

Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States

*Article 3*

**Definition of company, associated company and permanent establishment**

For the purposes of this Directive:

- (a) the term ‘company of a Member State’ means any company:
- (i) taking one of the forms listed in the Annex hereto; and
  - (ii) which in accordance with the tax laws of a Member State is considered to be resident in that Member State and is not, within the meaning of a Double Taxation Convention on Income concluded with a third state, considered to be resident for tax purposes outside the Community; and
  - (iii) which is subject to one of the following taxes without being exempt, or to a tax which is identical or substantially similar and which is imposed after the date of entry into force of this Directive in addition to, or in place of, those existing taxes:
    - impôt des sociétés/vennootschapsbelasting in Belgium,
    - selskabsskat in Denmark,
    - Körperschaftsteuer in Germany,
    - Φόρος εισοδήματος νομικών προσώπων in Greece,
    - impuesto sobre sociedades in Spain,
    - impôt sur les sociétés in France,
    - [F<sup>1</sup>porez na dobit in Croatia,]
    - corporation tax in Ireland,
    - imposta sul reddito delle persone giuridiche in Italy,
    - impôt sur le revenu des collectivités in Luxembourg,
    - vennootschapsbelasting in the Netherlands,
    - Körperschaftsteuer in Austria,
    - imposto sobre o rendimento da pessoas colectivas in Portugal,
    - yhteisöjen tulovero/inkomstskatten för samfund in Finland,
    - statlig inkomstskatt in Sweden,
    - corporation tax in the United Kingdom[F<sup>2</sup>,]
    - [F<sup>3</sup>Daň z příjmů právnických osob in the Czech Republic,
    - Tulumaks in Estonia,
    - φόρος εισοδήματος in Cyprus,
    - Uzņēmumu ienākuma nodoklis in Latvia,
    - Pelnų mokestis in Lithuania,
    - Társasági adó in Hungary,
    - Taxxa fuq l-income in Malta,
    - Podatek dochodowy od osób prawnych in Poland,

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- Davek od dobička pravnih oseb in Slovenia,
- Daň z príjmov právnických osôb in Slovakia<sup>[F4]</sup>,]]
- <sup>[F5]</sup>корпоративен данък in Bulgaria,
- impozit pe profit, impozitul pe veniturile obținute din România de nerezidenți in Romania;]

- (b) a company is an ‘associated company’ of a second company if, at least:
- (i) the first company has a direct minimum holding of 25 % in the capital of the second company, or
  - (ii) the second company has a direct minimum holding of 25 % in the capital of the first company, or
  - (iii) a third company has a direct minimum holding of 25 % both in the capital of the first company and in the capital of the second company.

Holdings must involve only companies resident in Community territory.

However, Member States shall have the option of replacing the criterion of a minimum holding in the capital with that of a minimum holding of voting rights;

- (c) the term ‘permanent establishment’ means a fixed place of business situated in a Member State through which the business of a company of another Member State is wholly or partly carried on.

#### Textual Amendments

- F1** Inserted by Council Directive 2013/13/EU of 13 May 2013 adapting certain directives in the field of taxation, by reason of the accession of the Republic of Croatia.
- F2** Substituted by Council Directive 2004/66/EC of 26 April 2004 adapting Directives 1999/45/EC, 2002/83/EC, 2003/37/EC and 2003/59/EC of the European Parliament and of the Council and Council Directives 77/388/EEC, 91/414/EEC, 96/26/EC, 2003/48/EC and 2003/49/EC, in the fields of free movement of goods, freedom to provide services, agriculture, transport policy and taxation, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.
- F3** Inserted by Council Directive 2004/66/EC of 26 April 2004 adapting Directives 1999/45/EC, 2002/83/EC, 2003/37/EC and 2003/59/EC of the European Parliament and of the Council and Council Directives 77/388/EEC, 91/414/EEC, 96/26/EC, 2003/48/EC and 2003/49/EC, in the fields of free movement of goods, freedom to provide services, agriculture, transport policy and taxation, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.
- F4** Substituted by Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania.
- F5** Inserted by Council Directive 2006/98/EC of 20 November 2006 adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania.