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Delegations will find in the Annex the latest Presidency compromise text on the CCTB proposal, Chapters I to X, referred to in the ECOFIN report to the European Council on tax issues (doc. 9773/19).

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*

This Directive establishes a system of a common corporate tax base and lays down rules for the calculation of that base.

*Article 2*

*Scope*

1. The rules of this Directive shall apply to all taxpayers that are subject to corporate tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country.

2. The rules of this Directive shall not apply to the following sectors which fall under special tax regimes:

(a) shipping;

[(b) exploration and mining industries;]

[(c) forestry sector;]

[(d) *placeholder: other specific sectors to be determined*].

#### *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);

(2) 'non-taxpayer' means a company that does not meet the conditions of Article 2(1) or (2);

(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;

(4a) 'associated enterprise' means:

(a) an entity in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 25 percent or more or is entitled to receive 25 percent or more of the profits of that entity;

- (b) an individual or entity which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 25 percent or more or is entitled to receive 25 percent or more of the profits of the taxpayer;

If an individual or entity holds directly or indirectly a participation of 25 percent or more in a taxpayer and one or more entities, all the entities concerned, including the taxpayer, shall also be regarded as associated enterprises.

- (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, proceeds of liquidations, royalties, subsidies and grants, gifts received, compensations and ex-gratia payments. Revenues shall also include non-monetary gifts made by 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 period 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, any applicable period for tax purposes not longer than twelve months or any other applicable period for tax purposes longer than twelve months in relation to the establishment, liquidation or winding up of a taxpayer or if the taxpayer is involved in a group company restructuring;
- (8) 'profit' means an excess of revenues over deductible expenses and other deductible items in a tax period;

- (9) 'loss' means an excess of deductible expenses and other deductible items over revenues in a tax period;
- (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;
- (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<sup>1</sup>, 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;
- (21) 'acquisition or construction cost' means the monetary amount paid or payable, the value of other assets or any other consideration 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;

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<sup>1</sup> 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).

- (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;
- (23b) 'acquired goodwill' means the difference between the purchase price of a business in an assets deal and the market value of its net assets (assets minus liabilities);
- (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<sup>2</sup>, an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council<sup>3</sup>, 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<sup>4</sup>;

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

- (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<sup>5</sup>;
- (c) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;
- (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<sup>6</sup>, 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<sup>7</sup> and by Regulation (EC) No 987/2009 of the European Parliament and of the Council<sup>8</sup>, as well as any legal entity set up for the purpose of investment in such pension schemes;

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

- (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<sup>9</sup>;
  - (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<sup>10</sup>;
- (30) 'entity' means any legal arrangement to carry on business through either a company or a structure that is transparent for tax purposes;
- (30a) 'transparent for 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 taxed at the level of the entity or the arrangement but at the level of the persons who have an interest in that entity or arrangement;

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<sup>9</sup> 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).

<sup>10</sup> 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).

## *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 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. 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) [and gains resulting from a disposal of shares held by life insurance undertakings in accordance with point (b) of Article 28];
- (b) 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].

## *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 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)<sup>11</sup> 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) 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;

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<sup>11</sup> OJ L 335, 17.12.2009, p. 1.

- (c) 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.
4. The depreciation of fixed assets that have not been used for more than 12 months for reasons not 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 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.
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 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.

## CHAPTER V

### LOSSES

#### *Article 41*

##### *Losses*

1. Unless otherwise provided for in this Directive, losses incurred in a tax period 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 periods as follows:
  - (a) up to an amount of EUR 1 million, to the extent that they are covered by profits;
  - (b) up to 50 percent of the taxable profits of the respective tax period after the deduction in point a).
- [1a. By way of derogation from paragraph 1 (b), Member States may provide for a higher percentage of the taxable profits up to which losses incurred in tax period may be deducted by a resident taxpayer or a permanent establishment of a non-resident taxpayer in subsequent tax periods.]
2. A reduction of the tax base as a result of considering losses from previous tax periods 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 percent of its turnover in the previous tax period or embarks on new activities which amount to more than 60 percent of its turnover in the tax period of their introduction or the following tax period [or reduces the number of employees by more than X percent.]
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, 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 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-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 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.]

**CHAPTER VI**  
**RULES ON ENTERING AND LEAVING THE SYSTEM OF THE TAX BASE**

*Article 43*

*Recognition and valuation of assets and liabilities*

All assets and liabilities shall be recognised at their tax value, as calculated in accordance with national tax rules immediately prior to the date on which the rules of this Directive start to be applied to the taxpayer.

*Article 44*

*Qualification of fixed assets for depreciation purposes*

In addition to Articles 30 to 40, the following rules shall apply in connection with the depreciation of fixed assets which transition from national corporate tax law to the system of the tax base:

- (a) fixed assets that are individually depreciable both under the national corporate tax law previously applicable to the taxpayer and under the rules of this Directive shall be depreciated according to Article 33(2);
- (b) fixed assets that were included in an asset pool for depreciation purposes under the national corporate tax law previously applicable to the taxpayer shall enter into in the asset pool referred to in Article 37, irrespective of whether they would be individually depreciable under the rules of this Directive;

- (c) fixed assets that were not depreciable or were not depreciated under the national corporate tax law previously applicable to the taxpayer but are depreciable under the rules of this Directive shall be depreciated in accordance with Article 33(1) or Article 37, as the case may be;
- (d) assets that were individually depreciable or included in an asset pool for depreciation purposes under the national corporate tax law previously applicable to the taxpayer but are not depreciable under the rules of this Directive shall be recognised at their tax value, as calculated in accordance with the national tax rules immediately prior to the date on which the rules of this Directive start to be applied to the taxpayer. The tax value of those assets shall be deductible in the tax year in which the assets are disposed of, provided that the disposal proceeds are included in the tax base.
- (e) acquired goodwill that was not depreciable under national corporate tax law previously applicable to the taxpayer shall be depreciated as newly acquired goodwill over 15 years.

*Article 45*

*Long-term contracts*

1. Revenues and expenses which pursuant to Article 22(2) and (3) are considered to have accrued or been incurred before the rules of this Directive became applicable to the taxpayer, but were not yet included in the tax base under the national corporate tax law previously applicable to the taxpayer, shall be added to or deducted from the tax base in accordance with the national legislation previously applicable to the taxpayer.
2. Revenues which had been taxed under national corporate tax law before the taxpayer became subject to the rules of this Directive at a higher amount than the amount that would have been included in the tax base pursuant to Article 22(2) shall be deducted from the tax base in the first tax year that the rules of this Directive become applicable to the taxpayer.

## *Article 46*

### *Provisions, revenues and deductions*

1. Provisions as referred to in Article 23 and bad-debt deductions as referred to in Article 25 shall be deductible only to the extent that they arise from activities or transactions carried out after the rules of this Directive became applicable to the taxpayer.
2. Revenues which pursuant to Article 16 are considered to have accrued before the taxpayer became subject to the rules of this Directive but were not yet included in the tax base under the national corporate tax law previously applicable to the taxpayer shall be added to the tax base in accordance with the national legislation previously applicable to the taxpayer..
3. Expenses incurred after the rules of this Directive became applicable to the taxpayer but in relation to activities or transactions carried out prior to the application of the Directive and for which no deduction was made shall be deductible.
4. Amounts that have already been deducted by a taxpayer before the rules of this Directive became applicable to him or her may not be deducted again.

## *Article 47*

### *Pre-entry losses*

A taxpayer bringing forward unrelieved losses incurred before the rules of this Directive became applicable to him or her, may deduct those losses from its tax base if and to the extent that the national legislation applicable to the taxpayer and according to which those losses were incurred, allow for such deduction. The conditions of Article 41(1) should also apply to the pre-entry losses.

*Article 48*

*Recognition of assets and liabilities*

The assets and liabilities of a taxpayer to whom the rules of this Directive no longer apply, shall be recognised at their value, as calculated according to the rules of this Directive, unless otherwise stated in this Directive.

*Article 49*

*Recognition of the asset pool of a taxpayer*

The asset pool of a taxpayer to whom the rules of this Directive no longer apply, shall be recognised, for the purposes of the national tax rules subsequently applicable, as one asset pool which shall be depreciated in accordance with the declining balance method at an annual rate of 25 %.

*Article 50*

*Revenues and expenses arising from long-term contracts*

The revenues and expenses arising from long-term contracts of a taxpayer to whom the rules of this Directive no longer apply shall be treated in accordance with the national corporate tax law subsequently applicable. However, revenues and expenses already taken into account for tax purposes in accordance with the rules of this Directive shall not be taken into account again.

*Article 51*

*Provisions, revenues and deductions*

1. Expenses of a taxpayer to whom the rules of this Directive no longer apply and which have already been deducted in accordance with Articles 9, 23 and 25 may not be deducted again under the national corporate tax law subsequently applicable.
2. Revenues of a taxpayer to whom the rules of this Directive no longer apply and which the taxpayer has already included in its tax base in accordance with Article 4(5) and Article 16 may not be included again under the national corporate tax law subsequently applicable.
3. Expenses incurred by the taxpayer in accordance with the rules of this Directive and which remain partly unrelieved after the rules of this Directive are no longer applicable to the taxpayer shall be deductible according to the rules of this Directive.

*Article 52*

*Losses on exit*

Unrelieved losses incurred by the taxpayer in accordance with the rules of this Directive shall be carried forward in accordance with the national corporate tax law subsequently applicable.

**CHAPTER VII**  
**RELATIONS BETWEEN THE TAXPAYER AND OTHER ENTITIES**

*[Article 53*

*Switch-over*

1. By way of derogation from points (c) and (d) of Article 8, a taxpayer shall not be exempt from tax on foreign income that the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country where that entity in its country of tax residence is subject to a statutory corporate tax rate lower than half of the statutory tax rate that the taxpayer would have been subject to, in connection with such foreign income, in the Member State of its residence for tax purposes.

The first subparagraph shall not apply where a convention for the avoidance of double taxation between the Member State in which the taxpayer is resident for tax purposes and the third country where that entity is resident for tax purposes does not allow switching over from a tax exemption to taxing the designated categories of foreign income.

2. Where paragraph 1 applies, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in the Member State where it is resident for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.
3. Member States shall exclude losses from the scope of this Article in the event of a disposal of shares in an entity that has its residence for tax purposes in a third country.]

*[Article 54*

*Computation of income of a foreign permanent establishment*

Where Article 53 applies to the income of a permanent establishment in a third country, its revenues, expenses and other deductible items shall be determined according to the rules of this Directive.]

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

## 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 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 or not shall be determined according to the law of the Member State of the taxpayer.