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Subject:	Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) – State of play

Delegations will find in the Annex the latest Presidency compromise text on the CCTB proposal, Chapters I to V, referred to in the ECOFIN report to the European Council on tax issues (doc. 14601/18).

<u>ANNEX</u>

2016/0337 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a Common Corporate Tax Base

THE COUNCIL OF THE EUROPEAN UNION,

(…)

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

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

2. A company that applies the rules of this Directive shall cease to be subject to the national corporate tax law in respect of all matters regulated by this Directive, unless otherwise stated in this Directive.

Article 2

Scope

1. The rules of this Directive shall apply to a company that is established under the laws of a Member State, including its permanent establishments in other Member States, where the company meets all of the following conditions:

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

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

(c) [it belongs to a consolidated group for financial accounting purposes with a total consolidated group revenue that exceeded EUR 750 000 000 during the financial year preceding the relevant financial year;

(d) it qualifies as a parent company or qualifying subsidiary as referred to in Article 3 and/or has one or more permanent establishment in other Member States as referred to in Article 5].

2. This Directive shall also apply to a company that is established under the laws of a third country in respect of its permanent establishments situated in one or more Member States where the company meets the conditions laid down in point[s] (b) [to (d)] of paragraph 1.

As regards whether the company meets the condition of point (a) in paragraph 1, it shall suffice that the company in a third country has a similar form to one of the company forms in Annex I. For the purposes of point (a) of paragraph 1, the Commission shall adopt annually a list of third country company forms that are similar to the company forms listed in Annex I. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2). The fact that a third country company form is not included in that list shall not preclude the application of the rules of this Directive to that form.

[3. A company that meets the conditions of points (a) and (b) of paragraph 1, but does not meet the conditions of points (c) and/or (d) of that paragraph, may opt, including for its permanent establishments situated in other Member States, to apply the rules of this Directive for a period of five tax years. That period shall automatically be extended for successive terms of five tax years, unless there is a notice of termination as referred to in Article 65(3). The conditions under points (a) and (b) of paragraph 1 shall be met each time the extension takes place.]

4. The rules of this Directive shall not apply to a shipping company under a special tax regime for this sector. [A shipping company under the special tax regime shall be taken into account for the purpose of determining the companies which are members of the same group as referred to in Article 3.]

[5. The Commission shall be empowered to adopt delegated acts in accordance with Article 66 to amend Annexes I and II to take account of changes to the laws of the Member States concerning company forms and corporate taxes.]

[Article 3

Parent company and qualifying subsidiaries

1. A qualifying subsidiary means every immediate and lower-tier subsidiary in which the parent company holds the following rights:

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

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

2. For the purpose of calculating the thresholds referred to in paragraph 1 in relation to lower-tier subsidiaries, the following rules shall be applied:

(a) once the voting-right threshold is reached in respect of a subsidiary, the parent company shall be considered to hold 100 % of these rights;

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

Article 4

Definitions

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

(1) 'taxpayer' means a company that meets the conditions of Article 2(1) or (2), or has opted for applying the rules of this Directive in accordance with Article 2(3);

(2) 'non-taxpayer' means a company that does not meet the conditions of Article 2(1) or (2) and has not opted for applying the rules of this Directive in accordance with Article 2(3);

(3) 'resident taxpayer' means a taxpayer that is resident for tax purposes in a Member State;

(4) 'non-resident taxpayer' means a taxpayer that for tax purposes is not resident in a Member State;

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

(6) 'expenses' means decreases in net equity of the company during the tax year in the form of outflows or a reduction in the value of assets or in the form of a recognition or increase in the value of liabilities, other than those relating to monetary or non-monetary distributions to shareholders or equity owners in their capacity as such;

(7) 'tax period' means any twelve-month period or any other applicable period for tax purposes not longer than twelve months;

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

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

(10) 'consolidated group for financial accounting purposes' means all entities that are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or a national financial reporting system;

(10a) 'hidden profit distribution' means any economic benefit not disclosed as profit distribution, which the taxpayer provides to persons mentioned in Article 14 and would not have provided to independent third persons and which leads to a decrease of the profits;

(11) ['research and development' means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any particular application or use in view (basic research); original investigation undertaken in order to acquire new knowledge but directed primarily towards a specific, practical aim or objective (applied research); systematic work, drawing on knowledge gained from research and practical experience and producing additional knowledge, which is directed to producing new products or processes or to improving existing products or processes (experimental development);]

(12) 'borrowing costs' means interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance, as defined in national law, including payments under profit participating loans, imputed interest on convertible bonds and zero coupon bonds, payments under alternative financing arrangements, the finance cost elements of finance lease payments, capitalised interest included in the balance sheet value of a related asset, the amortisation of capitalised interest, amounts measured by reference to a funding return under transfer pricing rules, notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings, the defined yield on net equity increases as referred to in Article 11 of this Directive, certain foreign exchange gains and losses on borrowings and instruments connected with the raising of finance, guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

(13) 'exceeding borrowing costs' means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest revenues and other taxable revenues that the taxpayer receives and which are economically equivalent to interest revenues;

(14) 'transfer of assets' means an operation whereby a Member State loses the right to tax the transferred assets, whilst the assets remain under the legal or economic ownership of the same taxpayer;

(15) 'transfer of tax residence' means an operation whereby a taxpayer ceases to be resident for tax purposes in a Member State, whilst acquiring tax residence in another Member State or third country;

(16) 'transfer of a business carried on by a permanent establishment' means an operation whereby a taxpayer ceases to have taxable presence in a Member State whilst acquiring such presence in another Member State or third country without becoming resident for tax purposes in that Member State or third country;

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

(18) 'market value' means the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated parties in a direct transaction;

(19) 'fixed assets' means tangible assets acquired or created by the taxpayer and intangible assets acquired that are capable of being valued independently and that are used or are expected to be used in the business for producing, maintaining or securing income for more than 12 months, except where their acquisition or construction cost is less than EUR 1,000. Fixed assets shall also include financial assets, with the exception of financial assets held for trading in accordance with Article 21;

(20) 'financial assets' means shares in, and loans to, associated enterprises as referred to in Article 56 of this Directive, participating interests as defined in Article 2(2) of Directive 2013/34/EU of the European Parliament and of the Council[1], loans to undertakings with which the taxpayer is linked by virtue of participating interests, investments held as fixed assets, other loans, and own shares to the extent that national law permits their being shown in the balance sheet;

1 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(21) 'acquisition or construction cost' means the amount of cash or cash equivalents paid or payable or the value of other assets given in exchange for or consumed to acquire a fixed tangible asset at the time of its acquisition or construction. In the case of fixed intangible assets only acquisition costs shall be included;

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

(23) 'medium-life fixed tangible assets' means fixed tangible assets that do not qualify as long-life fixed tangible assets under point 22 and have a useful life of eight years or more;

(23a) 'short-life fixed tangible assets' means fixed tangible assets that do not qualify as long-life or medium-life fixed tangible assets under points 22 and 23, and have a useful life of less than eight years;

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

(25) 'useful life' means the period for which an asset is expected to be available for use or the number of production or similar units that a taxpayer expected to obtain from the asset;

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

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

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

(29) 'financial undertaking' means any of the following entities:

(a) a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council[2], an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council[3], or a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council[4];

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council[5];

(c) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

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[2] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

[3] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[4] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

[5] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

(d) an institution for occupational retirement provision as defined in point (a) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council[6], unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive, or the delegate of an institution for occupational retirement provision as referred to in Article 19(1) of Directive 2003/41/EC;

(e) a pension institution operating pension schemes which qualify as social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council[7] and by Regulation (EC) No 987/2009 of the European Parliament and of the Council[8], as well as any legal entity set up for the purpose of investment in such pension schemes;

(f) an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU, which is managed by an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU, or an AIF supervised under national law;

(g) a UCITS as defined in Article 1(2) of Directive 2009/65/EC;

(h) a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[9];

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6 Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

7 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 200, 7.6.2004, p. 1).

8 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 on laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

9 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(i) a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[10];

(30) 'entity' means any legal arrangement to carry on business through either a company or a structure that is transparent for tax purposes;

(31) 'hybrid mismatch' means a situation between a taxpayer and an associated enterprise or a structured arrangement between parties in different tax jurisdictions where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or entity, or in the treatment of a commercial presence as a permanent establishment:

(a) a deduction of the same payment, expenses or losses from the taxable base occurs both in the jurisdiction in which the payment has its source, the expenses are incurred or the losses are suffered and in the other jurisdiction ('double deduction');

(b) a deduction of a payment from the taxable base in the jurisdiction in which the payment has its source without a corresponding inclusion for tax purposes of the same payment in the other jurisdiction ('deduction without inclusion');

(c) in case of differences in the treatment of a commercial presence as a permanent establishment, non-taxation of income which has its source in a jurisdiction without a corresponding inclusion for tax purposes of the same income in the other jurisdiction ('non-taxation without inclusion').

A hybrid mismatch only arises to the extent that the same payment deducted, expenses incurred or losses suffered in two jurisdictions exceed the amount of income that is included in both jurisdictions and which can be attributed to the same source.

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10 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

A hybrid mismatch also includes the transfer of a financial instrument under a structured arrangement involving a taxpayer where the underlying return on the transferred financial instrument is treated for tax purposes as derived simultaneously by more than one of the parties to the arrangement, who are resident for tax purposes in different jurisdictions, giving rise to any of the following outcomes:

(a) a deduction of a payment connected with the underlying return without a corresponding inclusion for tax purposes of such payment, unless the underlying return is included in the taxable income of one the parties involved;

(b) a relief for tax withheld at source on a payment derived from the transferred financial instrument to more than one of the parties involved;

(32) 'structured arrangement' means an arrangement involving a hybrid mismatch where the mismatch is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch;

(33) 'national corporate tax law' means the statute of a Member State which provides for one of the taxes listed in Annex II.

The Commission may adopt delegated acts in accordance with Article 66 in order to lay down definitions of more concepts.

Article 5

Permanent establishment in a Member State of a taxpayer who is resident for tax purposes in the Union

1. A taxpayer shall be considered to have a permanent establishment in a Member State other than the Member State in which it is resident for tax purposes when it has a fixed place in that other Member State through which it carries on its business, wholly or partly, including in particular:

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop;

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

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

3. The term 'permanent establishment' shall not include the following activities, provided that such activities are or, the overall activity of the fixed place of business in the case of point (f) is, of auxiliary or preparatory character:

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

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

(c) the maintenance of a stock of goods or merchandise belonging to the taxpayer for the sole purpose of being processed by another person;

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

(e) the maintenance of a fixed place of business for the sole purpose of carrying on any other activity for the taxpayer;

(f) the maintenance of a fixed place of business for the sole purpose of any combination of activities mentioned in points (a) to (e).

4. Without prejudice to paragraph 5, where a person is acting in a Member State on behalf of a taxpayer and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the taxpayer, the taxpayer shall be deemed to have a permanent establishment in that Member State in respect of the activities undertaken by that person for the taxpayer.

The contracts under the first subparagraph shall be concluded:

(a) in the name of the taxpayer, or

(b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that taxpayer or that the taxpayer has the right to use, or

(c) for the provision of services by the taxpayer.

The first and second subparagraphs shall not apply if the activities of that person are auxiliary or preparatory as referred to in paragraph 3 so that, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5.

(a) Paragraph 4 shall not apply where the person acting in a Member State on behalf of a taxpayer carries on business in that Member State as an independent agent and acts for the taxpayer in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more taxpayers to which it is 'closely related', that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to these taxpayers.

(b) For the purposes of this Article, a person is 'closely related' to a taxpayer if one possesses, directly or indirectly, a right to exercise more than 50 % of the voting rights in the other or an ownership right amounting to more than 50 % of the other's capital or more than 50 % of the rights giving entitlement to profit.

6. The fact that a taxpayer who is resident for tax purposes in a Member State controls, or is being controlled by, a taxpayer who is tax resident in another Member State or carries on business in that other Member State (whether through a permanent establishment or otherwise), shall not of itself mean that any of the taxpayers is a permanent establishment of the other.

CHAPTER II

CALCULATION OF THE TAX BASE

Article 6

General principles

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

2. Transactions and taxable events shall be measured individually.

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

4. The tax base shall be calculated for each tax year unless otherwise provided.

5. The tax base shall be determined on the basis of the national accounting rules, provided that they are compatible with the rules laid down in this Directive.

6. The rules of this Directive do not prevent Member States from applying national group taxation systems including a separate entity taxation system allowing the transfer of profits or interest capacity. Where a taxpayer is permitted or required to act on behalf of a group, as defined in the rules of a national group taxation system, the entire group shall be treated as a taxpayer.

Article 7

Elements of the tax base

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

[2. Alternatively, the tax base may be calculated as the difference between the carrying amount of (net) business assets at the end of the tax year and the carrying amount of (net) business assets at the end of the preceding tax year, plus the value of any repayments of nominal capital and profit distributions and minus any additions to business assets made pursuant to corporate law, provided the outcome would be the same as the calculation under paragraph 1. The calculation is to be performed in observance of the rules on tax exemption of revenues, on the deductibility of expenses, on recognition and valuation and on depreciation, as laid down in this Directive.]

Article 8

Exempt revenues

The following revenues shall not be included in the tax base:

(a) subsidies directly linked to the acquisition, construction or improvement of fixed assets that are subject to depreciation in accordance with Articles 30 to 40;

(b) proceeds from the disposal of pooled assets referred to in Article 37(2), including the market value of non-monetary gifts;

(c) gains from a disposal of shares, provided that the taxpayer has maintained a minimum holding of 10 % in the capital or 10 % of the voting rights of the company during the 12 months preceding the disposal, with the exception of gains resulting from a disposal of shares held for trading as referred to in Article 21(3) and of shares held by life insurance undertakings in accordance with point (b) of Article 28;

(d) received profit distributions, including hidden profit distributions, provided that the taxpayer has a minimum holding of 10 % in the capital or 10 % of the voting rights of the distributing company for an uninterrupted period of at least 12 months, with the exception of profit distributions from shares held for trading as referred to in Article 21(4) and profit distributions received by life insurance undertakings in accordance with point (c) of Article 28;

(e) income of a permanent establishment received by the taxpayer in the Member State where the taxpayer is resident for tax purposes.

Article 9

Deductible expenses

1. Expenses shall be deductible only to the extent that they are incurred in the direct business interest of the taxpayer.

2. The expenses referred to in paragraph 1 shall include all costs of sales and all expenses, net of deductible value added tax, that the taxpayer incurred with a view to obtaining or securing income, including costs for research and development and costs incurred in raising equity or debt for the purposes of the business.

[3. In addition to the amounts which are deductible as costs for research and development in accordance with paragraph 2 and provided that the taxpayer does not avail itself, directly or indirectly, of any benefit in whatever form granted by any Member State in its national legislation, in relation to such research and development costs, the taxpayer may also deduct, per tax year, an extra 50% of such costs with the exception of the costs related to the assets referred to in points (c), (d),and (e) of Article 33 (1) and (c), (d) and (e) of Article 33 (2) that it incurred during that year.

To the extent that costs for research and development reach beyond EUR 20 000 000, the taxpayer may deduct 25% of the exceeding amount.

By way of derogation from the first subparagraph, the taxpayer may deduct an extra [100%] of its costs for research and development up to EUR 20 000 000 where that taxpayer meets all of the following conditions:

(a) it is an unlisted enterprise with fewer than 50 employees and an annual turnover and/or annual balance sheet total that does not exceed EUR 10 000 000;

(b) it has not been registered for longer than five years. If the taxpayer is not subject to registration, the period of five years may be taken to start at the moment that the enterprise either starts, or is liable to tax for, its economic activity;

(c) it has not been formed through a merger or any other form of business reorganisation;

(d) it does not have any associated enterprises as referred to in Article 56;

(e) it does not avail itself, directly or indirectly, of any benefit in whatever form granted by any Member State in its national legislation, in relation to such research and development costs.]

4. Member States may provide for the deduction of gifts and donations to charitable bodies.

Article 10

Other deductible items

A deduction shall be made in respect of the depreciation of fixed assets referred to in Articles 30 to 40.

[Article 11

Allowance for growth and investment ('AGI')

1. For the purposes of this Article, 'AGI equity base' means, in a given tax year, the difference between the book value of the equity of a taxpayer and that of its participation in the capital of associated enterprises as referred to in Article 56.

2. For the purposes of this Article, 'equity' shall mean:

(a) Where the taxpayer is a company, the total of:

i. Subscribed capital;

ii. Share premium account;

iii. Revaluation reserve;

iv. Reserves:

- Legal reserve;
- Reserve for own shares;
- Reserves provided for by the articles of association;
- Other reserves, including the fair value reserve;

v. Accounting Profit or loss brought forward; and

vi. Accounting Profit or loss for the financial year.

Where the taxpayer is a permanent establishment, the term shall mean the equity of that taxpayer which is attributable to the permanent establishment.

3. An amount equal to the defined yield on the AGI equity base increases shall be deductible from the taxable base of a taxpayer according to paragraphs 1 to 6. If there is an AGI equity base decrease, an amount equal to the defined yield on the AGI equity base decrease shall become taxable.

4. (a) AGI equity base increases or decreases shall be calculated, for the first [ten] tax years that a taxpayer is subject to the rules of this Directive, as the difference between its AGI equity base at the end of the relevant tax year and its AGI equity base on the first day of the first tax year under the rules of this Directive.

(b) By derogation from the first subparagraph of paragraph 4, where the calculation of the AGI equity base results in an AGI equity base decrease, the movement in the AGI equity base shall be recalculated without regard to accounting losses incurred by the taxpayer from the first tax year under the rules of this Directive. Where such recalculation results in an AGI equity base increase, such increase shall be disregarded.

(c) After the first ten tax years, the reference to the amount of AGI equity base that shall be deductible against the AGI equity base at the end of the relevant tax year shall annually be moved forward by one tax year.

5. The defined yield referred to in paragraph 3 shall be equal to the yield of the euro area 10-year government benchmark bond in December of the year preceding the relevant tax year, as published by the European Central Bank, increased by a risk premium of two percentage points. A floor of two per cent shall apply where the curve of the annual yield is negative.

6. By derogation to paragraphs 1 to 5, the following shall be excluded from the AGI equity base where the arrangement or a series of arrangements have been put in place for the essential purpose of obtaining a tax advantage under this Article:

(a) intra-group loans and loans involving associated enterprises, as referred to in Article 56;

(b) intra-group cash contributions and contributions in kind;

(c) intra-group transfers of assets and participations;

(d) the re-categorisation of old capital as new capital through liquidations and the creation of start-ups;

(e) the creation of subsidiaries;

(f) acquisitions of businesses, in full or part, held by associated enterprises;

(g) double-dipping structures combining interest deductibility and deductions under the AGI;

(h) increases in the amount of loan financing receivables towards associated enterprises as compared to the amount of such receivables at the reference date.]

Article 12

Non-deductible items

By way of derogation from Articles 9 and 10, the following items shall be non-deductible:

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

(b) 50 % of entertainment costs, up to an amount that does not exceed [x] % of revenues in the tax year.

Member States may impose further restrictions on deductibility of expenses relating to lifestyle or private sphere;

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

(d) corporate tax and similar taxes on profits;

(e) bribes and other illegal payments;

(f) fines and penalties, including charges for late payment, that are due to a public authority for breach of any legislation;

(g) expenses incurred by a taxpayer for the purpose of deriving income that is exempt pursuant to points (c), (d) and (e) of Article 8;

(h) gifts to persons other than employees of the taxpayer. The non-deductibility rule shall not apply if the acquisition or construction cost of the items given to the recipient during the business year does not exceed [EUR 50] in total;

(i) gifts and donations other than those referred to in Article 9(4);

(j) acquisition or construction costs or cost connected with the improvement of fixed assets which are deductible under Articles 10 and 18, except for the cost related to research and development. The costs referred to in point (a) of Article 33(1) and points (a) and (b) of Article 33(2) shall not be treated as costs related to research and development;

(k) [annual contributions incurred by banks pursuant to the BRR directive and SRM regulation;]

(l) losses incurred by a permanent establishment in a third country.

Article 13

Interest limitation rule

1. Borrowing costs shall be deductible up to the amount of the interest or other taxable revenues from financial assets received by the taxpayer.

2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred for maximum of 30 % of the taxpayer's earnings before interest, tax, depreciation and amortisation ('EBITDA') or for a maximum amount of EUR 3 000 000, whichever is higher.

   Where a group is treated as a taxpayer pursuant to Article 6, exceeding borrowing costs and the EBITDA shall be calculated for the entire group. The amount of EUR 3 000 000 shall also be considered for the entire group.

3. The EBITDA shall be calculated by adding back to the tax base of the taxpayer the tax-adjusted amounts for exceeding borrowing costs, as well as the tax-adjusted amounts for depreciation and amortisation. Tax-exempt revenues shall be excluded from the EBITDA of a taxpayer.

4. By way of derogation from paragraph 2, a taxpayer who qualifies as a standalone company shall be entitled to fully deduct its exceeding borrowing costs. A standalone company means a taxpayer who is not part of a consolidated group for financial accounting purposes and has no associated enterprises or permanent establishments.

5. By way of derogation from paragraph 2, exceeding borrowing costs shall be fully deductible if they are incurred on:

   (a) loans concluded before [date of political agreement on this directive], with the exclusion of any subsequent modifications of those loans;

   (b) loans used to fund long-term public infrastructure projects, where the project operator, borrowing costs, assets and income are all in the Union.

   For the purposes of point (b), a long-term public infrastructure project shall mean a project to provide, upgrade, operate or maintain a large-scale asset that a Member State considers to be in the general public interest.

   Where point (b) applies, any income arising from a long-term public infrastructure project shall be excluded from the EBITDA of the taxpayer.

6. Exceeding borrowing costs that cannot be deducted in a given tax year shall be carried forward without time limitation.

7. Paragraphs 1 to 6 shall not apply to financial undertakings, including those that are part of a consolidated group for financial accounting purposes.

Article 14

Expenditure incurred for the benefit of shareholders, direct relatives of those shareholders or associated enterprises

Benefits granted to a shareholder who is an individual or to another person personally linked to the shareholder, or granted to an associated enterprise as referred to in Article 56, shall not be treated as deductible expenses, or revenues shall be increased as appropriate, insofar as such benefits would not be granted to an independent third party.

CHAPTER III

TIMING AND QUANTIFICATION

Article 15

General principles

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

Article 16

Accrual of revenues

1. Revenues shall accrue at the moment that the right to receive them has arisen and they can be measured reliably, irrespective of whether the relevant amounts have actually been paid.

2. Revenues resulting from trade in goods shall be considered to have been accrued in accordance with paragraph 1 when the following conditions are fulfilled:

   (a) the taxpayer has transferred to the buyer the ownership of the goods sold;

   b) the taxpayer does not retain effective control over the goods sold;

(c) the amount of revenue can be measured reliably;

(d) it is probable that the economic benefits associated with the transaction will flow to the taxpayer;

(e) the costs incurred or to be incurred in respect of the transaction can be measured reliably.

3. Revenues resulting from the supply of services shall be considered to have accrued to the extent that the services have been provided and when the following conditions have been fulfilled:

(a) the amount of revenue can be measured reliably;

(b) it is probable that the economic benefits associated with the transaction will flow to the provider;

(c) the stage of completion of the transaction at the end of the tax year can be measured reliably;

(d) the costs incurred or to be incurred in respect of the transaction can be measured reliably.

Where the criteria set out in points (a) to (d) are not met, revenues arising from the supply of services shall be considered to have accrued only to the extent that they can be matched to deductible expenses.

4. Where revenues arise from payments to the taxpayer which are scheduled to be carried out at several stages, revenues shall be considered to accrue when each of the individual instalments becomes due.

Article 17

Incurrence of deductible expenses

Deductible expenses are incurred at the moment that all of the following conditions are met:

(a) the obligation to make the payment has arisen; where an expense consists of payments by the taxpayer at several stages, the obligation to make a payment shall arise when each of the individual instalments becomes due;

(b) the amount of the obligation can be quantified;

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

Article 18

Costs related to non-depreciable assets

Acquisition or construction costs of fixed tangible assets as referred to in Article 38, or costs for the improvement of those assets, shall be deductible in the tax year in which those assets are disposed of, provided that the disposal proceeds are included in the tax base.

Article 19

Stocks and work-in-progress

1. The total amount of deductible expenses for a tax year shall be increased with the value of stocks and work-in-progress at the beginning of the tax year and decreased with the value of stocks and work-in-progress at the end of the same tax year, with the exception of stocks and work-in-progress relating to long-term contracts as referred to in Article 22.

2. The costs of stocks and work-in-progress shall be measured by using the first-in first-out method, last-in first-out method or the weighted-average cost method.

3. The cost of stocks and work-in-progress involving items that ordinarily are not interchangeable and goods or services which are produced or supplied respectively and segregated for specific projects shall be measured individually.

4. A taxpayer shall use the same method for the valuation of all stocks and work-in-progress having a similar nature and use.

The cost of stocks and work-in-progress shall comprise all costs of purchase, direct costs of conversion and other direct costs incurred in bringing them to the location and condition in which they are found in the relevant tax year.

Costs shall be net of deductible value added tax.

[A taxpayer who has included indirect costs in valuing stocks and work-in-progress before becoming subject to the rules of this Directive may continue to apply the indirect cost approach.]

5. Stocks and work-in-progress shall be valued on the last day of the tax year at the lower of cost and net realisable value.

The net realisable value is the estimated selling price in the ordinary course of business, less the estimated costs of completion and the estimated costs necessary to make the sale.

Article 20

Valuation

1. The tax base shall be calculated on the basis of the following elements:

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

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

(c) the market value, in the case of a non-monetary gift;

(d) the market value of financial assets and liabilities held for trading.

2. The tax base, including revenues and expenses, shall be expressed in EUR during the tax year or on the last day of the tax year, at the annual average exchange rate for the calendar year issued by the European Central Bank or, if the tax year does not coincide with the calendar year, at the average of daily observations issued by the European Central Bank through the tax year.

3. Paragraph 2 shall not apply to a taxpayer in a Member State that has not adopted the EUR.

Article 21

Financial instruments held for trading (trading book)

1. A financial instrument shall be treated as held for trading if it is one of the following:

(a) it is acquired or incurred principally for the purpose of selling it or repurchasing it within 12 calendar months;

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

2. By way of derogation from Articles 16 and 17, any differences between the market value of financial instruments held for trading, calculated at the beginning of a tax year or at the date of purchase if later, and their market value calculated at the end of the same tax year, shall be included in the tax base of that tax year.

3. The proceeds of a financial instrument held for trading that is disposed of shall be added to the tax base. The market value of that instrument at the beginning of the tax year or at the date of purchase if later shall be deducted from the tax base.

4. Where profit distributions are received in respect of a participation held for trading, the exemption from the tax base referred to in point (d) of Article 8 shall not apply.

5. By way of derogation from point (c) of Article 8, any differences between the market value of a financial instrument that is no longer held for trading but is still held as a fixed asset, calculated at the beginning of a tax year or at the date of purchase if later, and its market value calculated at the end of the same tax year, shall be included in the tax base of that tax year.

By way of derogation from point (c) of Article 8, any differences between the market value of a financial instrument that is no longer held as a fixed asset but is still held for trading, calculated at the beginning of a tax year or at the date of purchase if later, and its market value calculated at the end of the same tax year, shall be included in the tax base of that tax year.

The market value of a financial instrument at the end of the tax year during which it transitioned from fixed asset to an instrument held for trading and vice versa shall also be its market value at the beginning of the year following the transition.

6. The period referred to in point (c) of Article 8 shall begin or be interrupted when the financial instrument is no longer held for trading or is no longer a fixed asset.

Article 22

Long-term contracts

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

   (a) it is concluded for the purpose of manufacturing, installing or constructing, or for performing services;

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

2. By way of derogation from Article 16, revenues relating to a long-term contract shall be considered to have been accrued for the amount that corresponds to the part of the long-term contract that has been completed in the relevant tax year. The percentage of completion of the long-term contract shall be determined by reference to the ratio of costs of that year to the overall estimated costs.

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

Article 23

Provisions

1. By way of derogation from Article 17, where at the end of a tax year it is established that the taxpayer has a legal obligation, arising from activities or transactions carried out in that, or previous tax years, any amount arising from that obligation which can be reliably estimated shall be deductible, provided that the eventual settlement of the amount is expected to result in a deductible expense. The same shall apply to public commitments expected to result in deductible expenses within the next two calendar years.

For the purposes of this Article, a legal obligation may derive from any of the following:

(a) a contract;

(b) legislation;

(c) an administrative act of general nature or addressed to a specific taxpayer;

(d) another operation of law.

Where the obligation relates to an activity or transaction which will continue over future tax years, the provision shall be spread proportionately over the estimated duration of the activity or transaction.

Provisions under this Article shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future tax years, account shall be taken of amounts that have already been deducted pursuant to this Article.

2. A reliably estimated amount as referred to in paragraph 1 shall be the expected expenditure required to settle the present legal obligation at the end of the tax year, provided that that estimation is based on all relevant factors, including past experience of the company, group or industry. In estimating the amount of a provision, the following shall apply:

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

(b) if the term of the provision is 12 months or longer and there is no agreed discount rate, the provision shall be discounted at the rate of the yield of the euro area 10-year government benchmark bond in December of the year preceding the relevant tax year, as published by the European Central Bank, increased by a risk premium of two percentage points;

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

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

3. Provisions shall not be deducted for the following:

(a) contingent losses;

(b) future cost increases.

Article 24

Pensions

Member States may provide for the deduction of pension provisions.

Article 25

Bad debt deductions

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

   (a) at the end of the tax year, the taxpayer has taken all reasonable steps, as outlined in paragraph 2 of this Article, to pursue payment and it is probable that the debt will not be satisfied wholly or partially, or the taxpayer has a large number of homogeneous receivables which all derive from the same sector of business activity and is able to reliably estimate the amount of the bad debt receivable on a percentage basis, provided that the value of each homogeneous receivable is lower than 0.1 % of the value of all homogeneous receivables. In order to arrive at a reliable estimate, the taxpayer shall take into account all relevant factors, including past experience;

   (b) [the debtor neither has a relation with the taxpayer as referred to Article 3, nor are] the debtor and the taxpayer [are not] associated enterprises as referred to in Article 56. If the debtor is an individual, the debtor, his or her spouse or (registered) partner, his or her lineal ascendant or descendant, his or her siblings or their lineal descendants shall not participate in the management or control of the taxpayer, or directly or indirectly in his or her capital, as referred to in Article 56;

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

2. In determining whether all reasonable steps to pursue payment have been made, the elements listed in points (a) to (c) shall be taken into account, provided that they are based on objective evidence:

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

(b) whether there is any prospect of successful collection, including cases where the debtor has been declared insolvent, legal action has been initiated or a debt collector has been engaged; or

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

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

Article 26

Hedging

1. Gains and losses on a hedging instrument, which result from a valuation or acts of disposal, shall be treated in the same manner as the corresponding gains and losses on the hedged item. There is a hedging relationship where both of the following conditions are met:

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

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

2. Where the hedging relationship is interrupted or an already held financial instrument is subsequently treated as a hedging instrument, leading to its transition to a different tax regime, any difference between the new value of the hedging instrument, to be determined according to Article 20 at the end of the tax year, and the market value at the beginning of the same tax year shall be included in the tax base.

The market value of the hedging instrument at the end of the tax year during which that instrument transitioned to a different tax regime shall coincide with its market value at the beginning of the year following that transition.

Article 28

Insurance undertakings

Insurance undertakings that are authorised to operate in a Member State in accordance with Council Directive 73/239/EEC[11] for non-life insurance, Directive 2002/83/EC of the European Parliament and of the Council[12] for life insurance, and Directive 2005/68/EC of the European Parliament and of the Council[13] for reinsurance, shall be subject to the following additional rules:

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

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

(c) the tax base shall include profit distributions received by life insurance undertakings;

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[11] First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3).

[12] Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).

[13] Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ L 232.9.12.2005, p. 1).

(d) the technical provisions of insurance undertakings established in accordance with Council Directive 91/674/EEC[14] shall be deductible. Amounts deducted shall be reviewed and adjusted at the end of every tax year. Amounts already deducted shall be taken into account when calculating the tax base in future years.

Article 29

Exit taxation

1. An amount equal to the market value of transferred assets, at the time of exit of the assets, less their value for tax purposes, shall be treated as accrued revenues in any of the following circumstances:

   (a) where a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country;

   (b) where a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country, to the extent that, due to the transfer, the Member State of the permanent establishment no longer has the right to tax the transferred assets;

   (c) where a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in the first Member State;

   (d) where a taxpayer transfers the business carried on by its permanent establishment from a Member State to another Member State or to a third country, to the extent that, due to the transfer, the Member State of the permanent establishment no longer has the right to tax the transferred assets.

[14] Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 19.12.1991, p. 1).

2. The Member State to where the assets, tax residence or the business carried on by a permanent establishment are transferred shall accept the value established by the Member State of the taxpayer or of the permanent establishment as the starting value of the assets for tax purposes.

3. This Article shall not apply to asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management where those assets are set to revert to the Member State of the transferor within a period of 12 months.

CHAPTER IV

DEPRECIATION OF FIXED ASSETS

Article 30

Fixed asset register

1. Acquisition or construction costs or improvement costs, together with the date of entry into use after acquisition, construction or improvement, shall be recorded in a fixed asset register for each fixed asset separately.

2. When a fixed asset is disposed of, details of the disposal, including the date of disposal, and any proceeds or compensation received as a result of the disposal, shall be recorded in the fixed asset register.

3. The fixed asset register shall be kept in a manner that provides sufficient information to calculate the tax base and shall at least comprise:

   - designation of the asset;

   - month of entry into use;

- depreciation base;
- useful life according to Article 33;
- depreciation accumulated during the current tax year;
- total accumulated depreciation;
- depreciation base net of total accumulated depreciation and net of exceptional decrease in value;
- month of discontinuance or resumption of the charging of tax depreciation;
- month of disposal.

Article 31

Depreciation base

1. The depreciation base shall comprise costs directly connected with the acquisition, construction or improvement of a fixed asset. Those costs shall not include deductible value added tax. Acquisition or construction costs or improvement costs of a fixed asset shall not include interest.

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

3. The depreciation base of a fixed asset subject to depreciation shall be reduced by deducting the amount of any subsidy directly linked to the acquisition, construction or improvement of the asset, as referred to in (a) point of Article 8.

4. The depreciation of fixed assets that have not been used for more than 12 months for reasons outside the control of the taxpayer shall not be taken into account.

Depreciation shall cease from the month following the month when the period referred to in the first sentence has ended and shall be resumed from the month following the end of the 12 months from the month in which the asset started being used again.

Article 32

Entitlement to depreciate

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

2. In the case of contracts in which the economic and legal ownership do not coincide, the economic owner shall be entitled to deduct the interest element of the payments from its tax base, unless that element is not included in the tax base of the legal owner.

3. If the economic owner of an asset cannot be identified, the legal owner shall be entitled to deduct depreciation. In the case of leasing contracts both the interest and capital element of the lease payments shall be included in the tax base of the legal owner and be deductible by the lessee.

4. A fixed asset may not be depreciated by more than one taxpayer within a tax year, unless either the legal or the economic ownership is shared between more taxpayers or the economic or legal owner of the asset has changed.

5. A taxpayer may not disclaim depreciation.

[6. The Council, acting unanimously on a proposal from the Commission, shall adopt:

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

(b) the calculation of the depreciation base of a leased asset.]

Article 33

Individually depreciable assets

1. Without prejudice to paragraph 2 and Articles 37 and 38, fixed assets shall be depreciated individually over their useful lives on a straight-line basis. The useful life of a fixed asset shall be determined as follows:

(a) commercial, office and other buildings, as well as any other type of immovable property in use for the business, with the exception of industrial buildings and structures: 40 years;

(b) industrial buildings and structures: 25 years;

(c) long-life fixed tangible assets, other than the assets referred to in points (a) and (b): 15 years;

(d) medium-life fixed tangible assets: 8 years;

(e) short-life fixed tangible assets: 5 years;

(f) fixed intangible assets, [including acquired goodwill]: the period for which the asset enjoys legal protection or for which the right has been granted or, where that period cannot be determined, 15 years.

2. Second-hand buildings and other types of immovable property, second-hand long-life fixed tangible assets, second-hand medium-life fixed tangible assets, second-hand short-life fixed tangible assets and second-hand fixed intangible assets shall be depreciated in accordance with the following rules:

(a) second-hand commercial, office or other buildings, as well as any other type of immovable property in use for the business, with the exception of industrial buildings and structures: 40 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 40 years, in which case it shall be depreciated over that shorter period;

(b) second-hand industrial buildings and structures: 25 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 25 years, in which case it shall be depreciated over that shorter period;

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

(d) second-hand medium-life fixed tangible assets: 8 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 8 years, in which case it shall be depreciated over that shorter period;

(e) second-hand short-life fixed tangible assets: 5 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 5 years, in which case it shall be depreciated over that shorter period;

(f) second-hand fixed intangible assets: 15 years, unless the remaining period for which the asset enjoys legal protection or for which the right has been granted can be determined, in which case it shall be depreciated over that period.

Article 34

Timing

1. Depreciation shall be deducted on a monthly basis as from the month of entry into use of the fixed asset. No depreciation shall be deducted in the month of disposal.

2. The value for tax purposes of a fixed asset that is disposed of, or damaged to an extent that it can no longer be used for the business, and the value for tax purposes of any improvement costs incurred in relation to that asset, shall be deducted from the tax base in the month of the disposal or damage.

Article 35

Rollover relief for replacement assets

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

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

2. The replacement asset referred to in paragraph 1 may be purchased in the tax year prior to the disposal. Where the replacement asset is not purchased before the end of the second tax year after the year in which the disposal of the asset took place [and except in cases of force majeure], the amount deducted in the year of disposal, increased by 10 %, shall be added to the tax base in the second tax year after the disposal took place.

Article 36

Depreciation of improvement costs

1. Improvement costs shall be depreciated in accordance with the rules applicable to the fixed asset which has been improved as if they related to a newly acquired fixed asset, including its useful life according to Article 33(1)(a) to (e). Notwithstanding this, improvement costs concerning rented assets shall be depreciated according to Article 32 and Article 33(2)(a) to (e).

2. Where the taxpayer demonstrates that the estimated remaining useful life of an individually depreciated fixed asset is shorter than the useful life of the asset specified in Article 33 (1) (a) to (e), improvement costs for that asset shall be depreciated over that shorter period.

Article 37

Asset pool

1. Member States may alternatively provide for the depreciation of fixed assets referred to in Article 33(1) (e) and (2) (e) together in one asset pool at an annual rate of 25 % of the depreciation base.

2. The depreciation base of the asset pool at the end of a tax year shall be its value for tax purposes at the end of the preceding tax year, adjusted for assets entering and leaving the pool during the relevant tax year. Acquisition or construction costs and costs of improvement of assets shall be added to the depreciation base, whereas the proceeds of a disposal of assets and any compensation received for the loss or destruction of an asset shall be deducted.

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

Article 38

Assets not subject to depreciation

The following assets shall not be subject to depreciation:

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

(b) financial assets with the exception of financial assets held for trading.

Article 39

Exceptional decrease in value

1. A taxpayer who demonstrates that a fixed tangible asset has decreased in value at the end of a tax year due to force majeure or criminal activities by third parties may deduct from the tax base an amount equal to that decrease in value. However, no such deduction may be made in respect of assets the proceeds from the disposal of which are exempt from taxation.

2. Where the value of a fixed tangible asset subsequently increases, an amount equivalent to that increase shall be added to the tax base in the year in which that increase takes place. However, any such addition or additions, taken together, shall not exceed the amount of the deduction originally granted.

3. Where a fixed tangible asset not subject to depreciation has given rise to an exceptional decrease in value, the deductible costs under Article 18 shall be reduced to take into account the exceptional deduction that a taxpayer has already received.

[Article 40

Precision of categories of fixed assets

The Council, acting unanimously on a proposal from the Commission, shall define more precisely the categories of fixed assets referred to in this Chapter.]

CHAPTER V

LOSSES

Article 41

Losses

1. Unless otherwise provided for in this Directive, losses incurred in a tax year by a resident taxpayer or a permanent establishment of a non-resident taxpayer may be carried forward in its full amount and deducted in subsequent tax years as follows:

   (a) up to an amount of EUR 1 million, to the extent that they are covered by profits;

   (b) up to [60] percent of the taxable profits of the respective tax year after the deduction in point a).

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

3. Losses incurred by a resident taxpayer or by a permanent establishment of a non-resident taxpayer in previous years shall not be deducted where all of the following conditions are met:

   (a) another entity or individual acquires a participation in the taxpayer as a result of which the overall participation of the acquirer in the taxpayer exceeds 50%;

(b) there is a major change of activity of the taxpayer, which means that the taxpayer discontinues a certain activity which accounted for more than [60 %] of its turnover in the previous tax year or embarks on new activities which amount to more than [60 %] of its turnover in the tax year of their introduction or the following tax year.

4. The oldest losses shall be deducted first.

[Article 42

Loss relief and recapture

1. A resident taxpayer that is still profitable after having deducted its own losses pursuant to Article 41 may additionally deduct losses incurred, in the same tax year, by its immediate qualifying subsidiaries, as referred to in Article 3(1), or by permanent establishment(s) situated in other Member States. This loss relief shall be given for a limited period of time in accordance with paragraphs 3 and 4 of this Article.

   By derogation from the first subparagraph, where a taxpayer is allowed or required to act on behalf of a group as defined in the rules of the national legislation of a Member State, and where the companies forming part of such group are companies which are resident in such Member State and to which the rules of this directive apply, such group may be treated as an immediate qualifying subsidiary.

2. A deduction for losses in accordance with this article shall only be available to the extent that such losses have not been deducted, temporarily or otherwise, under the national legislation of any Member State.

3. The deduction shall be in proportion to the holding of the resident taxpayer in its immediate qualifying subsidiaries as referred to in Article 3(1) and full for permanent establishments. In no case shall the reduction of the tax base of the resident taxpayer result in a negative amount.

4. The resident taxpayer shall add back to its tax base, up to the amount previously deducted as a loss, any subsequent profits made by its immediate qualifying subsidiaries as referred to in Article 3(1) or by its permanent establishments.

5. Losses deducted pursuant to paragraphs 1, 2 and 3 shall automatically be recaptured into the tax base of the resident taxpayer in any of the following circumstances:

(a) where, at the end of the fifth tax year after the losses became deductible, no profit has been recaptured or the recaptured profits do not correspond to the full amount of losses deducted;

(b) where the immediate qualifying subsidiary as referred to in Article 3(1) is sold, wound up, merged or transformed into a permanent establishment;

(c) where the permanent establishment is sold, wound up or transformed into a subsidiary;

(d) where the parent company no longer fulfils the requirements of Article 3(1).]