Council Directive 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Member States and to the transfer of the registered office, of an SE or SCE, between Member States (90/434/EEC) (repealed)

[[F1]COUNCIL DIRECTIVE

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

(90/434/EEC)**]** (repealed)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal of the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the Economic and Social Committee[(3)],

Whereas mergers, 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 establishment and effective functioning of the common market; whereas such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States; whereas to that end it is necessary to introduce with respect to such operations tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the common market, to increase their productivity and to improve their competitive strength at the international level;

Whereas tax provisions disadvantage such operations, in comparison with those concerning companies of the same Member State; whereas it is necessary to remove such disadvantages;

Whereas it is not possible to attain this objective by an extension at the Community level of the systems presently in force in the Member States, since differences between these systems tend to produce distortions; whereas only a common tax system is able to provide a satisfactory solution in this respect;

Whereas the common tax system ought to avoid the imposition of tax in connection with mergers, divisions, transfers of assets or exchanges of shares, while at the same time safeguarding the financial interests of the State of the transferring or acquired company;

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Whereas 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;

Whereas 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 State of the transferring company at the date of their disposal;

Whereas 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;

Whereas the allotment to the shareholders of the transferring company of securities of the receiving or acquiring company would not in itself give rise to any taxation in the hands of such shareholders;

Whereas it is necessary to allow Member States the possibility of refusing to apply this Directive where the merger, division, transfer of assets or exchange of shares operation 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,

HAS ADOPTED THIS DIRECTIVE:

Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

TITLE I

General provisions

[F1 Article 1

Each Member State shall apply this Directive to the following:

(a) mergers, divisions, partial divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved,

(b) transfers of the registered office from one Member State to another Member State of European companies (Societas Europaea or SE), as established in Council Regulation (EC) No 2157/2001 of 8 October 2001, on the statute for a European Company (SE)[(4)], and European Cooperative Societies (SCE), as established in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)[(5)].**]**

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Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

Article 2

For the purposes of this Directive:

(a) 'merger' shall mean an operation whereby:

— 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 respresenting 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,

— 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,

— 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' shall mean 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;

(b)(a) **[**[F2]'partial division' shall mean 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 payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;**]**

(c) 'transfer of assets' shall mean 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;

(d) **[**[F1]'exchange of shares' shall mean 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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(e) 'transferring company' shall mean the company transferring its assets and liabilities or transferring all or one or more branches of its activity;

(f) 'receiving company' shall mean the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company;

(g) 'acquired company' shall mean the company in which a holding is acquired by another company by means of an exchange of securities;

(h) 'acquiring company' shall mean the company which acquires a holding by means of an exchange of securities;

(i) 'branch of activity' shall mean all the assets and liabilities of a division of a company which from an organizational point of view constitute an independent business, that is to say an entity capable of functioning by its own means**[**[F1]**;]**

(j) **[**[F2]'transfer of the registered office' shall mean 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.**]**

Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

F2 Inserted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

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 the Annex hereto;

(b) according to the tax laws of a Member State is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Community;

(c) moreover, is subject to one of the following taxes, without the possibility of an option or of being exempt:

— impôt des sociétés/vennootschapsbelasting in Belgium,
— selskabsskat in Denmark,
— Körperschaftsteuer in the Federal Republic of Germany,
— φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα, in Greece,
— impuesto sobre sociedades in Spain,
— impôt sur les sociétés in France,
— corporation tax in Ireland,
— **[**[F1]imposta sul reddito delle società in Italy,**]**
— impôt sur le revenu des collectivités in Luxembourg,
— vennootschapsbelasting in the Netherlands,

— imposto sobre o rendimento das pessoas colectivas in Portugal,
— corporation tax in the United Kingdom,
— **[**[F3]**[**[F4]Körperschaftsteuer in Austria,
— yhteisöjen tulovero/inkomstskatten för samfund in Finland,
— statlig inkomstskatt in Sweden,**]]**
— **[**[F5]Daň z příjmů právnických osobin the Czech Republic,
— Tulumaks in Estonia,
— Φόρος Εισοδήματος in Cyprus,
— uzņēmumu ienākuma nodoklis in Latvia,
— Pelno mokestis in Lithuania,
— Társasági adó in Hungary,
— Taxxa fuq l-income in Malta,
— Podatek dochodowy od osób prawnych in Poland,
— Davek od dobička pravnih oseb in Slovenia,
— Daň z príjmov právnických osôb in Slovakia,**]**

or to any other tax which may be substituted for any of the above taxes.

Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

F3 Inserted by Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (94/C 241/08).

F4 Substituted by Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (95/1/EC, Euratom, ECSC).

F5 Inserted by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

[[F1]TITLE II

Rules applicable to mergers, divisions, partial divisions, and exchanges of shares]

[[F1]*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.

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;

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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.

2 Where paragraph 1 applies and where a Member State considers a non-resident transferring company as fiscally transparent on the basis of that 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 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.

3 Paragraphs 1 and 2 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.

4 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 3, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.**]**

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.

[[F1]*Article 6*

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

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.

[[F1]2 The Member States may derogate from paragraph 1 where the receiving company has a holding of less than 20 % in the capital of the transferring company.

From 1 January 2007 the minimum holding percentage shall be 15 %. From 1 January 2009 the minimum holding percentage shall be 10 %.**]**

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[F1 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 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 shareholders on their share of the profits of the shareholder as and when those profits arise, that 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 In this Article the expression 'value for tax purposes' means 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.**]**

TITLE III

Rules applicable to transfers of assets.

Article 9

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

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TITLE IV

Special case of the transfer of a permanent establishment

[F1 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 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.

These provisions 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.**]**

Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

[F2 TITLE IVa

Special case of transparent entities

Article 10a

1 Where a Member State considers a non-resident transferring or acquired company to be fiscally transparent on the basis of that 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 State would have done if that tax had actually been charged and paid.

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3 Where a Member State considers a non-resident receiving or acquiring company to be fiscally transparent on the basis of that 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 paragraphs 1, 2 and 3.

4 Where a Member State considers a non-resident receiving company to be fiscally transparent on the basis of that 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.**]**

[[F2]TITLE IVb

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

Article 10b

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 of 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 that Member State, 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 10c

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

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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 10d

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.**]**

TITLE V

Final provisions

Article 11

[[F1]1 A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Titles II, III, IV and IVb where it appears that the merger, division, partial division, transfer of assets, exchange of shares or transfer of the registered office of an SE or an SCE:

a has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that one of the operations referred to in Article 1 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.**]**

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.

Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.

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Article 12

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1992 and shall forthwith inform the Commission thereof.

2 By way of derogation from paragraph 1, the Portuguese Republic may delay the application of the provisions concerning transfers of assets and exchanges of shares until 1 January 1993.

3 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.

Article 13

This Directive is addressed to the Member States.

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[F1 ANNEX

LIST OF COMPANIES REFERRED TO IN ARTICLE 3(a)

(a) companies incorporated under Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, and cooperative societies incorporated under Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) 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;

(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;

(c) companies under Czech law known as: 'akciová společnost', 'společnost s ručením omezeným';

(d) 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';

(e) 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;

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

(g) companies under Greek law known as 'ανώνυμη εταιρεία', 'εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)';

(h) 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;

(i) 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;

(j) 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;

(k) 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;

(l) under Cypriot law: 'εταιρείες' as defined in the Income Tax laws;

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

(n) companies incorporated under the law of Lithuania;

(o) 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;

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

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

(r) 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;

(s) companies under Austrian law known as 'Aktiengesellschaft', 'Gesellschaft mit beschränkter Haftung', 'Erwerbs- und Wirtschaftsgenossenschaften';

(t) companies under Polish law known as: 'spółka akcyjna', 'spółka z ograniczoną odpowiedzialnością';

(u) 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;

(v) companies under Slovenian law known as: 'delniška družba', 'komanditna družba', 'družba z omejeno odgovornostjo';

(w) companies under Slovak law known as: 'akciová spoločnosť ', 'spoločnosť s ručením obmedzeným', 'komanditná spoločnosť '.

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(x) companies under Finnish law known as ‘osakeyhtiö’/‘aktiebolag’, ‘osuuskunta’/‘andelslag’, ‘säästöpankki’/‘sparbank’ and ‘vakuutusyhtiö’/‘försäkringsbolag’;

(y) companies under Swedish law known as ‘aktiebolag’, ‘försäkringsaktiebolag’, ‘ekonomiska föreningar’, ‘sparbanker’, ‘ömsesidiga försäkringsbolag’;

(z) companies incorporated under the law of the United Kingdom.**]**

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(1) OJ No C 39, 22. 3. 1969, p. 1.

(2) OJ No C 51, 29. 4. 1970, p. 12.

(3) OJ No C 100, 1. 8. 1969, p. 4.

(4) **[**[F1]OJ L 294, 10.11.2001, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

(5) OJ L 207, 18.8.2003, p. 1. Regulation as amended by Decision of the EEA Joint Committee No 15/2004 (OJ L 116, 22.4.2004, p. 68).**]**

Textual Amendments

F1 Substituted by Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.