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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 42

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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 42 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 42**Loss relief and recapture*

1. A resident taxpayer that is still profitable after having deducted its own losses pursuant to Article 41 may additionally deduct losses incurred, in the same tax year, by its immediate qualifying subsidiaries, as referred to in Article 3(1), or by permanent establishment(s) situated in other Member States. This loss relief shall be given for a limited period of time in accordance with paragraphs 3 and 4 of this Article.

**By derogation from the first subparagraph, where a taxpayer is permitted or required to act on behalf of a group as defined in the rules of a national group taxation system, the entire group shall be treated as a resident taxpayer.**

***Presidency comments:***

- *An exception was inserted to clarify that the treatment of losses under national group taxation rules shall take precedence over the EU temporary loss relief mechanism. If a national group incurs losses, Article 42 will however apply.*

2. The deduction shall be in proportion to the holding of the resident taxpayer in its **immediate** qualifying subsidiaries as referred to in Article 3(1) and full for permanent establishments. In no case shall the reduction of the tax base of the resident taxpayer result in a negative amount.

***Presidency comments:***

- *Only paragraph 1 referred to 'immediate qualifying subsidiaries': the legal drafting is therefore being aligned.*

3. The resident taxpayer shall add back to its tax base, up to the amount previously deducted as a loss, any subsequent profits made by its **immediate** qualifying subsidiaries as referred to in Article 3(1) or by its permanent establishments.

4. Losses deducted pursuant to paragraphs 1 and 2 shall automatically be ~~reincorporated~~ **recaptured** into the tax base of the resident taxpayer in any of the following circumstances:
- (a) where, at the end of the fifth tax year after the losses became deductible, no profit has been ~~reincorporated~~ **recaptured** or the ~~reincorporated~~ **recaptured** profits do not correspond to the full amount of losses deducted;
  - (b) where the **immediate** qualifying subsidiary as referred to in Article 3(1) is sold, wound up, **merged** or transformed into a permanent establishment;
  - (c) where the permanent establishment is sold, wound up or transformed into a subsidiary;
  - (d) where the parent company no longer fulfils the requirements of Article 3(1).

***Presidency comments:***

- *The terminology ('recapture') was aligned with the title of the Article.*