the Simplest Tax System of Them All?, The Economic Effects of Fundamental Tax Reform, Washington D.C., 355-391.
- Slemrod, J. and N. Sorum (1984), The Compliance Cost of the U.S. Individual Income Tax System, in: National Tax Journal, 461-474.
- Sørensen, P. B. (2004), Company Tax Reform in the European Union, in: International Tax and Public Finance, 91-115.
- Spengel, C. (2003), Internationale Unternehmensbesteuerung in der Europäischen Union. Steuerwirkungsanalysen – Empirische Befunde – Reformüberlegungen, Düsseldorf.
- Spengel, C. (2004), Einheitliche Bemessungsgrundlage für die laufende Besteuerung der Europäischen Aktiengesellschaft, in: Herzig, N. (Ed.), Besteuerung der Europäischen Aktiengesellschaft (Societas Europaea – SE), Köln, 101-117.

- Spengel, C. (2006), Besteuerung von Einkommen – Aufgaben, Wirkungen und europäische Herausforderungen, Gutachten F/G zum 66. Deutschen Juristentag, Stuttgart.
- Spengel, C. and R.U. Braunagel (2006), EU-Recht und Harmonisierung der Konzernbesteuerung in Europa, in: Steuer und Wirtschaft, 34-49.
- Weichenrieder, A. (2006), Profit Shifting Within the EU: Evidence from Germany. Mimeo, University of Frankfurt, paper presented at the European Tax Policy Forum Conference ‘The Impact of Corporation Taxes Across Borders’, London, April.
- Wissenschaftlicher Beirat beim Bundesministerium der Finanzen (2007), Einheitliche Bemessungsgrundlage der Körperschaftsteuer in der Europäischen Union, Gutachten, Berlin.

OXFORD UNIVERSITY CENTRE FOR BUSINESS TAXATION
WORKING PAPER SERIES

- WP07/17** Spengel, Christoph and Carsten Wendt A Common Consolidated Corporate Tax Base for Multinational Companies in the European Union: some issues and options
- WP07/16** de Mooij, Ruud A. and Gaëtan Nicodème, Corporate tax policy and incorporation in the EU
- WP07/15** Zodrow, George R., Capital Income be Subject to Consumption-Based Taxation?
- WP07/14** Mintz, Jack M., Europe Slowly Lurches to a Common Consolidated Corporate Tax Base: Issues at Stake
- WP07/13** Creedy, John and Norman Gemmell, Corporation Tax Revenue Growth in the UK: a Microsimulation Analysis
- WP07/12** Creedy, John and Norman Gemmell, Corporation Tax Buoyancy and Revenue Elasticity in the UK
- WP07/11** Davies, Ronald B., Egger, Hartmut and Peter Egger, Tax Competition for International Producers and the Mode of Foreign Market Entry
- WP07/10** Davies, Ronald B. and Robert R. Reed III, Population Aging, Foreign Direct Investment, and Tax Competition
- WP07/09** Avi-Yonah, Reuven S., Tax Competition, Tax Arbitrage, and the International Tax Regime
- WP07/08** Keuschnigg, Christian, Exports, Foreign Direct Investment and the Costs of Corporate Taxation
- WP07/07** Arulampalam, Wiji, Devereux, Michael P. and Giorgia Maffini, The Incidence of Corporate Income Tax on Wages
- WP07/06** Devereux, Michael P. and Simon Loretz, The Effects of EU Formula Apportionment on Corporate Tax Revenues
- WP07/05** Auerbach, Alan, Devereux, Michael P. and Helen Simpson, Taxing Corporate Income
- WP07/04** Devereux, Michael P., Developments in the Taxation of Corporate Profit in the OECD since 1965: Rates, Bases and Revenues
- WP07/03** Devereux, Michael P., Taxes in the EU New Member States and the Location of Capital and Profit

- WP07/02** Devereux, Michael P., The Impact of Taxation on the Location of Capital, Firms and Profit: a Survey of Empirical Evidence
- WP07/01** Bond, Stephen R., Devereux, Michael P. and Alexander Klemm, The Effects of Dividend Taxes on Equity Prices: a Re-examination of the 1997 UK Tax Reform