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### **WORKING PAPER**

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#### **MEETING DOCUMENT**

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From:	Presidency
To:	Working Party on Tax Questions (Direct Taxation – CCTB)
Subject:	Proposal for a Council Directive on a Common Corporate Tax Base - Draft Presidency compromise on Article 9

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Delegations will find attached a document from the Presidency in view of the meeting of the Working Party on Tax Questions (Direct Taxation - CCTB) on the morning of 26 April 2017.

Delegations will find in Annex a preliminary draft Presidency compromise on Article 9 of the Proposal for a Council Directive on a Common Corporate Tax Base (doc. 13730/16)

New text (compared to the European Commission's proposal) is marked **bold and underlined**, deletions are marked with ~~striketrough~~.

\* \* \*

*Article 4*  
*Definitions*

For the purposes of this Directive, the following definitions shall apply:

(...)

(11) 'research and development' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any particular application or use in view (basic research); original investigation undertaken in order to acquire new knowledge but directed primarily towards a specific, practical aim or objective (applied research); systematic work, drawing on knowledge gained from research and practical experience and producing additional knowledge, which is directed to producing new products or processes or to improving existing products or processes (experimental development);

***Presidency comment:***

- *No changes are proposed at this stage to this definition, but for clarity sake it is better to examine it in conjunction with Article 9. Some MSs commented that the type of expenses allowable as costs for R&D should be limited. Written suggestions by delegations would at this stage be welcome .*

*Article 9*  
*Deductible expenses*

1. Expenses shall be deductible only to the extent that they are incurred in the direct business interest of the taxpayer.
2. The expenses referred to in paragraph 1 shall include all costs of sales and all expenses, net of deductible value added tax, that the taxpayer incurred with a view to obtaining or securing income, including costs for research and development and costs incurred in raising equity or debt for the purposes of the business.

***Presidency comments:***

- *The drafting of paragraphs 1-2 is very close to the latest state of play in Council deliberations (see doc. 15756/14). The Presidency therefore proposes to keep this part of the text unchanged.*
- *The costs incurred in 'raising equity' for the purpose of the business are also deductible. Article 11 provides for more detailed rules in this respect.*

3. In addition to the amounts which are deductible as costs for research and development in accordance with paragraph 2 **and to the extent that the taxpayer is not entitled to a tax credit on these research and development costs**, the taxpayer may also deduct, per tax year, an extra 50% of such costs, with the exception of the costs ~~related to movable tangible fixed assets~~, **referred to in points (c), (d) and (e) of Article 33(1) and (c), (d) and (e) of Article 33(2)**, that it incurred during that year.

***Presidency comments:***

- *After taking into account the input of several MS, the Presidency is proposing an amendment that aims at leaving the freedom for Member States to opt for either a tax credit or a super deduction, whilst preventing the possibility to cumulate both. However, the Presidency also acknowledges the fact that a tax credit is applied to the final tax liability which comes after the tax base has been calculated and the tax been charged. In this respect, tax credits fall outside the scope of the tax base.*
- *The added text referring to Article 33 is to replace ‘movable tangible fixed assets’ with specific references to avoid any misinterpretations.*

To the extent that costs for research and development reach beyond EUR 20 000 000, the taxpayer may deduct 25% of the exceeding amount.

By way of derogation from the first subparagraph, the taxpayer may deduct an extra **[100%]** of its costs for research and development up to EUR 20 000 000 where that taxpayer meets all of the following conditions:

- (a) it is an unlisted enterprise with fewer than 50 employees and an annual turnover and/or annual balance sheet total that does not exceed EUR 10 000 000;
- (b) it has not been registered for longer than five years. If the taxpayer is not subject to registration, the period of five years may be taken to start at the moment that the enterprise either starts, or is liable to tax for, its economic activity;
- (c) it has not been formed through a merger **or any other form of business reorganisation**;
- (d) it does not have any associated enterprises **as referred to in Article 56**.

***Presidency comment:***

- *The figure of 100% was put between square brackets as some delegations have requested a higher/lower figure and the level of the super-deduction may require political guidance.*
- *The definition in sub-paragraph a) comes from GBER and has thus been left unchanged.*
- *Sub-paragraph c) was amended in order not to limit the rule to mergers.*
- *A reference to draft Article 56 was added in sub-paragraph d).*

4. Member States may provide for the deduction of gifts and donations to charitable bodies.

***Presidency comment:***

*The drafting of this paragraph is very close to the latest state of play in Council deliberations (see doc. 15756/14). The Presidency therefore proposes to keep the text unchanged.*