EUROPEAN COMMISSION

Brussels, 3.10.2011
COM(2011) 121 final/2

2011/0058 (CNS)

CORRIGENDUM
Annule et remplace le document COM(2011)121 final du 16 mars 2011
Concerne: toutes les versions linguistiques
(Descriptif: 'Cyprus/Kibris' de l'Annexe II est remplacé par 'Κύπρος'; le mot 'Kibris' de l'Annexe III est effacé.)

Proposal for a

COUNCIL DIRECTIVE

on a Common Consolidated Corporate Tax Base (CCCTB)

{SEC(2011) 315 final}
{SEC(2011) 316 final}

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Common Consolidated Corporate Tax Base (CCCTB) aims to tackle some major fiscal impediments to growth in the Single Market. In the absence of common corporate tax rules, the interaction of national tax systems often leads to over-taxation and double taxation, businesses are facing heavy administrative burdens and high tax compliance costs. This situation creates disincentives for investment in the EU and, as a result, runs counter to the priorities set in Europe 2020 – A strategy for smart, sustainable and inclusive growth[1]. The CCCTB is an important initiative on the path towards removing obstacles to the completion of the Single Market[2] and was identified in the Annual Growth Survey[3] as a growth-enhancing initiative to be frontloaded to stimulate growth and job creation.

The common approach proposed would ensure consistency in the national tax systems but would not harmonise tax rates. Fair competition on tax rates is to be encouraged. Differences in rates allows a certain degree of tax competition to be maintained in the internal market and fair tax competition based on rates offers more transparency and allows Member States to consider both their market competitiveness and budgetary needs in fixing their tax rates.

The CCCTB is compatible with the rethinking of tax systems and the shift to more growth-friendly and green taxation advocated in the Europe 2020 strategy. In designing the common base supporting research and development has been a key aim of the proposal. Under the CCCTB all costs relating to research and development are deductible. This approach will act as an incentive for companies opting in to the system to continue to invest in research and development. To the extent that there are economic losses to be offset on a cross-border basis, consolidation under the CCCTB tends to shrink the common base. However, in general, the common base would lead to an average EU base that is broader than the current one, mostly due to the option retained for the depreciation of assets.

A key obstacle in the single market today involves the high cost of complying with transfer pricing formalities using the arm's length approach. Further, the way that closely-integrated groups tend to organise themselves strongly indicates that transaction-by-transaction pricing based on the 'arm's length' principle may no longer be the most appropriate method for profit allocation. The possibility of cross-border loss offsets is only made possible in a limited number of circumstances within the EU, which leads to over-taxation for companies engaged in cross-border activities. In addition, the network of Double Tax Conventions (DTCs) does not offer an appropriate solution for the elimination of double taxation in the single market, as it is designed to operate in a bilateral context at the international level, rather than within a closely integrated setting.

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1 Communication from the Commission, 'EUROPE 2020 - A strategy for smart, sustainable and inclusive growth' - COM(2010) 2020, 3.3.2010.

2 Communication from the Commission, 'Towards a Single Market Act – For a highly competitive social market economy – 50 proposals for improving our work, business and exchanges with one another' - COM(2010) 608, 27.10.2010.

3 Communication from the Commission, 'Annual Growth Survey: advancing the EU's comprehensive response to the crisis', COM(2011) 11, 12.01.2010.

The CCCTB is a system of common rules for computing the tax base of companies which are tax resident in the EU and of EU-located branches of third-country companies. Specifically, the common fiscal framework provides for rules to compute each company's (or branch's) individual tax results, the consolidation of those results, when there are other group members, and the apportionment of the consolidated tax base to each eligible Member State.

The CCCTB will be available for all sizes of companies; MNEs would be relieved from the fact of certain tax obstacles in the single market and SMEs would incur less compliance costs when they decided to expand commercially to another Member State. The system is optional. Since not all businesses trade across the border, the CCCTB will not force companies not planning to expand beyond their national territory to bear the cost of shifting to a new tax system.

Harmonisation will only involve the computation of the tax base and will not interfere with financial accounts. Therefore, Member States will maintain their national rules on financial accounting and the CCCTB system will introduce autonomous rules for computing the tax base of companies. These rules shall not affect the preparation of annual or consolidated accounts.

There is no intention to extend harmonisation to the rates. Each Member State will be applying its own rate to its share of the tax base of taxpayers.

Under the CCCTB, groups of companies would have to apply a single set of tax rules across the Union and deal with only one tax administration (one-stop-shop). A company that opts for the CCCTB ceases to be subject to the national corporate tax arrangements in respect of all matters regulated by the common rules. A company which does not qualify or does not opt for the system provided for by the CCCTB Directive remains subject to the national corporate tax rules which may include specific tax incentive schemes in favour of Research & Development.

Business operating across national borders will benefit both from the introduction of cross-border loss compensation and from the reduction of company tax related compliance costs. Allowing the immediate consolidation of profits and losses for computing the EU-wide taxable bases is a step towards reducing over-taxation in cross-border situations and thereby towards improving the tax neutrality conditions between domestic and cross-border activities to better exploit the potential of the Internal Market. Calculations on a sample of EU multinationals shows that, on average approximately 50% of non-financial and 17% of financial multinational groups could benefit from immediate cross-border loss compensation.

A major benefit of the introduction of the CCCTB will be a reduction in compliance costs for companies. Survey evidence points to a reduction in the compliance costs for recurring tax related tasks in the range of 7% under CCCTB. The reduction in actual and perceived compliance costs is expected to exert a substantial influence on firms' ability and willingness to expand abroad in the medium and long term. The CCCTB is expected to translate into substantial savings in compliance time and outlays in the case of a parent company setting up a new subsidiary in a different Member State. On average, the tax experts participating in the study estimated that a large enterprise spends over €140,000 (0.23% of turnover) in tax related expenditure to open a new subsidiary in another Member State. The CCCTB will reduce these costs by €87,000 or 62%. The savings for a medium sized enterprise are even more significant, as costs are expected to drop from €128,000 (0.55% of turnover) to €42,000 or a decrease of 67%.

The proposal will benefit companies of all sizes but it is particularly relevant as part of the effort to support and encourage SMEs to benefit from the Single Market as set out in the review of the Small Business Act (SBA) for Europe[4]. The CCCTB notably contributes to reduced tax obstacles and administrative burdens, making it simpler and cheaper for SMEs to expand their activities across the EU. The CCCTB will mean that SMEs operating across borders and opting into the system will only be required to calculate their corporate tax base according to one set of tax rules. The CCCTB complements the European Private Company (SPE), which is still under discussion in the Council. A common framework for computing the tax base for companies in the EU would be particularly useful for SPEs operating across Member States.

The present proposal is not intended to influence the tax revenues and the impact on the distribution of the tax bases between the EU Member States has been analysed. In fact, the impact on the revenues of Member States will ultimately depend on national policy choices with regard to possible adaptations of the mix of different tax instruments or applied tax rates. In this respect it is difficult to predict the exact impacts on each of the Member States. In this context, as an exception to the general principle, where the outcome of the apportionment of the tax base between Member States does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method. Moreover, the Directive includes a clause to review the impacts after five years following the entry into force of the Directive.

For Member States, the introduction of an optional system will of course mean that tax administrations will have to manage two distinct tax schemes (CCCTB and their national corporate income tax). But it is compensated by the fact that the CCCTB will mean fewer opportunities for tax planning by companies using transfer pricing or mismatches in Member State tax systems. There will be fewer disputes involving the ECJ or the mutual agreement procedure in double tax conventions.

To assist Member State tax administrations in the run up to the implementation of the CCCTB it is planned that the FISCALIS EU programme will be mobilised to assist Member States in the CCCTB implementation and administration.

The present proposal includes a complete set of rules for company taxation. It details who can opt, how to calculate the taxable base and what is the perimeter and functioning of the consolidation. It also provides for anti-abuse rules, defines how the consolidated base is shared and how the CCCTB should be administered by Member States under a 'one-stop-shop' approach.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

(a) Consultations

Following publication of the Company Tax Study in 2001, the Commission led a broad public debate and held a series of consultations.

[4] Communication from the Commission, 'Review of the "Small Business Act" for Europe', COM(2011)78 final, 23.2.2011.

The most important step in that process was the creation of a Working Group (CCCTB WG) consisting of experts from the tax administrations of all Member States. The CCCTB WG was set up in November 2004 and met thirteen times in plenary sessions up until April 2008. In addition, six sub-groups were established to explore specific areas in more depth and reported back to the CCCTB WG. The role of the national experts was limited to providing technical assistance and advice to the Commission services. The CCCTB WG also met in extended format three times (i.e. December 2005, 2006 and 2007) to allow all key experts and stakeholders from the business, professions and academia to express their views.

Further, the Commission consulted informally, on a bilateral basis, several business and professional associations. Some of those interest groups submitted their views officially. The results of academic research were also considered. Thus, leading scholars furnished the Commission with their insights in connection with various features of the system.

The Commission also organised two events in Brussels (April 2002) and Rome (December 2003 with the Italian Presidency). In February 2008, another conference, co-sponsored by the Commission and an academic institution, took place in Vienna and discussed in detail several items relevant to the CCCTB. Finally, on 20 October 2010, the Commission consulted experts from Member States, business, think tanks and academics on certain topics which its services had reconsidered and further developed since the last meeting of the CCCTB WG in April 2008.

(b) Impact Assessment

A very detailed Impact Assessment has been prepared. It includes the results of the following studies: (i) European Tax Analyzer (ETA); (ii) Price Waterhouse Cooper-Study (PWC); (iii) Amadeus and Orbis database; (iv) Deloitte Study and (v) CORTAX study.

The report follows the Guidelines of Secretariat General for Impact Assessments and thereby it provides: (i) a review of the consultation process; (ii) a description of the existing problems; (iii) a statement of the objectives of the policy; and (iv) a comparison of alternative policy options which could attain the stated objectives. In particular, a CCTB (common tax base without consolidation) and a CCCTB (common tax base with consolidation), both compulsory and optional, are subject to analysis and their respective economic, social and environmental impacts are compared.

Comparison of Policy Options

The impact assessment looks at different options with the aim to improve the competitive position of European companies by providing them with the possibility to compute their EU-wide profits according to one set of rules and, hence, choose a legal environment that best suits their business needs, while eliminating tax costs related to the existence of 27 separate national tax systems. The report considers 4 main policy scenarios, which are compared with the 'no action' or 'status-quo' scenario (option 1):

(i) An optional Common Corporate Tax Base (optional CCTB): EU-resident companies (and EU-situated permanent establishments) would have the option to compute their tax base pursuant to a set of common rules across the Union instead of any of the 27 national corporate tax systems. 'Separate accounting' (i.e. transaction-by-transaction pricing according to the 'arm's length' principle) would remain in place for intra-group transactions, as the system would not involve a consolidation of tax results (option 2).

(ii) A compulsory Common Corporate Tax Base (compulsory CCTB): all qualifying EU-resident companies (and EU-situated permanent establishments) would be required to compute their tax base pursuant to a single set of common rules across the Union. The new rules would replace the current 27 national corporate tax systems. In the absence of consolidation, 'separate accounting' would continue to determine the allocation of profit in intra-group transactions (option 3).

(iii) An optional Common Consolidated Corporate Tax Base (optional CCCTB): a set of common rules establishing an EU-wide consolidated tax base would be an alternative to the current 27 national corporate tax systems and the use of 'separate accounting' in allocating revenues to associated enterprises. Thus, the tax results of each group member (i.e. EU-resident company or EU-situated permanent establishment) would be aggregated to form a consolidated tax base and re-distributed according to a pre-established sharing mechanism based on a formula. Under this scenario, EU-resident companies and/or EU-situated permanent establishments owned by companies resident outside the Union would be entitled to apply the CCCTB, provided that they fulfil the eligibility requirements for forming a group and all eligible members of the same group opt to apply the common rules ('all-in all-out') (option 4).

(iv) A compulsory Common Consolidated Corporate Tax Base (compulsory CCCTB): EU-resident companies and/or EU-situated permanent establishments owned by companies resident outside the Union would be required to apply the CCCTB rules insofar as they fulfilled the eligibility requirements for forming a group.

Impact Analysis

The economic results of the Impact Assessment show that the removal of the identified corporate tax obstacles would allow business to make sounder economic choices and thus improve the overall efficiency of the economy. The options for an optional and compulsory CCCTB will both result in a slightly higher welfare. The optional CCCTB is preferable for a number of reasons. The two main reasons verified in the Impact Assessment are (i) the estimated impact on employment is more favourable and (ii) the enforced change by every single company in the Union to a new method of calculating its tax base (regardless of whether it operates in more that one Member State) is avoided.

The reforms under analysis are potentially associated with important dynamic effects in the long run. The reduction in uncertainty and in the costs (actual and perceived) that companies operating in multiple jurisdictions currently incur is the main channel through which these effects are expected to materialize. Ultimately, this will translate into increased cross-border investment within the Union, stemming both from further expansion of European and foreign multinational enterprises and from de novo investment of purely domestic companies into other Member States. Notably, the elimination of additional compliance costs associated with the obligation to comply with different tax rules across the Union and deal with more than one tax administration ('one-stop-shop' principle) are likely to enhance companies' capacity to expand cross-border. Such a prospect should be particularly beneficial for small and medium enterprises which are mostly affected by the high compliance costs of the current situation.

Although the Impact Assessment points out that the final impact of the introduction of a CCCTB on overall tax revenues depends on the Member States' own policy choices, it is important that Member States pay close attention to the revenue effects, in particular given the very difficult budgetary situation in many Member States.

In general, the new rules for the common base would lead to an average EU base that is broader than the current one. To the extent that there are economic losses to be offset on a cross-border basis, consolidation under CCCTB tends to shrink the common base.

In fact, the impact on the revenues of Member States will ultimately depend on national policy choices with regard to possible adaptations of the mix of different tax instruments or applied tax rates. In this respect, it is difficult to predict the exact impacts on each of the Member States. However, the Directive includes a clause to review the impacts after 5 years.

3. LEGAL ELEMENTS OF THE PROPOSAL

(a) Legal Basis

Direct tax legislation falls within the ambit of Article 115 of the Treaty on the Functioning of the EU (TFEU). The clause stipulates that legal measures of approximation under that article shall be vested the legal form of a Directive.

(b) Subsidiarity

This proposal complies with the principle of Subsidiarity.

The system of the CCCTB aims to tackle fiscal impediments, mainly resulting from the fragmentation of the Union into 27 disparate tax systems, that businesses are faced with when they operate within the single market. Non-coordinated action, planned and implemented by each Member State individually, would replicate the current situation, as companies would still need to deal with as many tax administrations as the number of Member States in which they are liable to tax.

The rules set out in this proposal, such as the relief for cross-border losses and tax-free group restructurings, would be ineffective and likely to create distortion in the market, notably double taxation or non-taxation, if each Member State applied its own system. Neither would disparate national rules for the division of profits improve the current - already complex - process of allocating business profits amongst associated enterprises.

The nature of the subject requires a common approach.

A single set of rules for computing, consolidating and sharing the tax bases of associated enterprises across the Union is expected to attenuate market distortions caused by the current interaction of 27 national tax regimes. Further, the building blocks of the system, especially cross-border loss relief, tax-free intra-group asset transfers and the allocation of the group tax base through a formula, could only be materialised under a common regulatory umbrella. Accordingly, common rules of administrative procedure would have to be devised to allow the principle of a 'one-stop-shop' administration to function.

This proposal is limited to combatting tax obstacles caused by the disparities of national systems in computing the tax base between associated enterprises. The work that followed up to the Company Tax Study identified that the best results in tackling those obstacles would be achieved if a common framework regulated the computation of the corporate tax base and cross-border consolidation. Indeed, these matters may only be dealt with by laying down legislation at the level of the Union, since they are of a primarily cross-border nature. This proposal is therefore justified by reference to the principle of Subsidiarity because individual action by the Member States would fail to achieve the intended results.

(c) Proportionality

This proposal, being shaped as an optional system, represents the most proportionate answer to the identified problems. It does not force companies which do not share the intention of moving abroad to bear the unnecessary administrative cost of implementing the common rules in the absence of any real benefits.

The present initiative is expected to create more favourable conditions for investment in the single market, as tax compliance costs should be expected to decrease. Further, companies would be likely to derive considerable benefits from the elimination of transfer pricing formalities, the possibility to transfer losses across national borders within the same group as well as from tax-free intra-group reorganisations. The positive impact should outweigh possible additional financial and administrative costs which national tax authorities would have to undergo for the purpose of implementing the system at a first stage.

The measures laid down in this proposal are both suitable and necessary for achieving the desired end (i.e. proportionate). They namely deal with harmonising the corporate tax base, which is a prerequisite for curbing the identified tax obstacles and rectifying the elements that distort the single market. In this regard, it should also be clarified that this proposal does not involve any harmonisation of tax rates (or setting of a minimum tax rate). Indeed, the determination of rates is treated as a matter inherent in Member States' tax sovereignty and is therefore left to be dealt with through national legislation.

4. BUDGETARY IMPLICATION

This proposal for a Directive does not have any budgetary implications for the European Union.

2011/0058 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a Common Consolidated Corporate Tax Base (CCCTB)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament[5],

Having regard to the opinion of the European Economic and Social Committee[6],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Companies which seek to do business across frontiers within the Union encounter serious obstacles and market distortions owing to the existence of 27 diverse corporate tax systems. These obstacles and distortions impede the proper functioning of the internal market. They create disincentives for investment in the Union and run counter to the priorities set in the Communication adopted by the Commission on 3 March 2010 entitled Europe 2020 – A strategy for smart, sustainable and inclusive growth[7]. They also conflict with the requirements of a highly competitive social market economy.

(2) Tax obstacles to cross-border business are particularly severe for small and medium enterprises, which commonly lack the resources to resolve market inefficiencies.

(3) The network of double taxation conventions between Member States does not offer an appropriate solution. The existing Union legislation on corporate tax issues addresses only a small number of specific problems.

(4) A system allowing companies to treat the Union as a single market for the purpose of corporate tax would facilitate cross-border activity for companies resident in the Union and would promote the objective of making the Union a more competitive location for

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5 OJ C , , p. .
6 OJ C , , p. .
7 COM(2010) 2020.

investment internationally. Such a system would best be achieved by enabling groups of companies with a taxable presence in more than one Member State to settle their tax affairs in the Union according to a single set of rules for calculation of the tax base and to deal with a single tax administration ('one-stop-shop'). These rules should also be made available to entities subject to corporate tax in the Union which do not form part of a group.

(5) Since differences in rates of taxation do not give rise to the same obstacles, the system (the Common Consolidated Corporate Tax Base (CCCTB)) need not affect the discretion of Member States regarding their national rate(s) of company taxation.

(6) Consolidation is an essential element of such a system, since the major tax obstacles faced by companies in the Union can be tackled only in that way. It eliminates transfer pricing formalities and intra-group double taxation. Moreover, losses incurred by taxpayers are automatically offset against profits generated by other members of the same group.

(7) Consolidation necessarily entails rules for apportionment of the result between the Member States in which group members are established.

(8) Since such a system is primarily designed to serve the needs of companies that operate across borders, it should be an optional scheme, accompanying the existing national corporate tax systems.

(9) The system (the Common Consolidated Corporate Tax Base (CCCTB)) should consist in a set of common rules for computing the tax base of companies without prejudice to the rules laid down in Council Directives 78/660/EEC[8] and 83/349/EEC[9] and Regulation of the European Parliament and of the Council 1606/2002/EC[10].

(10) All revenues should be taxable unless expressly exempted.

(11) Income consisting in dividends, the proceeds from the disposal of shares held in a company outside the group and the profits of foreign permanent establishments should be exempt. In giving relief for double taxation most Member States exempt dividends and proceeds from the disposals of shares since it avoids the need of computing the taxpayer's entitlement to a credit for the tax paid abroad, in particular where such entitlement must take account of the corporation tax paid by the company distributing dividends. The exemption of income earned abroad meets the same need for simplicity.

(12) Income consisting in interest and royalty payments should be taxable, with credit for withholding tax paid on such payments. Contrary to the case of dividends, there is no difficulty in computing such a credit.

(13) Taxable revenues should be reduced by business expenses and certain other items. Deductible business expenses should normally include all costs relating to sales and expenses linked to the production, maintenance and securing of income. Deductibility

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8 OJ L 222, 14.8.1978, p. 11.

9 OJ L 193, 18.7.1983, p. 1.

10 OJ L 243, 11.9.2002, p. 1.

should be extended to costs of research and development and costs incurred in raising equity or debt for the purposes of the business. There should also be a list of non-deductible expenses.

(14) Fixed assets should be depreciable for tax purposes, subject to certain exceptions. Long-life tangible and intangible assets should be depreciated individually, while others should be placed in a pool. Depreciation in a pool simplifies matters for both the tax authorities and taxpayers since it avoids the need to establish and maintain a list of every single type of fixed asset and its useful life.

(15) Taxpayers should be allowed to carry losses forward indefinitely, but no loss carry-back should be allowed. Since carry-forward of losses is intended to ensure that a taxpayer pays tax on its real income, there is no reason to place a time limit on carry forward. Loss carry back is relatively rare in the practice of the Member States, and leads to excessive complexity.

(16) Eligibility for consolidation (group membership) should be determined in accordance with a two-part test based on (i) control (more than 50% of voting rights) and (ii) ownership (more than 75% of equity) or rights to profits (more than 75% of rights giving entitlement to profit). Such a test ensures a high level of economic integration between group members, as indicated by a relation of control and a high level of participation. The two thresholds should be met throughout the tax year; otherwise, the company should leave the group immediately. There should also be a nine-month minimum requirement for group membership.

(17) Rules on business reorganisations should be established in order to protect the taxing rights of Member States in an equitable manner. Where a company enters the group, pre-consolidation trading losses should be carried forward to be set off against the taxpayer's apportioned share. When a company leaves the group, no losses incurred during the period of consolidation should be allocated to it. An adjustment may be made in respect of capital gains where certain assets are disposed within a short period after entry to or exit from a group. The value of self-generated intangible assets should be assessed on the basis of a suitable proxy, that is to say research and development, marketing and advertising costs over a specified period.

(18) When withholding taxes are charged on interest and royalty payments made by taxpayers, the proceeds of such taxes should be shared according to the formula of that tax year. When withholding taxes are charged on dividends distributed by taxpayers, the proceeds of such taxes should not be shared since, contrary to interest and royalties, dividends have not led to a previous deduction borne by all group companies.

(19) Transactions between a taxpayer and an associated enterprise which is not a member of the same group should be subject to pricing adjustments in line with the 'arm's length' principle, which is a generally applied criterion.

(20) The system should include a general anti-abuse rule, supplemented by measures designed to curb specific types of abusive practices. These measures should include limitations on the deductibility of interest paid to associated enterprises resident for tax purposes in a low-tax country outside the Union which does not exchange information with the Member State of the payer based on an agreement comparable to Council

Directive 2011/16/EU[11] concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums[12] and rules on controlled foreign companies.

(21) The formula for apportioning the consolidated tax base should comprise three equally weighted factors (labour, assets and sales). The labour factor should be computed on the basis of payroll and the number of employees (each item counting for half). The asset factor should consist of all fixed tangible assets. Intangibles and financial assets should be excluded from the formula due to their mobile nature and the risks of circumventing the system. The use of these factors gives appropriate weight to the interests of the Member State of origin. Finally, sales should be taken into account in order to ensure fair participation of the Member State of destination. Those factors and weightings should ensure that profits are taxed where they are earned. As an exception to the general principle, where the outcome of the apportionment does not fairly represent the extent of business activity, a safeguard clause provides for an alternative method.

(22) Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[13] applies to the processing of personal data carried out within the framework of this Directive.

(23) Groups of companies should be able to deal with a single tax administration ('principal tax authority'), which should be that of the Member State in which the parent company of the group ('principal taxpayer') is resident for tax purposes. This Directive should also lay down procedural rules for the administration of the system. It should also provide for an advance ruling mechanism. Audits should be initiated and coordinated by the principal tax authority but the authorities of any Member State in which a group member is subject to tax may request the initiation of an audit. The competent authority of the Member State in which a group member is resident or established may challenge a decision of the principal tax authority concerning the notice to opt or an amended assessment before the courts of the Member State of the principal tax authority. Disputes between taxpayers and tax authorities should be dealt with by an administrative body which is competent to hear appeals at first instance according to the law of the Member State of the principal tax authority.

(24) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in order to adapt the Annexes to take into account the changes to the laws of the Member States concerning company forms and corporate taxes and update the list of the non-deductible taxes as well as lay down rules on the definition of legal and economic ownership in relation to leased assets and the calculation of the capital and interest elements of the leasing payments and of the depreciation base of a leased asset. It is necessary that the powers are delegated to the Commission for an indeterminate time, in order to allow the rules to be adjusted, if needed.

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[11] OJ L 64, 11.3.2011, p. 1.

[12] OJ L 336 27.12.1977, p.15.

[13] OJ L 281, 23.11.1995, p. 31-50.

(25) In order to ensure uniform conditions for the implementation of this Directive as regards the annual adoption of a list of third country company forms which meet the requirements set out in this Directive, laying down rules on the calculation of the labour, asset and sales factors, the allocation of employees and payroll, assets and sales to the respective factor as well as the valuation of assets for the asset factor and the adoption of a standard form of the notice to opt and of rules on electronic filing, on the form of the tax return, on the form of the consolidated tax return and on the required supporting documentation, powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European Parliament and of the Council of 28 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[14].

(26) The objective of this Directive cannot be sufficiently achieved through individual action undertaken by the Member States because of the lack of coordination among national tax systems. Considering that the inefficiencies of the internal market primarily give rise to problems of a cross-border nature, remedial measures must be adopted at the level of the Union. Such an approach is in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(27) The Commission should review the application of the Directive after a period of five years and that Member States should support the Commission by providing appropriate input to this exercise,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1
Scope

This Directive establishes a system for a common base for the taxation of certain companies and groups of companies and lays down rules relating to the calculation and use of that base.

Article 2
Eligible companies

1. This Directive shall apply to companies established under the laws of a Member State where both of the following conditions are met:

   (a) the company takes one of the forms listed in Annex I;

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[14] OJ L 55, 28.2.2011, p. 13.

(b) the company is subject to one of the corporate taxes listed in Annex II or to a similar tax subsequently introduced.

2. This Directive shall apply to companies established under the laws of a third country where both of the following conditions are met:

(a) the company has a similar form to one of the forms listed in Annex I;

(b) the company is subject to one of the corporate taxes listed in Annex II.

3. The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 in order to amend Annexes I and II to take account of changes to the laws of the Member States concerning company forms and corporate taxes.

Article 3
Eligible third country company forms

1. The Commission shall adopt annually a list of third country company forms which shall be considered to meet the requirements laid down in Article 2(2)(a). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 131(2).

2. The fact that a company form is not included in the list of third country company forms referred to in paragraph 1 shall not preclude the application of this Directive to that form.

CHAPTER II

FUNDAMENTAL CONCEPTS

Article 4
Definitions

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

(1) 'taxpayer' means a company which has opted to apply, the system provided for by this Directive;

(2) 'single taxpayer' means a taxpayer not fulfilling the requirements for consolidation;

(3) 'non-taxpayer' means a company which is ineligible to opt or has not opted to apply the system provided for by this Directive;

(4) 'resident taxpayer' means a taxpayer which is resident for tax purposes in a Member State according to Article 6(3) and (4);

(5) 'non-resident taxpayer' means a taxpayer which is not resident for tax purposes in a Member State according to Article 6(3) and (4);

(6) 'principal taxpayer' means:

(a) a resident taxpayer, where it forms a group with its qualifying subsidiaries, its permanent establishments located in other Member States or one or more permanent establishments of a qualifying subsidiary resident in a third country; or

(b) the resident taxpayer designated by the group where it is composed only of two or more resident taxpayers which are immediate qualifying subsidiaries of the same parent company resident in a third country; or

(c) a resident taxpayer which is the qualifying subsidiary of a parent company resident in a third country, where that resident taxpayer forms a group solely with one or more permanent establishments of its parent; or

(d) the permanent establishment designated by a non-resident taxpayer which forms a group solely in respect of its permanent establishments located in two or more Member States.

(7) 'group member' means any taxpayer belonging to the same group, as defined in Articles 54 and 55. Where a taxpayer maintains one or more permanent establishments in a Member State other than that in which its central management and control is located, each permanent establishment shall be treated as a group member;

(8) 'revenues' means proceeds of sales and of any other transactions, net of value added tax and other taxes and duties collected on behalf of government agencies, whether of a monetary or non-monetary nature, including proceeds from disposal of assets and rights, interest, dividends and other profits distributions, proceeds of liquidation, royalties, subsidies and grants, gifts received, compensation and ex-gratia payments. Revenues shall also include non-monetary gifts made by a taxpayer. Revenues shall not include equity raised by the taxpayer or debt repaid to it;

(9) 'profit' means an excess of revenues over deductible expenses and other deductible items in a tax year;

(10) 'loss' means an excess of deductible expenses and other deductible items over revenues in a tax year;

(11) 'consolidated tax base' means the result of adding up the tax bases of all group members as calculated in accordance with Article 10;

(12) 'apportioned share' means the portion of the consolidated tax base of a group which is allocated to a group member by application of the formula set out in Articles 86-102;

(13) 'value for tax purposes' of a fixed asset or asset pool means the depreciation base less total depreciation deducted to date;

(14) 'fixed assets' means all tangible assets acquired for value or created by the taxpayer and all intangible assets acquired for value where they are capable of being valued independently and are used in the business in the production, maintenance or securing of income for more than 12 months, except where the cost of their

acquisition, construction or improvement are less than EUR 1,000. Fixed assets shall also include financial assets;

(15) 'financial assets' means shares in affiliated undertakings, loans to affiliated undertakings, participating interests, loans to undertakings with which the company is linked by virtue of participating interests, investments held as fixed assets, other loans, and own shares to the extent that national law permits their being shown in the balance sheet;

(16) 'long-life fixed tangible assets' means fixed tangible assets' with a useful life of 15 years or more. Buildings, aircraft and ships shall be deemed to be long-life fixed tangible assets;

(17) 'second-hand assets' means fixed assets with a useful life that had partly been exhausted when acquired and which are suitable for further use in their current state or after repair;

(18) 'improvement costs' means any additional expenditure on a fixed asset that materially increases the capacity of the asset or materially improves its functioning or represents more than 10% of the initial depreciation base of the asset;

(19) 'stocks and work-in-progress' means assets held for sale, in the process of production for sale or in the form of materials or supplies to be consumed in the production process or in the rendering of services;

(20) 'economic owner' means the person who has substantially all the benefits and risks attached to a fixed asset, regardless of whether that person is the legal owner. A taxpayer who has the right to possess, use and dispose of a fixed asset and bears the risk of its loss or destruction shall in any event be considered the economic owner;

(21) 'competent authority' means the authority designated by each Member State to administer all matters related to the implementation of this Directive;

(22) 'principal tax authority' means the competent authority of the Member State in which the principal taxpayer is resident or, if it is a permanent establishment of a non-resident taxpayer, is situated;

(23) 'audit' means inquiries, inspections or examinations of any kind conducted by a competent authority for the purpose of verifying the compliance of a taxpayer with this Directive.

Article 5
Permanent establishment

1. A taxpayer shall be considered to have a 'permanent establishment' in a State other than the State in which its central management and control is located when it has a fixed place in that other State through which the business is wholly or partly carried on, including in particular:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

2. A building site or construction or installation project shall constitute a permanent establishment only if it lasts more than twelve months.

3. Notwithstanding paragraphs 1 and 2, the following shall not be deemed to give rise to a permanent establishment:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the taxpayer;

b) the maintenance of a stock of goods or merchandise belonging to the taxpayer solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the taxpayer solely for the purpose of processing by another person;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the taxpayer;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the taxpayer, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in points (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding paragraph 1, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting on behalf of a taxpayer and has, and habitually exercises, in a State an authority to conclude contracts in the name of the taxpayer, that taxpayer shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the taxpayer, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5. A taxpayer shall not be deemed to have a permanent establishment in a State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

6. The fact that a taxpayer which is a resident of a State controls or is controlled by a taxpayer which is a resident of another State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either taxpayer a permanent establishment of the other.

CHAPTER III

OPTING FOR THE SYSTEM PROVIDED FOR BY THIS DIRECTIVE

Article 6
Opting

1. A company to which this Directive applies which is resident for tax purposes in a Member State may opt for the system provided for by this Directive under the conditions provided for therein.

2. A company to which this Directive applies which is not resident for tax purposes in a Member State may opt for the system provided for by this Directive under the conditions laid down therein in respect of a permanent establishment maintained by it in a Member State.

3. For the purposes of paragraphs 1 and 2, a company that has its registered office, place of incorporation or place of effective management in a Member State and is not, under the terms of an agreement concluded by that Member State with a third country, regarded as tax resident in that third country shall be considered resident for tax purposes in that Member State.

4. Where, under paragraph 3, a company is resident in more than one Member State, it shall be considered to be resident in the Member State in which it has its place of effective management.

5. If the place of effective management of a shipping group member or of a group member engaged in inland waterways transport is aboard a ship or boat, it shall be deemed to be situated in the Member State of the home harbour of the ship or boat, or, if there is no such home harbour, in the Member State of residence of the operator of the ship or boat.

6. A company resident in a Member State which opts for the system provided for by this Directive shall be subject to corporate tax under that system on all income derived from any source, whether inside or outside its Member State of residence.

7. A company resident in a third country which opts for the system provided for by this Directive shall be subject to corporate tax under that system on all income from an activity carried on through a permanent establishment in a Member State.

Article 7
Applicable law

Where a company qualifies and opts for the system provided for by this Directive it shall cease to be subject to the national corporate tax arrangements in respect of all matters regulated by this Directive unless otherwise stated.

Article 8
Directive overrides agreements between Member States

The provisions of this Directive shall apply notwithstanding any provision to the contrary in any agreement concluded between Member States.

CHAPTER IV

CALCULATION OF THE TAX BASE

Article 9
General principles

1. In computing the tax base, profits and losses shall be recognised only when realised.

2. Transactions and taxable events shall be measured individually.

3. The calculation of the tax base shall be carried out in a consistent manner unless exceptional circumstances justify a change.

4. The tax base shall be determined for each tax year unless otherwise provided. A tax year shall be any twelve-month period, unless otherwise provided.

Article 10
Elements of the tax base

The tax base shall be calculated as revenues less exempt revenues, deductible expenses and other deductible items.

Article 11
Exempt revenues

The following shall be exempt from corporate tax:

(a) subsidies directly linked to the acquisition, construction or improvement of fixed assets, subject to depreciation in accordance with Articles 32 to 42;

(b) proceeds from the disposal of pooled assets referred to in Article 39(2), including the market value of non-monetary gifts;

(c) received profit distributions;

(d) proceeds from a disposal of shares;

(e) income of a permanent establishment in a third country.

Article 12
Deductible expenses

Deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising equity or debt for the purposes of the business.

Deductible expenses shall also include gifts to charitable bodies as defined in Article 16 which are established in a Member State or in a third country which applies an agreement on the exchange of information on request comparable to the provisions of Directive 2011/16/EU. The maximum deductible expense for monetary gifts or donations to charitable bodies shall be 0.5% of revenues in the tax year.

Article 13
Other deductible items

A proportional deduction may be made in respect of the depreciation of fixed assets in accordance with Articles 32 to 42.

Article 14
Non-deductible expenses

1. The following expenses shall be treated as non-deductible:

   (a) profit distributions and repayments of equity or debt;

   (b) 50% of entertainment costs;

   (c) the transfer of retained earnings to a reserve which forms part of the equity of the company;

   (d) corporate tax;

   (e) bribes;

   (f) fines and penalties payable to a public authority for breach of any legislation;

   (g) costs incurred by a company for the purpose of deriving income which is exempt pursuant to Article 11; such costs shall be fixed at a flat rate of 5% of that income unless the taxpayer is able to demonstrate that it has incurred a lower cost;

(h) monetary gifts and donations other than those made to charitable bodies as defined in Article 16;

(i) save as provided for in Articles 13 and 20, costs relating to the acquisition, construction or improvement of fixed assets except those relating to research and development;

(j) taxes listed in Annex III, with the exception of excise duties imposed on energy products, alcohol and alcoholic beverages, and manufactured tobacco.

2. Notwithstanding point (j) of paragraph 1 a Member State may provide for deduction of one or more of the taxes listed in Annex III. In the case of a group, any such deduction shall be applied to the apportioned share of the group members resident or situated in that Member State.

3. The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 to amend Annex III as is necessary in order to include all similar taxes which raise more than 20 % of the total amount of corporate tax in the Member State in which they are levied.

Amendments to Annex III shall first apply to taxpayers in their tax year starting after the amendment.

Article 15
Expenditure incurred for the benefit of shareholders

Benefits granted to a shareholder who is an individual, his spouse, lineal ascendant or descendant or associated enterprises, holding a direct or indirect participation in the control, capital or management of the taxpayer, as referred to in Article 78, shall not be treated as deductible expenses to the extent that such benefits would not be granted to an independent third party.

Article 16
Charitable bodies

A body shall qualify as charitable where the following conditions are met:

(a) it has legal personality and is a recognised charity under the law of the State in which it is established;

(b) its sole or main purpose and activity is one of public benefit; an educational, social, medical, cultural, scientific, philanthropic, religious, environmental or sportive purpose shall be considered to be of public benefit provided that it is of general interest;

(c) its assets are irrevocably dedicated to the furtherance of its purpose;

(d) it is subject to requirements for the disclosure of information regarding its accounts and its activities;

(e) it is not a political party as defined by the Member State in which it is established.

CHAPTER V

TIMING AND QUANTIFICATION

Article 17
General principles

Revenues, expenses and all other deductible items shall be recognised in the tax year in which they accrue or are incurred, unless otherwise provided for in this Directive.

Article 18
Accrual of revenues

Revenues accrue when the right to receive them arises and they can be quantified with reasonable accuracy, regardless of whether the actual payment is deferred.

Article 19
Incurrence of deductible expenses

A deductible expense is incurred at the moment that the following conditions are met:

(a) the obligation to make the payment has arisen;

(b) the amount of the obligation can be quantified with reasonable accuracy;

(c) in the case of trade in goods, the significant risks and rewards of ownership over the goods have been transferred to the taxpayer and, in the case of supplies of services, the latter have been received by the taxpayer.

Article 20
Costs related to non-depreciable assets

The costs relating to the acquisition, construction or improvement of fixed assets not subject to depreciation according to Article 40 shall be deductible in the tax year in which the fixed assets are disposed of, provided that the disposal proceeds are included in the tax base.

Article 21
Stocks and work-in-progress

The total amount of deductible expenses for a tax year shall be increased by the value of stocks and work-in-progress at the beginning of the tax year and reduced by the value of stocks and work-in-progress at the end of the same tax year. No adjustment shall be made in respect of stocks and work-in-progress relating to long-term contracts.

Article 22
Valuation

1. For the purposes of calculating the tax base, transactions shall be measured at:

   (a) the monetary consideration for the transaction, such as the price of goods or services;

   (b) the market value where the consideration for the transaction is wholly or partly non-monetary;

   (c) the market value in the case of a non-monetary gift received by a taxpayer;

   (d) the market value in the case of non-monetary gifts made by a taxpayer other than gifts to charitable bodies;

   (e) the fair value of financial assets and liabilities held for trading;

   (f) the value for tax purposes in the case of non-monetary gifts to charitable bodies.

2. The tax base, income and expenses shall be measured in EUR during the tax year or translated into EUR on the last day of the tax year at the annual average exchange rate for the calendar year issued by the European Central Bank or, if the tax year does not coincide with the calendar year, at the average of daily observations issued by the European Central Bank through the tax year. This shall not apply to a single taxpayer located in a Member State which has not adopted the EUR. Nor shall it apply to a group if all group members are located in the same Member State and that state has not adopted the EUR.

Article 23
Financial assets and liabilities held for trading (trading book)

1. A financial asset or liability shall be classified as held for trading if it is one of the following:

   (a) acquired or incurred principally for the purpose of selling or repurchasing in the near term;

   (b) part of a portfolio of identified financial instruments, including derivatives, that are managed together and for which there is evidence of a recent actual pattern of short-term profit-taking.

2. Notwithstanding Articles 18 and 19, any differences between the fair value at the end of the tax year and the fair value at the beginning of the same tax year, or at the date of purchase if later, of financial assets or liabilities held for trading shall be included in the tax base.

3. When a financial asset or liability held for trading is disposed of, the proceeds shall be added to the tax base. The fair value at the beginning of the tax year, or the market value at the date of purchase if later, shall be deducted.

Article 24
Long-term contracts

1. A long-term contract is one which complies with the following conditions:

   (a) it is concluded for the purpose of manufacturing, installation or construction or the performance of services;

   (b) its term exceeds, or is expected to exceed, 12 months.

2. Notwithstanding Article 18, revenues relating to a long-term contract shall be recognised, for tax purposes, at the amount corresponding to the part of the contract completed in the respective tax year. The percentage of completion shall be determined either by reference to the ratio of costs of that year to the overall estimated costs or by reference to an expert evaluation of the stage of completion at the end of the tax year.

3. Costs relating to long-term contracts shall be taken account of in the tax year in which they are incurred.

Article 25
Provisions

1. Notwithstanding Article 19, where at the end of a tax year it is established that the taxpayer has a legal obligation, or a probable future legal obligation, arising from activities or transactions carried out in that, or previous tax years, any amount arising from that obligation which can be reliably estimated shall be deductible, provided that the eventual settlement of the amount is expected to result in a deductible expense.

   Where the obligation relates to an activity or transaction which will continue over future tax years, the deduction shall be spread proportionately over the estimated duration of the activity or transaction, having regard to the revenue derived therefrom.

   Amounts deducted under this Article shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future years account shall be taken of amounts already deducted.

2. A reliable estimate shall be the expected expenditure required to settle the present obligation at the end of the tax year, provided that the estimate is based on all relevant factors, including past experience of the company, group or industry. In measuring a provision the following shall apply:

   (a) account shall be taken of all risks and uncertainties. However, uncertainty shall not justify the creation of excessive provisions;

   (b) if the term of the provision is 12 months or longer and there is no agreed discount rate, the provision shall be discounted at the yearly average of the Euro Interbank Offered Rate (Euribor) for obligations with a maturity of

12 months, as published by the European Central Bank, in the calendar year in the course of which the tax year ends;

(c) future events shall be taken into account where they can reasonably be expected to occur;

(d) future benefits directly linked to the event giving rise to the provision shall be taken into account.

Article 26
Pensions

In case of pension provisions actuarial techniques shall be used in order to make a reliable estimate of the amount of benefits that employees have earned in return for their service in the current and prior period.

The pension provision shall be discounted by reference to Euribor for obligations with a maturity of 12 months, as published by the European Central Bank. The calculations shall be based on the yearly average of that rate in the calendar year in the course of which the tax year ends.

Article 27
Bad debt deductions

1. A deduction shall be allowed for a bad debt receivable where the following conditions are met:

(a) at the end of the tax year, the taxpayer has taken all reasonable steps to pursue payment and reasonably believes that the debt will not be satisfied wholly or partially; or the taxpayer has a large number of homogeneous receivables and is able to reliably estimate the amount of the bad debt receivable on a percentage basis, through making reference to all relevant factors, including past experience where applicable;

(b) the debtor is not a member of the same group as the taxpayer;

(c) no deduction has been claimed under Article 41 in relation to the bad debt;

(d) where the bad debt relates to a trade receivable, an amount corresponding to the debt shall have been included as revenue in the tax base.

2. In determining whether all reasonable steps to pursue payment have been made, the following shall be taken into account:

(a) whether the costs of collection are disproportionate to the debt;

(b) whether there is any prospect of successful collection;

(c) whether it is reasonable, in the circumstances, to expect the company to pursue collection.

3. Where a claim previously deducted as a bad debt is settled, the amount recovered shall be added to the tax base in the year of settlement.

Article 28
Hedging

Gains and losses on a hedging instrument shall be treated in the same manner as the corresponding gains and losses on the hedged item. In the case of taxpayers which are members of a group, the hedging instrument and hedged item may be held by different group members. There is a hedging relationship where both the following conditions are met:

(a) the hedging relationship is formally designated and documented in advance;

(b) the hedge is expected to be highly effective and the effectiveness can reliably be measured.

Article 29
Stocks and work-in-progress

1. The cost of stock items and work-in-progress that are not ordinarily interchangeable and goods or services produced and segregated for specific projects shall be measured individually. The costs of other stock items and work-in-progress shall be measured by using the first-in first-out (FIFO) or weighted-average cost method.

2. A taxpayer shall consistently use the same method for the valuation of all stocks and work-in-progress having a similar nature and use. The cost of stocks and work-in-progress shall comprise all costs of purchase, direct costs of conversion and other direct costs incurred in bringing them to their present location and condition. Costs shall be net of deductible Value Added Tax. A taxpayer who has included indirect costs in valuing stocks and work-in-progress before opting for the system provided for by this Directive may continue to apply the indirect cost approach.

3. The valuation of stocks and work-in-progress shall be done in a consistent way.

4. Stocks and work-in-progress shall be valued on the last day of the tax year at the lower of cost and net realisable value. The net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Article 30
Insurance undertakings

Insurance undertakings that have been authorised to operate in the Member States, in accordance with Council Directive 73/239/EEC[15] for non-life insurance, Directive 2002/83/EC of the European Parliament and of the Council[16] for life insurance, and Directive

[15] OJ L 228, 16.8.1973, p. 3.
[16] OJ L 345, 19.12.2002, p. 1.

2005/68/EC of the European Parliament and of the Council[17] for reinsurance, shall be subject to the following additional rules:

(a) the tax base shall include the difference in the market value, as measured at the end and the beginning of the same tax year, or upon completion of the purchase if later, of assets in which investment is made for the benefit of life insurance policyholders bearing the investment risk;

(b) the tax base shall include the difference in the market value, as measured at the time of disposal and the beginning of the tax year, or upon completion of the purchase if later, of assets in which investment is made for the benefit of life insurance policyholders bearing the investment risk;

(c) the technical provisions of insurance undertakings established in compliance with Directive 91/674EEC[18] shall be deductible, with the exception of equalisation provisions. A Member State may provide for the deduction of equalisation provisions. In the case of a group, any such deduction of equalisation provisions shall be applied to the apportioned share of the group members resident or situated in that Member State. Amounts deducted shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future years account shall be taken of amounts already deducted.

Article 31
Transfers of assets towards a third country

1. The transfer of a fixed asset by a resident taxpayer to its permanent establishment in a third country shall be deemed to be a disposal of the asset for the purpose of calculating the tax base of a resident taxpayer in relation to the tax year of the transfer. The transfer of a fixed asset by a non-resident taxpayer from its permanent establishment in a Member State to a third country shall also be deemed to be a disposal of the asset.

2. Paragraph 1 shall not apply where the third country is party to the European Economic Area Agreement and there is an agreement on the exchange of information between that third country and the Member State of the resident taxpayer or of the permanent establishment, comparable to Directive 2011/16/EU.

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[17] OJ L 232.9.12.2005, p. 1.
[18] OJ L 374, 19.12.1991, p. 1.

CHAPTER VI

DEPRECIATION OF FIXED ASSETS

Article 32
Fixed asset register

Acquisition, construction or improvement costs, together with the relevant date, shall be recorded in a fixed asset register for each fixed asset separately.

Article 33
Depreciation base

1. The depreciation base shall comprise any cost directly connected with the acquisition, construction or improvement of a fixed asset.

   Costs shall not include deductible value added tax.

   In the case of fixed assets produced by the taxpayer, the indirect costs incurred in production of the asset shall also be added to the depreciation base in so far as they are not otherwise deductible.

2. The depreciation base of an asset received as a gift shall be its market value as included in revenues.

3. The depreciation base of a fixed asset subject to depreciation shall be reduced by any subsidy directly linked to the acquisition, construction or improvement of the asset as referred to in Article 11(a).

Article 34
Entitlement to depreciate

1. Subject to paragraph 3, depreciation shall be deducted by the economic owner.

2. In the case of leasing contracts in which economic and legal ownership does not coincide, the economic owner shall be entitled to deduct the interest element of the lease payments from its tax base. The interest element of the lease payments shall be included in the tax base of the legal owner.

3. A fixed asset may be depreciated by no more than one taxpayer at the same time. If the economic owner of an asset cannot be identified, the legal owner shall be entitled to deduct depreciation. In that case the interest element of the lease payments shall not be included in the tax base of the legal owner.

4. A taxpayer may not disclaim depreciation.

5. The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 in order to lay down more detailed rules concerning:

(a) the definition of legal and economic ownership, in relation in particular to leased assets;

(b) the calculation of the capital and interest elements of the lease payments;

(c) the calculation of the depreciation base of a leased asset.

Article 35
Depreciation of improvement costs

Improvement costs shall be depreciated in accordance with the rules applicable to the fixed asset which has been improved as if they related to a newly acquired fixed asset.

Article 36
Individually depreciable assets

1. Without prejudice to paragraph 2 and Articles 39 and 40, fixed assets shall be depreciated individually over their useful lives on a straight-line basis. The useful life of a fixed asset shall be determined as follows:

(a) buildings: 40 years;

(b) long-life tangible assets other than buildings: 15 years;

(c) intangible assets: the period for which the asset enjoys legal protection or for which the right is granted or, if that period cannot be determined, 15 years.

2. Second-hand buildings, second-hand long-life tangible assets and second-hand intangible assets shall be depreciated in accordance with the following rules:

(a) a second-hand building shall be depreciated over 40 years unless the taxpayer demonstrates that the estimated remaining useful life of the building is shorter than 40 years, in which case it shall be depreciated over that shorter period;

(b) a second-hand long-life tangible asset shall be depreciated over 15 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 15 years, in which case it shall be depreciated over that shorter period;

(c) a second-hand intangible asset shall be depreciated over 15 years, unless the remaining period for which the asset enjoys legal protection or for which the right is granted can be determined, in which case it shall be depreciated over that period.

Article 37
Timing

1. A full year's depreciation shall be deducted in the year of acquisition or entry into use, whichever comes later. No depreciation shall be deducted in the year of disposal.

2. Where an asset is disposed of, voluntarily or involuntarily, during a tax year, its value for tax purposes and the value for tax purposes of any improvement costs incurred in relation to the asset shall be deducted from the tax base in that year. Where a fixed asset has given rise to an exceptional deduction under Article 41, the deduction under Article 20 shall be reduced to take into account the exceptional deduction already received.

Article 38
Rollover relief for replacement assets

1. Where the proceeds from the disposal of an individually depreciable asset are to be re-invested before the end of the second tax year after the tax year in which the disposal took place in an asset used for the same or a similar purpose, the amount by which those proceeds exceed the value for tax purposes of the asset shall be deducted in the year of disposal. The depreciation base of the replacement asset shall be reduced by the same amount.

   An asset which is disposed of voluntarily must have been owned for a minimum period of three years prior to the disposal.

2. The replacement asset may be purchased in the tax year prior to the disposal.

   If a replacement asset is not purchased before the end of the second tax year after the year in which the disposal of the asset took place, the amount deducted in the year of disposal, increased by 10%, shall be added to the tax base in the second tax year after the disposal took place.

3. If the taxpayer leaves the group of which it is a member or ceases to apply the system provided for by this Directive within the first year, without having purchased a replacement asset, the amount deducted in the year of disposal shall be added to the tax base. If the taxpayer leaves the group or ceases to apply the system in the second year, that amount shall be increased by 10%.

Article 39
Asset pool

1. Fixed assets other than those referred to in Articles 36 and 40 shall be depreciated together in one asset pool at an annual rate of 25% of the depreciation base.

2. The depreciation base of the asset pool at the end of the tax year shall be its value for tax purposes at the end of the previous year, adjusted for assets entering and leaving the pool during the current year. Adjustments shall be made in respect of acquisition, construction or

improvement costs of assets (which shall be added) and the proceeds of disposal of assets and any compensation received for the loss or destruction of an asset (which shall be deducted).

3. If the depreciation base as calculated in accordance with paragraph 2 is a negative amount, an amount shall be added, so that the depreciation base is zero. The same amount shall be added to the tax base.

Article 40
Assets not subject to depreciation

The following assets shall not be subject to depreciation:

(a) fixed tangible assets not subject to wear and tear and obsolescence such as land, fine art, antiques, or jewellery;

(b) financial assets.

Article 41
Exceptional depreciation

1. If, in exceptional circumstances, a taxpayer demonstrates that the value of a fixed asset not subject to depreciation has permanently decreased at the end of a tax year, it may deduct an amount equal to the decrease in value. However, no such deduction may be made in respect of assets the proceeds from the disposal of which are exempt.

2. If the value of an asset which has been subject to such exceptional depreciation in a previous tax year subsequently increases, an amount equivalent to the increase shall be added to the tax base in the year in which the increase takes place. However, any such addition or additions, taken together, shall not exceed the amount of the deduction originally granted.

Article 42
Precision of categories of fixed assets

The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 in order to define more precisely the categories of fixed assets referred to in this Chapter.

CHAPTER VII

LOSSES

Article 43
Losses

1. A loss incurred by a taxpayer or a permanent establishment of a non-resident taxpayer in a fiscal year may be deducted in subsequent tax years, unless otherwise provided by this Directive.

2. A reduction of the tax base on account of losses from previous tax years shall not result in a negative amount.

3. The oldest losses shall be used first.

CHAPTER VIII

PROVISIONS ON ENTRY TO AND EXIT FROM THE SYSTEM PROVIDED FOR BY THIS DIRECTIVE

Article 44
General rule on recognition and valuation of assets and liabilities

When a taxpayer opts to apply the system provided for by this Directive, all assets and liabilities shall be recognised at their value as calculated according to national tax rules immediately prior to the date on which it begins to apply the system, unless otherwise stated in this Directive.

Article 45
Qualification of fixed assets for depreciation purposes

1. Fixed assets entering the system provided for by this Directive shall be depreciated in accordance with Articles 32 to 42.

2. Notwithstanding paragraph 1, the following depreciation rules shall apply:

   (a) fixed assets that are individually depreciable both under the national corporate tax law previously applicable to the taxpayer and under the rules of the system shall be depreciated according to Article 36(2);

   (b) fixed assets that were individually depreciable under the national corporate tax law previously applicable to the taxpayer but not under the rules of the system shall enter the asset pool provided for in Article 39;

(c) fixed assets that were included in an asset pool for depreciation purposes under the national corporate tax law previously applicable to the taxpayer shall enter the system in the asset pool provided for in Article 39, even if they would be individually depreciable under the rules of the system;

(d) fixed assets that were not depreciable or were not depreciated under the national corporate tax law previously applicable to the taxpayer but are depreciable under the rules of the system shall be depreciated in accordance with Article 36(1) or Article 39, as the case may be.

Article 46
Long-term contracts on entering the system

Revenues and expenses which pursuant to Article 24(2) and (3) are considered to have accrued or been incurred before the taxpayer opted into the system provided for by this Directive but were not yet included in the tax base under the national corporate tax law previously applicable to the taxpayer shall be added to or deducted from the tax base, as the case may be, in accordance with the timing rules of national law.

Revenues which were taxed under national corporate tax law before the taxpayer opted into the system in an amount higher than that which would have been included in the tax base under Article 24(2) shall be deducted from the tax base.

Article 47
Provisions and deductions on entering the system

1. Provisions, pension provisions and bad-debt deductions provided for in Articles 25, 26 and 27 shall be deductible only to the extent that they arise from activities or transactions carried out after the taxpayer opted into the system provided for by this Directive.

2. Expenses incurred in relation to activities or transactions carried out before the taxpayer opted into the system but for which no deduction had been made shall be deductible.

3. Amounts already deducted prior to opting into the system may not be deducted again.

Article 48
Pre-entry losses

Where a taxpayer incurred losses before opting into the system provided for by this Directive which could be carried forward under the applicable national law but had not yet been set off against taxable profits, those losses may be deducted from the tax base to the extent provided for under that national law.

Article 49
General rule for opting-out of the system

When a taxpayer leaves the system provided for by this Directive, its assets and liabilities shall be recognised at their value as calculated according to the rules of the system, unless otherwise stated in this Directive.

Article 50
Fixed assets depreciated in a pool

When a taxpayer leaves the system provided for by this Directive, its asset pool under the system provided for by this Directive shall be recognised, for the purpose of the national tax rules subsequently applicable, as one asset pool which shall be depreciated on the declining balance method at an annual rate of 25%.

Article 51
Long-term contracts on leaving the system

After the taxpayer leaves the system, revenues and expenses arising from long-term contracts shall be treated in accordance with the national corporate tax law subsequently applicable. However, revenues and expenses already taken into account for tax purposes in the system provided for by this Directive shall not be taken into account again.

Article 52
Provisions and deductions on leaving the system

After the taxpayer leaves the system provided for by this Directive, expenses which have already been deducted in accordance with Articles 25 to 27 may not be deducted again.

Article 53
Losses on leaving the system

Losses incurred by the taxpayer which have not yet been set off against taxable profits under the rules of the system provided for by this Directive shall be carried forward in accordance with national corporate tax law.

CHAPTER IX

CONSOLIDATION

Article 54
Qualifying subsidiaries

1. Qualifying subsidiaries shall be all immediate and lower-tier subsidiaries in which the parent company holds the following rights:

(a) a right to exercise more than 50% of the voting rights;

(b) an ownership right amounting to more than 75% of the company's capital or more than 75% of the rights giving entitlement to profit.

2. For the purpose of calculating the thresholds referred to in paragraph 1 in relation to companies other than immediate subsidiaries, the following rules shall be applied:

(a) once the voting-right threshold is reached in respect of immediate and lower-tier subsidiaries, the parent company shall be deemed to hold 100% of such rights.

(b) entitlement to profit and ownership of capital shall be calculated by multiplying the interests held in intermediate subsidiaries at each tier. Ownership rights amounting to 75% or less held directly or indirectly by the parent company, including rights in companies resident in a third country, shall also be taken into account in the calculation.

Article 55
Formation of group

1. A resident taxpayer shall form a group with:

(a) all its permanent establishments located in other Member States;

(b) all permanent establishments located in a Member State of its qualifying subsidiaries resident in a third country;

(c) all its qualifying subsidiaries resident in one or more Member States;

(d) other resident taxpayers which are qualifying subsidiaries of the same company which is resident in a third country and fulfils the conditions in Article 2(2)(a).

2. A non-resident taxpayer shall form a group in respect of all its permanent establishments located in Member States and all its qualifying subsidiaries resident in one or more Member States, including the permanent establishments of the latter located in Member States.

Article 56
Insolvency

A company in insolvency or liquidation may not become a member of a group. A taxpayer in respect of which a declaration of insolvency is made or which is liquidated shall leave the group immediately.

Article 57
Scope of consolidation

1. The tax bases of the members of a group shall be consolidated.

2. When the consolidated tax base is negative, the loss shall be carried forward and be set off against the next positive consolidated tax base. When the consolidated tax base is positive, it shall be shared in accordance with Articles 86 to 102.

Article 58
Timing

1. The thresholds of Article 54 must be met throughout the tax year.

2. Notwithstanding paragraph 1, a taxpayer shall become a member of a group on the date when the thresholds of Article 54 are reached. The thresholds must be met for at least nine consecutive months, failing which a taxpayer shall be treated as if it had never having become a member of the group.

Article 59
Elimination of intra-group transactions

1. In calculating the consolidated tax base, profits and losses arising from transactions directly carried out between members of a group shall be ignored.

2. For the purpose of determining whether there is an intra-group transaction, both parties to the transaction must be group members at the time that the transaction is effected and the associated revenues and expenses fall to be recognised.

3. Groups shall apply a consistent and adequately documented method for recording intra-group transactions. Groups may change the method only for valid commercial reasons, at the beginning of a tax year.

4. The method for recording intra-group transactions shall enable all intra-group transfers and sales to be identified at the lower of cost and value for tax purposes.

Article 60
Withholding and source taxation

No withholding taxes or other source taxation shall be charged on transactions between members of a group.

CHAPTER X

ENTERING AND LEAVING THE GROUP

Article 61
Fixed assets on entering the group

Where a taxpayer is the economic owner of non-depreciable or individually depreciable fixed assets on the date of its entry into a group and any of these assets are disposed of by a member of a group within five years of that date, an adjustment shall be made in the year of the disposal to the apportioned share of the group member that held the economic ownership over these assets on the date of entry. The proceeds of such disposal shall be added to that share and the costs relating to non-depreciable assets and the value for tax purposes of depreciable assets shall be deducted.

Such an adjustment shall also be made in respect of financial assets with the exception of shares in affiliated undertakings, participating interests and own shares.

If, as a result of a business reorganisation, the taxpayer no longer exists or no longer has a permanent establishment in the Member State in which it was resident on the date of its entry into the group, it shall be deemed to have a permanent establishment there for the purpose of applying the provisions of this Article.

Article 62
Long-term contracts on entering the group

Revenues and expenses which accrued according to Articles 24(2) and (3) before a taxpayer entered the group but had not yet been included in the calculation of tax under the applicable national corporate tax law shall be added to, or deducted from the apportioned share in accordance with the timing rules of national law.

Revenues which were taxed under the applicable national corporate tax law before a taxpayer entered the group in an amount higher than that which would have been charged under Article 24(2) shall be deducted from the apportioned share.

Article 63
Provisions and Deductions on entering the group

Expenses covered by Articles 25, 26 and 27, which are incurred in relation to activities or transactions carried out before a taxpayer entered the group but for which no provision or deduction had been made under the applicable national corporate tax law shall be deductible only against the apportioned share of the taxpayer, unless they are incurred more than five years after the taxpayer enters the group.

Article 64
Losses on entering the group

Unrelieved losses incurred by a taxpayer or a permanent establishment under the rules of this Directive or under national corporate tax law before entering a group may not be set off against the consolidated tax base. Such losses shall be carried forward and may be set off against the apportioned share in accordance respectively with Article 43 or with the national corporate tax law which would be applicable to the taxpayer in the absence of the system provided for by this Directive.

Article 65
Termination of a group

When a group terminates, the tax year shall be deemed to end. The consolidated tax base and any unrelieved losses of the group shall be allocated to each group member in accordance with Articles 86 to 102, on the basis of the apportionment factors applicable to the tax year of termination.

Article 66
Losses after the group terminates

Following termination of the group, losses shall be treated as follows:

(a) if the taxpayer remains in the system provided for by this Directive but outside a group, the losses shall be carried forward and be set off according to Article 43;

(b) if the taxpayer joins another group, the losses shall be carried forward and be set off against its apportioned share;

(c) if the taxpayer leaves the system, the losses shall be carried forward and be set off according to the national corporate tax law which becomes applicable, as if those losses had arisen while the taxpayer was subject to that law.

Article 67
Fixed assets on leaving the group

If non-depreciable or individually depreciable fixed assets, except for those which gave rise to a reduced exemption under Article 75, are disposed of within three years of the departure from the group of the taxpayer holding the economic ownership over these assets, the proceeds shall be added to the consolidated tax base of the group in the year of disposal and the costs relating to non-depreciable assets and the value for tax purposes of depreciable assets shall be deducted.

The same rule shall apply to financial assets, with the exception of shares in affiliated undertakings, participating interests and own shares.

To the extent to which the proceeds of disposal are added to the consolidated tax base of the group, they shall not otherwise be taxable.

Article 68
Self-generated intangible assets

Where a taxpayer which is the economic owner of one or more self-generated intangible assets leaves the group, an amount equal to the costs incurred in respect of those assets for research, development, marketing and advertising in the previous five years shall be added to the consolidated tax base of the remaining group members. The amount added shall not, however, exceed the value of the assets on the departure of the taxpayer from the group. Those costs shall be attributed to the leaving taxpayer and shall be treated in accordance with national corporate tax law which becomes applicable to the taxpayer or, if it remains in the system provided for by this Directive, the rules of this Directive.

Article 69
Losses on leaving the group

No losses shall be attributed to a group member leaving a group.

CHAPTER XI

BUSINESS REORGANISATIONS

Article 70
Business reorganisations within a group

1. A business reorganisation within a group or the transfer of the legal seat of a taxpayer which is a member of a group shall not give rise to profits or losses for the purposes of determining the consolidated tax base. Article 59(3) shall apply.

2. Notwithstanding paragraph 1, where, as a result of a business reorganisation or a series of transactions between members of a group within a period of two years, substantially all the assets of a taxpayer are transferred to another Member State and the asset factor is substantially changed, the following rules shall apply.

   In the five years that follow the transfer, the transferred assets shall be attributed to the asset factor of the transferring taxpayer as long as a member of the group continues to be the economic owner of the assets. If the taxpayer no longer exists or no longer has a permanent establishment in the Member State from which the assets were transferred it shall be deemed to have a permanent establishment there for the purpose of applying the provisions of this Article.

Article 71
Treatment of losses where a business reorganisation takes place between two or more groups

1. Where, as a result of a business reorganisation, one or more groups, or two or more members of a group, become part of another group, any unrelieved losses of the previously existing group or groups shall be allocated to each of the members of the latter in accordance with Articles 86 to 102, on the basis of the factors applicable to the tax year in which the business reorganisation takes place, and shall be carried forward for future years.

2. Where two or more principal taxpayers merge within the meaning of Article 2(a)(i) and (ii) of Council Directive 2009/133/EC[19], any unrelieved loss of a group shall be allocated to its members in accordance with Articles 86 to 102, on the basis of the

[19] OJ L 310, 25.11.2009, p. 34.

factors applicable to the tax year in which the merger takes place, and shall be carried forward for future years.

CHAPTER XII

DEALINGS BETWEEN THE GROUP AND OTHER ENTITIES

Article 72
Exemption with progression

Without prejudice to Article 75, revenue which is exempt from taxation under Article 11(c), (d) or (e) may be taken into account in determining the tax rate applicable to a taxpayer.

Article 73
Switch-over clause

Article 11(c), (d) or (e) shall not apply where the entity which made the profit distributions, the entity the shares in which are disposed of or the permanent establishment were subject, in the entity's country of residence or the country in which the permanent establishment is situated, to one of the following:

(a) a tax on profits, under the general regime in that third country, at a statutory corporate tax rate lower than 40% of the average statutory corporate tax rate applicable in the Member States;

(b) a special regime in that third country that allows for a substantially lower level of taxation than the general regime.

The average statutory corporate tax rate applicable in the Member States shall be published by the Commission annually. It shall be calculated as an arithmetic average. For the purpose of this Article and Articles 81 and 82, amendments to the rate shall first apply to taxpayers in their tax year starting after the amendment.

Article 74
Computation of income of a foreign permanent establishment

Where Article 73 applies to the income of a permanent establishment in a third country, its revenues, expenses and other deductible items shall be determined according to the rules of the system provided for by this Directive.

Article 75
Disallowance of exempt share disposals

Where, as a result of a disposal of shares, a taxpayer leaves the group and that taxpayer has within the current or previous tax years acquired in an intra-group transaction one or more fixed assets other than assets depreciated in a pool, an amount corresponding to those assets shall be excluded from the exemption unless it is demonstrated that the intra-group transactions were carried out for valid commercial reasons.

The amount excluded from exemption shall be the market value of the asset or assets when transferred less the value for tax purposes of the assets or the costs referred to in Article 20 relating to fixed assets not subject to depreciation.

When the beneficial owner of the shares disposed of is a non-resident taxpayer or a non-taxpayer, the market value of the asset or assets when transferred less the value for tax purposes shall be deemed to have been received by the taxpayer that held the assets prior to the intra-group transaction referred to in the first paragraph.

Article 76
Interest and royalties and any other income taxed at source

1. Where a taxpayer derives income which has been taxed in another Member State or in a third country, other than income which is exempt under Article 11(c), (d) or (e), a deduction from the tax liability of that taxpayer shall be allowed.

2. The deduction shall be shared among the members of a group according to the formula applicable in that tax year pursuant to Articles 86 to 102.

3. The deduction shall be calculated separately for each Member State or third country as well as for each type of income. It shall not exceed the amount resulting from subjecting the income attributed to a taxpayer or to a permanent establishment to the corporate tax rate of the Member State of the taxpayer's residence or where the permanent establishment is situated.

4. In calculating the deduction, the amount of the income shall be decreased by related deductible expenses, which shall be deemed to be 2% thereof unless the taxpayer proves otherwise.

5. The deduction for the tax liability in a third country may not exceed the final corporate tax liability of a taxpayer, unless an agreement concluded between the Member State of its residence and a third country states otherwise.

Article 77
Withholding tax

Interest and royalties paid by a taxpayer to a recipient outside the group may be subject to a withholding tax in the Member State of the taxpayer according to the applicable rules of national law and any applicable double tax convention. The withholding tax shall be shared among the Member States according to the formula applicable in the tax year in which the tax is charged pursuant to Articles 86 to 102.

CHAPTER XIII

TRANSACTIONS BETWEEN ASSOCIATED ENTERPRISES

Article 78
Associated enterprises

1. If a taxpayer participates directly or indirectly in the management, control or capital of a non-taxpayer, or a taxpayer which is not in the same group, the two enterprises shall be regarded as associated enterprises.

If the same persons participate, directly or indirectly, in the management, control or capital of a taxpayer and a non-taxpayer, or of taxpayers not in the same group, all the companies concerned shall be regarded as associated enterprises.

A taxpayer shall be regarded as an associated enterprise to its permanent establishment in a third country. A non-resident taxpayer shall be regarded as an associated enterprise to its permanent establishment in a Member State.

2. For the purposes of paragraph 1, the following rules shall apply:

(a) participation in control shall mean a holding exceeding 20% of the voting rights;

(b) participation in the capital shall mean a right of ownership exceeding 20% of the capital;

(c) participation in management shall mean being in a position to exercise a significant influence in the management of the associated enterprise.

(d) an individual, his spouse and his lineal ascendants or descendants shall be treated as a single person.

In indirect participations, the fulfilment of the requirements in points (a) and (b) shall be determined by multiplying the rates of holding through the successive tiers. A taxpayer holding more than 50% of the voting rights shall be deemed to hold 100%.

Article 79
Adjustment of pricing in relations between associated enterprises

Where conditions are made or imposed in relations between associated enterprises which differ from those that would be made between independent enterprises, then any income which would, but for those conditions, have accrued to the taxpayer, but, by reason of those conditions, has not so accrued, shall be included in the income of that taxpayer and taxed accordingly.

CHAPTER XIV

ANTI-ABUSE RULES

Article 80
General anti-abuse rule

Artificial transactions carried out for the sole purpose of avoiding taxation shall be ignored for the purposes of calculating the tax base.

The first paragraph shall not apply to genuine commercial activities where the taxpayer is able to choose between two or more possible transactions which have the same commercial result but which produce different taxable amounts.

Article 81
Disallowance of interest deductions

1. Interest paid to an associated enterprise resident in a third country shall not be deductible where there is no agreement on the exchange of information comparable to the exchange of information on request provided for in Directive 2011/16/EU and where one of the following conditions is met:

   (a) a tax on profits is provided for, under the general regime in the third country, at a statutory corporate tax rate lower than 40% of the average statutory corporate tax rate applicable in the Member States;

   (b) the associated enterprise is subject to a special regime in that third country which allows for a substantially lower level of taxation than that of the general regime.

2. The term "interest" means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest.

3. Notwithstanding paragraph 1, interest paid to an entity resident in a third country with which there is no agreement on the exchange of information comparable to the exchange of information on request provided for in Directive 2011/16/EU shall be deductible, in an amount not exceeding that which would be stipulated between independent enterprises, where one of the following conditions is met:

   (a) the amount of that interest is included in the tax base as income of the associated enterprise in accordance with Article 82;

   (b) the interest is paid to a company whose principal class of shares is regularly traded on one or more recognized stock exchanges;

(c) the interest is paid to an entity engaged, in its country of residence, in the active conduct of a trade or business. This shall be understood as an independent economic enterprise carried on for profit and in the context of which officers and employees carry out substantial managerial and operational activities.

Article 82
Controlled foreign companies

1. The tax base shall include the non-distributed income of an entity resident in a third country where the following conditions are met:

(a) the taxpayer by itself, or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns more than 50% of capital or is entitled to receive more than 50% of the profits of that entity;

(b) under the general regime in the third country, profits are taxable at a statutory corporate tax rate lower than 40% of the average statutory corporate tax rate applicable in the Member States, or the entity is subject to a special regime that allows for a substantially lower level of taxation than that of the general regime;

(c) more than 30% of the income accruing to the entity falls within one or more of the categories set out in paragraph 3;

(d) the company is not a company, whose principal class of shares is regularly traded on one or more recognized stock exchanges.

2. Paragraph 1 shall not apply where the third country is party to the European Economic Area Agreement and there is an agreement on the exchange of information comparable to the exchange of information on request provided for in Directive 2011/16/EU.

3. The following categories of income shall be taken into account for the purposes of point (c) of paragraph 1, in so far as more than 50 % of the category of the entity's income comes from transactions with the taxpayer or its associated enterprises:

(a) interest or any other income generated by financial assets;

(b) royalties or any other income generated by intellectual property;

(c) dividends and income from the disposal of shares;

(d) income from movable property;

(e) income from immovable property, unless the Member State of the taxpayer would not have been entitled to tax the income under an agreement concluded with a third country;

(f) income from insurance, banking and other financial activities.

Article 83
Computation

1. The income to be included in the tax base shall be calculated according to the rules of Articles 9 to 15. Losses of the foreign entity shall not be included in the tax base but shall be carried forward and taken into account when applying Article 82 in subsequent years.

2. The income to be included in the tax base shall be calculated in proportion to the entitlement of the taxpayer to share in the profits of the foreign entity.

3. The income shall be included in the tax year in which the tax year of the foreign entity ends.

4. Where the foreign entity subsequently distributes profits to the taxpayer, the amounts of income previously included in the tax base pursuant to Article 82 shall be deducted from the tax base when calculating the taxpayer's liability to tax on the distributed income.

5. If the taxpayer disposes of its participation in the entity, the proceeds shall be reduced, for the purposes of calculating the taxpayer's liability to tax on those proceeds, by any undistributed amounts which have already been included in the tax base.

CHAPTER XV

TRANSPARENT ENTITIES

Article 84
Rules for allocating the income of transparent entities to taxpayers holding an interest

1. Where an entity is treated as transparent in the Member State of its location, a taxpayer holding an interest in the entity shall include its share in the income of the entity in its tax base. For the purpose of this calculation, the income shall be computed under the rules of this Directive.

2. Transactions between a taxpayer and the entity shall be disregarded in proportion to the taxpayer’s share of the entity. Accordingly, the income of the taxpayer derived from such transactions shall be considered to be a proportion of the amount which would be agreed between independent enterprises calculated on an arm's length basis which corresponds to the third party ownership of the entity.

3. The taxpayer shall be entitled to relief for double taxation in accordance with Article 76(1),(2),(3) and (5).

Article 85
Rules for determining transparency in the case of third country entities

Where an entity is located in a third country, the question whether or not it is transparent shall be determined according to the law of the Member State of the taxpayer. If at least two group members hold an interest in the same entity located in a third country, the treatment of the latter shall be determined by common agreement among the relevant Member States. If there is no agreement, the principal tax authority shall decide.

CHAPTER XVI

APPORTIONMENT OF THE CONSOLIDATED TAX BASE

Article 86
General principles

1. The consolidated tax base shall be shared between the group members in each tax year on the basis of a formula for apportionment. In determining the apportioned share of a group member A, the formula shall take the following form, giving equal weight to the factors of sales, labour and assets:

$$\text{Share A} = \left(\frac{1}{3}\frac{\text{Sales}^{\text{A}}}{\text{Sales}^{\text{Group}}} + \frac{1}{3}\left(\frac{1}{2}\frac{\text{Payroll}^{\text{A}}}{\text{Payroll}^{\text{Group}}} + \frac{1}{2}\frac{\text{No of employees}^{\text{A}}}{\text{No of employees}^{\text{Group}}} \right) + \frac{1}{3}\frac{\text{Assets}^{\text{A}}}{\text{Assets}^{\text{Group}}} \right) * \text{Con'd Tax Base}$$

2. The consolidated tax base of a group shall be shared only when it is positive.

3. The calculations for sharing the consolidated tax base shall be done at the end of the tax year of the group.

4. A period of 15 days or more in a calendar month shall be considered as a whole month.

Article 87
Safeguard clause

As an exception to the rule set out in Article 86, if the principle taxpayer or a competent authority considers that the outcome of the apportionment to a group member does not fairly represent the extent of the business activity of that group member, the principal taxpayer or the authority concerned may request the use of an alternative method. If, following consultations among the competent authorities and, where applicable, discussions held in accordance with Article 132, all these authorities agree to the alternative method, it shall be used. The Member State of the principal tax authority shall inform the Commission about the alternative method used.

Article 88
Entering and leaving the group

Where a company enters or leaves a group during a tax year, its apportioned share shall be computed proportionately having regard to the number of calendar months during which the company belonged to the group in the tax year.

Article 89
Transparent entities

Where a taxpayer holds an interest in a transparent entity, the factors used in calculating its apportioned share shall include the sales, payroll and assets of the transparent entity, in proportion to the taxpayer's participation in its profits and losses.

Article 90
Composition of the labour factor

1. The labour factor shall consist, as to one half, of the total amount of the payroll of a group member as its numerator and the total amount of the payroll of the group as its denominator, and as to the other half, of the number of employees of a group member as its numerator and the number of employees of the group as its denominator. Where an individual employee is included in the labour factor of a group member, the amount of payroll relating to that employee shall also be allocated to the labour factor of that group member.

2. The number of employees shall be measured at the end of the tax year.

3. The definition of an employee shall be determined by the national law of the Member State where the employment is exercised.

Article 91
Allocation of employees and payroll

1. Employees shall be included in the labour factor of the group member from which they receive remuneration.

2. Notwithstanding paragraph 1, where employees physically exercise their employment under the control and responsibility of a group member other than that from which they receive remuneration, those employees and the amount of payroll relating to them shall be included in the labour factor of the former.

   This rule shall only apply where the following conditions are met:

   (a) this employment lasts for an uninterrupted period of at least three months;

   (b) such employees represent at least 5% of the overall number of employees of the group member from which they receive remuneration.

3. Notwithstanding paragraph 1, employees shall include persons who, though not employed directly by a group member, perform tasks similar to those performed by employees.

4. The term “payroll” shall include the cost of salaries, wages, bonuses and all other employee compensation, including related pension and social security costs borne by the employer.

5. Payroll costs shall be valued at the amount of such expenses which are treated as deductible by the employer in a tax year.

Article 92
Composition of the asset factor

1. The asset factor shall consist of the average value of all fixed tangible assets owned, rented or leased by a group member as its numerator and the average value of all fixed tangible assets owned, rented or leased by the group as its denominator.

2. In the five years that follow a taxpayer's entry into an existing or new group, its asset factor shall also include the total amount of costs incurred for research, development, marketing and advertising by the taxpayer over the six years that preceded its entry into the group.

Article 93
Allocation of assets

1. An asset shall be included in the asset factor of its economic owner. If the economic owner cannot be identified, the asset shall be included in the asset factor of the legal owner.

2. Notwithstanding paragraph 1, if an asset is not effectively used by its economic owner, the asset shall be included in the factor of the group member that effectively uses the asset. However, this rule shall only apply to assets that represent more than 5% of the value for tax purposes of all fixed tangible assets of the group member that effectively uses the asset.

3. Except in the case of leases between group members, leased assets shall be included in the asset factor of the group member which is the lessor or the lessee of the asset. The same shall apply to rented assets.

Article 94
Valuation

1. Land and other non-depreciable fixed tangible assets shall be valued at their original cost.

2. An individually depreciable fixed tangible asset shall be valued at the average of its value for tax purposes at the beginning and at the end of a tax year.

Where, as a result of one or more intra-group transactions, an individually depreciable fixed tangible asset is included in the asset factor of a group member for less than a tax year, the value to be taken into account shall be calculated having regard to the whole number of months.

3. The pool of fixed assets shall be valued at the average of its value for tax purposes at the beginning and at the end of a tax year.

4. Where the renter or lessee of an asset is not its economic owner, it shall value rented or leased assets at eight times the net annual rental or lease payment due, less any amounts receivable from sub-rentals or sub-leases.

Where a group member rents out or leases an asset but is not its economic owner, it shall value the rented or leased assets at eight times the net annual rental or lease payment due.

5. Where, following an intra-group transfer in the same or the previous tax year, a group member sells an asset outside the group, the asset shall be included in the asset factor of the transferring group member for the period between the intra-group transfer and the sale outside the group. This rule shall not apply where the group members concerned demonstrate that the intra-group transfer was made for genuine commercial reasons.

Article 95
Composition of the sales factor

1. The sales factor shall consist of the total sales of a group member (including a permanent establishment which is deemed to exist by virtue of the second subparagraph of Article 70(2) as its numerator and the total sales of the group as its denominator.

2. Sales shall mean the proceeds of all sales of goods and supplies of services after discounts and returns, excluding value added tax, other taxes and duties. Exempt revenues, interest, dividends, royalties and proceeds from the disposal of fixed assets shall not be included in the sales factor, unless they are revenues earned in the ordinary course of trade or business. Intra-group sales of goods and supplies of services shall not be included.

3. Sales shall be valued according to Article 22.

Article 96
Sales by destination

1. Sales of goods shall be included in the sales factor of the group member located in the Member State where dispatch or transport of the goods to the person acquiring them ends. If this place is not identifiable, the sales of goods shall be attributed to the group member located in the Member State of the last identifiable location of the goods.

2. Supplies of services shall be included in the sales factor of the group member located in the Member State where the services are physically carried out.

3. Where exempt revenues, interest, dividends and royalties and the proceeds from the disposal of assets are included in the sales factor, they shall be attributed to the beneficiary.

4. If there is no group member in the Member State where goods are delivered or services are carried out, or if goods are delivered or services are carried out in a third country, the sales shall be included in the sales factor of all group members in proportion to their labour and asset factors.

5. If there is more than one group member in the Member State where goods are delivered or services are carried out, the sales shall be included in the sales factor of all group members located in that Member State in proportion to their labour and asset factors.

Article 97
Rules on calculation of factors

The Commission may adopt acts laying down detailed rules on the calculation of the labour, asset and sales factors, the allocation of employees and payroll, assets and sales to the respective factor and the valuation of assets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Article 98
Financial institutions

1. The following entities shall be regarded as financial institutions:

   (a) credit institutions authorised to operate in the Union in accordance with Directive 2006/48/EC of the European Parliament and of the Council[20];

   (b) entities, except for insurance undertakings as defined in Article 99, which hold financial assets amounting to 80% or more of all their fixed assets, as valued in accordance with the rules of this Directive.

2. The asset factor of a financial institution shall include 10% of the value of financial assets, except for participating interests and own shares. Financial assets shall be included in the asset factor of the group member in the books of which they were recorded when it became a member of the group.

3. The sales factor of a financial institution shall include 10% of its revenues in the form of interest, fees, commissions and revenues from securities, excluding value added tax, other taxes and duties. For the purposes of Article 96(2), financial services shall be deemed to be carried out, in the case of a secured loan, in the Member State in which the security is situated or, if this Member State cannot be identified, the Member State in which the security is registered. Other financial services shall be

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20 OJ L 177, 30.06.2006, p. 1.

deemed to be carried out in the Member State of the borrower or of the person who pays fees, commissions or other revenue. If the borrower or the person who pays fees, commissions or other revenue cannot be identified or if the Member State in which the security is situated or registered cannot be identified, the sales shall be attributed to all group members in proportion to their labour and asset factors.

Article 99
Insurance Undertakings

1. The term "insurance undertakings" shall mean those undertakings authorised to operate in the Member States in accordance with Directive 73/239/EEC for non-life insurance, 2002/83/EC for life insurance and Directive 2005/68/EC for reinsurance.

2. The asset factor of insurance undertakings shall include 10% of the value of financial assets as provided for in Article 98(2).

3. The sales factor of insurance undertakings shall include 10% of all earned premiums, net of reinsurance, allocated investment returns transferred from the non-technical account, other technical revenues, net of reinsurance, and investment revenues, fees and commissions, excluding value added tax, other taxes and duties. For the purposes of Article 96(2), insurance services shall be deemed to be carried out in the Member State of the policy holder. Other sales shall be attributed to all group members in proportion to their labour and asset factors.

Article 100
Oil and gas

Notwithstanding Article 96(1), (2) and (3), sales of a group member conducting its principal business in the field of the exploration or production of oil or gas shall be attributed to the group member in the Member State where the oil or gas is to be extracted or produced.

Notwithstanding Article 96(4) and (5), if there is no group member in the Member State of exploration or production of oil and gas or the exploration or production takes place in a third country where the group member which carries on the exploration or production of oil and gas does not maintain a permanent establishment, the sales shall be attributed to that group member.

Article 101
Shipping, inland waterways transport and air transport

The revenues, expenses and other deductible items of a group member whose principal business is the operation of ships or aircraft in international traffic or the operation of boats engaged in inland waterways transport shall not be apportioned according to the formula referred to in Article 86 but shall be attributed to that group member. Such a group member shall be excluded from the calculation of the apportionment formula.

Article 102
Items deductible against the apportioned share

The apportioned share shall be adjusted by the following items:

(a) unrelieved losses incurred by a taxpayer before entering the system provided for by this Directive, as provided for in Article 64;

(b) unrelieved losses incurred at the level of the group, as provided for in Article 64 in conjunction with Article 66(b) and in Article 71;

(c) the amounts relating to the disposal of fixed assets as provided for in Article 61, revenues and expenses related to long-term contracts as provided for in Article 62 and future expenses as provided for in Article 63;

(d) In the case of insurance undertakings, optional technical provisions as provided for in Article 30(c);

(e) the taxes listed in Annex III where a deduction is provided for under national rules.

Article 103
Tax liability

The tax liability of each group member shall be the outcome of the application of the national tax rate to the apportioned share, adjusted according to Article 102, and further reduced by the deductions provided for in Articles 76.

CHAPTER XVII

ADMINISTRATION AND PROCEDURES

Article 104
Notice to opt

1. A single taxpayer shall opt for the system provided for by this Directive by giving notice to the competent authority of the Member State in which it is resident or, in respect of a permanent establishment of a non-resident taxpayer, that establishment is situated. In the case of a group, the principal taxpayer shall give notice, on behalf of the group, to the principal tax authority.

   Such notice shall be given at least three months before the beginning of the tax year in which the taxpayer or the group wishes to begin applying the system.

2. The notice to opt shall cover all group members. However, shipping companies subject to a special taxation regime may be excluded from the group.

3. The principal tax authority shall transmit the notice to opt immediately to the competent authorities of all Member States in which group members are resident or established. Those authorities may submit to the principal tax authority, within one

month of the transmission, their views and any relevant information on the validity and scope of the notice to opt.

Article 105
Term of a Group

1. When the notice to opt has been accepted, a single taxpayer or a group, as the case may be, shall apply the system provided for by this Directive for five tax years. Following the expiry of that initial term, the single taxpayer or the group shall continue to apply the system for successive terms of three tax years unless it gives notice of termination. A notice of termination may be given by a taxpayer to its competent authority or, in the case of a group, by the principal taxpayer to the principal tax authority in the three months preceding the end of the initial term or of a subsequent term.

2. Where a taxpayer or a non-taxpayer joins a group, the term of the group shall not be affected. Where a group joins another group or two or more groups merge, the enlarged group shall continue to apply the system until the later of the expiry dates of the terms of the groups, unless exceptional circumstances make it more appropriate to apply a shorter period.

3. Where a taxpayer leaves a group or a group terminates, the taxpayer or taxpayers shall continue to apply the system for the remainder of the current term of the group.

Article 106
Information in the notice to opt

The following information shall be included in the notice to opt:

(a) the identification of the taxpayer or of the members of the group;

(b) in respect of a group, proof of fulfilment of the criteria laid down in Articles 54 and 55;

(c) identification of any associated enterprises as referred to in Articles 78;

(d) the legal form, statutory seat and place of effective management of the taxpayers;

(e) the tax year to be applied.

The Commission may adopt an act establishing a standard form of the notice to opt. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Article 107
Control of the notice to opt

1. The competent authority to which the notice to opt is validly submitted shall examine whether, on the basis of the information contained in the notice, the group fulfils the

requirements of this Directive. Unless the notice is rejected within three months of its receipt, it shall be deemed to have been accepted.

2. Provided that the taxpayer has fully disclosed all relevant information in accordance with Article 106, any subsequent determination that the disclosed list of group members is incorrect shall not invalidate the notice to opt. The notice shall be corrected, and all other necessary measures shall be taken, from the beginning of the tax year when the discovery is made. Where there has not been full disclosure, the principal tax authority, in agreement with the other competent authorities concerned, may invalidate the original notice to opt.

Article 108
Tax year

1. All members of a group shall have the same tax year.

2. In the year in which it joins an existing group, a taxpayer shall bring its tax year into line with that of the group. The apportioned share of the taxpayer for that tax year shall be calculated proportionately having regard to the number of calendar months during which the company belonged to the group.

3. The apportioned share of a taxpayer for the year in which it leaves a group shall be calculated proportionately having regard to the number of calendar months during which the company belonged to the group.

4. Where a single taxpayer joins a group, it shall be treated as though its tax year terminated on the day before joining.

Article 109
Filing a tax return

1. A single taxpayer shall file its tax return with the competent authority.

   In the case of a group, the principal taxpayer shall file the consolidated tax return of the group with the principal tax authority.

2. The return shall be treated as an assessment of the tax liability of each group member. Where the law of a Member State provides that a tax return has the legal status of a tax assessment and is to be treated as an instrument permitting the enforcement of tax debts, the consolidated tax return shall have the same effect in relation to a group member liable for tax in that Member State.

3. Where the consolidated tax return does not have the legal status of a tax assessment for the purposes of enforcing a tax debt, the competent authority of a Member State may, in respect of a group member which is resident or situated there, issue an instrument of national law authorising enforcement in the Member State. That instrument shall incorporate the data in the consolidated tax return concerning the group member. Appeals shall be permitted against the instrument exclusively on grounds of form and not to the underlying assessment. The procedure shall be governed by the national law of the relevant Member State.

4. Where a permanent establishment is deemed to exist pursuant to the third paragraph of Article 61, the principal taxpayer shall be responsible for all procedural obligations relating to the taxation of such a permanent establishment.

5. The tax return of a single taxpayer shall be filed within the period provided for in the law of the Member State in which it is resident or in which it has a permanent establishment. The consolidated tax return shall be filed in the nine months that follow the end of the tax year.

Article 110
Content of tax return

1. The tax return of a single taxpayer shall include the following information:

(a) the identification of the taxpayer;

(b) the tax year to which the tax return relates;

(c) the calculation of the tax base;

(d) identification of any associated enterprises as referred to in Article 78.

2. The consolidated tax return shall include the following information:

(a) the identification of the principal taxpayer;

(b) the identification of all group members;

(c) identification of any associated enterprises as referred to in Article 78;

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

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

(f) the calculation of the consolidated tax base;

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

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

Article 111
Notification of errors in the tax return

The principal taxpayer shall notify the principal tax authority of errors in the consolidated tax return. The principal tax authority shall, where appropriate, issue an amended assessment according to Article 114(3).

Article 112
Failure to file a tax return

Where the principal taxpayer fails to file a consolidated tax return, the principal tax authority shall issue an assessment within three months based on an estimate, taking into account such information as is available. The principal taxpayer may appeal against such an assessment.

Article 113
Rules on electronic filing, tax returns and supporting documentation

The Commission may adopt acts laying down rules on electronic filing, on the form of the tax return, on the form of the consolidated tax return, and on the supporting documentation required. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 131(2).

Article 114
Amended assessments

1. In relation to a single taxpayer, audits and assessments shall be governed by the law of the Member State in which it is resident or in which it has a permanent establishment.

2. The principal tax authority shall verify that the consolidated tax return complies with Article 110(2).

3. The principal tax authority may issue an amended assessment not later than three years after the final date for filing the consolidated tax return or, where no return was filed before that date, not later than three years following issuance of an assessment pursuant to Article 112.

   An amended assessment may not be issued more than once in any period of 12 months.

4. Paragraph 3 shall not apply where an amended assessment is issued in compliance with a decision of the courts of the Member State of the principal tax authority according to Article 123 or with the result of a mutual agreement or arbitration procedure with a third country. Such amended assessments shall be issued within 12 months of the decision of the courts of the principal tax authority or the completion of the procedure.

5. Notwithstanding paragraph 3, an amended assessment may be issued within six years of the final date for filing the consolidated tax return where it is justified by a deliberate or grossly negligent misstatement on the part of a taxpayer, or within 12 years of that date where the misstatement is the subject of criminal proceedings. Such an amended assessment shall be issued within 12 months of the discovery of the misstatement, unless a longer period is objectively justified by the need for further inquiries or investigations. Any such amended assessment shall relate solely to the subject-matter of the misstatement.

6. Prior to issuing an amended assessment, the principal tax authority shall consult the competent authorities of the Member States in which a group member is resident or established. Those authorities may express their views within one month of consultation.

   The competent authority of a Member State in which a group member is resident or established may call on the principal tax authority to issue an amended assessment. Failure to issue such an assessment within three months shall be deemed to be a refusal to do so.

7. No amended assessment shall be issued in order to adjust the consolidated tax base where the difference between the declared base and the corrected base does not exceed the lower of EUR 5,000 or 1% of the consolidated tax base.

   No amended assessment shall be issued in order to adjust the calculation of the apportioned shares where the total of the apportioned shares of the group members resident or established in a Member State would be adjusted by less than 0.5%.

Article 115
Central data base

The consolidated tax return and supporting documents filed by the principal taxpayer shall be stored on a central data base to which all the competent authorities shall have access. The central data base shall be regularly updated with all further information and documents and all decisions and notices issued by the principal tax authority.

Article 116
Designation of the principal taxpayer

The principal taxpayer designated in accordance with Article 4(6) may not subsequently be changed. However, where the principal taxpayer ceases to meet the criteria in Article 4(6) a new principal taxpayer shall be designated by the group.

In exceptional circumstances the competent tax authorities of the Member States in which the members of a group are resident or in which they have a permanent establishment may, within six months of the notice to opt or within six months of a reorganisation involving the principal taxpayer, decide by common agreement that a taxpayer other than the taxpayer designated by the group shall be the principal taxpayer.

Article 117
Record-keeping

A single taxpayer and, in the case of a group, each group member shall keep records and supporting documents in sufficient detail to ensure the proper implementation of this Directive and to allow audits to be carried out.

Article 118
Provision of information to the competent authorities

On a request from the competent authority of the Member State in which it is resident or in which its permanent establishment is situated, a taxpayer shall provide all information relevant to the determination of its tax liability. On a request from the principal tax authority, the principal taxpayer shall provide all information relevant to the determination of the consolidated tax base or of the tax liability of any group member.

Article 119
Request for an opinion by the competent authority

1. A taxpayer may request an opinion from the competent authority of the Member State in which it is resident or in which it has a permanent establishment on the implementation of this Directive to a specific transaction or series of transactions planned to be carried out. A taxpayer may also request an opinion regarding the proposed composition of a group. The competent authority shall take all possible steps to respond to the request within a reasonable time.

   Provided that all relevant information concerning the planned transaction or series of transactions is disclosed, the opinion issued by the competent authority shall be binding on it, unless the courts of the Member State of the principal tax authority subsequently decide otherwise pursuant to Article 123. If the taxpayer disagrees with the opinion, it may act in accordance with its own interpretation but must draw attention to that fact in its tax return or consolidated tax return.

2. Where two or more group members in different Member States are directly involved in a specific transaction or a series of transactions, or where the request concerns the proposed composition of a group, the competent authorities of those Member States shall agree on a common opinion.

Article 120
Communication between competent authorities

1. Information communicated pursuant to this Directive shall, to the extent possible, be provided by electronic means, through making use of the common communication network/common system interface (CCN/CSI).

2. When a competent authority receives a request for cooperation or exchange of information concerning a group member pursuant to Directive 2011/16/EU, it shall respond no later than in three months following the date of receipt of the request.

Article 121
Secrecy clause

1. All information made known to a Member State under this Directive shall be kept secret in that Member State in the same manner as information received under its domestic legislation. In any case, such information:

(a) may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment;

(b) may in addition be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection;

(c) shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

In addition, Member States may provide for the information referred to in the first subparagraph to be used for assessment of other levies, duties and taxes covered by Article 2 of Council Directive 2008/55/EC[21].

2. Notwithstanding paragraph 1, the competent authority of the Member State providing the information may permit it to be used for other purposes in the requesting State, if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

Article 122
Audits

1. The principal tax authority may initiate and coordinate audits of group members. An audit may also be initiated on the request of a competent authority.

The principal tax authority and the other competent authorities concerned shall jointly determine the scope and content of an audit and the group members to be audited.

2. An audit shall be conducted in accordance with the national legislation of the Member State in which it is carried out, subject to such adjustments as are necessary in order to ensure proper implementation of this Directive.

3. The principal tax authority shall compile the results of all audits.

Article 123
Disagreement between Member States

1. Where the competent authority of the Member State in which a group member is resident or established disagrees with a decision of the principal tax authority made pursuant to Articles 107 or Article 114 paragraphs (3), (5) or (6) second subparagraph, it may challenge that decision before the courts of the Member State of the principal tax authority within a period of three months.

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21 OJ L 150, 10.6.2008, p. 28.

2. The competent authority shall have at least the same procedural rights as a taxpayer enjoys under the law of that Member State in proceedings against a decision of the principal tax authority.

Article 124
Appeals

1. A principal taxpayer may appeal against the following acts:

(a) a decision rejecting a notice to opt;

(b) a notice requesting the disclosure of documents or information;

(c) an amended assessment;

(d) an assessment on the failure to file a consolidated tax return.

The appeal shall be lodged within 60 days of the receipt of the act appealed against.

2. An appeal shall not have any suspensory effect on the tax liability of a taxpayer.

3. Notwithstanding Article 114(3), an amended assessment may be issued to give effect to the result of an appeal.

Article 125
Administrative appeals

1. Appeals against amended assessments or assessments made pursuant to Article 112 shall be heard by an administrative body which is competent to hear appeals at first instance according to the law of the Member State of the principal tax authority. If, in that Member State, there is no such competent administrative body, the principal taxpayer may lodge directly a judicial appeal.

2. In making submissions to the administrative body, the principal tax authority shall act in close consultation with the other competent authorities.

3. An administrative body may, where appropriate, order evidence to be provided by the principal taxpayer and the principal tax authority on the fiscal affairs of the group members and other associated enterprises and on the law and practices of the other Member States concerned. The competent authorities of the other Member States concerned shall provide all necessary assistance to the principal tax authority.

4. Where the administrative body varies the decision of the principal tax authority, the varied decision shall take the place of the latter and shall be treated as the decision of the principal tax authority.

5. The administrative body shall decide the appeal within six months. If no decision is received by the principal taxpayer within that period, the decision of the principal tax authority shall be deemed to have been confirmed.

6. Where the decision is confirmed or varied, the principal taxpayer shall have the right to appeal directly to the courts of the Member State of the principal tax authority within 60 days of the receipt of the decision of the administrative appeals body.

7. Where the decision is annulled, the administrative body shall remit the matter to the principal tax authority, which shall take a new decision within 60 days of the date on which the decision of the administrative body is notified to it. The principal taxpayer may appeal against any such new decision either pursuant to paragraph 1 or directly to the courts of the Member State of the principal tax authority within 60 days of receipt of the decision. If the principal tax authority does not take a new decision within 60 days, the principal taxpayer may appeal against the original decision of the principal tax authority before the courts of the Member State of the principal tax authority.

Article 126
Judicial appeals

1. A judicial appeal against a decision of the principal tax authority shall be governed by the law of the Member State of that principal tax authority, subject to paragraph 3.

2. In making submissions to the courts, the principal tax authority shall act in close consultation with the other competent authorities.

3. A national court may, where appropriate, order evidence to be provided by the principal taxpayer and the principal tax authority on the fiscal affairs of the group members and other associated enterprises and on the law and practices of the other Member States concerned. The competent authorities of the other Member States concerned shall provide all necessary assistance to the principal tax authority.

CHAPTER XVIII

FINAL PROVISIONS

Article 127
Exercise of the delegation

1. The power to adopt delegated acts referred to in Articles 2, 14, 34 and 42 shall be conferred on the Commission for an indeterminate period of time.

2. As soon as the Commission adopts a delegated act, it shall notify it to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 128, 129 and 130.

Article 128
Revocation of the delegation

1. The delegation of powers referred to in Articles 2, 14, 34 and 42 may be revoked at any time by the Council.

2. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 129
Objection to delegated acts

1. The Council may object to a delegated act within a period of three months from the date of notification.

2. If, on the expiry of this period, the Council has not objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.

   The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the Council has informed the Commission of its intention not to raise objections.

3. If the Council objects to a delegated act, it shall not enter into force. The Council shall state the reasons for objecting to the delegated act.

Article 130
Informing the European Parliament

The European Parliament shall be informed of the adoption of delegated acts by the Commission of any objection formulated to them, or the revocation of the delegation of powers by the Council.

Article 131
Committee

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011[22].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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22 OJ L 55, 28.2.2011, p. 13.

Article 132
Consultations on Article 87

The Committee established by Article 131 may also discuss the application of Article 87 in a given case.

Article 133
Review

The Commission shall, five years after the entry into force of this Directive, review its application and report to the Council on the operation of this Directive. The report shall in particular include an analysis of the impact of the mechanism set up in Chapter XVI of this Directive on the distribution of the tax bases between the Member States.

Article 134
Transposition

1. Member States shall adopt and publish, by [date] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   They shall apply those provisions from […].

   When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 135
Entry into force

This Directive shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.

Article 136
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEXES

ANNEX I

(a) The European company or Societas Europaea (SE), as established in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)[23] and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees,[24]

(b) The European Cooperative Society (SCE), as established in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the European Cooperative Society (SCE)[25] and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees,[26].

(c) companies under Belgian law known as "société anonyme"/"naamloze vennootschap", "société en commandite par actions"/"commanditaire vennootschap op aandelen", "société privée à responsabilité limitée"/"besloten vennootschap met beperkte aansprakelijkheid" "société coopérative à responsabilité limitée"/"coöperatieve vennootschap met beperkte aansprakelijkheid", "société coopérative à responsabilité illimitée"/"coöperatieve vennootschap met onbeperkte aansprakelijkheid", "société en nom collectif"/"vennootschap onder firma", "société en commandite simple"/ "gewone commanditaire vennootschap", public undertakings which have adopted one of the abovementioned legal forms, and other companies constituted under Belgian law subject to the Belgian Corporate Tax;

(d) companies under Bulgarian law known as: "събирателното дружество", "командитното дружество", "дружеството с ограничена отговорност", "акционерното дружество", "командитното дружество с акции", "кооперации","кооперативни съюзи", "държавни предприятия" constituted under Bulgarian law and carrying on commercial activities;

(e) companies under Czech law known as: "akciová společnost", "společnost s ručením omezeným", "veřejná obchodní společnost", "komanditní společnost", "družstvo";

(f) companies under Danish law known as "aktieselskab" and "anpartsselskab". Other companies subject to tax under the Corporation Tax Act, in so far as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to "aktieselskaber";

(g) companies under German law known as "Aktiengesellschaft", "Kommanditgesellschaft auf Aktien", "Gesellschaft mit beschränkter Haftung", "Versicherungsverein auf Gegenseitigkeit", "Erwerbs- und Wirtschaftsgenossenschaft", "Betriebe gewerblicher Art von juristischen Personen

[23] OJ L 294, 10.11.2001, p. 1.
[24] OJ L 294, 10.11.2001, p. 22.
[25] OJ L 207, 18.8.2003, p. 1.
[26] OJ L 207, 18.8.2003, p. 25.

des öffentlichen Rechts", and other companies constituted under German law subject to German corporate tax;

(h) companies under Estonian law known as: "täisühing", "usaldusühing", "osaühing", "aktsiaselts", "tulundusühistu";

(i) companies under Greek law known as "ανώνυμη εταιρεία", "εταιρεία περιωρισμένης ευθύνης (Ε.Π.Ε.)";

(j) companies under Spanish law known as "sociedad anónima", "sociedad comanditaria por acciones", "sociedad de responsabilidad limitada", and those public law bodies which operate under private law;

(k) companies under French law known as "société anonyme", "société en commandite par actions", "société à responsabilité limitée", "sociétés par actions simplifiées", "sociétés d'assurances mutuelles", "caisses d'épargne et de prévoyance", "sociétés civiles" which are automatically subject to corporation tax, "coopératives", "unions de coopératives", industrial and commercial public establishments and undertakings, and other companies constituted under French law subject to the French Corporate Tax;

(l) companies incorporated or existing under Irish laws, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;

(m) companies under Italian law known as "società per azioni", "società in accomandita per azioni", "società a responsabilità limitata", "società cooperative", "società di mutua assicurazione", and private and public entities whose activity is wholly or principally commercial;

(n) under Cypriot law: "εταιρείες" as defined in the Income Tax laws;

(o) companies under Latvian law known as: "akciju sabiedrība", "sabiedrība ar ierobežotu atbildību";

(p) companies incorporated under the law of Lithuania;

(q) companies under Luxembourg law known as "société anonyme", "société en commandite par actions", "société à responsabilité limitée", "société coopérative", "société coopérative organisée comme une société anonyme", "association d'assurances mutuelles", "association d'épargne-pension", "entreprise de nature commerciale, industrielle ou minière de l'État, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public", and other companies constituted under Luxembourg law subject to the Luxembourg Corporate Tax;

(r) companies under Hungarian law known as: "közkereseti társaság", "betéti társaság", "közös vállalat", "korlátolt felelősségű társaság", "részvénytársaság", "egyesülés", "közhasznú társaság", "szövetkezet";

(s) companies under Maltese law known as: “Kumpaniji ta’ Responsabilita Limitata”, “Soċjetajiet en commandite li l-kapital tagħhom maqsum f’azzjonijiet”;

(t) companies under Dutch law known as “naamloze vennootschap”, “besloten vennootschap met beperkte aansprakelijkheid”, “Open commanditaire vennootschap”, “Coöperatie”, “onderlinge waarborgmaatschappij”, “Fonds voor gemene rekening”, “vereniging op coöperatieve grondslag” and “vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt”, and other companies constituted under Dutch law subject to the Dutch Corporate Tax;

(u) companies under Austrian law known as "Aktiengesellschaft", "Gesellschaft mit beschränkter Haftung", "Versicherungsvereine auf Gegenseitigkeit", "Erwerbs und Wirtschaftsgenossenschaften", "Betriebe gewerblicher Art von Körperschaften des öffentlichen Rechts", "Sparkassen", and other companies constituted under Austrian law subject to Austrian corporate tax;

(v) companies under Polish law known as: “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”, “spółdzielnia“, “przedsiębiorstwo państwowe“;

(w) commercial companies or civil law companies having a commercial form, cooperatives and public undertakings incorporated in accordance with Portuguese law;

(x) companies under Romanian law known as: “societăți pe acțiuni”, “societăți în comandită pe acțiuni”, “societăți cu răspundere limitată;

(y) companies under Slovenian law known as: "delniška družba", "komanditna delniška družba", "komanditna družba", "družba z omejeno odgovornostjo", "družba z neomejeno odgovornostjo";

(z) companies under Slovak law known as: “akciová spoločnosť ”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť ”, “verejná obchodná spoločnosť“, “družstvo“;

(aa) companies under Finnish law known as “osakeyhtiö”/“aktiebolag”, “osuuskunta”/“andelslag”, “säästöpankki”/“sparbank” and “vakuutusyhtiö”/“försäkringsbolag”;

(bb) companies under Swedish law known as “aktiebolag”, “försäkringsaktiebolag”, “ekonomiska föreningar”, “sparbanker”, “ömsesidiga försäkringsbolag”;

(cc) companies incorporated under the law of the United Kingdom.

ANNEX II

Belgien / Belgique

impôt des sociétés/vennootschapsbelasting

България

корпоративен данък

Česká republika

Daň z příjmů právnických osob

Danmark

selskabsskat

Deutschland

Körperschaftsteuer

Eesti

Tulumaks

Éire/Ireland

Corporation Tax

Ελλάδα

Φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα

España

Impuesto sobre sociedades

France

Impôt sur les sociétés

Italia

Imposta sul reddito delle società

Κύπρος

Φόρος Εισοδήματος

Latvija

uzņēmumu ienākuma nodoklis

Lietuva

pelno mokestis

Luxembourg

impôt sur le revenu des collectivités

Magyarország

Társasági adó

Malta

Taxxa fuq l-income

Nederland

vennootschapsbelasting

Österreich

Körperschaftsteuer

Polska

Podatek dochodowy od osób prawnych

Portugal

imposto sobre o rendimento das pessoas colectivas

România

impozit pe profit

Slovenija

Davek od dobička pravnih oseb

Slovensko

Daň z príjmov právnických osôb

Suomi/Finland

yhteisöjen tulovero/inkomstskatten för samfund

Sverige

statlig inkomstskatt

United Kingdom

Corporation Tax

ANNEX III

List of non-deductible taxes under Article 14

Belgien/Belgique

Droits d'enregistrement – Registratierechten

България

None

Česká republika

None

Danmark

Registreringsafgift af motorkøretøjer

Kommunal grundskyld

Kulbrinteskat

Deutschland

Grunderwerbsteuer

Grundsteuer B

Gewerbesteuerumlage

Versicherungsteuer

Eesti

None

Éire/Ireland

Stamp Duties

Vehicle Registration Tax

Residential Property Tax

Ελλάδα

Φόρος Μεταβίβασης Ακινήτων

España

Impuesto sobre Bienes Inmuebles (IBI) / Recargo sobre el IBI

Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados

France

Foncier bati

Taxe professionnelle

Taxe sur les salaires

Taxe d'habitation

Italia

Imposta comunale sugli immobili (ICI) - Fabbricati

Imposta regionale sulle attività produttive (IRAP) – (employers' split)

Κύπρος

Taxes on Holding Gains

Latvija

None

Lietuva

None

Luxembourg

Taxe d'abonnement sur les titres de société

Impôt commercial communal

Magyarország

Különadó

Helyi iparűzésiadó

Malta

Taxes on Holding Gains

Nederland

Overdrachtsbelasting

Overige productgebonden belastingen neg - (energy split)

Österreich

Kommunalsteuer

Polska

Podatek od nieruchomości

Portugal

None

România

None

Slovenija

Davek na izplačane plače

Slovensko

None

Suomi/Finland

None

Sverige

Fastighetsskatt

Allmän löneavgift

Särskild löneskatt

United Kingdom

National Non-Domestic Rates from Businesses

Capital Levies

<u>**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS**</u>

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

1.6. Duration and financial impact

1.7. Management method(s) envisaged

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on operational appropriations

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party participation in financing

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Legislative proposal for a Common Consolidated Corporate Tax Base (CCCTB)

1.2. Policy area(s) concerned in the ABM/ABB structure[27]

Taxation Policy (ABB05)

1.3. Nature of the proposal/initiative

X The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[28]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objectives

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

The CCCTB will contribute to the re-launching of the single market and the Europe 2020 flagship initiative on the Industrial Policy and contributes to the achievement of the broad objectives for the Union's industrial policy, as set out in Europe 2020'. The CCCTB is a tax policy measure at the simplification of tax rules, the reduction of compliance cost and the removal of tax obstacles for companies operating cross-border.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No. Objective 2: To reduce administrative cost and to tackle tax obstacles in the Internal Market ABM/ABB activities concerned Tax Policy (ABB05)

27 ABM: Activity-Based Management – ABB: Activity-Based Budgeting.
28 As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

To provide companies with the option to apply a common system for taxation in the union (a common and consolidated tax base for the determination of the corporate profits) Introduce a one-stop shop approach for tax declarations and assessment Allow cross-border loss-offset Reduce transfer pricing compliance obligations Reduce occurrences of double or over taxation Reduce undue or unintended tax planning opportunities for companies by the parallel application of 27 corporate tax systems in the Union

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Complete and appropriate implementation of the CCCTB Directive by the Member States Proper application of the CCCTB provisions in practice

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

Adoption of the CCCTB as included in the Commission work plan for 2011 (as a flagship initiative) and according to the timeline in the published roadmap by 31.3.2011

1.5.2. Added value of EU involvement

The introduction of a common consolidated corporate tax base in 27 Member States cannot be achieved by unilateral (domestic) or bilateral (cross-border) measures and agreements between Member States.

1.5.3. Lessons learned from similar experiences in the past

The introduction of a comprehensive and complex set of rules and provisions to facilitate cross-border trade and investments and abolish tax obstacles (e.g. over taxation or lack of loss-offset) in the internal market is difficult task due to the unanimity requirement for legislative proposals in direct taxation. Similar proposals in the past which mainly proposed mandatory implementation and application by Member State did not meet willingness for a political discussion or were found acceptable in Council. The CCCTB proposal is built upon an optional and well prepared approach (studies, expert working group meetings, public consultations) over a period of nearly nine years.

1.5.4. Coherence and possible synergy with other relevant instruments

It is a secondary legislative proposal which can stand alone, but there are close links to other tax policy initiatives in the company tax area such as the work of the Code of Conduct Group and more specific measures (e. g. corporate tax Directives targeted to deal with specific matters and coordination initiatives).

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

X Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from 2011 to 2015,

– followed by full-scale operation.

1.7. Management mode(s) envisaged[29]

☐ **Centralised direct management** by the Commission

☐ **Centralised indirect management** with the delegation of implementation tasks to:

– ☐ executive agencies

– ☐ bodies set up by the Communities[30]

– ☐ national public-sector bodies/bodies with public-service mission

– ☐ persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

X Shared management with the Member States

☐ **Decentralised management** with third countries

☐ **Joint management** with international organisations ***(to be specified)***

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

[29] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

[30] As referred to in Article 185 of the Financial Regulation.

After adoption in Council it is the responsibility of the Member States to properly implement and apply the rules and provisions of the CCCTB Directive.

The Commission services have to monitor and closely follow the developments in the area of corporate taxation and any possible problems encountered in the field of the CCCTB.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

It is the general approach in tax legislation to demand correlation tables from Member States. Member States have to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

2.2. Management and control system

2.2.1. Risk(s) identified

An implementation risk plan for the CCCTB Directive has been prepared and is attached to the CIS-Net Consultation.

2.2.2. Control method(s) envisaged

General approach for legislation proposals in the tax area.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

Not applicable at EU level for this proposal.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

NONE

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

NONE

3.2.2. Estimated impact on operational appropriations

– **X** The proposal/initiative does not require the use of operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of administrative appropriations

– **X** The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year **2016**	Year **2017**	Year **2018**	Year **2019**	**2020 to 2022**			**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure	0.250	0.250	0.250	0.250	0.250	0.250	0.250	**1.75**
Subtotal HEADING 5 of the multiannual financial framework	0.250	0.250	0.250	0.250	0.250	0.250	0.250	**1.75**

Outside HEADING 5[31] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								

TOTAL	**0.250**	**0.250**	**0.250**	**0.250**	**0.250**	**0.250**	**0.250**	**1.75**

3.2.3.2. Estimated requirements of human resources

– **X** The proposal/initiative does not require the use of human resources

– ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	… enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary agents)							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External personnel (in Full Time Equivalent unit: FTE)[32]							
XX 01 02 01 (CA, INT, SNE from the "global envelope")							
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)							
XX 01 04 *yy* [33] - at Headquarters[34]							
XX 01 04 *yy* [33] - in delegations							

31 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

32 CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert.

33 Under the ceiling for external personnel from operational appropriations (former "BA" lines).

34 Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

XX 01 05 02 (CA, INT, SNE - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	The staff currently assigned to the Unit TAXUD D1 will be charge of the proposal until adoption in Council in line with the tasks described in the mission statement for the unit.
External personnel	As for officials and temporary agents

3.2.4. Compatibility with the current multiannual financial framework

– **X** Proposal/initiative is compatible the current multiannual financial framework.

– ☐ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

– ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[35].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

– **X** The proposal/initiative does not provide for co-financing by third parties

– The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	… enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing *body*								

[35] See points 19 and 24 of the Interinstitutional Agreement.

TOTAL appropriations cofinanced								

3.3. Estimated impact on revenue

– **X** Proposal/initiative has no financial impact on revenue.

– ☐ Proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on miscellaneous revenue