CCCTB
Administrative & Procedural Aspects

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Agenda

- Objectives of administrative procedures in explanatory memorandum
- Chapter IX of the Proposal: Administration and Procedures

Explanatory memorandum

“**Administrative procedures**: differently from the proposal of 2011, the common administrative rules are limited to the consolidated group. As a matter of principle, single taxpayers, who opt to apply the rules under the 'first step', continue to fall within their national administrative provisions.

Groups will deal with a single tax administration ('principal tax authority') in the EU; this is also referred to as the 'one-stop-shop'. This will be based in the Member State where the parent company of the group ('principal taxpayer') is resident for tax purposes. Audits will be initiated and coordinated by the principal tax authority. The national authorities of any Member State in which the profits of a group member are subject to tax may request the initiation of an audit.”

Explanatory memorandum

"**Administrative procedures**: (…)

The competent authority of the Member State in which a group member is resident or established may challenge a decision by the principal tax authority concerning the notification that there is a group or an amended assessment. For this purpose, an action will be brought before the courts of the Member State of the principal tax authority. Disputes between taxpayers and tax authorities will be dealt with by an administrative body which is competent to hear appeals at first instance according to the law of the Member State of the principal tax authority."

Chapter IX: overview

- Art 46: Notice to create a group
- Art 47: Term of a group
- Art 48: Information in the notice to create a group
- Art 49: Examination of the notice to create a group
- Art 50: Tax year

Chapter IX: overview

- Art 51: Tax returns and tax assessments
- Art 52: Content of the consolidated tax return
- Art 53: Notification of errors in the consolidated tax return
- Art 54: Failure to file a tax return
- Art 55: Electronic filing, tax returns and supporting documentation
- Art 56: Amended tax assessments

Chapter IX: overview

- Art 57: Central database
- Art 58: Change of the principal taxpayer
- Art 59: Record-keeping
- Art 60: Provision of information to the competent authorities

Chapter IX: overview

- Art 61: Request for an opinion from the competent authority
- Art 62: Communication between competent authorities
- Art 63: Secrecy clause
- Art 64: Audits
- Art 65: Disagreement between Member States

Chapter IX: overview

- Art 66: Appeals
- Art 67: Administrative appeals
- Art 68: Judicial appeals

Start

- Notice to create a group
  - By principal taxpayer on behalf of the group three months before the tax year
  - Principal taxpayer cannot be changed except by mutual agreement by MSs within 6 months after the notice or a reorganisation
  - Notice is transmitted to other MSs which may submit view within 1 month
  - If there is no notice: principal tax authority shall issue assessments within 6 months of the discovery, for the period in which the group is deemed to have existed and limited to 5 tax years
- Examination of notice
  - Deemed acceptance if no rejection within three months of its receipt
  - If no full disclosure the principal tax authority may invalidate original notice in agreement with other MSs, followed by amended tax assessments

Start

- Term of a group
  - Group taxation starts one month after all relevant MSs have been informed of notice; principal tax authority will inform taxpayer
  - If group no longer fulfil conditions it shall inform principal tax authority; option available to stay in CCCTB (at least five years)

Tax year

- Equal for all group members
- Calendar year or any other appropriate period for tax purposes
- Joining group: apportioned share of the taxpayer for that tax year shall be calculated in proportion to the number of calendar months during which the company belonged to the group
- Leaving group: apportioned share of a taxpayer for the year in which it leaves a group shall be calculated in proportion to the number of calendar months during which the company belonged to the group

Tax returns and assessments

- Principal taxpayer files consolidated tax return with principal tax authority within 9 months after the tax year
- Commission may adopt rules on electronic filing, form and supporting documentation
- Consolidated tax return shall shall be treated as an assessment of the tax liability of each group member (‘tax assessment’)
- If domestic law permits, consolidated tax return can be used to enforce tax debts in relation to a group member liable to tax there

Consolidated tax return: content

(a) identification of the principal taxpayer

(b) identification of all group members

(c) identification of any associated enterprises

(d) the tax year to which the tax return relates

(e) the calculation of the tax base of each group member

(f) the calculation of the consolidated tax base

(g) the calculation of the apportioned share of each group member

(h) the calculation of the tax liability of each group member

=> All relevant documents of the file will be stored in central database

=> Group members shall keep records and provide, on request, all foreseeably relevant information to CA (same for principal taxpayer <-> principal tax authority)

Consolidated tax return: notification of errors

- Principal taxpayer shall notify principal tax authority of errors
- Principal tax authority shall issue amended tax assessment within 12 months

Consolidated tax return: failure to file

- Tax assessment based on an estimate taking into account available information
- The principal taxpayer may appeal against that assessment

Amended tax assessments: corrections

- Principal tax authority may issue amended tax assessment within 3 years after final date of submission tax return or ex officio tax assessment
- Extension to 6 years in case of deliberate or grossly negligent misstatement on the part of the taxpayer and to 12 years where misstatement is the subject of criminal proceedings
  - Amended assessment within 12 months of the discovery of the misstatement, unless a longer period is objectively justified by the need for further inquiries
  - Amended tax assessment relate solely to the subject matter of the misstatement
- Time limits n/a in case of court proceedings, mutual agreements or arbitration with third country (in that case 1 year after relevant decision)
- De minimis rule of € 5,000, 1% of consolidated tax base or 0,5% of apportioned shares

Amended tax assessments: role of other MSs

- Principal tax authority shall consult the other MSs before an amended tax assessment
  - MSs may express their views within 1 month
- Competent authority of a MS may call on the principal tax authority to issue an amended tax assessment
  - Failure of the principal tax authority to notify within 3 months that it undertakes to issue that amended tax assessment shall be treated as a refusal
- MSs shall communicate with each other through CCN/CSI and stick to time limits in DAC
- Information shall be kept secret

Ruling requests

- Taxpayer may request opinion from the competent authority of the MS
  - on specific transaction or series of transactions that it plans to carry out
  - on the proposed composition of a group
  - competent authority responds within a reasonable time
- Opinion shall be binding on it in case of full disclosure
  - unless the courts of the principal tax authority subsequently decide otherwise pursuant to disagreement between MSs
  - taxpayer is not bound by opinion but must be transparent in tax return
- MSs shall agree on a common opinion where two or more group members in different MSs are directly involved, or where the request concerns the proposed composition of a group

Audits

- Principal tax authority may initiate and coordinate audits of group members
  - audit may also be initiated at the request of a competent authority
  - joint determination of scope and content of audit and auditees
- Audit shall be conducted in accordance with the national legislation of the Member State in which it is carried out
  - audits may include inquiries, inspections or examinations of any kind for the purpose of verifying the compliance of a taxpayer with the Directive
- Principal tax authority shall compile the results of all audits

Disagreement between Member States

- If MS disagrees with a decision of the principal tax authority it may challenge that decision before the courts of the MS of principal tax authority within 3 months
  - examination of notice to create a group
  - amended tax assessment
  - refusal to issue amended tax assessment
- Competent authority shall have at least the same procedural rights as those enjoyed by a taxpayer under the law of that Member State in proceedings against a decision of the principal tax authority

Appeals: against what

Principal taxpayer may appeal, amongst others, against:

(a) decision rejecting a notice to create a group

(b) notice requesting the disclosure of documents or information

(c) amended tax assessment

(d) ex officio tax assessment

(e) invalidation of the original notice to create a group

Appeal within 60 days of the receipt of the act appealed against

No suspensory effect on the tax liability of a taxpayer

Amended tax assessment may be issued to effectuate result of appeal

Appeals: administrative body

- Appeal against (ex officio or amended) tax assessment: administrative body competent to hear appeals at first instance under the laws of the MS of principal tax authority
  - independent from the tax authorities in MS of principal tax authority
  - principal taxpayer may lodge judicial appeal directly if no administrative body
  - if no decision within 6 months: deemed decision against taxpayer
- Principal tax authority and other MSs shall assist each other
- Decision of administrative body replaces assessment
- Confirmation or variation of decision at issue: direct appeal to court within 60 days after decision of administrative body
- Annulment: principal tax authority takes new decision in 60 days
  - Subsequently direct appeal to court possible

Appeals: judicial body

- Judicial appeal against a decision of the principal tax authority is governed by the law of the MS of principal tax authority
- MSs shall assist each other

Thank you!