EU MERGER DIRECTIVE[1]: OVERVIEW

I INTRODUCING

The single market refers to the European Union as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services. A functioning single market stimulates competition and trade, improves efficiency, raises quality, and helps cut prices. The European single market is one of the EU's greatest achievements. It has fuelled economic growth and made the everyday life of European businesses and consumers easier.[2]

Member States' national tax rules can have a disadvantage, creating restrictions on the reorganizations[3] of companies from different Member States, which is not compatible with the functioning of the European single market.

Due to the tax rules of different Member States, reorganizations can lead to less favorable tax treatment if they are cross-border status changes compared to national ones. Such disadvantages and unequal positions need to be eliminated, following the objectives of the single market.

Due to the diversity of Member States' tax systems, it is not possible to make them unique at the European level, so the solution to remove barriers to cross-border status changes of companies was to adopt a common tax system. The common tax system should ensure tax neutrality on the competition side, compliance with the requirements of the common market, increase the productivity and competitiveness of companies internationally.

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[1] COUNCIL DIRECTIVE 2009/133/EC of 19 October 2009 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), OJ L 310, 25.11.2009, p. 34–46 (further in the text: Merger Directive)

[2] The European Single Market, available on https://ec.europa.eu/growth/single-market_en

[3] In this overview, the reorganizations imply mergers, divisions, partial divisions, transfers of assets and exchange of shares of companies.

The main objective of the common tax system in cases of status changes is to avoid taxation while at the same time safeguarding the financial interests of the Member States of the transferring company or the acquired company. It is evident and reasonable that in this way the financial interests are retained, as a rule, of all the Member States involved in the common system of taxation in the context of status changes of companies. In the case of reorganizations or status changes such as mergers, divisions or transfers of assets, the consequence is, as a rule, the transformation of the transferring company into the permanent establishment of the receiving company or the assets become linked to the receiving company.

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.[4] 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.

The Merger Directive includes:

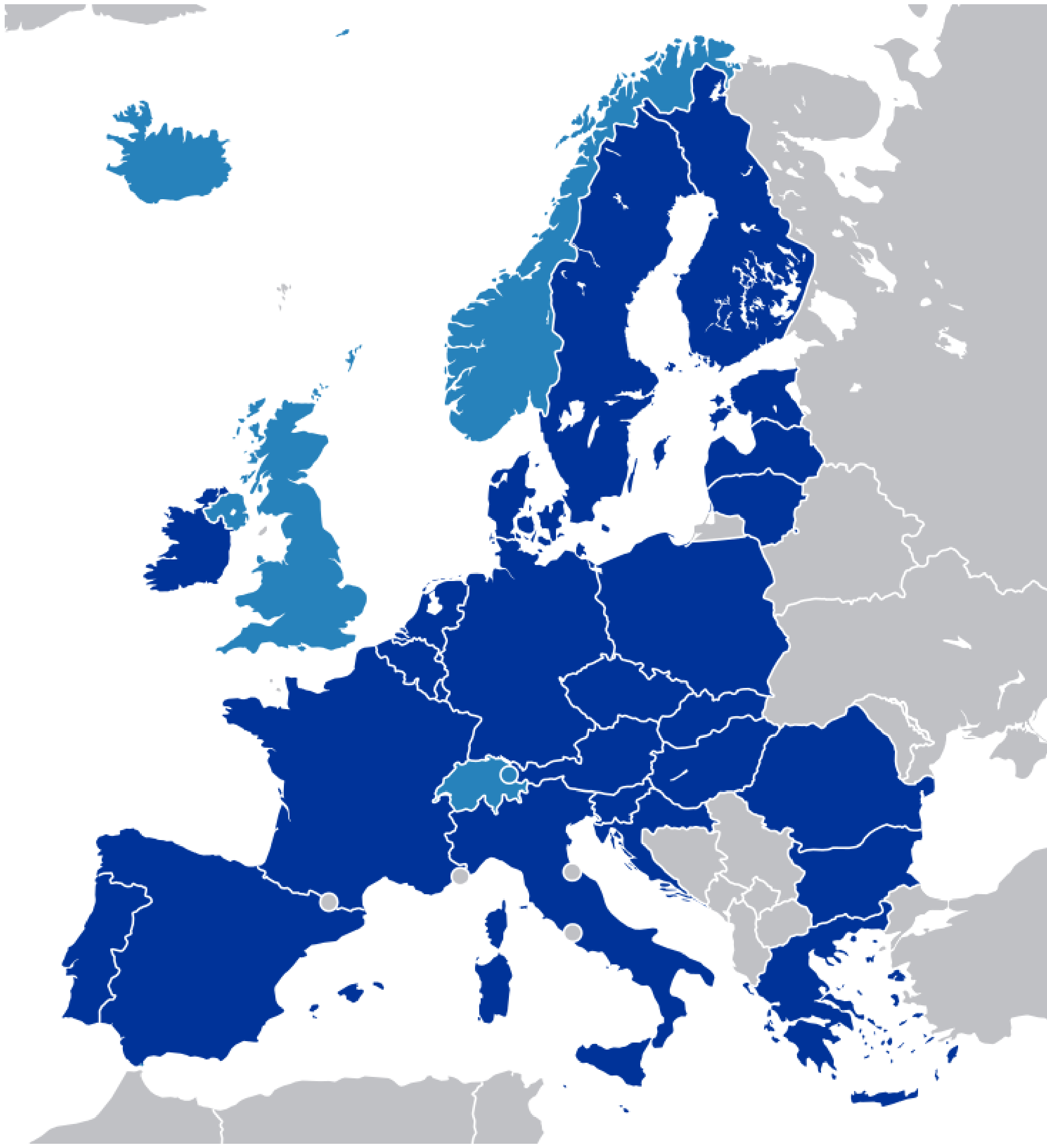
- ✓ a list of the legal forms to which it applies. The companies must be subject to corporate tax, without being exempted, and resident for tax purposes in a Member State (Annex I, Part A)
- ✓ a list of taxes. The companies must be subject to one of the taxes listed in Annex I, Part B, without the possibility of an option or of being exempt, or to any other tax which may be substituted for any of those taxes.

The Merger Directive also applies to:

- ✓ special case of the transfer of a permanent establishment
- ✓ special case of transparent entities
- ✓ rules applicable to the transfer of the registered office of an SE or an SCE.

[4] Article 4 (1) Merger Directive

European Single Market[5]



EU member states

Non-EU states which participate in the single market via the EEA or are in bilateral agreements with the EU

The Merger Directive does not apply to reorganizations with a party from a non-Member State. The freedom of establishment principle of the EEA Agreement[6], however, may require that tax benefits similar to the benefits available in domestic situations

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[5] European Single Market, available on https://en.wikipedia.org/wiki/European_Single_Market
Image source: This file was derived from: Location European nation states.svg, available on https://commons.wikimedia.org/wiki/File:Location_European_nation_states.svg author: Rob984, available on: https://commons.wikimedia.org/wiki/User:Rob984

[6] AGREEMENT ON THE EUROPEAN ECONOMIC AREA (OJ No L 1, 3.1.1994, p. 3; and EFTA States' official gazettes)

are made available also to reorganizations between a company from a Member State and from an EEA State outside the European Union, provided that the states concerned have concluded a comprehensive tax information exchange agreement.[7]

According to the Judgment of the Court (Third Chamber) of 19 July 2012 (reference for a preliminary ruling from the Korkein hallinto-oikeus - Finland) - Veronsaajien oikeudenvalvontayksikkö v A Oy, (Case C-48/11)[8] Article 31 of Agreement on the European Economic Area of 2 May 1992 precludes legislation of a Member State which treats an exchange of shares between a company established in that Member State and a company established in a third country that is a party to that agreement as a taxable disposal of shares whereas such an operation would be neutral for tax purposes if it concerned only domestic companies or companies established in other Member States, if there is, between that Member State and the third country, an agreement on mutual administrative assistance in the field of taxation which provides for an exchange of information between the national authorities which is as effective as that provided for in Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799, which is for the referring court to ascertain.

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[7] M.Helminen : Merger Directive, EU Tax Law, (2013), available on: https://jak.ppke.hu/uploads/articles/336468/file/EU_TaxLaw_MHelminen_2013_MergerDir.pdf

[8] Judgment of the Court (Third Chamber) of 19 July 2012 (reference for a preliminary ruling from the Korkein hallinto-oikeus - Finland) - Veronsaajien oikeudenvalvontayksikkö v A Oy, (Case C-48/11) (Direct taxation - Freedom of establishment - Free movement of capital - EEA Agreement - Articles 31 and 40 - Directive 2009/133/EC - Scope - Exchange of shares between a company established in a Member State and a company established in a third State party to the EEA Agreement - Refusal of a tax advantage - Agreement on mutual administrative assistance in the field of taxation), OJ C 103, 2.4.2011.

II BACKGROUND AND OBJECTIVES[9]

On 23 July 1990 the Council adopted Directive 90/434/EEC[10] on a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (the Merger Directive). The objective of the Merger Directive is to remove fiscal obstacles to cross-border reorganisations involving companies situated in two or more Member States.

On 17 October 2003 the Commission adopted a proposal (COM(2003) 613) amending Council Directive 90/434/EEC on a common system of taxation applicable to mergers, divisions, transfer of assets and exchanges of shares concerning companies of different Member States as Directive 2005/19/EC[11]. The main amendments introduced by Directive 2005/19/EC are the following:

Directive 2005/19/EC adds new legal entities to this list annexed to the initial Directive and to which it applies. The benefits of the Merger Directive are thus extended to a greater number of legal entities, including the European Company (SE) (Council Regulation (EC) 2157/2001 [12] and Council Directive 2001/86/EC[13]) and the European Co-operative Society (SCE) (Council Regulation (EC) 1435/2003 [14] and Council Directive 2003/72/EC[15]).

The current list of companies covered by the Merger Directive contains entities that are subject to corporate tax in their Member

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[9] https://ec.europa.eu/taxation_customs/business/company-tax/merger-directive_en

[10] Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States OJ L 225, 20.8.1990, p. 1–5 (no longer in force)

[11] 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 OJ L 58, 4.3.2005, p. 19–27 (no longer in force)

[12] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) OJ L 294, 10.11.2001, p. 1–21

[13] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees OJ L 294, 10.11.2001, p. 22–32

[14] Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) OJ L 207, 18.8.2003, p. 1–24

[15] Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees OJ L 207, 18.8.2003, p. 25–36

States of residence. However, in the case of some of the new entities that have been added to the list other Member States simultaneously tax their resident taxpayers which have an interest in those entities, so-called 'transparent entities'. The same tax situation can also apply to the shareholders of companies entering into the transactions covered by the Directive. Directive 2005/19/EC introduces specific provisions (new Articles 4(2) and 8(3)) to ensure that the benefits of the Merger Directive are available even in these cases, subject to certain exceptions which are set out in the new Article 10a.

The coverage of a new type of transactions: a special division known as a "split off ", named in the Directive as partial division (new Article 2(b)(a)). The splitting company is not dissolved and continues to exist. It transfers part of its assets and liabilities, constituting one or more branches of activity, to another company. In exchange, the receiving company issues securities representing its capital. These securities are transferred to the shareholders of the transferring company.

The directive provides for capital gains exemption when the receiving company holds shares in the transferring company. The holding threshold required to enjoy this exemption has been modified by the Directive 2005/19 to align it with that of the Parent-Subsidiary Directive. This threshold will be lowered in stages from 25% to 10% (Article 7(2)), in line with the amendments to the Parent-Subsidiary Directive introduced by Council Directive 2003/123/EC[16].

Directive 2005/19/EC introduces specific provisions providing relief on the conversion of branches into subsidiaries (Article 10).

The Directive introduces rules governing the transfer of the registered office of the European Company (SE). The title of the Merger Directive is modified to include a reference to this operation (Article 1) and the latter is defined in the text of the Directive (Article 2(j)).

The applicable tax regime is found under a new Title IVb, Articles 10b to 10d: the SE transferring its registered office will enjoy tax deferral on capital gains where its assets remain connected with

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[16] Council Directive 2003/123/EC of 22 December 2003 amending Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States OJ L 7, 13.1.2004, p. 41–44 (no longer in force)

a permanent establishment situated in the Member State from which it is moving. The shareholders of the SE should not be liable to tax on this occasion.

The EU Council of Ministers adopted Council Directive 2009/133/EC of 19 October 2009 **codifying** in a single text all Council Directives governing this matter. This includes the initial Directive, the amendments introduced by Council Directive 2005/19/EC and Council Directive 2006/98/EC[17] of 20 November 2006 adding the required references following the accession of Bulgaria and Romania to the European Union. This codification was prior to the accession of Republic of Croatia to the European Union.

III TAX TREATMENT

Article 4-8 Merger Directive applies on merger, division, partial division, transfer of assets and exchange of shares. Mentioned before, according to the 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. When assets are subsequently transferred, capital gains will be taxed (deferral of taxation). Article 4(2) content the definitions of a “value for the tax purposes” and “transferred assets and liabilities”. “Value for tax purposes” is 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. “Transferred assets and liabilities’ means 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.

Article 4, 5 and 6 apply in the cases of **transfer of assets**.

[17] 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 OJ L 363, 20.12.2006, p. 129–136

Transparent entities

Article 4(3) and Article 11 refer to cases of transparent entities. According to the Article 4(3), where Article 4(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.

But Article 4 paragraph 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. 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.

According to the 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 Directive when taxing a direct or indirect shareholder of that company in respect of the income, profits or capital gains of that company.** However, in the case of taxation the shareholders according to the paragraph 1 article 11, Member State with taxing right shall give relief for the tax which 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.

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).[18]Article 8 covers the case of the **tax exemptions for the shareholders.** Also, according to the Article 11(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.

CARRY OVER THE PROVISIONS AND RESERVES AND TAKEOVER THE LOSSES CONNECT WITH PERMANENT ESTABLISHMENT

According to the 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.

If the reorganizations (mergers, divisions, partial divisions, transfers of assets and exchanges of shares involving companies from two or more Member States) 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 (Article 6).

[18] Article 11(3) Merger Directive

CASE WHEN RECEIVING COMPANY HAS A HOLDING IN THE CAPITAL OF THE TRANSFERRING COMPANY

Where the receiving company, according to the article 7(1) 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.** The Member States **may derogate** from paragraph 1 where the receiving company has a holding of **less than 10%** in the capital of the transferring company.

TAX TREATMENT OF THE SHAREHOLDERS

a) In the cases of merger, division or Mergers, divisions or exchange of shares (Article 8 (1))

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.

b) In the case of partial division (Article 8 (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.

c) In the case of transparent entities (Article 8 (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.

d) Conditions for tax exemptions (Article 8 (4) and (5))

In the cases of mergers, divisions, exchange of shares and transparent entities, tax exemptions from Article 8 (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. For the purpose of Article 8, "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.

In the cases of partial divisions and transparent entities, tax exemptions from Article 8 (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.

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 Article 8 (4) and (5), tax exemptions from article 8 (1), (2) and (3) **shall not apply** to the securities in respect of which such an option is exercised.

e) Taxation the gain arising out of the subsequent transfer of securities (Article 8 (6))

The application of tax exemptions from Article 8 (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.

f) Cash payments (Article 8 (9))

Tax exemptions from Article 8 (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. Tax exemptions apply **only on the consideration paid in securities**.

SPECIAL CASE OF THE TRANSFER OF A PERMANENT ESTABLISHMENT

According to the 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.

Example[19]: *Austrian company is a company resident in Austria. It carries on a trade in Germany through a branch in that territory. It transfers its branch operations to a company incorporated and resident in the Netherlands. No German tax is payable on the transfer. The Netherlands company takes over the assets and liabilities of the German branch on a tax-neutral basis.*

By way of derogation from Article 10 (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.

RULES APPLICABLE TO THE TRANSFER OF THE REGISTERED OFFICE OF AN SE OR AN SCE

a) Tax treatment of the capital gains

Where, according to the Article 12 (1):

(a) an SE or an SCE transfers its registered office from one Member State to another Member State; or

[19] https://library.croneri.co.uk/cch_uk/btr/103-840

(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.

Conditions

Article 12 (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. (Article 12 (2)). 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 Article 12 (2), paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

b) Carry over the provisions and reserves and takeover the losses

Where, according to the article 13 (1):

(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.

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.

c) Tax treatment of the shareholders

According to the 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.

The application of Article 14 (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.

IV CASES OF TAX EVASION AND TAX AVOIDANCE

A Member State, according to the Article 15 (1), 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.

Article 15 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 the Directive.

V DEFINITION

MERGER	(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;
DIVISION	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;
PARTIAL DIVISION	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.
TRANSFER OF ASSETS	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
EXCHANGE OF SHARES	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.
TRANSFERRING COMPANY	the company transferring its assets and liabilities or transferring all or one or more branches of its activity.
RECEIVING COMPANY	the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company.
ACQUIRED COMPANY	the company in which a holding is acquired by another company by means of an exchange of securities.
ACQUIRING COMPANY	the company which acquires a holding by means of an exchange of securities.

BRANCH OF ACTIVITY	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.
TRANSFER OF THE REGISTERED OFFICE	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.

VI INSTAED CONCLUSIONS

This complex Directive contains the objectives that must be achieved by implementing it into national tax law. The details elaborated under national law will depend on the law of the different Member States, but the objectives of the Directive must be fully met.

Ksenija Cipek and Professor Dr Manuel Pereira

4 March 2020.