Formulary Apportionment in the Common Consolidated Corporate Tax Base Proposal

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Disclaimer

The views expressed in these lecture slides are the author's alone and do not purport to necessarily reflect those of the European Commission.

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Background

- *First proposal for a CCCTB in 2011*
- *Relaunch in 2016 – CCTB and CCCTB*
  - **First common base**
  - **Second consolidation (and apportionemnt)**
- *Digital tax discussion gives new impetus to CC(C)TB*

Policy objectives

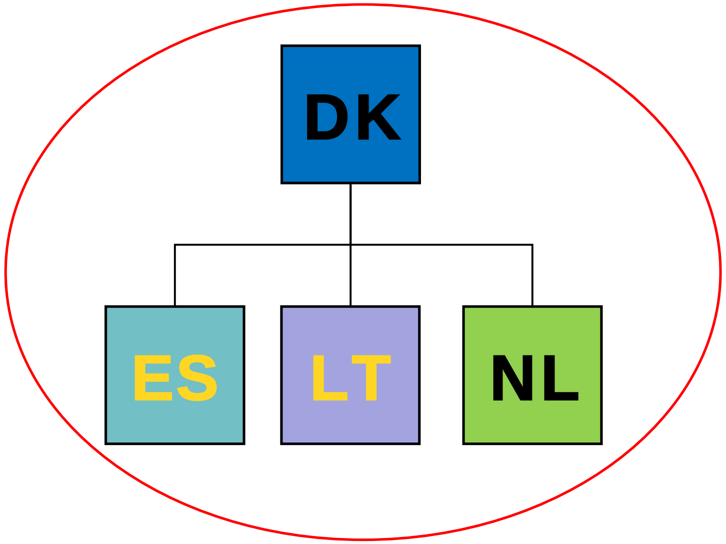
The CCCTB delivers on the following main fronts:

- Creation of a **better business environment** (one rulebook, legal certainty, removal of double taxation, loss offset);

- Support of **growth-friendly activities** (re-launched R&D framework & AGI);

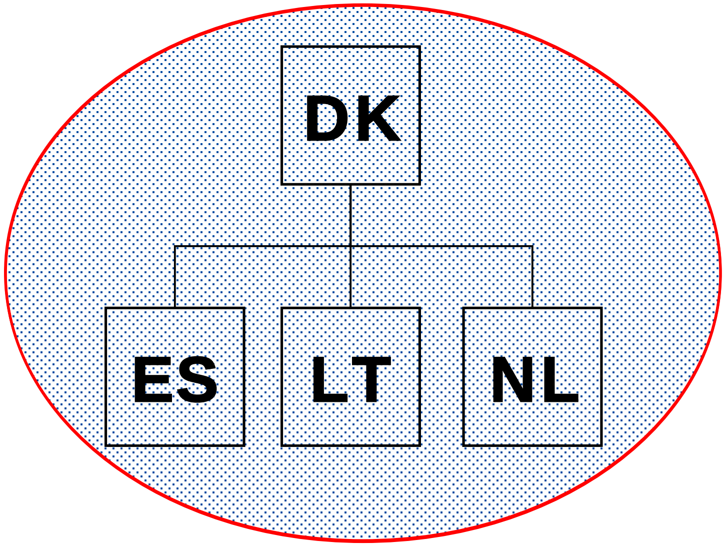
- It is a model of **fair corporate tax system** set to remove major channels of **profit shifting**: mismatches, preferential regimes, transfer pricing; the system is also defended through robust anti-abuse rules, **also featuring in the ATAD**.

Calculation of the individual tax bases



ES, LT, NL and DK calculate their taxable revenues individually under the rules for a common tax base.

Consolidation Exercise



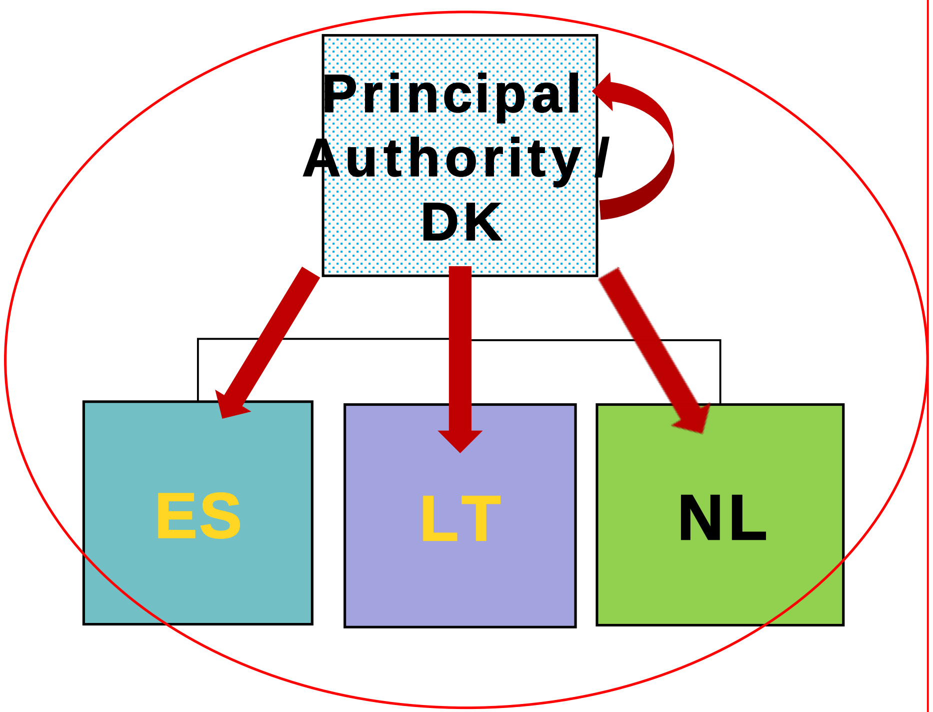
All results are added up together by DK (principal tax authority) to create a consolidated tax base for the group in the EU;

Loss-making results of one company are automatically set off against the taxable profits of others in the same group;

Tax return in one MS ('one-stop-shop');

No transfer pricing formalities within the group

Apportionment of the Consolidated Tax Base



DK, as principal authority, applies the formula to distribute the consolidated tax base across the group;

Taxable revenues are allocated to each company of the group based on the weight of the three factors: assets, labour (1/2 personnel & 1/2 payroll) and sales by destination;

MS are free to set tax rates on their taxable shares individually.

Formulary Apportionment

- A **formula** is used for apportioning a tax share to each group member (Art. 28-44).

- 3 equally-weighted factors (**Labour, Assets & Sales**);
- Safeguard clause (Art. 29);
- Treatment of intangibles;
- Sector-specific formulae for:
  - (i) **Financial Institutions** (Art. 40) & **Insurance Undertakings** (Art. 41) – adjustment of assets and sales;
  - (ii) **Oil and Gas** (Art. 42) – sales attributed to the jurisdiction of extraction or production; &
  - (iv) **Shipping, Inland Waterways Transport & Air Transport** (Art. 43) – outside consolidation & formula.

Tax Base for Group Member A

$$Share\ A = \left(\begin{array}{c} \frac{1}{3}\frac{Sales^{A}}{Sales^{Group}} \\ + \frac{1}{3}\left(\frac{1}{2}\frac{Payroll^{A}}{Payroll^{Group}} + \frac{1}{2}\frac{No\ of\ employees^{A}}{No\ of\ employees^{Group}}\right) \\ + \left(\frac{1}{3}\frac{Assets^{A}}{Assets^{Group}}\right) \end{array} \right) * con‘TB$$

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Why this formula? (1/2)

- Micro-factors reflect supply and demand sides of profit generating activities,
- Labour factor is split in two parts – payroll and employees – account for disparities in labour productivity across the EU,
- Little sensitivity of the formula to different weights - changing the weights has little effect on the relative apportionment of the tax base,

Why this formula? (2/2)

- *Intangible and financial assets are excluded to prevent manipulation,*
- *A uniform formula with identical factors and weights in all Member States taking part in the CCCTB avoids distorting tax competition and double taxation (or double non taxation)*
- *The 'all-or- nothing' approach limits tax-motivated manipulations of group structures.*

Outlook

- *CCCTB remains the key building block for a modern tax system in the EU*
- *Long-term solution also for the taxation of the digital economy*
- *Difficult political process, but the recent activity in international tax reform shows that the CCCTB is the answer for challenges in the EU and beyond.*

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Tax Transparency

- Automatic exchange of info re financial account information (DAC 2 – Dec. 2014);
- Mandatory automatic exchange of info re cross-border tax rulings (DAC 3 – Dec. 2015);
- CbCR amongst tax authorities (DAC 4 – May 2016);
- Proposal for public CbCR (April 2016 - pending);
- Access to anti-money laundering info by tax authorities (DAC 5 – Nov. 2016);
- BEPS 12 – Intermediaries & Advisors involved in potentially ATP schemes – Public Consultation (Mar. 2018).

Fair, Competitive & Stable Corporate Tax System

- Action Plan to modernise corporate taxation (2015);
- Anti-Tax Avoidance Directive (adopted – July 2016);
- Proposals for re-launching the C(C)CTB (Oct. 2016);
- Proposal on hybrid mismatches (ATAD 2 – Oct. 2016);
- Proposal for a Double Taxation Dispute Resolution Mechanism (Oct. 2016);
- EU list of non-cooperative jurisdictions for tax purposes – Criteria and Process (Council Conclusions – Nov. 2016).