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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 23 July 1990

on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States

(90/434/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal of the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the establishment and effective functioning of the common market; whereas such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States; whereas to that end it is necessary to introduce with respect to such operations tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the common market, to increase their productivity and to improve their competitive strength at the international level;

Whereas tax provisions disadvantage such operations, in comparison with those concerning companies of the same Member State; whereas it is necessary to remove such disadvantages;

Whereas it is not possible to attain this objective by an extension at the Community level of the systems presently in force in the Member States, since differences between these systems tend to produce distortions; whereas only a common tax system is able to provide a satisfactory solution in this respect;

Whereas the common tax system ought to avoid the imposition of tax in connection with mergers, divisions, transfers of assets or exchanges of shares, while at the same time safeguarding the financial interests of the State of the transferring or acquired company;

Whereas in respect of mergers, divisions or transfers of assets, such operations normally result either in the transformation of the transferring company into a permanent establishment of the company receiving the assets or in the assets becoming connected with a permanent establishment of the latter company;

Whereas the system of deferral of the taxation of the capital gains relating to the assets transferred until their actual disposal, applied to such of those assets as are transferred to that permanent establishment, permits exemption from taxation of the corresponding capital gains, while at the same time ensuring their ultimate taxation by the State of the transferring company at the date of their disposal;

Whereas it is also necessary to define the tax regime applicable to certain provisions, reserves or losses of the transferring company and to solve the tax problems occurring where one of the two companies has a holding in the capital of the other;

Whereas the allotment to the shareholders of the transferring company of securities of the receiving or acquiring company would not in itself give rise to any taxation in the hands of such shareholders;

(1) OJ No C 39, 22. 3. 1969, p. 1.
(2) OJ No C 51, 29. 4. 1970, p. 12.
(3) OJ No C 100, 1. 8. 1969, p. 4.

Whereas it is necessary to allow Member States the possibility of refusing to apply this Directive where the merger, division, transfer of assets or exchange of shares operation has as its objective tax evasion or avoidance or results in a company, whether or not it participates in the operation, no longer fulfilling the conditions required for the representation of employees in company organs,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

Each Member State shall apply this Directive to mergers, divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved.

Article 2

For the purposes of this Directive:

(a) 'merger' shall mean an operation whereby:

— one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their shareholders of securities respresenting the capital of that other company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities,

— two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities,

— a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital;

(b) 'division' shall mean an operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

(c) 'transfer of assets' shall mean an operation whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer;

(d) 'exchange of shares' shall mean an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;

(e) 'transferring company' shall mean the company transferring its assets and liabilities or transferring all or one or more branches of its activity;

(f) 'receiving company' shall mean the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company;

(g) 'acquired company' shall mean the company in which a holding is acquired by another company by means of an exchange of securities;

(h) 'acquiring company' shall mean the company which acquires a holding by means of an exchange of securities;

(i) 'branch of activity' shall mean all the assets and liabilities of a division of a company which from an organizational point of view constitute an independent business, that is to say an entity capable of functioning by its own means.

Article 3

For the purposes of this Directive, 'company from a Member State' shall mean any company which:

(a) takes one of the forms listed in the Annex hereto;

(b) according to the tax laws of a Member State is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Community;

(c) moreover, is subject to one of the following taxes, without the possibility of an option or of being exempt:

— impôt des sociétés/vennootschapsbelasting in Belgium,

— selskabsskat in Denmark,

— Körperschaftsteuer in the Federal Republic of Germany,

— φόρος εισοδήματος νομικών προσώπων κερδοκοπικού χαρακτήρα, in Greece,

— impuesto sobre sociedades in Spain,

— impôt sur les sociétés in France,

— corporation tax in Ireland,

— imposta sul reddito delle persone giuridiche in Italy,

— impôt sur le revenu des collectivités in Luxembourg,

— vennootschapsbelasting in the Netherlands,

— imposto sobre o rendimento das pessoas colectivas in Portugal,

— corporation tax in the United Kingdom,

or to any other tax which may be substituted for any of the above taxes.

TITLE II

Rules applicable to mergers, divisions and exchanges of shares

Article 4

1. A merger or division shall not give rise to any taxation of capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes. The following expressions shall have the meanings assigned to them:

— value for tax purposes: the value on the basis of which any gain or loss would have been computed for the purposes of tax upon the income, profits or capital gains of the transferring company if such assets or liabilities had been sold at the time of the merger or division but independently of it,

— transferred assets and liabilities: those assets and liabilities of the transferring company which, in consequence of the merger or division, are effectively connected with a permanent establishment of the receiving company in the Member State of the transferring company and play a part in generating the profits or losses taken into account for tax purposes.

2. The Member States shall make the application of paragraph 1 conditional upon the receiving company's computing any new depreciation and any gains or losses in respect of the assets and liabilities transferred according to the rules that would have applied to the transferring company or companies if the merger or division had not taken place.

3. Where, under the laws of the Member State of the transferring company, the receiving company is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities transferred computed on a basis different from that set out in paragraph 2, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

Article 5

The Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the transferring company are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by the permanent establishments of the receiving company which are situated in the Member State of the transferring company, the receiving company thereby assuming the rights and obligations of the transferring company.

Article 6

To the extent that, if the operations referred to in Article 1 were effected between companies from the Member State of the transferring company, the Member State would apply provisions allowing the receiving company to take over the losses of the transferring company which had not yet been exhausted for tax purposes, it shall extend those provisions to cover the take-over of such losses by the receiving company's permanent establishments situated within its territory.

Article 7

1. Where the receiving company has a holding in the capital of the transferring company, any gains accruing to the receiving company on the cancellation of its holding shall not be liable to any taxation.

2. The Member States may derogate from paragraph 1 where the receiving company's holding in the capital of the transferring company does not exceed 25 %.

Article 8

1. On a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

2. The Member States shall make the application of paragraph 1 conditional upon the shareholder's not attributing to the securities received a value for tax purposes higher than the securities exchanged had immediately before the merger, division or exchange.

The application of paragraph 1 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.

In this paragraph the expression 'value for tax purposes' means the amount on the basis of which any gain or loss would be computed for the purposes of tax upon the income, profits or capital gains of a shareholder of the company.

3. Where, under the law of the Member State in which he is resident, a shareholder may opt for tax treatment different from that set out in paragraph 2, paragraph 1 shall not apply to the securities in respect of which such an option is exercised.

4. Paragraphs 1, 2 and 3 shall not prevent a Member State from taking into account when taxing shareholders any cash payment that may be made on the merger, division or exchange.

TITLE III

Rules applicable to transfers of assets

Article 9

The provisions of Articles 4, 5 and 6 shall apply to transfers of assets.

TITLE IV

Special case of the transfer of a permanent establishment

Article 10

1. Where the assets transferred in a merger, a division or a transfer of assets include a permanent establishment of the transferring company which is situated in a Member State other than that of the transferring company, the latter State shall renounce any right to tax that permanent establishment. However, the State of the transferring company may reinstate in the taxable profits of that company such losses of the permanent establishment as may previously have been set off against the taxable profits of the company in that State and which have not been recovered. The State in which the permanent establishment is situated and the State of the receiving company shall apply the provisions of this Directive to such a transfer as if the former State were the State of the transferring company.

2. By way of derogation from paragraph 1, where the Member State of the transferring company applies a system of taxing world-wide profits, that Member State shall have the right to tax any profits or capital gains of the permanent establishment resulting from the merger, division or transfer of assets, on condition that it gives relief for the tax that, but for the provisions of this Directive, would have been charged on those profits or capital gains in the Member State in which that permanent establishment is situated, in the same way and in the same amount as it would have done if that tax had actually been charged and paid.

TITLE V

Final provisions

Article 11

1. A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Titles II, III and IV where it appears that the merger, division, transfer of assets or exchange of shares:

(a) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that one of the operations referred to in Article 1 is not carried out for valid commercial reasons such as the restructuring or rationalization of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;

(b) results in a company, whether participating in the operation or not, no longer fulfilling the necessary conditions for the representation of employees on company organs according to the arrangements which were in force prior to that operation.

2. Paragraph 1 (b) shall apply as long as and to the extent that no Community law provisions containing equivalent rules on representation of employees on company organs are applicable to the companies covered by this Directive.

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1992 and shall forthwith inform the Commission thereof.

2. By way of derogation from paragraph 1, the Portuguese Republic may delay the application of the provisions concerning transfers of assets and exchanges of shares until 1 January 1993.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 23 July 1990.

For the Council

The President

G. CARLI

ANNEX

List of companies referred to in Article 3 (a)

(a) companies under Belgian law known as 'société anonyme' / 'naamloze vennootschap', 'société en commandite par actions' / 'commanditaire vennootschap op aandelen', 'société privée à responsabilité limitée' / 'besloten vennootschap met beperkte aansprakelijkheid' and those public law bodies that operate under private law;

(b) companies under Danish law known as: 'aktieselskab', 'anpartsselskab';

(c) companies under German law known as: 'Aktiengesellschaft', 'Kommanditgesellschaft auf Aktien', 'Gesellschaft mit beschränkter Haftung', 'bergrechtliche Gewerkschaft';

(d) companies under Greek law known as: 'ανώνυμη εταιρεία';

(e) companies under Spanish law known as: 'sociedad anónima', 'sociedad comanditaria por acciones', 'sociedad de responsabilidad limitada' and those public law bodies which operate under private law;

(f) companies under French law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée' and industrial and commercial public establishments and undertakings;

(g) the companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;

(h) companies under Italian law known as 'società per azioni', 'società in accomandita per azioni', 'società a responsabilità limitata', and public and private entities carrying on industrial and commercial activities;

(i) companies under Luxembourg law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée';

(j) companies under Dutch law known as: 'naamloze vennootschap', 'besloten vennootschap met beperkte aansprakelijkheid';

(k) commercial companies or civil law companies having a commercial form as well as other legal persons carrying on commercial or industrial activities, which are incorporated in accordance with Portuguese law;

(l) companies incorporated under the law of the United Kingdom.

COUNCIL DIRECTIVE

of 23 July 1990

on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

(90/435/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal of the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the grouping together of companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the establishment and effective functioning of the common market; whereas such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States; whereas it is therefore necessary to introduce with respect to such grouping together of companies of different Member States, tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the common market, to increase their productivity and to improve their competitive strength at the international level;

Whereas such grouping together may result in the formation of groups of parent companies and subsidiaries;

Whereas the existing tax provisions which govern the relations between parent companies and subsidiaries of different Member States vary appreciably from one Member State to another and are generally less advantageous than those applicable to parent companies and subsidiaries of the same Member State; whereas cooperation between companies of different Member States is thereby disadvantaged in comparison with cooperation between companies of the same Member State; whereas it is necessary to eliminate this disadvantage by the introduction of a common system in order to facilitate the grouping together of companies;

Whereas where a parent company by virtue of its association with its subsidiary receives distributed profits, the State of the parent company must:

— either refrain from taxing such profits,

— or tax such profits while authorizing the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits;

Whereas it is furthermore necessary, in order to ensure fiscal neutrality, that the profits which a subsidiary distributes to its parent company be exempt from withholding tax; whereas, however, the Federal Republic of Germany and the Hellenic Republic, by reason of the particular nature of their corporate tax systems, and the Portuguese Republic, for budgetary reasons, should be authorized to maintain temporarily a withholding tax,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Each Member State shall apply this Directive:

— to distributions of profits received by companies of that State which come from their subsidiaries of other Member States,

— to distributions of profits by companies of that State to companies of other Member States of which they are subsidiaries.

2. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse.

Article 2

For the purposes of this Directive 'company of a Member State' shall mean any company which:

(a) takes one of the forms listed in the Annex hereto;

(b) according to the tax laws of a Member State is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Community;

(c) moreover, is subject to one of the following taxes, without the possibility of an option or of being exempt:

— impôt des sociétés/vennootschapsbelasting in Belgium,

— selskabsskat in Denmark,

— Körperschaftsteuer in the Federal Republic of Germany,

(1) OJ No C 39, 22. 3. 1969, p. 7 and Amendment transmitted on 5 July 1985.
(2) OJ No C 51, 29. 4. 1970, p. 6.
(3) OJ No C 100, 1. 8. 1969, p. 7.

— φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα in Greece,

— impuesto sobre sociedades in Spain,

— impôt sur les sociétés in France,

— corporation tax in Ireland,

— imposta sul reddito delle persone giuridiche in Italy,

— impôt sur le revenu des collectivités in Luxembourg,

— vennootschapsbelasting in the Netherlands,

— imposto sobre o rendimento das pessoas colectivas in Portugal,

— corporation tax in the United Kingdom,

or to any other tax which may be substituted for any of the above taxes.

Article 3

1. For the purposes of applying this Directive,

(a) the status of parent company shall be attributed at least to any company of a Member State which fulfils the conditions set out in Article 2 and has a minimum holding of 25 % in the capital of a company of another Member State fulfilling the same conditions;

(b) 'subsidiary' shall mean that company the capital of which includes the holding referred to in (a).

2. By way of derogation from paragraph 1, Member States shall have the option of:

— replacing, by means of bilateral agreement, the criterion of a holding in the capital by that of a holding of voting rights,

— not applying this Directive to companies of that Member State which do not maintain for an uninterrupted period of at least two years holdings qualifying them as parent companies or to those of their companies in which a company of another Member State does not maintain such a holding for an uninterrupted period of at least two years.

Article 4

1. Where a parent company, by virtue of its association with its subsidiary, receives distributed profits, the State of the parent company shall, except when the latter is liquidated, either:

— refrain from taxing such profits, or

— tax such profits while authorizing the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits and, if appropriate, the amount of the withholding tax levied by the Member State in which the subsidiary is resident, pursuant to the derogations provided for in Article 5, up to the limit of the amount of the corresponding domestic tax.

2. However, each Member State shall retain the option of providing that any charges relating to the holding and any losses resulting from the distribution of the profits of the subsidiary may not be deducted from the taxable profits of the parent company. Where the management costs relating to the holding in such a case are fixed as a flat rate, the fixed amount may not exceed 5 % of the profits distributed by the subsidiary.

3. Paragraph 1 shall apply until the date of effective entry into force of a common system of company taxation.

The Council shall at the appropriate time adopt the rules to apply after the date referred to in the first subparagraph.

Article 5

1. Profits which a subsidiary distributed to its parent company shall, at least where the latter holds a minimum of 25 % of the capital of the subsidiary, be exempt from withholding tax.

2. Notwithstanding paragraph 1, the Hellenic Republic may, for so long as it does not charge corporation tax on distributed profits, levy a withholding tax on profits distributed to parent companies of other Member States. However, the rate of that withholding tax must not exceed the rate provided for in bilateral double-taxation agreements.

3. Notwithstanding paragraph 1, the Federal Republic of Germany may, for as long as it charges corporation tax on distributed profits at a rate at least 11 points lower than the rate applicable to retained profits, and at the latest until mid-1996, impose a compensatory withholding tax of 5 % on profits distributed by its subsidiary companies.

4. Notwithstanding paragraph 1, the Portuguese Republic may levy a withholding tax on profits distributed by its subsidiaries to parent companies of other Member States until a date not later than the end of the eighth year following the date of application of this Directive.

Subject to the existing bilateral agreements concluded between Portugal and a Member State, the rate of this withholding tax may not exceed 15 % during the first five years and 10 % during the last three years of that period.

Before the end of the eighth year the Council shall decide unanimously, on a proposal from the Commission, on a possible extension of the provisions of this paragraph.

Article 6

The Member State of a parent company may not charge withholding tax on the profits which such a company receives from a subsidiary.

Article 7

1. The term 'withholding tax' as used in this Directive shall not cover an advance payment or prepayment (précompte) of corporation tax to the Member State of the subsidiary which is made in connection with a distribution of profits to its parent company.

2. This Directive shall not affect the application of domestic or agreement-based provisions designed to eliminate or lessen economic double taxation of dividends, in particular provisions relating to the payment of tax credits to the recipients of dividends.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1992. They shall forthwith inform the Commission thereof.

2. Member States shall ensure that the texts of the main provisions of domestic law which they adopt in the field covered by this Directive are communicated to the Commission.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 23 July 1990.

For the Council

The President

G. CARLI

ANNEX

List of companies referred to in Article 2 (a)

(a) companies under Belgian law known as 'société anonyme' / 'naamloze vennootschap', 'société en commandite par actions' / 'commanditaire vennootschap op aandelen', 'société privée à responsabilité limitée' / 'besloten vennootschap met beperkte aansprakelijkheid' and those public law bodies that operate under private law;

(b) companies under Danish law known as: 'aktieselskab', 'anpartsselskab';

(c) companies under German law known as: 'Aktiengesellschaft', 'Kommanditgesellschaft auf Aktien', 'Gesellschaft mit beschränkter Haftung', 'bergrechtliche Gewerkschaft';

(d) companies under Greek law known as: 'ανώνυμη εταιρία';

(e) companies under Spanish law known as: 'sociedad anónima', 'sociedad comanditaria por acciones', 'sociedad de responsabilidad limitada' and those public law bodies which operate under private law;

(f) companies under French law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée' and industrial and commercial public establishments and undertakings;

(g) the companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;

(h) companies under Italian law known as 'società per azioni', 'società in accomandita per azioni', 'società a responsabilità limitata', and public and private entities carrying on industrial and commercial activities;

(i) companies under Luxembourg law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée';

(j) companies under Dutch law known as: 'naamloze vennootschap', 'besloten vennootschap met beperkte aansprakelijkheid';

(k) commercial companies or civil law companies having a commercial form cooperatives and public undertakings incorporated in accordance with Portuguese law;

(l) companies incorporated under the law of the United Kingdom.

CONVENTION

on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

(90/463/EEC)

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

DESIRING to give effect to Article 220 of that Treaty, by virtue of which they have undertaken to enter into negotiations with one another with a view to securing for the benefit of their nationals the elimination of double taxation,

CONSIDERING the importance attached to the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

HAVE DECIDED to conclude this Convention, and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Philippe de SCHOUTHEETE de TERVARENT,
Ambassador Extraordinary and Plenipotentiary;

HER MAJESTY THE QUEEN OF DENMARK:

Niels HELVEG PETERSEN,
Minister for Economic Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Theo WAIGEL,
Federal Minister for Finance;

Jürgen TRUMPF,
Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Ioannis PALAIOKRASSAS,
Minister for Finance;

HIS MAJESTY THE KING OF SPAIN:

Carlos SOLCHAGA CATALÁN,
Minister for Economic Affairs and Finance;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Jean VIDAL,
Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF IRELAND:

Albert REYNOLDS,
Minister for Finance;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Stefano DE LUCA,
State Secretary for Finance;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Jean-Claude JUNCKER,
Minister for the Budget, Minister for Finance, Minister for Labour;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

P.C. NIEMAN,
Ambassador Extraordinary and Plenipotentiary;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Miguel BELEZA,
Minister for Finance;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

David H.A. HANNAY KCMG,
Ambassador Extraordinary and Plenipotentiary;

WHO, meeting within the Council and having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

1. This Convention shall apply where, for the purposes of taxation, profits which are included in the profits of an enterprise of a Contracting State are also included or are also likely to be included in the profits of an enterprise of another Contracting State on the grounds that the principles set out in Article 4 and applied either directly or in corresponding provisions of the law of the State concerned have not been observed.

2. For the purposes of this Convention, the permanent establishment of an enterprise of an Contracting State situated in another Contracting State shall be deemed to be an enterprise of the State in which it is situated.

3. Paragraph 1 shall also apply where any of the enterprises concerned have made losses rather than profits.

Article 2

1. This Convention shall apply to taxes on income.

2. The existing taxes to which this Convention shall apply are, in particular the following:

(a) in Belgium:
- impôt des personnes physiques/personenbelasting,
- impôt des sociétés/vennootschapsbelasting,
- impôt des personnes morales/rechtspersonenbelasting,
- impôt des non-résidents/belasting der niet-verblijfhouders,
- taxe communale et la taxe d'agglomération additionnelles à l'impôt des personnes physiques/aanvullende gemeentebelasting en agglomeratiebelasting op de personenbelasting;

(b) in Denmark:
- selskabsskat,
- indkomstskat til staten,
- kommunale indkomstskat,
- amtskommunal indkomstskat,
- særlig indkomstskat,
- kirkeskat,
- udbytteskat,
- renteskat,
- royaltyskat,
- frigørelsesafgift;

(c) in the Federal Republic of Germany:
- Einkommensteuer,
- Körperschaftsteuer,
- Gewerbesteuer, in so far as this tax is based on trading profits;

(d) in Greece:
- φόρος εισοδήματος φυσικών προσώπων,
- φόρος εισοδήματος νομικών προσώπων,
- εισφορά υπέρ των επιχειρήσεων ύδρευσης και αποχέτευσης;

(e) in Spain:
- impuesto sobre la renta de las personas fisicas,
- impuesto sobre sociedades;

(f) in France:
- impôt sur le revenu,
- impôt sur les sociétés;

(g) in Ireland:
- Income Tax,
- Corporation Tax;

(h) in Italy:
- imposta sul reddito delle persone fisiche,
- imposta sul reddito delle persone giuridiche,
- imposta locale sui redditi;

(i) in Luxembourg:
- impôt sur le revenu des personnes physiques,
- impôt sur le revenu des collectivités,
- impôt commercial, in so far as this tax is based on trading profits;

(j) in the Netherlands:
- inkomstenbelasting,
- vennootschapsbelasting;

(k) in Portugal:
- imposto sobre o rendimento das pessoas singulares,
- imposto sobre o rendimento das pessoas colectivas,
- derrama para os municípios sobre o imposto sobre o rendimento das pessoas colectivas;

(l) in the United Kingdom:
- Income Tax,
- Corporation Tax.

3. The Convention shall also apply to any identical or similar taxes which are imposed after the date of signature thereof in addition to, or in place of existing taxes. The competent authorities of the Contracting States shall inform each other of any changes made in the respective domestic laws.

CHAPTER II

GENERAL PROVISIONS

Section I

Definitions

Article 3

1. For the purposes of this Convention: 'competent authority' shall mean:

— in Belgium:

De Minister van Financiën or an authorized representative,

Le Ministre des Finances or an authorized representative,

— in Denmark:

Skatteministeren or an authorized representative,

— in the Federal Republic of Germany:

Der Bundesminister der Finanzen or an authorized representative,

— in Greece:

Ο Υπουργός των Οικονομικών or an authorized representative,

— in Spain:

El Ministro de Economía y Hacienda or an authorized representative,

— in France:

Le Ministre chargé du budget or an authorized representative,

— in Ireland:

The Revenue Commissioners or an authorized representative,

— in Italy:

Il Ministro delle Finanze or an authorized representative,

— in Luxembourg:

Le Ministre des Finances or an authorized representative,

— in the Netherlands:

De Minister van Financiën or an authorized representative,

— in Portugal:

O Ministro das Finanças or an authorized representative,

— in the United Kingdom:

The Commissioners of Inland Revenue or an authorized representative.

2. Any term not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the double taxation convention between the States concerned.

Section II

Principles applying to the adjustment of profits of associated enterprises and to the attribution of profits to permanent establishments

Article 4

The following principles shall be observed in the application of this Convention:

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of another Contracting State,

or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one Contracting State and an enterprise of another Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ form those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where an enterprise of a Contracting State carries on business in another Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

Article 5

Where a Contracting State intends to adjust the profits of an enterprise in accordance with the principles set out in Article 4, it shall inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Contracting State.

However, the Contracting State providing such information shall not be prevented from making the proposed adjustment.

If after such information has been given the two enterprises and the other Contracting State agree to the adjustment, Articles 6 and 7 shall not apply.

Section 3

Mutual agreement and arbitration procedure

Article 6

1. Where an enterprise considers that, in any case to which this Convention applies, the principles set out in Article 4 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Contracting States concerned, present its case to the competent authority of the Contracting State of which it is an enterprise or in which its permanent establishment is situated. The case must be presented within three years of the first notification of the action which results or is likely to result in double taxation within the meaning of Article 1.

The enterprise shall at the same time notify the competent authority if other Contracting States may be concerned in the case. The competent authority shall then without delay notify the competent authorities of those other Contracting States.

2. If the complaint appears to it to be well-founded and if it is not itself able to arrive at a satisfactory solution, the competent authority shall endeavour to resolve the case by mutual agreement with the competent authority of any other Contracting State concerned, with a view to the elimination of double taxation on the basis of the principles set out in Article 4. Any mutual agreement reached shall be implemented irrespective of any time limits prescribed by the domestic laws of the Contracting States concerned.

Article 7

1. If the competent authorities concerned fail to reach an agreement that eliminates the double taxation referred to in Article 6 within two years of the date on which the case was first submitted to one of the competent authorities in accordance with Article 6 (1), they shall set up an advisory commission charged with delivering its opinion on the elimination of the double taxation in question.

Enterprises may have recourse to the remedies available to them under the domestic law of the Contracting States concerned; however, where the case has so been submitted to a court or tribunal, the term of two years referred to in the first subparagraph shall be computed from the date on which the judgment of the final court of appeal was given.

2. The submission of the case to the advisory commission shall not prevent a Contracting State from initiating or continuing judicial proceedings or proceedings for administrative penalties in relation to the same matters.

3. Where the domestic law of a Contracting State does not permit the competent authorities of that State to derogate from the decisions of their judicial bodies, paragraph 1 shall not apply unless the associated enterprise of that State has allowed the time provided for appeal to expire, or has withdrawn any such appeal before a decision has been delivered. This provision shall not affect the appeal if and in so far as it relates to matters other than those referred to in Article 6.

4. The competent authorities may by mutual agreement and with the agreement of the associated enterprises concerned waive the time limits referred to in paragraph 1.

5. In so far as the provisions of paragraphs 1 to 4 are not applied, the rights of each of the associated enterprises, as laid down in Article 6, shall be unaffected.

Article 8

1. The competent authority of a Contracting State shall not be obliged to initiate the mutual agreement procedure or

to set up the advisory commission referred to in Article 7 where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 one of the enterprises concerned is liable to a serious penalty.

2. Where judicial or administrative proceedings, initiated with a view to a ruling that by actions giving rise to an adjustment of profits under Article 4 one of the enterprises concerned was liable to a serious penalty, are being conducted simultaneously with any of the proceedings referred to in Articles 6 and 7, the competent authorities may stay the latter proceedings until the judicial or administrative proceedings have been concluded.

Article 9

1. The advisory commission referred to in Article 7 (1) shall consist of, in addition to its Chairman:

— two representatives of each competent authority concerned; this number may be reduced to one by agreement between the competent authorities,

— an even number of independent persons of standing to be appointed by mutual agreement from the list of persons referred to in paragraph 4 or, in the absence of agreement, by the drawing of lots by the competent authorities concerned.

2. When the independent persons of standing are appointed an alternate shall be appointed for each of them according to the rules for the appointment of the independent persons in case the independent persons are prevented from carrying out their duties.

3. Where lots are drawn, each of the competent authorities may object to the appointment of any particular independent person of standing in any circumstance agreed in advance between the competent authorities concerned or in one of the following situations:

— where that person belongs to or is working on behalf of one of the tax administrations concerned,

— where that person has, or has had, a large holding in or is or has been an employee of or adviser to one or each of the associated enterprises,

— where that person does not offer a sufficient guarantee of objectivity for the settlement of the case or cases to be decided.

4. The list of independent persons of standing shall consist of all the independent persons nominated by the Contracting States. For this purpose each Contracting State shall nominate five persons and shall inform the Secretary-General of the Council of the European Communities thereof.

Such persons must be nationals of a Contracting State and resident within the territory to which this Convention applies. They must be competent and independent.

The Contracting States may make alterations to the list referred to in the first subparagraph; they shall inform the Secretary-General of the Council of the European Communities thereof without delay.

5. The representatives and independent persons of standing appointed in accordance with paragraph 1 shall elect a Chairman from among those persons of standing on the list referred to in paragraph 4, without prejudice to the right of each competent authority concerned to object to the appointment of the person of standing thus chosen in one of the situations referred to in paragraph 3.

The Chairman must possess the qualifications required for appointment to the highest judicial offices in his country or be a jurisconsult of recognized competence.

6. The members of the advisory commission shall keep secret all matters which they learn as a result of the proceedings. The Contracting States shall adopt appropriate provisions to penalize any breach of secrecy obligations. They shall, without delay inform the Commission of the European Communities of the measures taken. The Commission of the European Comunities shall inform the other Contracting States.

7. The Contracting States shall take all necessary steps to ensure that the advisory commission meets without delay once cases are referred to it.

Article 10

1. For the purposes of the procedure referred to in Article 7, the associated enterprises concerned may provide any information, evidence or documents which seem to them likely to be of use to the advisory commission in reaching a decision. The enterprises and the competent authorities of the Contracting States concerned shall give effect to any request made by the advisory commission to provide information, evidence or documents. However, the competent authorities of any such Contracting State shall not be under any obligation:

(a) to carry out administrative measures at variance with its domestic law or its normal administrative practice;

(b) to supply information which is not obtainable under its domestic law or in its normal administrative practice;

or

(c) to supply information which would disclose any trade, business, industrial or professional secret or trade process, or information the disclosure of which would be contrary to public policy *(ordre public)*.

2. Each of the associated enterprises may, at its request, appear or be represented before the advisory commission. If

the advisory commission so requests, each of the associated enterprises shall appear or be represented before it.

Article 11

1. The advisory commission referred to in Article 7 shall deliver its opinion not more than six months from the date on which the matter was referred to it.

The advisory commission must base its opinion on Article 4.

2. The advisory commission shall adopt its opinion by a simple majority of its members. The competent authorities concerned may agree on additional rules of procedure.

3. The costs of the advisory commission procedure, other than those incurred by the associated enterprises, shall be shared equally by the Contracting States concerned.

Article 12

1. The competent authorities party to the procedure referred to in Article 7 shall, acting by common consent on the basis of Article 4, take a decision which will eliminate the double taxation within six months of the date on which the advisory commission delivered its opinion.

The competent authorities may take a decision which deviates from the advisory commission's opinion. If they fail to reach agreement, they shall be obliged to act in accordance with that opinion.

2. The competent authorities may agree to publish the decision referred to in paragraph 1, subject to the consent of the enterprises concerned.

Article 13

The fact that the decisions taken by the Contracting States, concerning the taxation of profits resulting from a transaction between associated enterprises, have become final shall not prevent recourse to the procedures set out in Articles 6 and 7.

Article 14

For the purposes of this Convention, the double taxation of profits shall be regarded as eliminated if either:

(a) the profits are included in the computation of taxable profits in one State only;

or

(b) the tax chargeable on those profits in one State is reduced by an amount equal to the tax chargeable on them in the other.

CHAPTER III

FINAL PROVISIONS

Article 15

Nothing in this Convention shall affect the fulfilment of wider obligations with respect to the elimination of double taxation in the case of an adjustment of profits of associated enterprises resulting either from other conventions to which the Contracting States are or will become parties or from the domestic law of the Contracting States.

Article 16

1. The territorial scope of this Convention shall be that defined in Article 227 (1) of the Treaty establishing the European Economic Community, without prejudice to paragraph 2 of this Article.

2. This Convention shall not apply to:

— the French territories referred to in Annex IV to the Treaty establishing the European Economic Community,

— the Faroe Islands and Greenland.

Article 17

This Convention will be ratified by the Contracting States. The instruments of ratification will be deposited at the office of the Secretary-General of the Council of the European Communities.

Article 18

This Convention shall enter into force on the first day of the third month following that in which the instrument of ratification is deposited by the last signatory State to take that step. The Convention shall apply to proceedings referred to in Article 6 (1) which are initiated after its entry into force.

Article 19

The Secretary-General of the Council of the European Communities shall inform the Contracting States of:

(a) the deposit of each instrument of ratification;

(b) the date on which this Convention will enter into force;

(c) the list of independent persons of standing appointed by the Contracting States and any alterations thereto in accordance with Article 9 (4).

Article 20

This Convention is concluded for a period of five years. Six months before the expiry of that period, the Contracting

States will meet to decide on the extension of this Convention and any other relevant measure.

Article 21

Each Contracting State may, at any time, ask for a revision of this Convention. In that event, a conference to revise the Convention will be convened by the President of the Council of the European Communities.

Article 22

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.

FINAL ACT

THE PLENIPOTENTIARIES OF THE HIGH CONTRACTING PARTIES,

meeting at Brussels, on the twenty-third day of July nineteenhundred and ninety, for the signature of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

have, on the occasion of signing the said Convention:

(a) adopted the following joint Declarations attached to the Final Act:
- Declaration on Article 4 (1),
- Declaration on Article 9 (6),
- Declaration on Article 13;

(b) taken note of the following unilateral Declarations attached to this Final Act:
- Declaration of France and the United Kingdom on Article 7,
- Individual Declarations of the Contracting States on Article 8,
- Declaration of the Federal Republic of Germany on Article 16.

En fe de lo cual, los abajo firmantes suscriben la presente Acta Final.

Til bekræftelse heraf har undertegnede underskrevet denne slutakt.

Zu Urkund dessen haben die Unterzeichneten ihre Unterschrift unter diese Schlußakte gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα τελική πράξη.

In witness whereof, the undersigned have signed this Final Act.

En foi de quoi, les soussignés ont apposé leurs signatures au bas du présent acte final.

Dá fhianú sin, chuir na daoine thíos-sínithe a lámh leis an Ionstraim Chríochnaitheach seo.

In fede di che, i sottoscritti hanno apposto le loro firme in calce al presente atto finale.

Ten blijke waarvan de ondergetekenden hun handtekening onder deze Slotakte hebben gesteld.

Em fé do que os abaixo assinados apuseram as suas assinaturas no final do presente Acto Final.

Hecho en Bruselas, el veintitrés de julio de mil novecientos noventa.

Udfærdiget i Bruxelles, den treogtyvende juli nitten hundrede og halvfems.

Geschehen zu Brüssel am dreiundzwanzigsten Juli neunzehnhundertneunzig.

Έγινε στις Βρυξέλλες, στις είκοσι τρεις Ιουλίου χίλια εννιακόσια ενενήντα.

Done at Brussels on the twenty-third day of July in the year one thousand nine hundred and ninety.

Fait à Bruxelles, le vingt-trois juillet mil neuf cent quatre-vingt-dix.

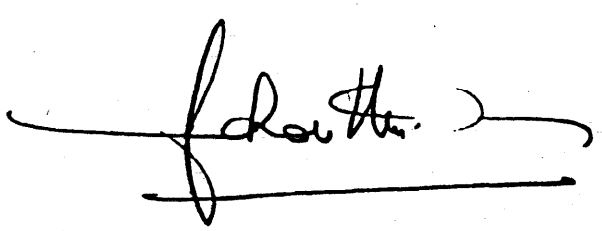
Arna dhéanamh sa Bhruiséil, an tríú lá fichead de Iúil, míle naoi gcéad nócha.

Fatto a Bruxelles, addì ventitré luglio millenovecentonovanta.

Gedaan te Brussel, de drieëntwintigste juli negentienhonderd negentig.

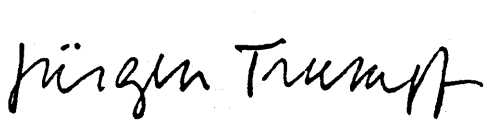
Feito em Bruxelas, em vinte e três de Julho de mil novecentos e noventa.

Pour Sa Majesté le Roi des Belges
Voor Zijne Majesteit de Koning der Belgen

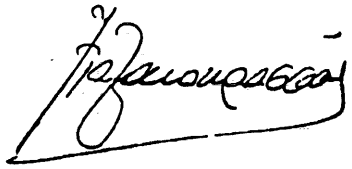


For Hendes Majestæt Danmarks Dronning

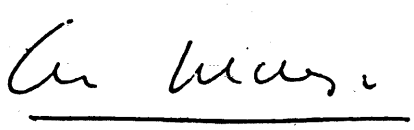
Für den Präsidenten der Bundesrepublik Deutschland



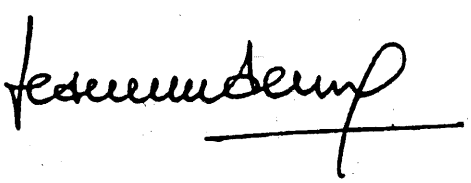
Για τον Πρόεδρο της Ελληνικής Δημοκρατίας



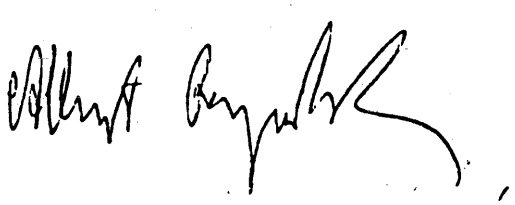
Por Su Majestad el Rey de España



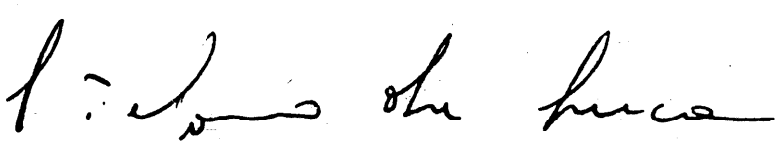
Pour le président de la République française



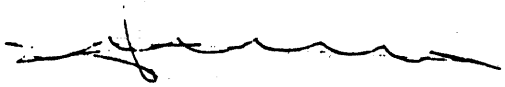
For the President of Ireland
Thar ceann Uachtarán na hÉireann



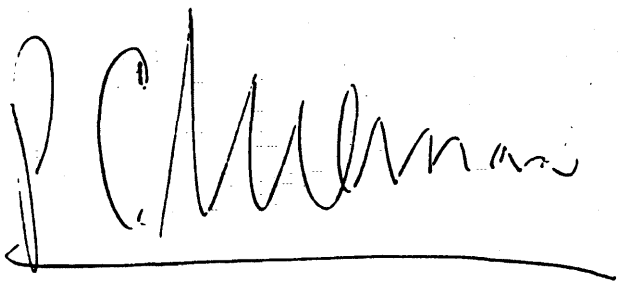
Per il presidente della Repubblica italiana



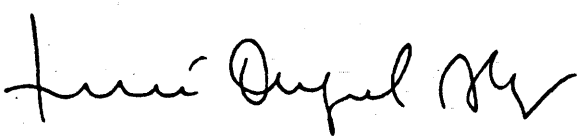
Pour Son Altesse Royale le Grand-Duc de Luxembourg



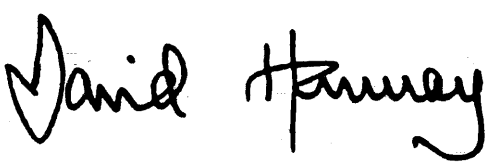
Voor Hare Majesteit de Koningin der Nederlanden



Pelo Presidente da República Portuguesa



For Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland



JOINT DECLARATIONS

Declaration on Article 4 (1)

The provisions of Article 4 (1) shall cover both cases where a transaction is carried out directly between two legally distinct enterprises as well as cases where a transaction is carried out between one of the enterprises and the permanent establishment of the other enterprise situated in a third country.

Declaration on Article 9 (6)

The Member States shall be entirely free as regards the nature and scope of the appropriate provisions they adopt for penalizing any breach of secrecy obligations.

Declaration on Article 13

Where, in one or more of the Contracting States concerned, the decisions regarding the taxation giving rise to the procedures referred to in Articles 6 and 7 have been altered after the procedure referred to in Article 6 has been concluded or after the decision referred to in Article 12 has been taken and where double taxation within the meaning of Article 1 results, account being taken of the application of the outcome of that procedure or that decision, Articles 6 and 7 shall apply.

UNILATERAL DECLARATIONS

Declaration on Article 7

France and the United Kingdom declare that they will apply Article 7 (3).

Individual Declarations of the Contracting States on Article 8

Belgium

The term 'serious penalty' means a criminal or administrative penalty in cases:

— either of a common law offence committed with the aim of tax evasion,

— or infringements of the provisions of the Code of income tax or of decisions taken in implementation thereof, committed with fraudulent intention or with the intention of causing injury.

Denmark

The concept of 'serious penalty' means a penalty for the intentional infringement of provisions of the Criminal Law or of special legislation in cases which cannot be regulated by administrative means.

Cases of infringement of provisions of tax law may, as a general rule, be regulated by administrative means where it is considered that the infringement will not entail a punishment greater than a fine.

Germany

An infringement of the tax laws punishable by a 'serious penalty' is constituted by any infringement of the tax laws penalized by detention, criminal or administrative fines.

Greece

Under Greek legislation governing taxation, an undertaking is liable to 'severe penalties':

1. if it fails to submit declarations, or submits incorrect declarations, in respect of taxes, charges or contributions which must be withheld and paid to the State under existing provisions, or in respect of value added tax, turnover tax or the special tax on luxury goods, in so far as the total amount of the above taxes, charges and contributions which should have been declared and paid to the State as a result of trade or other activities carried out over a period of six months exceeds an amount of six hundred thousand (600 000) Greek drachmas or one million (1 000 000) Greek drachmas over a period of one calendar year;

2. if it fails to submit a declaration of income tax, in so far as the tax due in respect of the income not declared is more than three hundred thousand (300 000) Greek drachmas;

3. if it fails to supply the taxation details laid down in the Code on Taxation Data;

4. if it supplies details as referred to under the previous case 3, which are incorrect as regards quantity or unit price or value, in so far as the inaccuracy results in a discrepancy which exceeds ten per cent (10 %) of the total amount or of the total value of the goods, the provision of services or the trade generally;

5. if it fails to keep accurately the books and records required by the Code on Taxation Data, in so far as that inaccuracy has been noted in the course of a regular check, the findings of which have been confirmed either by administrative resolution of the discrepancy or because the period allowed for an appeal has expired or as a result of a definitive decision by an administrative tribunal, provided that during the management period checked the discrepancy between gross income and the income declared is more than twenty per cent (20 %) and in any case not less than one million (1 000 000) Greek drachmas;

6. if it fails to observe the obligation to keep books and records as laid down in the relevant provisions of the Code on Taxation Data;

7. if it issues false or fictitious — or itself falsifies — invoices for the sale of goods or the supply of services or any other taxation details as referred to in case 3 above.

   A taxation document is regarded as false if it has been perforated or stamped in any way without the proper authentication having been entered in the relevant books of the competent tax authority, in so far as failure to make such an entry has occurred in the knowledge that such authentication is required for the taxation document. A taxation document is also regarded as false if the content and other details of the original or the copy differ from those which are recorded on the counterfoil of that document.

   A taxation document is regarded as fictitious if it has been issued for a transaction or part of a transaction, transfer or any other reason not recorded in the total or for a transaction carried out by persons different from those recorded in the taxation document;

8. if it is aware of the intention of the action taken and collaborates in any way in the production of false taxation documents or is aware that the documents are false or fictitious and collaborates in any way in their issue or accepts the false, fictitious or falsified taxation documents with the intention of concealing material relevant to taxation.

Spain

The term 'serious penalties' includes administrative penalties for serious tax infringements, as well as criminal penalties for offences committed with respect to the taxation authorities.

France

The term 'serious penalties' includes criminal penalties and tax penalties such as penalties for failure to make a tax return after receiving a summons, for lack of good faith, for fraudulent practices, for opposition to tax inspection, for secret payments or distribution, or for abuse of rights.

Ireland

'Serious penalties' shall include penalties for:

(a) failing to make a return;

(b) fraudulently or negligently making an incorrect return;

(c) failing to keep proper records;

(d) failing to make documents and records available for inspection;

(e) obstructing persons exercising statutory powers;

(f) failing to notify chargeability to tax;

(g) making a false statement to obtain an allowance.

The legislative provisions governing these offences, as at 3 July 1990, are as follows:

— Part XXXV of the Income Tax Act, 1967,

— Section 6 of the Finance Act, 1968,

— Part XIV of the Corporation Tax Act, 1976,

— Section 94 of the Finance Act, 1983.

Any subsequent provisions replacing, amending or updating the penalty code would also be comprehended.

Italy

The term 'serious penalties' means penalties laid down for illicit acts, within the meaning of the domestic law, constituting a tax offence.

Luxembourg

Luxembourg considers to be a 'serious penalty' what the other Contracting State considers to be so for the purposes of Article 8.

Netherlands

The term 'serious penalty' means a penalty imposed by a judge for any action, committed intentionally, which is mentioned in Article 68 of the General Law on taxation.

Portugal

The terms 'serious penalties' include criminal penalties as well as the further tax penalties applicable to infringements committed with intent to defraud or in which the fine applicable is of an amount exceeding 1 000 000 (one million) Portuguese escudos.

United Kingdom

The United Kingdom will interpret the term 'serious penalty' as comprising criminal sanctions and administrative sanctions in respect of the fraudulent or negligent delivery of incorrect accounts, claims or returns for tax purposes.

Declaration by the Federal Republic of Germany on Article 16

The Government of the Federal Republic of Germany reserves the right to declare, when lodging its instrument of ratification that the Convention also applies to Land of Berlin.