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NOTE

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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 last Presidency compromise text on the CCTB proposal, Chapters II-III-IV-VII-VIII-X, referred to in the ECOFIN report to the European Council on tax issues (doc. 14349/19, paragraph 20).

ANNEX

2016/0337 (CNS)

[…]

Chapter I

Article 4

Definitions

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

[…]

(28) 'economic owner' means, [another person than the legal owner, when]

a) the person who receives substantially all the benefits and bears all the risks attached to a fixed asset, or

b) if the legal ownership of an asset is undermined in a way that allows a taxpayer to have the right to possess, use and dispose of a fixed asset and bear the risk of its loss or destruction for its entire useful life, the taxpayer shall in any event be considered the economic owner;

[…]

(30a) 'transparent for income tax purposes' refers to situations where, under the national law of a Member State, the income (or part thereof) of the entity or arrangement is not subject to income taxation at the level of the entity or the arrangement but is treated as the income of the persons who have an interest in that entity or arrangement;

[…]

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 period unless otherwise provided.

5. The tax base shall be determined on the basis of the accounting rules applicable in the Member State concerned, 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, losses 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 or the members of the 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. By derogation from the first paragraph, a Member State may decide that taxpayers need to calculate the tax base 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, including hidden contributions, 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

1. 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 and losses from a disposal of shares, provided that the taxpayer has maintained a minimum direct holding of 10 % in the capital or 10 % of the voting rights of the company during the 12 months preceding the disposal;

   (d) received profit distributions, including hidden profit distributions, provided that the taxpayer has a minimum direct 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 [and that the received profits have been subject to tax in the State of source];

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

2. Points (c) and (d) of Paragraph 1 shall not apply to:

   (a) gains and losses resulting from a disposal of shares held for trading as referred to in Article 21(3);

   (b) profit distributions from shares held for trading as referred to in Article 21(4).

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, acquisition or construction costs of assets less than EUR 1,000 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 period, 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 period.

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 period, 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 periods 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 period and its AGI equity base on the first day of the first tax period 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 period 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 periods, 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 period shall annually be moved forward by one tax period.

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 period, 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

1. 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. 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 or would be exempt in that tax period pursuant to points (c), (d) and (e) of Article 8 and the losses from the disposal of shares referred in point (c) of Article 8. Member States may fix as a flat rate the expenses relating to such exempted income, however the fixed amount may not exceed 5 % of this income;

   (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;

(m) book value of the sorted out inventory and tangible asset in the absence of properly documented business reasons.

2. Member States may provide for the deductibility of annual contributions set out in point k of paragraph 1.

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 period 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.]

[5a. Where the taxpayer is a member of a consolidated group for financial accounting purposes, the taxpayer may be given the right to fully deduct its exceeding borrowing costs if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group and subject to the following conditions:

(i) the ratio of the taxpayer's equity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer's equity over its total assets is lower by up to two percentage points; and

(ii) all assets and liabilities are valued using the same method as in the consolidated financial statements.]

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

[6a. The Member State of the taxpayer shall provide for rules to carry forward, up to five years, unused interest capacity.]

[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

Benefits granted to 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 period 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 period 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 period 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 period shall be increased with the value of stocks and work-in-progress at the beginning of the tax period and decreased with the value of stocks and work-in-progress at the end of the same tax period, 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 period.

   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 period 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 period or on the last day of the tax period, at the annual average exchange rate for the calendar year issued by the European Central Bank or, if the tax period does not coincide with the calendar year, at the average of daily observations issued by the European Central Bank through the tax period.

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 period or at the date of purchase if later, and their market value calculated at the end of the same tax period, shall be included in the tax base of that tax period.

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 period, shall be included in the tax base of that tax period.

   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 period or at the date of purchase if later, and its market value calculated at the end of the same tax period, shall be included in the tax base of that tax period.

   The market value of a financial instrument at the end of the tax period 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 period. 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 period in which they are incurred.

Article 23

Provisions

1. By way of derogation from Article 17, where at the end of a tax period it is established that the taxpayer has a legal or reasonably expected obligation, arising from activities or transactions carried out in that, or previous tax periods, 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.

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 periods, 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 period. In calculating the tax base in future tax periods, 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 or reasonably expected obligation at the end of the tax period, 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 period, 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

1. Member States may provide for the deduction of pension provisions.

2. For the purpose of this Article, 'pension provisions' means a long-term capital accumulation with the explicit objective of providing income on retirement and with limited possibilities for early withdrawal before that time.

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 period, 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 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 period, and the market value at the beginning of the same tax period shall be included in the tax base.

The market value of the hedging instrument at the end of the tax period 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 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)[1] 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 period, 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) by way of derogation from point (c) of Article 8, the tax base shall include the difference in the market value, as measured at the time of disposal and the beginning of the tax period, 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, including gains resulting from a disposal of shares of such assets;

1 OJ L 335, 17.12.2009, p. 1.

(c) by way of derogation from point (d) of Article 8, the tax base shall include profit distributions received by life insurance undertakings from investments made for the benefit of life insurance policyholders bearing the investment risk and which are held by life insurance undertakings;

(d) the technical provisions of insurance undertakings shall be deductible. The rule for calculating these provisions are set out in national law. Amounts deducted shall be reviewed and adjusted at the end of every tax period. Amounts already deducted shall be taken into account when calculating the tax base in future years.

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 period;
- 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 [public] subsidy directly linked to the acquisition, construction or improvement of the asset, as referred to in (a) point of Article 8.

Article 32

Entitlement to depreciate

1. Subject to paragraph 2, the legal owner shall deduct depreciation in respect of a fixed asset in accordance with the provisions of this Chapter.

2. Notwithstanding paragraph 1, the legal owner shall not deduct depreciation in accordance with the provisions of this Chapter if another taxpayer is considered to be the economic owner in respect of a fixed asset. [Instead, the economic owner shall have the entitlement to depreciate.]

3. In the case of leasing contracts, the lessee will register a leased asset as a right-of-use asset including also the corresponding lease liability equal to the net present value of the lease payments. The right-of-use asset shall be expensed over the term of the lease on a straight line basis, while the lease liability will be measured at the present value of the lease payments that are outstanding.

4. Where paragraph 1 applies to a leased asset:

   a) The legal owner will recognise in its tax base the amount equal to sum of interest income and capital element of the lease,

   b) The lessee shall deduct the interest expense and the release of the right-of-use asset as an expense within the meaning of Article 9.

5. In case where paragraph 2 applies to a leased asset:

a) the economic owner will deduct depreciation calculated in accordance with this Chapter,

b) the economic owner will treat only interest expense on the leased asset calculated pursuant to paragraph 3 as deductible expense within the meaning of Article 9,

c) the legal owner will recognise in its tax base in respect of the leased asset, within the meaning of Article 7, the profit on the initial measurement of the leased asset and the periodical interest income deriving from the lease.

6. A fixed asset, connected or not with a right-of-use asset, may not be depreciated by more than one taxpayer within a tax period, unless either the legal or the economic ownership is shared between more taxpayers or the economic or legal owner of the asset has changed in the period (prorata temporis).

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 period after the tax period 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 period prior to the disposal. Where the replacement asset is not purchased before the end of the second tax period 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 period 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 period shall be its value for tax purposes at the end of the preceding tax period, adjusted for assets entering and leaving the pool during the relevant tax period. 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 period 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.

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CHAPTER VII

RELATIONS BETWEEN THE TAXPAYER AND OTHER ENTITIES

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Article 55

Interest and royalties and any other income taxed at source

1. A deduction from the tax liability ('tax credit') of a taxpayer shall be allowed where that taxpayer derives income that has been taxed at source in another Member State or in a third country, other than income that is exempt under points (c), (d) or (e) of Article 8.

2. In calculating the tax credit, the amount of the income shall be decreased by related deductible expenses.

3. The tax credit for the tax liability in another Member State or a third country may not exceed the final corporate tax liability of a taxpayer in that tax period, unless an agreement concluded between the Member State in which the taxpayer has its residence for tax purposes and another Member State or a third country states otherwise.

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[CHAPTER VIII
TRANSACTIONS BETWEEN ASSOCIATED ENTERPRISES]

[Article 57

Adjustment of pricing in relations between associated enterprises

1. Where conditions are made or imposed in relations between associated enterprises that differ from those that would have been made between independent enterprises, any income that would have accrued to the taxpayer but because of those conditions has not so accrued, shall be included in the income of that taxpayer and taxed accordingly.

2. Income attributable to a permanent establishment is what the permanent establishment would be expected to earn, in particular in its dealings with other parts of the same taxpayer, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the taxpayer through the permanent establishment and through other parts of the same taxpayer.]

CHAPTER X
TRANSPARENT ENTITIES

Article 62

Allocation of the income of transparent entities to taxpayers holding an interest

1. Where an entity is treated as transparent for income tax purposes in the Member State where it is established, a taxpayer holding an interest in the entity shall include its share in the income of the entity in its tax base. For the purpose of this calculation, the income shall be computed in accordance with the rules of this Directive.

2. Transactions between a taxpayer and the entity referred to in paragraph 1 shall be disregarded in proportion to the taxpayer's share in the entity. Accordingly, the income of the taxpayer derived from those transactions shall be considered to be a proportion to the amount that would be agreed between independent enterprises calculated on an arm's length basis which corresponds to the third party ownership of the entity.

3. The taxpayer shall be entitled to relief for double taxation in accordance with Article 55.

Article 63

Determining transparency in the case of third country entities

The question whether an entity that is located in a third country is transparent for income tax purposes or not shall be determined according to the law of the Member State of the taxpayer.

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