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1 KPMG recommendations

1.0 Executive summary

KPMG Canada LLP’s (KPMG) survey of 435 corporate stakeholders and our analysis and reasoning of the relevant issues concerning the taxation of corporate groups leads us to make the following recommendations:

• Canada should adopt a new system of group taxation (see section 1.4.1)
• Canada should move to adopt a group relief (i.e., tax loss transfer) system (see section 1.4.2)
• Canada should adopt an elective system of group relief (see section 1.4.3)
• Currently available loss utilization techniques should be preserved in a new group relief system (see section 1.4.4)
• The use of existing pools of losses in a new group relief system should be allowed (see section 1.4.5)
• Tax attributes other than non-capital losses should be allowed for transfer in a new group relief system (see section 1.4.6)
• The “affiliation test” should be the basis for determining eligible groups (see section 1.4.7)
• Consistent with the “affiliation test” as the basis for determining eligible groups, the degree of ownership should generally be based on votes (see section 1.4.8).

Further, once details of a new system have been framed, whether entities other than corporations should be eligible to participate in a new system can be determined at that time.

KPMG acknowledges and accepts that some provinces are concerned that the utilization of tax losses within a corporate group in a new system may affect provincial tax bases and the interprovincial allocation of income. However, the results of our survey suggest that the effects of corporate groups’ loss utilization may not be as significant as the provinces are concerned that it will be.

The decision on the type of system that is best for the taxation of corporate groups cannot be isolated from the accounting implications for financial statements that may arise from the new system. Once again, details of a new system must be framed before any definitive conclusions can be made in this regard.

1.1 Introduction

KPMG Canada LLP (KPMG) compliments the government for launching a consultation process with the release of the paper titled The Taxation of Corporate Groups (Consultation Paper) on November 23, 2010. KPMG welcomes the opportunity to contribute to the public debate on this important matter. We agree and strongly support Canada’s Department of Finance’s (Finance) stated tax policy objectives of a new system, including efficiency, competitiveness, fairness and simplicity for both taxpayers and tax authorities as set out in the Consultation Paper.
As outlined in the Consultation Paper, Canada, unlike many other countries, does not have a formal system to consolidate the tax reporting of corporate groups or to otherwise offset the profits and losses of the members of a corporate group. Although it is often possible for corporate groups to offset the profits and losses of group members through intra-group transactions and restructurings, Canada’s system taxes corporations on a stand-alone basis.

Finance’s examination of corporate group taxation builds on a number of policy developments over the last 25 years as articulated in the following:

- 1985 Ministerial discussion paper titled “A Corporate Loss Transfer System for Canada” that recommended the adoption of a system allowing losses to be transferred between members of a corporate group
- 1996 Auditor General suggestion that complex loss utilization strategies should not be necessary to allow loss transfers between affiliated corporations
- 1997 Technical Committee on Business Taxation recommendation that the federal government consider, in consultation with the provinces, a formal system for transferring losses between members of the same corporate group
- 2008 Advisory Panel on Canada’s System of International Taxation report that suggested federal and provincial governments should work together to consider how a tax consolidation system could operate in Canada.

KPMG views the various tax policy developments over the last 25 years as a clear indication that Canada’s system of taxation of corporate groups has required modification for quite some time, and that now is the opportune time to achieve a globally competitive and modern system for the taxation of corporate groups.

To contribute to this important initiative and to ensure that KPMG’s views on the key issues properly recognize various competing interests, KPMG queried a wide range of corporate stakeholders via a web-based survey. As well, we queried several of our KPMG member firms for their views on the effectiveness of their own country’s system for the taxation of corporate groups.

### 1.2 KPMG’s survey — Highlights of respondent profile

KPMG’s web-based survey consisting of 23 questions was distributed to several hundred corporate stakeholders. We received 435 responses (see section 2.2). Of the 435 respondents, 80% oversee or have direct responsibility for their organization’s tax affairs (see section 2.3.1). The organizations represent various industries including industrial markets, energy, real estate, consumer markets, Information, Communications and Entertainment, financial services, business / professional services, mining, public sector and private equity (see section 2.3.6).

Half of the respondents are Canadian privately held organizations, 24% are Canadian publicly traded, and 18% are Canadian subsidiaries of foreign-owned entities (see section 2.3.2). Further, 50% of the organizations have between one and 10 subsidiaries or affiliated companies within their corporate group, 15% are stand-alone corporations, and the remaining organizations (other than 2%) have 11 or more subsidiaries or affiliated companies (see section 2.3.5).
Respondents’ companies have revenues across a wide spectrum. In particular, 26% of companies have revenues in excess of $1 billion, and 17% had revenues of less than $10 million (see section 2.3.4).

Full details of KPMG’s survey are available in Section 2 of this submission.

1.3 **KPMG member countries’ views**

KPMG queried several of our member countries for their views on the taxation of corporate groups in their own countries to gauge their satisfaction with the effectiveness of their own systems.

Section 4 contains the questions posed to several of our member countries as well as a high-level summary of each of the 10 member countries’ comments.

1.4 **KPMG’s views**

1.4.1 **Canada should adopt a new system of group taxation**

KPMG submits that changes to the system for the taxation of corporate groups are overdue and that Finance’s consultation process should result in a new system.

An overwhelming majority of respondents to the KPMG survey (92%) indicated that a new system is required for the taxation of corporate groups (see section 2.4.5). Also, 84% of respondents indicated that Finance should give high or medium priority to its review of Canada’s system of corporate group taxation (see section 2.4.16).

As Finance indicates in its Consultation Paper, a new system for the taxation of corporate groups would constitute a fundamental change to the Canadian corporate tax system. However, the fundamental nature of the change should not prevent Canada from proceeding with it. Several KPMG member countries indicated that their governments have recently made changes to their countries’ systems of corporate taxation including Australia, the Netherlands and Denmark. These changes demonstrate that countries require consistent monitoring and tweaking of their systems to ensure systems meet policy objectives.

Maintaining the current system is clearly not what stakeholders want. Only 7% of the respondents indicated that the status quo system is the most beneficial system (see section 2.4.5). Further, this result should be taken into context — 15% of the respondents do not belong to a corporate group and are stand-alone entities (see section 2.3.5). Thus, even many stand-alone entities do not view the current system as the most beneficial.

1.4.2 **Canada should move to adopt a group relief system**

KPMG submits that a Group Relief System is the most appropriate system for the taxation of corporate groups.

The majority of respondents to the KPMG survey (56%) indicated that a loss transfer system (Group Relief System) would benefit Canadian businesses the most. A consolidation system (Fiscal Unity System) was viewed as the most beneficial system by 36% of respondents, and 7% indicated that the current system is the most appropriate (see section 2.4.5).

In our view, a group relief system would be much simpler to apply and to adapt to our existing tax system. By contrast, a consolidation system would almost certainly result in a
major overhaul of Canada’s corporate tax system. A group relief system should also be easier for taxpayers to comply with and for tax authorities to administer than a full-fledged new consolidation system.

Of the KPMG member countries who responded to KPMG’s questionnaire, KPMG UK appears to be the most satisfied with its system for the taxation of corporate groups. As Finance indicated in its Consultation Paper, the UK has a Group Relief System. It is KPMG UK’s informal view that their system is globally competitive as well as relatively easy to administer. “The system works and everyone understands it,” according to KPMG UK, thus there is no significant reason to consider modifying it (see section 4.3.2).

On a related note, it is interesting that the European Union (EU) is currently grappling with the taxation of corporate groups in the EU. An EC draft directive on the Common Consolidated Corporate Tax Base was released on March 16, 2011. This directive would allow companies to elect to calculate their taxable profits according to one set of rules — the new “common” EU tax base — rather than according to the different rules in each EU Member State in which they operate. Given the complexity of the system and that agreement among the 27 member states is required, it is currently uncertain if or when the Common Consolidated Corporate Tax Base will be introduced.

1.4.3 Canada should adopt an elective system of group relief

KPMG submits that a new system for the taxation of corporate groups should be an elective system.

Our KPMG survey indicates that respondents overwhelmingly favour (77%) an elective system for the participation in a group taxation regime rather a mandatory system. Only 22% of respondents indicated that the system should be mandatory for all corporate groups and their members based on a specific ownership percentage (see section 2.4.11).

Of the 10 KPMG member countries that responded to our questionnaire, only one country (Denmark) has a mandatory system.

1.4.4 Preserve currently available loss utilization techniques in a new group relief system

KPMG submits that any currently available loss utilization techniques should be preserved and codified in Canada’s Income Tax Act. Thus, if a system were introduced requiring a 100% ownership threshold for participation in the corporate group taxation, existing loss utilization techniques would continue to be permitted for affiliated/related groups.

The majority of respondents to the KPMG survey (69%) indicated that if Canada were to adopt a new elective system of corporate group taxation, then currently available loss utilization techniques should be preserved for corporate groups that do not opt into the new system (see section 2.4.12).

1.4.5 Allow use of existing pools of losses in a new group relief system

Given that one of the policy objectives for changing the taxation of corporate groups in Canada is global competitiveness, KPMG submits that restricting the use of existing unused tax loss balances would not be appropriate if a new system is introduced. Thus, existing tax loss balances should be available for use in the new system.
More than half (56%) of KPMG survey respondents indicated that their corporate group currently has unused tax loss balances from prior years (see section 2.4.6). Further, almost three-quarters (73%) indicated that they would not want Finance to restrict the use of losses accumulated by corporate groups prior to the introduction of a new system (see section 2.4.8).

As Finance indicated in its Consultation Paper, Japan has a consolidation system where in general, pre-consolidation losses of a corporate group member are cancelled upon entry into the consolidated group. Interestingly, KPMG Japan informally indicated to us that this restriction on pre-consolidation losses had been one factor that made its system less than an ideal choice since many companies chose not to elect into the consolidation system because of this restriction. Japan underwent a tax reform in 2010 that relaxed the restrictions on the use of pre-consolidation losses (see section 4.10).

Further, current legislation (e.g., loss streaming rules and the general anti-avoidance rule (GAAR)) will continue to prevent abusive loss utilization transactions.

1.4.6 Allow use of other tax attributes in a new group relief system

KPMG submits that a Group Relief System should allow for the transfer of various tax attributes in addition to tax losses.

Just over three-quarters (76%) of respondents to the KPMG survey indicated that Canada should adopt a group taxation system that incorporates tax attributes other than current year non-capital losses (see section 2.4.9). In particular, almost all respondents (94%) indicated that capital losses should be included. Further, over 50% or more of respondents indicated that investment tax credits, scientific research and experimental development expenses, capital cost allowance pools, foreign tax credit carryovers, refundable dividend tax on hand and capital dividend accounts should be available for transfer (see section 2.4.10). Although only 47% of total respondents indicated that general rate income pool (GRIP) amounts should be an attribute eligible for transfer, a majority of private companies indicated that GRIP should be eligible for transfer in a new Group Relief System.

KPMG member countries that responded to our questionnaire and that have a Group Relief System were the UK and Finland. Both countries allow for the transfer of attributes other than losses (see section 4).

1.4.7 Affiliation test for eligible groups in a new group relief system

KPMG submits that the appropriate ownership threshold for a new group relief system should be more than 50% because this would produce results consistent with codifying current loss utilization techniques, which generally permit loss utilization within affiliated groups. This threshold would also make it easier for the current system to be preserved in tandem with the new system.1

Further, consistent with current affiliation rules and administratively allowed loss transfer techniques, the treatment of Canadian corporate groups that are controlled by non-residents should be the same as groups that are controlled by residents, i.e., a new formal loss transfer

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1 KPMG also submits that whatever system is introduced, currently available loss utilization techniques should be preserved. For example, although we submit that an “affiliation test” is most appropriate, we believe that because certain loss consolidation techniques within a related (i.e., not affiliated) group are currently administratively allowed, such planning techniques should be preserved (see Ruling 2009-0332571R3).
system should be available to corporate groups with either a Canadian or foreign common parent corporation.

The majority of respondents (60%) indicated that the threshold of common ownership that should be mandated in a new system should be less than 100%. In particular, 21% indicated a threshold of 75% or more, 20% a 95%-+ threshold, and 19% a 51%-+ threshold (see section 2.4.3). Despite the varied responses, the majority of respondents to the KPMG survey (69%) indicated that if Canada were to adopt a new elective system of corporate group taxation, then currently available loss utilization techniques should be preserved for corporate groups that do not opt into the new system (see section 2.4.12). It is not known what the responses to the KPMG survey would have been on this ownership threshold question if the respondents were told to assume that current loss utilization techniques would no longer be available in a new system.

KPMG Netherlands indicated that, in theory, a 100% ownership threshold is appropriate. However, KPMG Netherlands is of the view that the country’s 95% threshold is viewed as practical and fair as it allows a corporation to grant small equity incentives (e.g., employee shares plans) without compromising its ability to join a corporate group for taxation purposes (see section 4.7).

Based on Finance’s statistics in the Consultation Paper in Annex 3, the majority of corporate groups consist of wholly owned group members (see Tables 3 and 4). Also according to the statistics, wholly owned corporate tax groups make up 62% of the Part I tax base and represent 61% of non-capital losses incurred. By lowering the ownership threshold to greater than 50% (affiliation test) the impact would be to increase the Part I tax base for this expanded definition of corporate groups by only 6% (to 68%) and the amount of non-capital losses by only 4% (to 65%). Thus, the impact on the government’s revenues may be relatively small when the eligible ownership threshold is reduced to more than 50% from 100%.

1.4.8 **Degree of ownership should be based on votes in a new group relief system**

Notwithstanding the survey results, KPMG submits that since we recommend the “affiliated” test for determining members of an eligible group, the degree of common ownership threshold would generally be based on having more than 50% of the votes. This recommendation is consistent with keeping the new regime relatively simple since a votes test currently applies for purposes of the Income Tax Act, jurisprudence and administrative practice. We do not recommend introducing a new test as this will unduly complicate matters and be inconsistent with the current income tax regime.

A majority (53%) of respondents to the KPMG survey indicated that common ownership of a corporate group should be determined by a combination of votes and value, whereas 39% indicated that the determination should be based on votes only.

1.4.9 **Eligible entities for a new group relief system**

KPMG submits that while corporate entities should clearly be able to participate in a new system, a definitive position on whether other types of entities should be able to participate can only be made once more details of a system have been framed. In the context of a new system, it may then make sense to determine to what extent it may be possible for the new system to accommodate certain types of non-corporate entities. We recognize, for example,
that issues related to flow-through entities may increase a new system’s complexity. As a result, this issue should be revisited once details of a proposed system become clearer.

A majority of respondents (60%) indicated that the most appropriate unit of taxation is wholly owned corporate groups whose members have the same owners and interact with each other in the best interests of the overall group. Of the other respondents, 23% indicated that corporate groups whose members have significant common ownership but different minority shareholders was the most appropriate, and 16% indicated the unit of taxation should be stand-alone entities (see section 2.4.1).

The majority of respondents to the KPMG survey (54%) said that membership in a corporate group taxation system should be restricted to corporations. Only 39% said it should be expanded to include other non-corporate entities such as partnerships and joint ventures, 18% were in favour of including Canadian branches of non-resident corporations and 17% wanted the system extended to include trusts (see section 2.4.2).

We submit that these responses to survey question 9 and 10 are inconclusive. Further, these responses may have been influenced by 50% of the survey respondents being Canadian privately held companies (see section 2.3.2). Further, almost 70% of these private companies had 10 or fewer subsidiaries or affiliates in their corporate group.

1.4.10 Provincial/Territorial considerations

We acknowledge and accept that some provinces are concerned that the utilization of tax losses within corporate groups in a new system may affect provincial tax bases and the interprovincial allocation of income. However, certain answers in the KPMG survey suggest that the effects of a new system may not be as significant as the provinces are concerned that they will be.

KPMG survey respondents were queried about the location of their Canadian headquarters. Highlights of the results are that 41% of respondents have their Canadian headquarters located in Ontario, 17% in Alberta, 13% in British Columbia, 8% in Quebec, and 5% in the Atlantic provinces (see section 2.3.3). Respondents were also queried about whether they operated in more than one province. Their answers indicated that 66% of respondents operate in more than one province (see section 2.3.3).

With this demographic in mind, a clear majority of respondents (78%) that operate in multiple provinces indicated that they would be indifferent about transferring losses from one province to another or less inclined to do so. In this regard, 35% said they would be indifferent (without giving a reason), 24% were indifferent because they could avail themselves of current loss utilization techniques, 12% said they were indifferent because profits and losses occur in the same province, 4% said that they would be less inclined to transfer losses (no reason given) and 3% were indifferent because they were currently in a loss position. The remaining 21% of respondents said they would be more inclined to transfer losses from one province to another (see section 2.4.13).

Interestingly, 46% of the respondents to a KPMG survey question about how provincial tax liabilities should be determined in a new system suggested that it may be appropriate to develop new interprovincial allocation rules. Also, 36% of respondents suggested that the existing income allocation rules should be applied to the corporate group members who actually pay tax in the new group relief or loss consolidation system (see section 2.4.14).
1.4.11 Accounting considerations in a new group relief system

A decision on what type of system is best for the taxation of corporate groups cannot be isolated from the accounting implications for financial statements that will arise from implementing the system.

Generally, when a Canadian corporation within a consolidated group for financial reporting purposes incurs losses that are carried forward, a future tax asset may be recognized. Recognition depends on whether it is “more likely than not” that all or some portion of the asset will be realized due to the existence of sufficient taxable income of the character necessary and relating to the same entity and jurisdiction and within the available carryback/carryforward periods. The Canadian corporation within the corporate group may not be able to meet the “more likely than not” recognition criteria unless a qualifying tax planning strategy is considered.

Tax planning strategies are one of the sources of taxable income that may support the recognition of a future tax asset and are generally considered whenever the other sources of future taxable income are not sufficient. A qualifying tax planning strategy is an action that is (a) prudent and feasible, (b) an enterprise ordinarily might not take, but would take to prevent a tax loss or income tax reduction from expiring unused, and (c) would result in the realization of the future tax asset.

In determining whether a strategy is a qualifying tax planning strategy, an enterprise needs to consider (a) its ability to implement a tax planning strategy for it to be feasible, (b) the transaction costs associated with the strategy (i.e., it is not prudent to implement a strategy where the costs exceed the tax benefit) and (c) whether the strategy would be sustained on examination by taxation authorities.

The current Canadian tax system allows for tax planning whereby corporate groups can offset the profits and losses of group members. Generally, such tax planning qualifies to be considered for recognition of a future tax asset for financial reporting purposes. A more formalized system to transfer losses within a corporate group such as a group relief system should ease an entity’s assessment of whether it has a qualifying tax planning strategy for financial statement reporting purposes.

A tax loss transfer system raises an issue in that entities that transfer tax losses between themselves will need to consider how to account for the current and deferred income taxes in their separate entity financial statements within the group. The method applied to account for such taxes in the separate financial statements will also depend on the GAAP the entity applies.

If Canada were to adopt a full consolidation approach instead, similar issues would need to be considered. Further, such a system has the potential for more complex accounting issues.
1.5 Conclusion

KPMG welcomes the opportunity to contribute to the debate on this important issue for Canadian corporations. We urge the federal and provincial governments to act quickly to introduce a new system for the taxation of corporate groups.

In this submission, we provide high-level comments on the policy objectives and conceptual design parameters of a new system. If such a new system is proposed as a result of this consultation, it will be critical for stakeholders to be able to review and comment on the specific details included in the proposals. We look forward to the opportunity to provide further comments when new proposals are released.
2 KPMG survey results

2.1 Purpose of survey

The Department of Finance asked for consultations on the taxation of corporate groups. The consultations could lead to the adoption of a more formalized system of loss transfers or some form of consolidated reporting, which could dramatically alter the taxation of many corporate groups in Canada. These consultations were launched with the release of a 33-page consultation paper on November 23, 2010.

As part of our contribution to this important debate, KPMG polled Canadian tax and financial executives for their views on potential measures associated with a more formalized system of loss transfers or consolidated reporting.

2.2 Survey methodology

The survey information was collected using an English and French online questionnaire. The questionnaire was distributed to Canadian tax and financial executives for their views.

KPMG also enlisted industry association support by providing associations with the opportunity to host the survey on their website or forward it to their membership. A total of five associations participated with KPMG. A full list of associations participating in this survey is available in Section 5.

KPMG developed 23 questions to respond to the Department of Finance’s consultation paper released on November 23, 2010.

Between January 12 – 28, 2011, a total of 435 individual responses were received.

KPMG would like to thank all respondents for taking the time to provide their feedback on the taxation of corporate groups. KPMG would also like to thank the associations who participated in this survey in conjunction with KPMG.
2.3 Respondent profile

2.3.1 Respondent’s role within organization

Forty percent of respondents are senior executives with an oversight role regarding their organization’s tax affairs, and another 40% are the tax director or other executive with direct responsibility for managing their organization’s tax affairs.

Respondent’s role within organization
2.3.2 Type of organization

Half of the respondents are Canadian privately held organizations, and one quarter are Canadian publicly traded organizations.

Type of organization

![Bar chart showing the distribution of types of organizations.]

- 50% Canadian privately held
- 24% Canadian publicly traded
- 18% Canadian subsidiary of foreign owned entity
- 1% Canadian subsidiary of Canadian privately owned entity
- 1% Canadian subsidiary of Canadian public owned entity
- 6% Other
2.3.3 Company headquarters

Of the 435 responses received, almost half of executives (41%) indicated their company’s headquarters is located in Ontario, with an additional 17% of respondents’ company headquarters located in Alberta. Two-thirds of respondents’ companies operate in more than one province.

Company headquarters

![Chart showing percentages of company headquarters locations]
2.3.4 Revenues

One quarter of respondents have revenues greater than $1 billion, and 17% of respondents indicate their company had revenues of less than $10 million in the last fiscal year.

Revenues
2.3.5 Number of subsidiaries/affiliates

Half of respondents have between one and 10 Canadian subsidiaries or affiliated companies in their corporate group.

**Number of subsidiaries/affiliates**

![Bar chart showing the distribution of the number of subsidiaries/affiliates among respondents.](chart)

- **None (stand-alone corporation):** 15%
- **1 - 2 subsidiaries:** 15%
- **3 - 10 subsidiaries:** 35%
- **11 - 50 subsidiaries:** 21%
- **More than 50 subsidiaries:** 12%
- **Not applicable:** 2%
2.3.6 Industry

As illustrated in the chart below, a range of industries were surveyed, with one quarter representing the industrial markets industry.

*Industry*

Just over one-third of respondents indicate their industry is not regulated. Another one-third indicate their industry is regulated, and a further 20% indicate their industry is highly regulated.
2.4 Detailed results

2.4.1 Appropriate unit of corporate taxation

Canada’s current system taxes corporations as stand-alone entities. In computing taxable income, the current system allows a corporation to offset income in one part of its business with losses arising from other business activities within the same corporation. The Department of Finance’s consultation paper suggests that moving to a larger unit of taxation by taxing corporate groups could better reflect common ownership and shared economic interests, and thus improve the tax system’s efficiency.

Almost two-thirds of respondents indicate that the most appropriate unit of corporate taxation is a wholly owned corporate group, whose members have the same owners and interact with each other in the best interests of the overall group. Another quarter of respondents believe that the most appropriate unit of corporate taxation is corporate groups whose members have significant common ownership but different minority shareholders.

Appropriate unit of corporate taxation

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly-owned corporate groups, whose members have the same owners and</td>
<td>60%</td>
</tr>
<tr>
<td>interact with each other in the best interests of the overall group</td>
<td></td>
</tr>
<tr>
<td>Corporate groups whose members have significant common ownership but</td>
<td>23%</td>
</tr>
<tr>
<td>different minority shareholders</td>
<td></td>
</tr>
<tr>
<td>Stand-alone entities (i.e. status quo)</td>
<td>16%</td>
</tr>
<tr>
<td>No response</td>
<td>1%</td>
</tr>
</tbody>
</table>

KPMG observation

It is interesting to note that the majority of respondents’ view that the appropriate unit of taxation be confined to wholly owned corporate groups may have been influenced by 50% of the survey respondents being Canadian privately held companies. Furthermore, of those Canadian privately held companies, almost 70% were part of a corporate group with 10 or fewer subsidiaries or affiliated companies within their corporate groups.
2.4.2 Entities to include in corporate group

Just over half of respondents believe that no entities other than corporations should be included as members of a corporate group. One-third of respondents feel that other non-corporate entities such as partnerships or joint ventures should be included as members of a corporate group.

Entities to include in corporate group

<table>
<thead>
<tr>
<th>Entity Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>None (i.e. membership restricted to corporations only)</td>
<td>54%</td>
</tr>
<tr>
<td>Other non-corporate entities (e.g. partnerships, joint ventures)</td>
<td>39%</td>
</tr>
<tr>
<td>Canadian branches of non-resident corporations</td>
<td>18%</td>
</tr>
<tr>
<td>Trusts</td>
<td>17%</td>
</tr>
</tbody>
</table>
2.4.3 Ownership threshold

Just over one-third of respondents indicate that 100% owned entities would be the most appropriate for determining membership within a corporate group, with remaining respondents split between whether the most appropriate common ownership should be at least 95%, 75% or 51%.

Ownership threshold

KPMG observation

As noted in the response in section 2.4.12, 69% of respondents said that if there is a new system, Canada should preserve the currently available loss utilization techniques. In addition, as noted in the response in section 2.4.8, 73% of respondents said that Canada should not restrict the use of losses accumulated by corporate groups prior to the introduction of the new system. It is not known how answers to this question might have been influenced if respondents believed that currently available loss utilization techniques would not be available in the new system.
2.4.4 Determination of common ownership

Just over half of respondents indicate that common ownership of a corporate group should be determined by a combination of votes and value. One-third of respondents indicate that common ownership should be determined by votes only, and only 8% indicate that common ownership should be determined by value only.

**Determination of common ownership**

![Pie chart showing the distribution of responses]

- **Votes only, 39%**
- **A combination of votes and value, 53%**
- **Value only, 8%**
2.4.5 Type of system of most benefit to Canadian businesses

More than half of respondents believe that a loss transfer system would most benefit Canadian businesses, with one-third indicating that a consolidation system would most benefit businesses. A loss transfer system (or group relief system) preserves the member corporations’ separate identities but allows for intra-group loss transfers that serve to reduce the corporate group’s total tax liability. A consolidation system (or fiscal unity system) taxes corporate groups as if they were a single entity.

System that most benefits Canadian business

- A loss transfer system (or group relief system): 56%
- A consolidation system (or fiscal unity system): 36%
- Current system (i.e. status quo): 7%
- No response: 1%
2.4.6 Unused tax loss balances

More than half of respondents indicate their corporation or corporate group currently has unused tax loss balances from prior years.

Unused tax loss balances
2.4.7 Why tax losses remain unutilized?

Among the respondents that have unused tax loss balances, the large majority indicate that business reasons best explains why they have not undertaken any transactions to utilize unused tax losses.

**Why tax losses remain unutilized**

![Bar chart showing reasons for tax losses remaining unutilized]

The “Other” category includes:

- No taxable income (multiple mentions)
- “Unused tax losses were created under a trust structure and will disappear over time after the conversion to a corporation”
- “Started planning to do so but stopped when these consultations were announced (reconsidering now whether we should resume this planning /structuring)”
- “Time consuming and expensive to plan and execute”
- “We have undertaken transactions which result in use over a number of years”
- “Cost and complexity”
- “Minority partners and business reasons”
- “No other domestic entities to transact with; investigating possibilities at the moment”
- “Cost to do so and have chosen to utilize losses against future income”
- “Recent loss which will reverse in the next year”
- “Very time consuming, costly and technically difficult”
- “We are a single entity. We are in early commercialization stage as a technology company.”
2.4.8 Restriction on the use of losses accumulated by corporate groups

If Canada were to adopt a consolidated or loss transfer system for the taxation of corporate groups, three-quarters of respondents would not want Canada to restrict the use of losses accumulated by corporate groups prior to the new system’s introduction.

Restriction on use of losses
2.4.9 Other tax attributes

Three-quarters of respondents believe that Canada should adopt a group taxation system that incorporates other tax attributes in addition to current year non-capital losses.

*Other tax attributes*
2.4.10 Which tax attributes should also be incorporated?

Among the respondents that indicate other tax attributes should be incorporated in a new system of corporate group taxation, almost all indicate that capital losses should be included. More than three-quarters of respondents indicate that investment tax credits, SR&ED expenses and capital cost allowance pools should be incorporated.

<table>
<thead>
<tr>
<th>Tax Attribute</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital losses</td>
<td>94</td>
</tr>
<tr>
<td>Investment tax credits</td>
<td>85</td>
</tr>
<tr>
<td>Scientific research and experimental development expenses</td>
<td>79</td>
</tr>
<tr>
<td>Capital cost allowance pools</td>
<td>76</td>
</tr>
<tr>
<td>Foreign tax credit carryovers</td>
<td>65</td>
</tr>
<tr>
<td>Refundable dividend tax on hand</td>
<td>51</td>
</tr>
<tr>
<td>Capital dividend accounts</td>
<td>50</td>
</tr>
<tr>
<td>General rate income pool and low rate income pool balances</td>
<td>47</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
<tr>
<td>None of the above</td>
<td>-</td>
</tr>
</tbody>
</table>

The “Other” category includes: resource pools such as Canadian Exploration Expense (CEE), Canadian Development Expense (CDE), Canadian Oil and Gas Property Expense (COGPE), Ontario Minimum Tax Credits, all tax attributes, “charitable donations, safe income, eligible capital pools, replacement property provisions, determination of reasonable expectation of profit.”
2.4.11 Determining participation: Elective or mandatory

One-third of respondents indicate that participation in a group taxation regime should be elective, but mandatory for all group members once elected. Another 30 percent of respondents feel that participation in a group taxation regime should be elective, but with discretion over which group members participate.

Determining participation: Elective or mandatory

- Elective, but mandatory for all group members once elected: 34%
- Elective, but with discretion over which group members participate (annually for each group member): 30%
- Mandatory for all corporate groups and their members (based on a specific ownership percentage): 22%
- Elective, but with discretion over which group members participate (irrevocable for each group member once elected): 13%
- No response: 1%
2.4.12 Preserve current system?

More than two-thirds of respondents agree that Canada should preserve the currently available loss utilization techniques.

Preserve current system?
2.4.13  Inclination to transfer losses under a new taxation system

Among respondents that operate in multiple provinces, more than one-third of respondents indicate they are indifferent about whether they are more or less inclined to transfer losses from one province to another under a new taxation system; i.e., the transfer of losses should be about the same. Twenty-four percent of respondents are indifferent and believe the corporate group has or can enter into loss transfer transactions using existing techniques. Another 21% are more inclined to transfer losses from one province to another.

<table>
<thead>
<tr>
<th>% of respondents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Indifferent – should be about the same</td>
<td>35</td>
</tr>
<tr>
<td>Indifferent – since the corporate group has or can enter into loss transfer transactions using existing techniques (generally involving reorganizations or other transactions)</td>
<td>24</td>
</tr>
<tr>
<td>More inclined to transfer losses from one province to another</td>
<td>21</td>
</tr>
<tr>
<td>Indifferent – since profits and losses occur in the same province</td>
<td>12</td>
</tr>
<tr>
<td>Less inclined to transfer losses from one province to another</td>
<td>4</td>
</tr>
<tr>
<td>Indifferent – since entities in various provinces are in a loss position</td>
<td>3</td>
</tr>
</tbody>
</table>
2.4.14 How should provincial tax liabilities be determined?

Almost half of respondents feel that Canada should develop new interprovincial allocation rules to determine provincial tax liabilities. One-third of respondents believe that Canada should apply the existing income allocation rules to the corporate group members who actually pay the tax in the loss consolidation or loss transfer system.

How should provincial tax liabilities be determined?

![Bar chart showing the percentage of respondents for each option.](chart.png)

- **Develop new interprovincial allocation rules**: 46%
- **Apply the existing income allocation rules to the corporate groups member(s) who actually pay the tax in the loss consolidation or loss transfer system**: 36%
- **Group consolidation or loss transfer system should be at the Federal level only; file separate provincial returns under existing rules**: 13%
- **Other method**: 2%
- **No response**: 3%
2.4.15  Adopt new system even if complex?

Respondents are evenly split on whether they would be in favour of adopting a new system for the taxation of corporate groups if it results in additional legislative and/or administrative complexities.

_ Adopt new system even if complex?_
2.4.16 Priority level for this initiative

The large majority of respondents indicate that the Department of Finance should give its review of corporate group taxation either a high or medium priority level.

**Priority level for this initiative**

![Bar chart showing priority levels]

- **High priority:** 38%
- **Medium priority:** 46%
- **Low priority:** 14%
- **No response:** 2%
2.4.17 Other comments and recommendations

Question 23 of our survey was an open-ended question asking individuals to provide any other comments/concerns. Three main themes emerged:

- The new system must be simple to comply with
- Provinces need to get on board since a federal-only system is not sufficient
- The system should be elective.

The following are some quotes provided by respondents:

“For those that would benefit with the change, a election opportunity would be ideal v. making it mandatory."

“We need to keep this simple. Full consolidation system is not an option.”

“We invest 150,000$ for consolidation of losses last year. If we had consolidation of losses in corporate group, we may have invest this amount in manufacturing facilities instead.”

“In my view a loss transfer system is preferable to a full consolidation system (e.g. prefer the UK system to the U.S. system, for example) principally because it has (or should have) less complexity and should not increase the compliance burden to taxpayers.”

“We need to simplify the tax system so our businesses keep their agility and spend less time in non-value added back office functions.”

“Federal only consolidation is a big mistake, and one of the main reasons true consolidation has not occurred over the past 50 years.”
The KPMG survey that respondents received is as follows:

**KPMG survey**

**Federal consultations on taxation of corporate groups**

The Department of Finance is undertaking consultations on the taxation of corporate groups. The consultations could lead to the adoption of a more formalized system of loss transfers or some form of consolidated reporting, which could dramatically alter the taxation of many corporate groups in Canada. These consultations were launched with the release of a 33-page consultation paper on November 23, 2010, and the government is soliciting comments on them until February 26, 2011.

As part of our contribution to this important debate, we are polling Canadian tax and financial executives for their views on these potential new measures. Please take ten minutes or so to share your comments and concerns by answering the questions in our survey by January 28, 2011. Your confidential responses will help shape our comments to the Department of Finance.

We will share the survey results and our final submission to the Department of Finance with you once the consultation period has closed.

Thank you for taking the time to provide your input into this important matter.

1. From the statements below, which one best describes your role within your organization?
   - [ ] I am a senior financial executive with an oversight role regarding the management of my organization’s tax affairs
   - [ ] I am a tax director or other executive with direct responsibility for managing my organization’s tax affairs
   - [ ] I am an executive with responsibilities that are not directly related to the management of my organization’s tax affairs
   - [ ] I am an interested party who does not have direct or indirect responsibility for an organization’s tax affairs

2. Please indicate which of the following best describes your company.
   - [ ] Canadian publicly traded
   - [ ] Canadian privately held
   - [ ] Canadian subsidiary of Canadian privately owned entity
   - [ ] Canadian subsidiary of Canadian public owned entity
   - [ ] Canadian subsidiary of foreign owned entity
   - [ ] Other (please specify__________________________)

3. Please indicate the location of your company’s Canadian headquarters.
   - [ ] British Columbia
   - [ ] Alberta
   - [ ] Saskatchewan
4. Please indicate your company’s revenue for the last fiscal year.
   - Less than $10 million
   - $10 - $25 million
   - $26 - $50 million
   - $51 - $100 million
   - $101 – $250 million
   - $251 - $500 million
   - $501 million - $1 billion
   - Greater than $1 billion
   - Not applicable

5. What is your company’s primary industry?
   - Aerospace and Defense
   - Automotive
   - Banking and Finance
   - Biotechnology and Pharmaceuticals
   - Building and Construction
   - Business / Professional Services
   - Chemicals
   - Communications
   - Consumer Products
   - Electronics
   - Energy Services
   - Entertainment
   - Food & Beverage
   - Forestry
6. Please indicate whether your industry is…?
   - Highly regulated
   - Regulated
   - Not-regulated
   - Not applicable

7. How many Canadian subsidiary or affiliated companies are within your corporate group?
   - None (stand-alone corporation)
   - 1 – 3
   - 4 - 10
   - 11 – 50
   - More than 50
   - Not applicable
8. Does your company operate in…?
   - One province only
   - Multiple provinces
   - Not applicable

Canada’s current system taxes corporations as stand-alone entities. In computing taxable income, the system allows a corporation to offset income in one part of its business (e.g., Division A) with losses arising from other business activities (e.g., Division B) within the same corporation.

The Department of Finance’s consultation paper suggests that moving to a larger unit of taxation by taxing corporate groups could better reflect common ownership and shared economic interests, and thus improves the tax system’s efficiency.

9. In your view, the most appropriate unit of corporate taxation is:
   - Stand-alone entities (i.e., status quo)
   - Wholly-owned corporate groups, whose members have the same owners and interact with each other in the best interests of the overall group
   - Corporate groups whose members have significant common ownership but different minority shareholders

10. If Canada were to adopt a system of taxing corporate groups, what entities other than corporations (if any) should be included as members of a corporate group? (Please select all that apply)
   - Trusts
   - Other non-corporate entities (e.g., partnerships, joint ventures)
   - Canadian branches of non-resident corporations
   - None (i.e., membership restricted to corporations only)

11. If Canada were to adopt a system of taxing corporate groups, which of the following thresholds of common ownership would be most appropriate for determining membership within the group?
   - 100%-owned only
   - 95%-owned or more
   - 75%-owned or more
   - 51%-owned or more

12. How should common ownership of a corporate group be determined under a group taxation system?
   - Votes only
   - Value only
   - A combination of votes and value
13. Canada’s current system allows for certain types of loss transfers within a “related”
corporate group through reorganizations and other transactions. Finance’s consultation
paper outlines the range of options that should be considered for a new system of group
taxation. These options range between two extremes: at one extreme is a full
consolidation system; at the other, a loss transfer system that is more developed than
Canada’s current system. In your view, which type of system would be of most benefit
to Canadian businesses?
☐ Current system (i.e., status quo)
☐ A consolidation system (or fiscal unity system), which taxes corporate groups as if
they were a single entity
☐ A loss transfer system (or group relief system), which preserves the member
corporations’ separate identities but allows for intra-group loss transfers that serve
to reduce the corporate group’s total tax liability

14. a. Does your corporation or corporate group currently have unused tax loss balances
from prior years?
☐ Yes
☐ No (or only nominal unused tax loss balances)

14. b. If yes, why hasn’t your corporate group undertaken any transaction(s) to utilize its
unused tax losses?
☐ Business reasons
☐ Legislative or regulatory restrictions
☐ Other – please specify: __________________________________________________

15. If Canada were to adopt a consolidated or loss transfer system for the taxation of
corporate groups, would it be appropriate to restrict the use of losses (and/or other tax
attributes) accumulated by corporate groups prior to the new system’s introduction?
☐ Yes
☐ No

16. a. In addition to current-year non-capital losses, should a group taxation system
incorporate other tax attributes, such as investment tax credits and capital cost
allowance pools?
☐ Yes
☐ No

16. b. If yes, which tax attributes (if any) should also be incorporated? (Please select all that
apply).
☐ Capital losses
☐ Investment tax credits
☐ Capital cost allowance pools
☐ Scientific research and experimental development expenses
☐ Capital dividend accounts
Refundable dividend tax on hand
General rate income pool (GRIP) and low rate income pool (LRIP) balances
Foreign tax credit carryovers
Other – please specify: ____________________________________________________
None of the above

17. To what extent should participation in a group taxation regime be elective or mandatory for the group and/or individual group members?
☐ Mandatory for all corporate groups and their members (based on a specified ownership percentage)
☐ Elective, but mandatory for all group members once elected
☐ Elective, but with discretion over which group members participate (irrevocably for each group member once elected)
☐ Elective, but with discretion over which group members participate (annually for each group member)

18. Under Canada’s current system, intra-group loss transfers can be accomplished in some cases through certain techniques (generally involving reorganizations or other transactions). If Canada were to adopt a new, elective system of corporate group taxation in Canada, should currently-available loss utilization techniques be preserved for corporate groups that do not opt into the new system (i.e., should the current system be retained to run in parallel to a new system)?
☐ Yes
☐ No

19. If your group of companies operate in multiple provinces and Canada were to adopt a new consolidation or loss transfer system for the taxation of corporate groups, would you be:
☐ More inclined to transfer losses from one province to another
☐ Less inclined to transfer losses from one province to another
☐ Indifferent – since the corporate group has or can enter into loss transfer transactions using existing techniques (generally involving reorganizations or other transactions)
☐ Indifferent – since profits and losses occur in the same province
☐ Indifferent – since entities in various provinces are in a loss position
☐ Indifferent – should be about the same
☐ Not applicable

20. If Canada were to adopt a new consolidation or loss transfer system for the taxation of corporate groups how should provincial tax liabilities be determined?
☐ Apply the existing income allocation rules to the corporate group member(s) who actually pays the tax in the loss consolidation or loss transfer system
Develop new interprovincial allocation rules (e.g. All corporate group members pay tax on their income (if any) based on aggregate provincial weightings for the corporate group based on existing income allocation rules)

Group consolidation or loss transfer system should be at the Federal level only; file separate provincial returns under existing rules

Other method (please specify: ____________________________)

21. If Canada were to adopt a new consolidation or loss transfer system for the taxation of corporate groups and the new system resulted in significant additional legislative and/or administrative complexities, would you still be in favour of adopting a new system for the taxation of corporate groups?

☐ Yes
☐ No

22. In your view, how much priority should Finance give its review of corporate group taxation relative to its other priorities?

☐ High priority – The current system does not operate appropriately, and it is harming the competitiveness of Canadian businesses.

☐ Medium priority – The current system is largely adequate, but it should be reviewed to determine whether changes to the system would be advantageous.

☐ Low priority – The current system is operating adequately, and Finance should focus its limited resources on other priorities.

23. Please provide us with any other concerns regarding the taxation of corporate groups that should be brought to the Department of Finance’s attention.

____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________.

Please indicate whether you would like to receive a copy of KPMG’s Submission to the Department of Finance based on the results from this survey?

☐ Yes
☐ No

If Yes, please provide us with your name and e-mail address below.

Please be assured your name or e-mail address will not be attributed to your specific responses, but will only be used to ensure you receive a copy of KPMG’s Submission paper to the Department of Finance.

Name: ___________________________________________________________

Email: ___________________________________________________________
4 KPMG views from around the globe

4.1 Introduction

This document provides a very high-level overview of 10 countries’ corporate group tax regimes. For each country we summarize the tax regime as described by Canada’s Department of Finance (Finance) in the Taxation of Corporate Groups Consultation Paper and then provide KPMG member countries’ views on their country’s system.

The following 10 countries’ tax regimes were reviewed:

- **United States** (Consolidation system with 80% ownership threshold)
- **United Kingdom** (Loss transfer system with 75% ownership threshold)
- **Australia** (Consolidation system with 100% ownership threshold)
- **France** (Consolidation system with 95% ownership threshold)
- **Germany** (Partial consolidation and partial attribute transfer system with 50% ownership threshold)
- **Netherlands** (Partial consolidation; attribution approach to consolidation; 95% ownership threshold)
- **Finland** (Attribute transfer system with 90% ownership threshold)
- **Denmark** (Partial consolidation and partial loss transfer with 50% ownership threshold)
- **Japan** (Consolidation system with 100% ownership threshold)
- **Italy** (Consolidation system with 50+ % ownership threshold).

For purposes of this survey, we asked senior KPMG Corporate Tax professionals in the various countries for their informal views on the effectiveness of their countries’ corporate tax loss system. We stress that the views expressed are not the official views of the KPMG member countries surveyed but instead represent the personal views of experienced tax professionals in each particular country. Nonetheless we feel that these “unofficial” views on candid assessments of their countries’ corporate tax loss systems may be instructive and helpful for purposes of the Canadian consultations process in evaluating the pros and cons of adopting regimes similar to those in use in other countries.

4.2 United States

4.2.1 Finance’s overview of system

According to Canada’s Department of Finance, the United States employs a “pooling” approach to consolidated reporting where each member of the corporate group first calculates its own taxable income as if it were filing its own tax return. The consolidated return must then report the sum of income, expenses, and balance sheet items of each member of the corporate group. The initial election to file a consolidated return is voluntary. Once an election is made, it is generally irrevocable and must include all subsidiaries (i.e., an “all-in” rule). A corporate group is comprised of a parent corporation and subsidiaries in which the parent or other subsidiaries own 80% of the total voting power and the total value of the group member’s stock. Pre-consolidation losses relating to a particular subsidiary may be
offset against the income of the subsidiary only if the group as a whole has taxable income after aggregation of the tax results for the group.

### 4.2.2 KPMG US views

Finance’s overview is generally accurate. However, a corporate group does not necessarily calculate its own taxable income as if it were filing its own tax return. For instance, certain capital items are calculated on a consolidated basis.

**Complexity/Appropriateness**

The United States has had a tax consolidation regime since 1918. Modifications to the regime are made via regulatory changes. Overall, there is a view that the regime is a good one. It is felt that the regime manages the tensions between appropriate results and complexity rather well. Granted, the system is complex. For example, four statutory sentences in the IRS code can have 1,000 pages of detailed regulations. The regime is likely more complex than many countries’ regimes. Despite this complexity, our US colleagues felt that no major overhaul to the system is required at this time.

**Federal system versus sub-national system**

The United States’ federal corporate income tax system is independent from its states’ corporate income tax systems. As such, each state determines its own corporate income tax system.

**Ownership threshold**

Our KPMG US tax colleagues were of the view that an 80% votes and values common ownership threshold works well for determining membership within a corporate group taxation system. Modifications to the threshold have been made over time, however, the threshold has tended to range between 80-95%.

### 4.3 United Kingdom

#### 4.3.1 Finance’s overview of system

According to Canada’s Department of Finance, the United Kingdom offers a loss transfer system known as “group relief” to corporate groups. It allows a group member with taxable operating profits to claim tax relief on the basis of “trading” losses and certain other tax attributes arising in other companies in the group. It is not mandatory to participate in any transfers, which are decided upon annually. To participate, one company must have a minimum 75% ownership interest in the other, or both companies must be subsidiaries of a common parent with at least 75% ownership interest in each subsidiary. The value of the transfer is limited to the available loss or profit relating to the overlapping portion of the taxation years of the transferor and transferee. Capital gains and losses of different companies within a 75% group can generally be offset through a separate system of gain and loss transfer.

#### 4.3.2 KPMG UK views

Finance’s assessment of the UK’s corporate tax regime is generally accurate.

KPMG UK provided further clarification/specifics as follows:
**Group relief**

Losses and profits must be from the same accounting periods and can be surrendered upwards, downwards or sideways within a 75% “group”. A “group” for these purposes means two or more companies where the parent company owns beneficially — whether directly or indirectly — at least 75% of the ordinary share capital of the subsidiary company or companies (as well as entitlement to 75% of distributable profits and assets on a winding up). Adjustments are made where accounting periods overlap. Surrenders are tax-neutral (i.e., no taxable income and no tax-deductible expense). Payments made for the surrender of losses are not treated as profits for the surrendering company.

Group relief was extended from April 1, 2000 to allow groups for group relief purposes to be connected through companies resident anywhere in the world. For example, two or more subsidiaries 75% owned by a UK parent would be able to make group relief claims between themselves.

Group relief is also extended to UK permanent establishments of non-resident companies. A UK permanent establishment of a non-resident company is able to claim losses surrendered by other UK resident group companies as group relief and is able to surrender its own losses as group relief, providing the losses have not already been made available for relief against overseas income.

From 2006, a UK resident parent company may claim group relief for losses of a non-resident subsidiary resident in EEA countries (EU Member States including Iceland, Liechtenstein and Norway) or the resident of a permanent establishment in the EEA where all scope for claiming non-UK relief for the losses has been exhausted.

In addition to group relief, the UK also operates a system of “consortium” relief. A consortium exists where 20 or fewer companies (consortium members) each own at least 5% and jointly own at least 75% of the ordinary share capital of another company (consortium company). There is an important restriction on consortium relief when compared to group relief (described above). Where a consortium member incurs a loss, the maximum amount that may be surrendered is restricted to the proportion of the claimant’s profits that correspond with the surrendering company’s interest in the consortium. Conversely, where the consortium company makes a loss, the maximum amount that it may surrender to a particular consortium member is limited to the proportion of the loss that corresponds with the surrendering company’s interest in the consortium.

**Transfer of capital losses/assets within a group**

The above covers trading losses only. Historically, the UK has not allowed capital losses to be transferred between group companies but it did allow assets to be transferred tax-free intra-group so taxpayers could achieve a similar result by moving assets to the relevant loss company pre-sale. The rules have now been relaxed so that a capital loss (or capital gain) can be transferred intra-group, provided an election is made within two years of the end of the year in which the loss/gain arose.

The capital loss can then be used in that year by the transferee company or, unlike trading losses, it can be carried forward in the transferee company and used in future periods. The grouping definitions are different than from trading losses but very similar, and again losses can go to/from a UK company or a UK branch of a foreign company, provided the right group control exists.
The UK’s group relief tax regime has been in place since the early 1970s. The group relief rules for trading losses have changed in recent years, largely in response to EU claims, but the broad principle of group relief has existed for a very long time. The rules for capital loss transfers have been relaxed in recent years.

**Complexity/Appropriateness**

There is a general feeling that the current tax regime is the best choice for the UK. There hasn’t been much debate about whether it would be better, in theory, to have a group relief or a consolidated return system. The view is that the system works and everyone understands it, so why consider changing it if there is no significant reason to do so.

The UK’s tax regime is viewed as being similar to other countries’ regimes for ease of compliance. Consolidated tax reporting regimes are often complex. Also, in a group relief system like that of the UK, when companies leave a group it is easier to establish the impact on tax attributes such as losses since tax attributes are always tracked separately in each company.

**Federal system versus sub-national system**

The UK does not have a sub-national tax regime.

**Ownership threshold**

In general it is viewed that a 75% threshold for common ownership is most appropriate for determining membership within a corporate group. A 75% ownership threshold represents significant ownership but does not exclude companies that have a relatively small percentage of minority shareholders. Under UK corporate law, 75% is usually required to pass special resolutions (and therefore exercise full control since corporate documents can be altered), which is probably why the 75% threshold is used for group tax relief purposes (rather than a higher threshold).

### 4.4 Australia

#### 4.4.1 Finance’s overview of system

According to Finance, Australia employs an “absorption” or “asset based” consolidation system, where the individual members of an Australian group lose their identities for tax purposes and a single return is filed for the entire group. A corporate group is generally comprised of a head company and its wholly owned subsidiaries; special rules allow multiple tier-one corporations if they are owned by a common foreign corporate parent.

The election by an Australian corporate group into the system is voluntary, but once the election is made it is irrevocable and it must cover all wholly owned subsidiaries. The Australian consolidated reporting system came into effect in 2003, replacing various attribute transfer mechanisms. Pre-consolidation losses of a subsidiary are transferred to the parent, but a limit is placed on the amount of such losses that may be used in a given year.
4.4.2 KPMG Australia views

KPMG Australia clarifies that under Australia’s current tax regime (which was modeled after the Netherlands consolidation model), capital losses can only be offset against capital gains and not revenue gains. In the previous system, losses were mobile and could be transferred within a wholly owned group. A major concern with the previous system was that in a corporate chain, losses could be duplicated even though only one economic loss was incurred (“loss cascading”).

Complexity/Appropriateness

Last year, the Australian government announced a “post consolidation implementation review” to address practical issues that include the treatment of subsidiary assets (distinction between revenue and capital) and the treatment of partnerships and trusts that can be members of a tax consolidated group. These entities create issues because of the unique tax rules that apply to them, which are difficult to reconcile with the tax consolidation rules. Also, complexities arise when corporations enter and exit a group.

Federal system versus sub-national system

Australia does not have a sub-national system.

Ownership threshold

A 100% threshold eases the administration of the tax system, which is likely the reason why Australia chose this threshold.

4.5 France

4.5.1 Finance’s overview of system

According to Canada’s Department of Finance, France offers a “pooling” approach to consolidated reporting for domestic companies called a “tax integration regime”. The tax base is calculated by adding the profits of all members of the group, following adjustments for intra-group transactions. It is more flexible than the US consolidation approach in that elections to participate in the regime are made for renewable five-year periods, and the parent company decides which eligible subsidiaries to include within the group each year.

The parent must hold directly or indirectly at least 95% of the share capital and voting rights of each subsidiary, and it must be a resident company which is not itself 95% or more directly held by another resident company subject to corporate income tax in France. Pre-consolidation losses are offset against the income of the subsidiary before aggregation of the group’s tax results.

4.5.2 KPMG France’s views (Fidal Direction Internationale)

Fidal clarifies that the parent can be a resident company or a foreign company’s French branch (if the branch is subject to corporate tax in France).

Complexity/Appropriateness

In general, France’s current tax regime is considered to be globally competitive and relatively easy to administer and comply with.
Federal system versus sub-national system

France does not have a sub-national system.

Ownership threshold

A 95%+ or a 100% threshold is viewed as being an appropriate threshold for determining common ownership for determining membership within a corporate group. A 100% threshold is easiest to comply with because it eliminates the need to address minority interests.

4.6 Germany

4.6.1 Finance’s overview of system

According to Canada’s Department of Finance, the German “Organschaft” is a group taxation system with elements of both a consolidation and an attribute transfer regime. To participate in the German system, a parent corporation and a subsidiary must enter into an agreement with a minimum duration of at least five years. Under the agreement, the subsidiary calculates its own profit or loss for tax purposes, and this profit or loss is transferred to the parent annually, for inclusion in the parent corporation’s tax return. It is voluntary whether to enter into such an agreement, and a separate agreement is needed with each subsidiary.

The parent must directly or indirectly own more than 50% of the voting rights of the subsidiary. Loss carry-forwards of participating subsidiaries are frozen for the duration of the Organschaft agreement and cannot be applied against the income of the subsidiary or of other participating group members. Loss carry-forwards of the parent originating prior to the Organschaft can generally be netted with the income of the fiscal unity.

4.6.2 KPMG Germany views

Germany tweaked its regime in 2001. Before 2001, a subsidiary had to be integrated with the parent company not only financially (i.e., direct or indirect ownership of more than 50% of share ownership) but also from an economic and organizational perspective. The administrative burden of an economic and organizational integration was difficult and hence the requirement was removed.

Complexity/Appropriateness

The current regime is not generally viewed as being the most appropriate for the country. In particular:

- The agreement between a parent company and its subsidiary (profit and loss pooling agreement – Gewinnabführungsvertrag) is very difficult to administer. There are several formal requirements for this agreement and the Organschaft (i.e., rules governing tax groups) is only recognized for tax purposes where the profit and loss pooling agreement has actually been fulfilled in that the entire profit is transferred to the parent company. Where the agreement is not fulfilled in one year of the minimum period, the Organschaft is not recognized retroactively from the beginning of the agreement and the companies are taxed on a stand-alone basis. As a result, it is widely viewed that the requirement of the profit and loss pooling agreement should be eliminated.

- Since the current Organschaft regime is generally limited to German companies, it is viewed as not competitive compared to other regimes within the EU (e.g., Austria). In
addition, it is still questionable whether the Organschaft contradicts EU law since only German companies can be a member of the group.

Germany’s tax regime is generally viewed from within as being relatively more difficult to comply with than other countries’ tax regimes.

**Federal system versus sub-national system**

Germany’s federal tax regime is not integrated with its sub-national system because a sub-national system does not exist for corporate income tax. There is a German trade tax in the sub-national system; the Organschaft tax regime applies for purposes of this tax.

**Ownership threshold**

A 51% threshold for common ownership is viewed as appropriate for determining membership within a corporate group because holding a majority of voting rights enables a parent company to exercise control over the subsidiary. Only major decisions and changes to a company’s articles of incorporation require a qualified majority of 75%. Since the current German tax regime is not a real consolidation regime (i.e., it is a profit and loss pooling agreement), requiring more than 50% ownership of shares or voting rights seems to be an appropriate threshold for determining membership within the group.

**Reform coming soon?**

In 2011, legislators have organized a working group on Germany’s tax administration to discuss and develop a "modern group taxation system". The publication of a first concept system is expected in September 2011.

### 4.7 Netherlands

#### 4.7.1 Finance’s overview of system

According to Canada’s Department of Finance, the Netherlands employs an “attribution” approach to consolidation, whereby the assets, liabilities and activities of participating subsidiaries are deemed to be those of the parent company for purposes of determining the tax liability, although the subsidiaries retain their separate tax identities. Participation in the system is voluntary for the corporate group. Elections to consolidate are made for at least one fiscal year. The Netherlands’ consolidation system requires a common corporate parent, and the minimum ownership threshold for subsidiaries is 95%. Pre-consolidation losses of a subsidiary may only be offset against its contribution to the consolidated profit.

#### 4.7.2 KPMG Netherlands views

Finance’s assessment of the Dutch corporate tax regime is generally correct, however the statement that “elections to consolidate are made for at least one fiscal year” is not fully accurate. The Dutch regime does not contain a minimum election period. It is possible to include or exclude a company from the fiscal unity at any moment during the fiscal year. The only limitation in this respect is that an entry in the course of a book year followed by an exit in the course of that same book year is not possible.

The Netherlands made a minor modification to its tax regime in 2003. However, both before and after 2003, the Netherlands’ tax regime is a full consolidation of profits and losses of the
participating companies, and intercompany transactions and financial relationships are eliminated. As a result, the new regime has not led to any fundamental changes.

**Complexity/Appropriateness**

The general view is that the current tax regime is the best choice for the country — this regime is globally competitive and it is relatively easy to administer.

**Federal system versus sub-national system**

The Netherlands does not have a sub-national tax regime.

**Ownership threshold**

A 95% threshold of common ownership is thought to be the most appropriate for determining membership within a corporate tax group. As stated above, in the Netherlands, the group taxation regime is based on full consolidation of profits and losses and the elimination of intercompany transactions. In the view of the Dutch legislator, such a regime is an exception to the leading general principle in Dutch corporate tax law (i.e., individual taxation of each corporate taxpayer). Therefore, the Dutch legislator has expressed the view that this far-reaching regime should be applied only in situations of full shareholdings. However, to provide for the possibility of small equity incentives (employee share plans), the threshold was reduced to 95% share ownership.

Although a threshold of less than 95% or other criteria such as “control” would provide for more flexibility, it is generally thought that the view of the Dutch legislator makes sense. In practice, it provides an effective and satisfactory tax consolidation regime.

### 4.8 Finland

#### 4.8.1 Finance’s overview of system

According to Canada’s Department of Finance, Finland permits one member of a corporate group to make a deductible payment to another member of the group; the payment is included in the recipient’s taxable income and reduces the recipient’s current-year loss if the recipient is loss-incurring. The amount of the contribution is capped by the profits available for transfer that originated in the member of the group making the payment. Participation is voluntary, and does not require that all group members participate. Membership in the group is determined using a 90% ownership threshold, either between the two corporations or with respect to a common direct or indirect corporate parent. The payment made by profitable corporation cannot exceed the profits of that corporation for the year of the transfer (i.e., the payment cannot be used to create a loss).

#### 4.8.2 KPMG Finland Views

Finance’s assessment of Finland’s corporate tax regime is generally accurate.

**Complexity/Appropriateness**

Generally, Finland’s tax regime is not considered to be the best choice for the country. In particular, the group contribution system is not recognized by IFRS standards, which causes several problems. A group contribution system can also be discriminatory for minority shareholders. There are also principled problems regarding the European Union legislation, because the group contribution system is based on a domestic entity/Finnish permanent
establishment requirement. Thus, Finnish group contribution requirements may be against the right of establishment in certain situations.

It is viewed that the group contribution system should be developed toward a group taxation model that is applied to European Union member states. Group contribution has not been possible in Finland for banks or insurance companies. It is intended that this limitation be removed in the future.

The Finnish system is viewed as being neither relatively more easy nor more complex to administer compared to other countries’ tax systems.

**Federal system versus sub-national system**

Finland has no sub-national tax system.

**Ownership threshold**

A 90% threshold for common ownership is viewed as appropriate to prevent violating the status of minority shareholders.

### 4.9 Denmark

#### 4.9.1 Finance’s overview of system

According to Canada’s Department of Finance, Denmark has a mandatory all-in consolidated reporting regime for domestic companies. A group is comprised of all Danish resident companies and Danish branches of foreign companies that are controlled by a common company, foundation, association, trust or similar entity. If the common parent is not resident in Denmark, there may be multiple tier-one corporations, and an administration company is appointed to act as the top parent for dealings with the tax authorities.

In general, the control requirement implies an ownership threshold of 50% of voting rights in the subsidiary. Each member of a Danish corporate group must pay its share of the tax burden to the top parent (or administration company), who then pays corporate income tax on the group’s behalf. The top parent is required to compensate for using a member’s losses. The current form of the Danish consolidated reporting system came into effect in 2004, replacing an earlier, voluntary system with a 100% threshold of common ownership. Pre-consolidation losses can only be offset against income from the same group member.

#### 4.9.2 KPMG Denmark views

**Clarification of current regime**

KPMG Denmark provides clarification of certain comments Finance made. A “foundation, association, trust or similar entity” must be entities that are not transparent. Only entities having characteristics similar to companies (or Danish foundations) can control companies in the way that triggers mandatory joint taxation (consolidated reporting).

The control criterion is defined in accordance with the rules for accounting. These rules have recently been changed and control can therefore now exist even if a company does not own more than 50% of the voting rights. Instead, a company can participate in the management of the subsidiary and in that way have substantial influence over the subsidiary.
Each company in the mandatory consolidated reporting must compensate for the use of tax losses from other entities in the mandatory joint taxation. When a company in its income has set off a tax loss from another company, the first mentioned company must pay the tax value of the loss to the administration company and the administration company will afterwards pay the compensation to the loss-making company.

Besides mandatory joint taxation, Danish companies can choose voluntary international joint taxation which makes it possible to include foreign companies in the consolidated reporting. Under voluntary international joint taxation, every controlled company in the group must be included in the consolidated reporting, e.g., foreign parent companies, sister “groups”, if any, and all subsidiaries regardless of which company in the group that owns the shares have to be included in the consolidated reporting.

Under voluntary international joint taxation, a permanent establishment outside Denmark owned by a Danish company must also be included in the consolidated reporting. Together with the rules about mandatory and international joint taxation, a territorial principle was introduced. In accordance with the territorial principle, a Danish company shall not include income from a permanent establishment outside Denmark in the company’s taxable Danish income. Likewise, a loss in the permanent establishment cannot be set off against the Danish company’s Danish taxable income. If the Danish company wants to include income from a permanent establishment outside Denmark, the only way is to choose international joint taxation, but that will imply that all other group companies all over the world will also be included in the international joint taxation.

**Denmark’s previous regime**

Previously, Danish companies could choose to include foreign companies in joint taxation. It was possible to include certain (typically loss-making) foreign companies while profit-making companies were kept outside joint taxation. When the Danish parent company took a foreign company out of joint taxation (typically when it became profit-making), there were rules about recapture of earlier deducted tax losses — the idea was that the Danish parent company should have increased its taxable income with an amount equal to the sum that all the tax losses from the foreign subsidiary that have been set off against income from other group companies exceed all income in the subsidiary that have been taxed in Denmark via joint taxation.

A study by the Danish Tax Ministry revealed that recapture of previously deducted tax losses only occurred in a very small scale which, in the Tax Ministry’s opinion, showed that the rules were not "robust" enough to handle increasing globalization.

It was not possible to exclude foreign companies from being included in joint taxation because Denmark then risked discriminating against companies in other EU countries and thus violating Denmark’s obligation towards the EU.

The result from introducing international joint taxation as the only way to include foreign companies in joint taxation was that the incentive for doing so was no longer as large because it is very complex to include all companies around the world in the group.

Now, years after the rules were implemented, a slight but potentially increasing new interest in joint taxation is beginning to show because Danish tier-one companies are beginning to realize that international joint taxation with a manageable number of foreign subsidiaries is administratively possible to handle.
Complexity/Appropriateness

The Danish tax regime is not viewed as being the best choice for the country in terms of competitiveness and ease of administration. In particular, awareness of Denmark’s obligation towards the EU is increasing, e.g., the free right to establishment, the free movement of capital. Issues arise when domestic rules conflict with EU rules. For example, the Danish exit tax may be in conflict with EU rules. It should be possible to utilize tax losses in a foreign subsidiary that are dissolved to be set off against income from other companies in the group resident in another EU state. Instead, the current rules are such that the tax loss is lost in these circumstances.

The Danish tax regime is viewed as being relatively more difficult to comply with compared to other countries.

Federal system versus sub-national system

Denmark’s federal tax regime is fully integrated with its sub-national tax regime.

Ownership threshold

An ownership threshold of 51%+ is considered the most appropriate threshold for determining membership within a corporate group.

Ownership of 100% seems to be the easy way to handle a threshold but is inconvenient because it can exclude companies from having joint taxation. On the other hand, a threshold of 51% seems to be the most flexible criterion for making joint taxation possible for as many companies as possible but this criterion creates specific problems with regards to minority shareholders. In Denmark, this problem has been solved by a requirement that any company in joint taxation must pay its own taxes and refund or receive refund in regard of tax losses.

4.10 Japan

4.10.1 Finance’s overview of system

According to Canada’s Department of Finance, Japan employs a “pooling” approach to consolidation. A corporate group is made up of a Japanese parent corporation and its wholly owned subsidiaries, employing an “all-in” rule (i.e., once an election is made, it is generally irrevocable and must include all subsidiaries). Pre-consolidation losses of a subsidiary are canceled on entry into the consolidated group.

4.10.2 KPMG Japan views

Finance’s comments are generally accurate, however, certain subsidiaries are permitted to bring in their tax losses to a consolidated group.

Complexity/Appropriateness

Japan’s tax consolidation regime has been in place for a relatively long time and the country has not considered other regimes. Despite this situation, modifications are viewed as needed. The following are viewed as obstacles that are encountered when Japanese companies elect into the country’s regime:

• Administrative burden
• Pre-consolidation losses are extinguished (this restriction has been relaxed in Japan’s 2010 reform and as a result it is expected that more companies will elect to consolidate)
• Crystallization of built-in gains upon starting a consolidation or joining an existing tax consolidation group. (Generally, upon starting a tax consolidation or a subsidiary joining an existing tax consolidated group, assets of the subsidiary are revalued to market value. Crystallizing built-in gains/losses may result in additional taxation or an increase of extinguished losses.)

**Federal system versus sub-national system**

Japan’s regime is somewhat integrated with its sub-national regime. Although a consolidated return can only be filed for national corporation tax purposes, to mitigate the administrative burden of recalculating taxable income solely for local tax purposes, certain taxable income items as calculated on a consolidated basis can be apportioned among group members.

**Ownership threshold**

A 100% common ownership threshold is likely the most appropriate threshold for determining membership within a corporate group. A 100% threshold is simple for taxpayers and the tax authorities to administer.

**2011 Tax reform**

Japan is making the following amendments to its loss carryforward rules within a tax consolidation group:

- The deductible amount will be reduced to 80% of taxable income for the year (previously the maximum deductible amount was the total taxable income for the year)
- The loss carryforward period will be extended from seven years to nine years.

### 4.11 Italy

#### 4.11.1 Finance’s overview of system

According to Canada’s Department of Finance, Italy has a domestic consolidation system which employs a “pooling” approach. The domestic regime is elective, requires the participation of a controlling company, is based on an ownership threshold of more than 50% for participating subsidiaries, and allows the group to choose which domestic entities to include. It requires a minimum three-year commitment. Pre-consolidation losses are offset against the income of the subsidiary before aggregation of the group’s tax results.

#### 4.11.2 KPMG Italy views

Finance’s overview is accurate.

Additional information provided:

Italian groups can opt for a domestic tax consolidation regime if the Italian resident companies are controlled by an Italian company. A non-resident company can only be head of the tax consolidated group if all of the following conditions are met:

- The company is resident in a treaty country
- It carries on a business activity in Italy through a permanent establishment
• The Italian subsidiaries are registered in the accounting books of the permanent establishment.

**Complexity/Appropriateness**

The general view is that Italy’s tax regime is the best choice for the country (i.e., it is globally competitive and relatively easy to administer).

**Federal system versus sub-national system**

Italy does not have a sub-national system.

**Ownership threshold**

A 50%+ ownership threshold is thought to be the most appropriate for determining membership within a group.

### 4.12 KPMG member country survey template

KPMG asked the member country firms listed above to respond to the following survey.

#### 4.12.1 Survey template

**Canada’s consultations on taxation of corporate groups**

Canada’s Department of Finance (“Finance”) recently released a consultation paper outlining several tax issues that would arise if Canada were to adopt a consolidated tax reporting or a formal loss transfer tax regime. As a result, we are interested in your views on the background and effectiveness of your own country’s corporate tax loss transfer or tax consolidation tax regime (“tax regime”).

Finance’s consultation paper asks a series of questions to gauge the tax community’s views on the issues associated with Canada adopting either a consolidated tax reporting or formal tax loss transfer regime. Currently, companies subject to Canadian income tax file their tax returns based on a legal entity approach. Interested parties have until February 25, 2011 to submit their comments to Finance.

The adoption of either tax regime would be a fundamental change to corporate income taxation in Canada. KPMG Canada wants to be at the forefront of this important discussion. In this regard, we are surveying clients and industry associations for their views on the matter, and will be providing Finance with our own submission.

We are asking you to provide comments on your own country’s tax regime (by answering the seven questions in the attached document) so that we can incorporate other countries’ practical experiences into our submission to Finance. The deadline for making our submission to Finance is quickly approaching and we kindly ask that you provide us with your comments by Monday January 31, 2011.

Thank you in advance for taking the time to participate in KPMG Canada’s latest thought leadership initiative.
The [COUNTRY’S] Income Tax System [relevant country extract from Section 6 on pages 7-9 of the consultation paper]

According to Canada’s Department of Finance, the [COUNTRY] ……

Questions:

1. Is the Department of Finance’s assessment of your country’s corporate tax regime accurate?
   - Yes
   - No

2. a. Did your country have another tax regime before the current regime?
   - Yes
   - No

2. b. If yes, please describe the prior tax regime and explain why your country changed tax regimes.
   __________________________________________
   __________________________________________
   __________________________________________.

3. a. Did your country consider other options for its tax regime before proceeding with your current regime?
   - Yes
   - No
   - Don’t know

3. b. If yes, what other tax regimes were considered?
   __________________________________________
   __________________________________________
   __________________________________________.

4. a. Is there a general feeling that the current tax regime in your country is the best choice (i.e., it is globally competitive and relatively easy to administer)?
   - Yes
   - No
   - Don’t know

4. b. If no, why not and what tax regime do you think would be a better choice?
   __________________________________________
   __________________________________________
   __________________________________________.

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5. Relative to other countries, do you find your country’s tax regime in this regard is:
   - [ ] Relatively easy to comply with
   - [ ] Relatively more difficult to comply with
   - [ ] About the same as other countries
   - [ ] Don’t know

6. Is your country’s federal tax regime integrated with your country’s provincial/state/territorial (“sub-national”) tax regime?
   - [ ] Yes – federal regime is fully integrated with sub-national regime
   - [ ] Yes – federal regime is somewhat integrated with sub-national regime
   - [ ] No – federal system is completely different/separate from sub-national system
   - [ ] No – there is no sub-national system
   - Other (please specify): ________________________________________________________

7. a. In a corporate group taxation system, which of the following thresholds of common ownership is most appropriate for determining membership within the group?
   - [ ] 100% owned entity
   - [ ] 95% owned or more
   - [ ] 75% owned or more
   - [ ] 51 owned or more
   - Other (please specify): ________________________________________________________

7. b. Why?
   __________________________________________________________________________
   __________________________________________________________________________
   __________________________________________________________________________

If readily available, please attach documents that provide additional background information on your country’s tax regime.
Participating industry associations

KPMG thanks the following organizations and their members for participating in the survey:

- Canadian Manufacturers and Exporters
- Automotive Parts Manufacturers Association
- Retail Council of Canada
- Canadian Advanced Technology Alliance
- Food and Consumer Products of Canada.