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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.7.2008  
COM(2008) 492 final

2008/0158 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**on the common system of taxation applicable to mergers, divisions, partial divisions,  
transfers of assets and exchanges of shares concerning companies of different Member  
States and to the transfer of the registered office of an SE or SCE between Member  
States**

**(Codified version)**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided<sup>1</sup> to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States<sup>3</sup>. The new Directive will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

<sup>4</sup> Annex II, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 90/434/EEC and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Directive.

Proposal for a

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↓ 2005/19/EC Art. 1 pt. 1

## COUNCIL DIRECTIVE

**on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States**

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↓ 90/434/EEC (adapted)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article  $\boxtimes$  94  $\boxtimes$  thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Whereas:

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- (1) Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States<sup>3</sup> has been substantially amended several times<sup>4</sup>. In the interests of clarity and rationality the said Directive should be codified.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ L 225, 20.8.1990, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).

<sup>4</sup> See Annex II, Part A.

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↓ 90/434/EEC Recital 1 (adapted)

- (2) Mergers, divisions, ☒ partial divisions, ☒ transfers of assets and exchanges of shares concerning companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the effective functioning of ☒ such an internal ☒ market. Such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States. To that end it is necessary, with respect to such operations, ☒ to provide for ☒ tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the ☒ internal ☒ market, to increase their productivity and to improve their competitive strength at the international level.

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↓ 90/434/EEC Recital 2

- (3) Tax provisions disadvantage such operations, in comparison with those concerning companies of the same Member State. It is necessary to remove such disadvantages.

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↓ 90/434/EEC Recital 3 (adapted)

- (4) It is not possible to attain this objective by an extension at Community level of the systems in force in the Member States, since differences between these systems tend to produce distortions. Only a common tax system is able to provide a satisfactory solution in this respect.

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↓ 90/434/EEC Recital 4 (adapted)

- (5) The common tax system ought to avoid the imposition of tax in connection with mergers, divisions, ☒ partial divisions, ☒ transfers of assets or exchanges of shares, while at the same time safeguarding the financial interests of the Member State of the transferring ☒ , receiving ☒ or acquired company.

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↓ 90/434/EEC Recital 5

- (6) In respect of mergers, divisions or transfers of assets, such operations normally result either in the transformation of the transferring company into a permanent establishment of the company receiving the assets or in the assets becoming connected with a permanent establishment of the latter company.

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↓ 90/434/EEC Recital 6

- (7) The system of deferral of the taxation of the capital gains relating to the assets transferred until their actual disposal, applied to such of those assets as are transferred to that permanent establishment, permits exemption from taxation of the

corresponding capital gains, while at the same time ensuring their ultimate taxation by the Member State of the transferring company at the date of their disposal.

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↓ 2005/19/EC Recital 12  
(adapted)

- (8) While the companies listed in Annex I, Part A are corporate taxpayers in their Member State of residence, some of them may be considered to be fiscally transparent by other Member States. In order to preserve the effectiveness of this Directive, Member States treating non-resident corporate taxpayers as fiscally transparent should grant the benefits of this Directive to them. However, Member States should have the option not to apply the relevant provisions of this Directive when taxing a direct or indirect shareholder of those taxpayers.
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↓ 90/434/EEC Recital 7

- (9) It is also necessary to define the tax regime applicable to certain provisions, reserves or losses of the transferring company and to solve the tax problems occurring where one of the two companies has a holding in the capital of the other.
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↓ 90/434/EEC Recital 8 (adapted)

- (10) The allotment to the shareholders of the transferring company of securities of the receiving or acquiring company should not in itself give rise to any taxation in the hands of such shareholders.
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↓ 2005/19/EC Recitals 6 and 7  
(adapted)

- (11) The decision of an SE or SCE to reorganise its business by transferring its registered office should not be unduly hampered by tax obstacles. The transfer, or an event connected with the transfer, may give rise to some form of taxation in the Member State from which the office is transferred. Where the assets of the SE or of the SCE remain effectively connected with a permanent establishment in the Member State from which the registered office was transferred, that permanent establishment should enjoy benefits similar to those provided for by Articles 4, 5 and 6. Moreover, the taxation of shareholders on the occasion of the transfer of the registered office should be excluded.
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↓ 2005/19/EC Recital 8

- (12) This Directive does not deal with losses of a permanent establishment in another Member State recognised in the Member State of residence of an SE or SCE. In particular, where the registered office of an SE or SCE is transferred to another

Member State, such transfer does not prevent the former Member State of residence from reinstating losses of the permanent establishment in due time.

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↓ 90/434/EEC Recital 9 and  
2005/19/EC Recital 17 (adapted)

- (13) It is necessary to allow Member States the possibility of refusing to apply this Directive where the merger, division, ☒ partial division, ☒ transfer of assets, exchange of shares ☒ or transfer of the registered office of an SE or SCE ☒ has as its objective tax evasion or avoidance or results in a company, whether or not it participates in the operation, no longer fulfilling the conditions required for the representation of employees in company organs.

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↓ 2005/19/EC Recital 3 (adapted)

- (14) One of the aims of this Directive is to eliminate obstacles to the functioning of the internal market, such as double taxation. In so far as this is not fully achieved by the provisions of ☒ this ☒ Directive, Member States should take the necessary measures to achieve this aim.

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- (15) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B,

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↓ 90/434/EEC

HAS ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **General provisions**

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↓ 2005/19/EC Art. 1 pt. 2

#### *Article 1*

Each Member State shall apply this Directive to the following:

- (a) mergers, divisions, partial divisions, transfers of assets and exchanges of shares involving companies from two or more Member States ;



- (b) transfers of the registered office from one Member State to another Member State of a European company (*Societas Europaea* or SE), as established in Council Regulation (EC) No 2157/2001 <sup>5</sup>, and a European Cooperative Society (SCE), as established in Council Regulation (EC) No 1435/2003 <sup>6</sup>.

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↓ 90/434/EEC

## *Article 2*

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

- (a) ‘merger’ means an operation whereby:
- (i) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities;
  - (ii) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities;
  - (iii) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital;
- (b) ‘division’ means an operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

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↓ 2005/19/EC Art. 1 pt. 3(a)

- (c) ‘partial division’ means an operation whereby a company transfers, without being dissolved, one or more branches of activity, to one or more existing or new companies, leaving at least one branch of activity in the transferring company, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash

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<sup>5</sup> OJ L 294, 10.11.2001, p. 1.

<sup>6</sup> OJ L 207, 18.8.2003, p. 1.

payment not exceeding 10% of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

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↓ 90/434/EEC Art. 2(c)

- (d) ‘transfer of assets’ means an operation whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer;

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↓ 2005/19/EC Art. 1 pt. 3(b)

- (e) ‘exchange of shares’ means an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company, or, holding such a majority, acquires a further holding, in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10% of the nominal value, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;

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↓ 90/434/EEC Art. 2(e)

- (f) ‘transferring company’ means the company transferring its assets and liabilities or transferring all or one or more branches of its activity;

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↓ 90/434/EEC Art. 2(f)

- (g) ‘receiving company’ means the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company;

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↓ 90/434/EEC Art. 2(g)

- (h) ‘acquired company’ means the company in which a holding is acquired by another company by means of an exchange of securities;

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↓ 90/434/EEC Art. 2(h)

- (i) ‘acquiring company’ means the company which acquires a holding by means of an exchange of securities;

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↓ 90/434/EEC Art. 2(i)

- (j) 'branch of activity' means all the assets and liabilities of a division of a company which from an organisational point of view constitute an independent business, that is to say an entity capable of functioning by its own means;

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↓ 2005/19/EC Art. 1 pt. 3(c)

- (k) 'transfer of the registered office' means an operation whereby an SE or an SCE, without winding up or creating a new legal person, transfers its registered office from one Member State to another Member State.

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↓ 90/434/EEC (adapted)

### *Article 3*

For the purposes of this Directive, 'company from a Member State' shall mean any company which:

- (a) takes one of the forms listed in Annex, I Part A;
- (b) according to the tax laws of a Member State is considered to be resident in that Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third country, is not considered to be resident for tax purposes outside the Community; and
- (c) is subject to one of the taxes ☒ listed in Annex I, Part B ☒, without the possibility of an option or of being exempt, or to any other tax which may be substituted for any of those taxes.

## Chapter II

### Rules applicable to mergers, divisions, partial divisions, exchanges of shares and transfers of assets

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#### *Article 4*

1. A merger, division or partial division shall not give rise to any taxation of capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes.

2. For the purpose of this Article, the following definitions shall apply:

- (a) ‘value for tax purposes’: the value on the basis of which any gain or loss would have been computed for the purposes of tax upon the income, profits or capital gains of the transferring company if such assets or liabilities had been sold at the time of the merger, division or partial division but independently of it;
- (b) ‘transferred assets and liabilities’: those assets and liabilities of the transferring company which, in consequence of the merger, division or partial division, are effectively connected with a permanent establishment of the receiving company in the Member State of the transferring company and play a part in generating the profits or losses taken into account for tax purposes.

3. Where paragraph 1 applies and where a Member State considers a non-resident transferring company as fiscally transparent on the basis of that Member State’s assessment of the legal characteristics of that company arising from the law under which it is constituted and therefore taxes the shareholders on their share of the profits of the transferring company as and when those profits arise, that Member State shall not tax any income, profits or capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes.

4. Paragraphs 1 and 3 shall apply only if the receiving company computes any new depreciation and any gains or losses in respect of the assets and liabilities transferred according to the rules that would have applied to the transferring company or companies if the merger, division or partial division had not taken place.

5. Where, under the laws of the Member State of the transferring company, the receiving company is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities transferred computed on a basis different from that set out in paragraph 4,

paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

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↓ 90/434/EEC

#### *Article 5*

The Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the transferring company are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by the permanent establishments of the receiving company which are situated in the Member State of the transferring company, the receiving company thereby assuming the rights and obligations of the transferring company.

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↓ 2005/19/EC Art. 1 pt. 7

#### *Article 6*

To the extent that, if the operations referred to in Article 1(a) were effected between companies from the Member State of the transferring company, the Member State would apply provisions allowing the receiving company to takeover the losses of the transferring company which had not yet been exhausted for tax purposes, it shall extend those provisions to cover the takeover of such losses by the receiving company's permanent establishments situated within its territory.

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↓ 90/434/EEC

#### *Article 7*

1. Where the receiving company has a holding in the capital of the transferring company, any gains accruing to the receiving company on the cancellation of its holding shall not be liable to any taxation.

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↓ 2005/19/EC Art. 1 pt. 8  
(adapted)

2. The Member States may derogate from paragraph 1 where the receiving company has a holding of less than  $\geq 15 \leq$  % in the capital of the transferring company.

From 1 January 2009 the minimum holding percentage shall be 10%.

*Article 8*

1. On a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.
2. On a partial division, the allotment to a shareholder of the transferring company of securities representing the capital of the receiving company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.
3. Where a Member State considers a shareholder as fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that shareholder arising from the law under which it is constituted and therefore taxes those persons having an interest in the shareholder on their share of the profits of the shareholder as and when those profits arise, that Member State shall not tax those persons on income, profits or capital gains from the allotment of securities representing the capital of the receiving or acquiring company to the shareholder.
4. Paragraphs 1 and 3 shall apply only if the shareholder does not attribute to the securities received a value for tax purposes higher than the value the securities exchanged had immediately before the merger, division or exchange of shares.
5. Paragraphs 2 and 3 shall apply only if the shareholder does not attribute to the sum of the securities received and those held in the transferring company, a value for tax purposes higher than the value the securities held in the transferring company had immediately before the partial division.
6. The application of paragraphs 1, 2 and 3 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.
7. ☒ For the purpose of ☒ this Article, 'value for tax purposes' ☒ shall ☒ mean the value on the basis of which any gain or loss would be computed for the purposes of tax upon the income, profits or capital gains of a shareholder of the company.
8. Where, under the law of the Member State in which he is resident, a shareholder may opt for tax treatment different from that set out in paragraphs 4 and 5, paragraphs 1, 2 and 3 shall not apply to the securities in respect of which such an option is exercised.
9. Paragraphs 1, 2 and 3 shall not prevent a Member State from taking into account when taxing shareholders any cash payment that may be made on the merger, division, partial division or exchange of shares.

*Article 9*

Articles 4, 5 and 6 shall apply to transfers of assets.

## **Chapter III**

### **Special case of the transfer of a permanent establishment**

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*Article 10*

1. Where the assets transferred in a merger, a division, a partial division or a transfer of assets include a permanent establishment of the transferring company which is situated in a Member State other than that of the transferring company, the Member State of the transferring company shall renounce any right to tax that permanent establishment.

The Member State of the transferring company may reinstate in the taxable profits of that company such losses of the permanent establishment as may previously have been set off against the taxable profits of the company in that Member State and which have not been recovered.

The Member State in which the permanent establishment is situated and the Member State of the receiving company shall apply the provisions of this Directive to such a transfer as if the Member State where the permanent establishment is situated were the Member State of the transferring company.

⊗ This paragraph ⊗ shall also apply in the case where the permanent establishment is situated in the same Member State as that in which the receiving company is resident.

2. By way of derogation from paragraph 1, where the Member State of the transferring company applies a system of taxing worldwide profits, that Member State shall have the right to tax any profits or capital gains of the permanent establishment resulting from the merger, division, partial division or transfer of assets, on condition that it gives relief for the tax that, but for the provisions of this Directive, would have been charged on those profits or capital gains in the Member State in which that permanent establishment is situated, in the same way and in the same amount as it would have done if that tax had actually been charged and paid.

## **Chapter IV**

### **Special case of transparent entities**

#### *Article 11*

1. Where a Member State considers a non-resident transferring or acquired company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply the provisions of this Directive when taxing a direct or indirect shareholder of that company in respect of the income, profits or capital gains of that company.
2. A Member State exercising the right referred to in paragraph 1 shall give relief for the tax which, but for the provisions of this Directive, would have been charged on the fiscally transparent company on its income, profits or capital gains, in the same way and in the same amount as that Member State would have done if that tax had actually been charged and paid.
3. Where a Member State considers a non-resident receiving or acquiring company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply Article 8 (1), (2) and (3).
4. Where a Member State considers a non-resident receiving company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, that Member State may apply to any direct or indirect shareholders the same treatment for tax purposes as it would if the receiving company were resident in that Member State.

## **Chapter V**

### **Rules applicable to the transfer of the registered office of an SE or an SCE**

#### *Article 12*

1. Where,



- (a) an SE or an SCE transfers its registered office from one Member State to another Member State, or
- (b) in connection with the transfer of its registered office from one Member State to another Member State, an SE or an SCE, which is resident in the first Member State, ceases to be resident in that Member State and becomes resident in another Member State,

that transfer of registered office or the cessation of residence shall not give rise to any taxation of capital gains, calculated in accordance with Article 4(1), in the Member State from which the registered office has been transferred, derived from those assets and liabilities of the SE or SCE which, in consequence, remain effectively connected with a permanent establishment of the SE or of the SCE in the Member State from which the registered office has been transferred and play a part in generating the profits or losses taken into account for tax purposes.

2. Paragraph 1 shall apply only if the SE or the SCE computes any new depreciation and any gains or losses in respect of the assets and liabilities that remain effectively connected with that permanent establishment, as though the transfer of the registered office had not taken place or the SE or the SCE had not so ceased to be tax resident.

3. Where, under the laws of ☒ the ☒ Member State ☒ from which the registered office was transferred ☒, the SE or the SCE is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities remaining in that Member State computed on a basis different from that set out in paragraph 2, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

### *Article 13*

1. Where,

- (a) an SE or an SCE transfers its registered office from one Member State to another Member State, or
- (b) in connection with the transfer of its registered office from one Member State to another Member State, an SE or an SCE, which is resident in the first Member State, ceases to be resident in that Member State and becomes resident in another Member State,

the Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the SE or the SCE before the transfer of the registered office are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by a permanent establishment of the SE or the SCE which is situated within the territory of the Member State from which the registered office was transferred.

2. To the extent that a company transferring its registered office within the territory of a Member State would be allowed to carry forward or carry back losses which had not been exhausted for tax purposes, that Member State shall allow the permanent establishment, situated within its territory, of the SE or of the SCE transferring its registered office, to take over those losses of the SE or SCE which have not been exhausted for tax purposes, provided

that the loss carry forward or carry back would have been available in comparable circumstances to a company which continued to have its registered office or which continued to be tax resident in that Member State.

#### *Article 14*

1. The transfer of the registered office of an SE or of an SCE shall not, of itself, give rise to any taxation of the income, profits or capital gains of the shareholders.
2. The application of paragraph 1 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of the securities representing the capital of the SE or of the SCE that transfers its registered office.

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| ↓ 90/434/EEC |
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## **Chapter VI**

### **Final provisions**

#### *Article 15*

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| ↓ 2005/19/EC Art. 1 pt. 13<br>(adapted) |
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1. A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of ☒ Articles 4 to 14 ☒ where it appears that ☒ one of the operations referred to in Article 1 ☒:
  - (a) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that ☒ the ☒ operation is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;
  - (b) results in a company, whether participating in the operation or not, no longer fulfilling the necessary conditions for the representation of employees on company organs according to the arrangements which were in force prior to that operation.

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| ↓ 90/434/EEC Art. 11(2) |
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2. Paragraph 1(b) shall apply as long as and to the extent that no Community law provisions containing equivalent rules on representation of employees on company organs are applicable to the companies covered by this Directive.

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| ↓ 90/434/EEC Art. 12 (adapted) |
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*Article 16*

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

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*Article 17*

Directive 90/434/EEC, as amended by the acts listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

*Article 18*

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

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| ↓ 90/434/EEC Art. 13 |
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*Article 19*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]

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↓ 2005/19/EC Art. 1 pt 14 and Annex (adapted)

## **ANNEX I**

### **⊠ Part A ⊠**

#### **LIST OF COMPANIES REFERRED TO IN ARTICLE 3(a)**

- (a) companies ⊠ (SE) ⊠ incorporated under Regulation (EC) No 2157/2001 and Council Directive 2001/86/EC<sup>1</sup> and cooperative societies ⊠ (SCE) ⊠ incorporated under Regulation (EC) No 1435/2003 and Council Directive 2003/72/EC<sup>2</sup>;

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↓ 2005/19/EC Art. 1 pt 14 and Annex

- (b) 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;

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↓ 2006/98/EC Art. 1 and Annex pt. 6(b)

- (c) 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;

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↓ 2005/19/EC Art. 1 pt 14 and Annex

- (d) companies under Czech law known as ‘akciová společnost’, ‘společnost s ručením omezeným’;

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<sup>1</sup> OJ L 294, 10.11.2001, p. 22.

<sup>2</sup> OJ L 207, 18.8.2003, p. 25.

- (e) companies under Danish law known as ‘aktieselskab’ and ‘anpartsselskab’ and 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’;
- (f) 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 des öffentlichen Rechts’, and other companies constituted under German law subject to German corporate tax;
- (g) companies under Estonian law known as ‘täisühing’, ‘usaldusühing’, ‘osaühing’, ‘aktsiaselts’, ‘tulundusühistu’;
- (h) companies incorporated or existing under Irish law, 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;
- (i) companies under Greek law known as ‘ανώνυμη εταιρεία’, ‘εταιρεία περιορισμένης 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 under Italian law known as ‘società per azioni’, ‘società in accomandita per azioni’, ‘società a responsabilità limitata’, ‘società cooperativa’, ‘società di mutua assicurazione’, and private and public entities whose activity is wholly or principally commercial;
- (m) companies (‘εταιρείες’) under Cypriot law as defined in the income tax laws;
- (n) companies under Latvian law known as ‘akciju sabiedrība’, ‘sabiedrība ar ierobežotu atbildību’;
- (o) companies incorporated under the law of Lithuania;
- (p) 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;

- (q) companies under Hungarian law known as ‘közkereseti társaság’, ‘betéti társaság’, ‘közös vállalat’, ‘korlátolt felelősségű társaság’, ‘részvénytársaság’, ‘egyesülés’, ‘közhasznú társaság’, ‘szövetkezet’;
- (r) companies under Maltese law known as ‘Kumpaniji ta’ Responsabilita Limitata’, ‘Soċjetajiet en commandite li l-kapital tagħhom maqsum f’azzjonijiet’;
- (s) 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;
- (t) companies under Austrian law known as ‘Aktiengesellschaft’, ‘Gesellschaft mit beschränkter Haftung’, ‘Erwerbs- und Wirtschaftsgenossenschaften’;
- (u) companies under Polish law known as ‘spółka akcyjna’, ‘spółka z ograniczoną odpowiedzialnością’;
- (v) commercial companies or civil law companies having a commercial form as well as other legal persons carrying on commercial or industrial activities, which are incorporated under Portuguese law;

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|-------------------------------------------|
| ↓ 2006/98/EC Art. 1 and Annex<br>pt. 6(b) |
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- (w) companies under Romanian law known as ‘societăți pe acțiuni’, ‘societăți în comandită pe acțiuni’, ‘societăți cu răspundere limitată’;

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|                                                  |
|--------------------------------------------------|
| ↓ 2005/19/EC Art. 1 pt 14 and<br>Annex (adapted) |
|--------------------------------------------------|

- (x) companies under Slovenian law known as ‘delniška družba’, ‘komanditna družba’, ‘družba z omejeno odgovornostjo’;
- (y) companies under Slovak law known as ‘akciová spoločnosť’, ‘spoločnosť s ručením obmedzeným’, ‘komanditná spoločnosť’;
- (z) companies under Finnish law known as ‘osakeyhtiö’/‘aktiebolag’, ‘osuuskunta’/‘andelslag’, ‘säästöpankki’/‘sparbank’ and ‘vakuutusyhtiö’/‘försäkringsbolag’;
- (aa) companies under Swedish law known as ‘aktiebolag’, ‘försäkringsaktiebolag’, ‘ekonomiska föreningar’, ‘sparbanker’, ‘ömsesidiga försäkringsbolag’;

- (ab) companies incorporated under the law of the United Kingdom.

⊠ Part B ⊠

⊠ LIST OF TAXES REFERRED TO IN ARTICLE 3(c) ⊠

|                                                         |                                                                    |
|---------------------------------------------------------|--------------------------------------------------------------------|
|                                                         | ↓ 90/434/EEC Art. 3 pt. (c) first indent                           |
| – impôt des sociétés/vennootschapsbelasting in Belgium, |                                                                    |
|                                                         | ↓ 2006/98/EC Art. 1 and Annex pt. 6(a)                             |
| – корпоративен данък in Bulgaria,                       |                                                                    |
|                                                         | ↓ 2003 Act of Accession, Art. 20 and Annex II part 9(7)(a), p. 559 |
| – daň z příjmů právnických osob in the Czech Republic,  |                                                                    |
|                                                         | ↓ 90/434/EEC Art. 3 pt. (c) second indent                          |
| – selskabsskat in Denmark,                              |                                                                    |
|                                                         | ↓ 90/434/EEC Art. 3 pt. (c) third indent                           |
| – Körperschaftssteuer in Germany,                       |                                                                    |
|                                                         | ↓ 2003 Act of Accession, Art. 20 and Annex II part 9(7)(a), p. 559 |
| – tulumaks in Estonia,                                  |                                                                    |
|                                                         | ↓ 90/434/EEC Art. 3 pt. (c) seventh indent                         |
| – corporation tax in Ireland,                           |                                                                    |

|   |                                                                                 |
|---|---------------------------------------------------------------------------------|
|   | <div> ↓ 90/434/EEC Art. 3 pt. (c) fourth indent </div>                          |
| – | φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα in Greece,           |
|   | <div> ↓ 90/434/EEC Art. 3 pt. (c) fifth indent </div>                           |
| – | impuesto sobre sociedades in Spain,                                             |
|   | <div> ↓ 90/434/EEC Art. 3 pt. (c) sixth indent </div>                           |
| – | impôt sur les sociétés in France,                                               |
|   | <div> ↓ 2005/19/EC Art. 1 pt. 4 </div>                                          |
| – | imposta sul reddito delle società in Italy,                                     |
|   | <div> ↓ 2003 Act of Accession, Art. 20 and Annex II part 9(7)(a), p. 559 </div> |
| – | φόρος εισοδήματος in Cyprus,                                                    |
| – | uzņēmumu ienākuma nodoklis in Latvia,                                           |
| – | pelno mokestis in Lithuania,                                                    |
|   | <div> ↓ 90/434/EEC Art. 3 pt. (c) ninth indent </div>                           |
| – | impôt sur le revenu des collectivités in Luxembourg,                            |
|   | <div> ↓ 2003 Act of Accession, Art. 20 and Annex II part 9(7)(a), p. 559 </div> |
| – | társasági adó in Hungary,                                                       |
| – | taxxa fuq l-income in Malta,                                                    |



|   |                                                                |                                                                        |
|---|----------------------------------------------------------------|------------------------------------------------------------------------|
| – | vennootschapsbelasting in the Netherlands,                     | ↓ 90/434/EEC Art. 3 pt. (c) tenth indent                               |
| – | Körperschaftssteuer in Austria,                                | ↓ 1994 Act of Accession, Art. 29 and Annex I, Part XI(B)(2)(a), p. 196 |
| – | podatek dochodowy od osób prawnych in Poland,                  | ↓ 2003 Act of Accession, Art. 20 and Annex II part 9(7)(a), p. 559     |
| – | imposto sobre o rendimento das pessoas colectivas in Portugal, | ↓ 90/434/EEC Art. 3 pt. (c) eleventh indent                            |
| – | impozit pe profit in Romania,                                  | ↓ 2006/98/EC Art. 1 and Annex pt. 6(a)                                 |
| – | davek od dobička pravnih oseb in Slovenia,                     | ↓ 2003 Act of Accession, Art. 20 and Annex II part 9(7)(a), p. 559     |
| – | daň z príjmov právnických osôb in Slovakia,                    |                                                                        |
| – | yhteisöjen tulovero/inkomstskatten för samfund in Finland,     | ↓ 1994 Act of Accession, Art. 29 and Annex I, Part XI(B)(2)(a), p. 196 |
| – | statlig inkomstskatt in Sweden,                                |                                                                        |

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|                                               |
|-----------------------------------------------|
| ↓ 90/434/EEC Art. 3 pt. (c)<br>twelfth indent |
|-----------------------------------------------|

– corporation tax in the United Kingdom.

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## **ANNEX II**

### **Part A**

#### **Repealed Directive with list of its successive amendments** (referred to in Article 17)

Council Directive 90/434/EEC  
(OJ L 225, 20.8.1990, p. 1)

Point XI(B)(I)(2) of Annex I to the 1994 Act of  
Accession  
(OJ C 241, 29.8.1994, p. 196)

Point 9.7 of Annex II to the 2003 Act of Accession  
(OJ L 236, 23.9.2003, p. 559)

Council Directive 2005/19/EC  
(OJ L 58, 4.3.2005, p. 19)

Council Directive 2006/98/EC  
(OJ L 363, 20.12.2006, p. 129)

Annex, point 6 only

### **Part B**

#### **List of time-limits for transposition into national law and application** (referred to in Article 17)

| Directive  | Time-limit for transposition | Date of application         |
|------------|------------------------------|-----------------------------|
| 90/434/EEC | 1 January 1992               | 1 January 1993 <sup>1</sup> |
| 2005/19/EC | 1 January 2006 <sup>2</sup>  |                             |
|            | 1 January 2007 <sup>3</sup>  |                             |
| 2006/98/EC | 1 January 2007               |                             |

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<sup>1</sup> Applicable to the Portuguese Republic only.

<sup>2</sup> As regards the provisions referred to in Article 2(1) of the Directive.

<sup>3</sup> As regards the provisions referred to in Article 2(2) of the Directive.

### ANNEX III

#### CORRELATION TABLE

| Directive 90/434/EEC                                                                | This Directive    |
|-------------------------------------------------------------------------------------|-------------------|
| Article 1                                                                           | Article 1         |
| Article 2(a) first indent                                                           | Article 2(a)(i)   |
| Article 2(a) second indent                                                          | Article 2(a)(ii)  |
| Article 2(a) third indent                                                           | Article 2(a)(iii) |
| Article 2(b)                                                                        | Article 2(b)      |
| Article 2(b)(a)                                                                     | Article 2(c)      |
| Article 2(c)                                                                        | Article 2(d)      |
| Article 2(d)                                                                        | Article 2(e)      |
| Article 2(e)                                                                        | Article 2(f)      |
| Article 2(f)                                                                        | Article 2(g)      |
| Article 2(g)                                                                        | Article 2(h)      |
| Article 2(h)                                                                        | Article 2(i)      |
| Article 2(i)                                                                        | Article 2(j)      |
| Article 2(j)                                                                        | Article 2(k)      |
| Article 3(a)                                                                        | Article 3(a)      |
| Article 3(b)                                                                        | Article 3(b)      |
| Article 3(c), introductory phrase of the first subparagraph and second subparagraph | Article 3(c)      |
| Article 3(c), first subparagraph, first to twenty-seventh indents                   | Annex I, Part B   |
| Article 4(1) first subparagraph                                                     | Article 4(1)      |
| Article 4(1) second subparagraph                                                    | Article 4(2)      |
| Article 4(2)                                                                        | Article 4(3)      |
| Article 4(3)                                                                        | Article 4(4)      |

|                                                    |                                   |
|----------------------------------------------------|-----------------------------------|
| Article 4(4)                                       | Article 4(5)                      |
| Articles 5 and 6                                   | Articles 5 and 6                  |
| Article 7(1)                                       | Article 7(1)                      |
| Article 7(2), first subparagraph                   | Article 7(2), first subparagraph  |
| Article 7(2), second subparagraph, first sentence  | -                                 |
| Article 7(2), second subparagraph, second sentence | Article 7(2), second subparagraph |
| Articles 8, 9 and 10                               | Articles 8, 9 and 10              |
| Article 10 <i>a</i>                                | Article 11                        |
| Article 10 <i>b</i>                                | Article 12                        |
| Article 10 <i>c</i>                                | Article 13                        |
| Article 10 <i>d</i>                                | Article 14                        |
| Article 11                                         | Article 15                        |
| Article 12(1)                                      | -                                 |
| Article 12(2)                                      | -                                 |
| Article 12(3)                                      | Article 16                        |
| -                                                  | Article 17                        |
| -                                                  | Article 18                        |
| Article 13                                         | Article 19                        |
| Annex                                              | Annex I, Part A                   |
| -                                                  | Annex II                          |
| -                                                  | Annex III                         |