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Delegations will find attached a Presidency compromise text on the Proposal on a Common Consolidated Corporate Tax Base (CCCTB) for discussion at the Working Party on Tax Questions - Direct Taxation on 24 November 2014.

CHAPTER I
SCOPE

Article 1

Scope

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

Article 2

Eligible companies

1. This Directive shall apply to companies established under the laws of a Member State where both of the following conditions are met:

- (a) the company takes one of the forms listed in Annex I;
- (b) the company is subject to one of the corporate taxes listed in Annex II or to a similar tax subsequently introduced.

2. This Directive shall apply to companies established under the laws of a third country where both of the following conditions are met:

- (a) the company has a similar form to one of the forms listed in Annex I;
- (b) the company is subject to one of the corporate taxes listed in Annex II.

3. The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 in order to amend Annexes I and II to take account of changes to the laws of the Member States concerning company forms and corporate taxes.

Article 3

Eligible third country company forms

1. The Commission shall adopt annually a list of third country company forms which shall be considered to meet the requirements laid down in Article 2(2)(a). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 131(2).
2. The fact that a company form is not included in the list of third country company forms referred to in paragraph 1 shall not preclude the application of this Directive to that form.

CHAPTER II
FUNDAMENTAL CONCEPTS

Article 4

Definitions

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

(1) 'taxpayer' means a company which has opted to apply, the system provided for by this Directive;

(2) 'single taxpayer' means a taxpayer not fulfilling the requirements for consolidation;

(3) 'non-taxpayer' means a company which is ineligible to opt or has not opted to apply the system provided for by this Directive;

(4) 'resident taxpayer' means a taxpayer which is resident for tax purposes in a Member State according to Article 6(3) and (4);

(5) 'non-resident taxpayer' means a taxpayer which is not resident for tax purposes in a Member State according to Article 6(3) and (4);

(6) 'principal taxpayer' means:

- (a) a resident taxpayer, where it forms a group with its qualifying subsidiaries, its permanent establishments located in other Member States or one or more permanent establishments of a qualifying subsidiary resident in a third country; or
- (b) the resident taxpayer designated by the group where it is composed only of two or more resident taxpayers which are immediate qualifying subsidiaries of the same parent company resident in a third country; or
- (c) a resident taxpayer which is the qualifying subsidiary of a parent company resident in a third country, where that resident taxpayer forms a group solely with one or more permanent establishments of its parent; or
- (d) the permanent establishment designated by a non-resident taxpayer which forms a group solely in respect of its permanent establishments located in two or more Member States.

(7) 'group member' means any taxpayer belonging to the same group, as defined in Articles 54 and 55. Where a taxpayer maintains one or more permanent establishments in a Member State other than that in which its central management and control is located, each permanent establishment shall be treated as a group member;

(8) '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 disposal of assets and rights, interest, dividends and other profits distributions, proceeds of liquidation, royalties, subsidies and grants, gifts received, compensation 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;

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

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

(11) 'consolidated tax base' means the result of adding up the tax bases of all group members as calculated in accordance with Article 10;

(12) 'apportioned share' means the portion of the consolidated tax base of a group which is allocated to a group member by application of the formula set out in Articles 86-102;

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

(14) 'fixed assets' means all tangible assets acquired for value or created by the taxpayer and all intangible assets acquired for value where they are capable of being valued independently and are used in the business in the production, maintenance or securing of income for more than 12 months, except where the cost of their acquisition, construction or improvement are less than EUR 1,000. Fixed assets shall also include financial assets;

(15) 'financial assets' means shares in affiliated undertakings, loans to affiliated undertakings, participating interests, loans to undertakings with which the company 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;

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

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

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

(19) 'stocks and work-in-progress' means assets held for sale, 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;

(20) 'economic owner' means the person who has substantially all the benefits and 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;

(21) 'competent authority' means the authority designated by each Member State to administer all matters related to the implementation of this Directive;

(22) 'principal tax authority' means the competent authority of the Member State in which the principal taxpayer is resident or, if it is a permanent establishment of a nonresident taxpayer, is situated;

(23) 'audit' means inquiries, inspections or examinations of any kind conducted by a competent authority for the purpose of verifying the compliance of a taxpayer with this Directive.

Article 5

Permanent establishment

1. A taxpayer shall be considered to have a 'permanent establishment' in a State other than the State ~~in which its central management and control is located~~ in which it is resident for tax purposes when it has a fixed place in that other State through which the business is wholly or partly carried on, 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. Notwithstanding paragraphs 1 and 2, the following shall not be deemed to give rise to a permanent establishment **if the taxpayer demonstrates that such activities are or, in the case of point f), the overall activity 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 solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the taxpayer solely for the purpose of processing by another person;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the taxpayer;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the taxpayer, any other activity ~~of a preparatory or auxiliary character~~;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in points (a) to (e), ~~provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character~~.

4. Notwithstanding paragraph 1, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting on behalf of a taxpayer and ~~has, and~~ habitually ~~exercises, in a State an authority to conclude in a State~~ contracts which, as a result of a legal relationship with the taxpayer, are on account and at risk of the taxpayer, that taxpayer shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the taxpayer, unless the activities of such person are of auxiliary or preparatory character according to paragraph 3 ~~which 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 taxpayer shall not be deemed to have a permanent establishment in a State merely because it carries on business in that State through an independent broker, general commission agent or any other agent ~~of an independent status~~, provided that such persons ~~are is~~ acting in the ordinary course of their his business.

CHAPTER III

OPTING FOR THE SYSTEM PROVIDED FOR BY THIS DIRECTIVE

Article 6

Opting

1. A company to which this Directive applies which is resident for tax purposes in a Member State may opt for the system provided for by this Directive under the conditions provided for therein.
2. A company to which this Directive applies which is not resident for tax purposes in a Member State may opt for the system provided for by this Directive under the conditions laid down therein in respect of a permanent establishment maintained by it in a Member State.
3. For the purposes of paragraphs 1 and 2, a company that has its registered office, place of incorporation or place of effective management in a Member State and is not, under the terms of an agreement concluded by that Member State with a third country, regarded as tax resident in that third country shall be considered resident for tax purposes in that Member State.
4. Where, under paragraph 3, a company is resident in more than one Member State, it shall be considered to be resident in the Member State in which it has its place of effective management.

5. If the place of effective management of a shipping group member or of a group member engaged in inland waterways transport is aboard a ship or boat, it shall be deemed to be situated in the Member State of the home harbour of the ship or boat, or, if there is no such home harbour, in the Member State of residence of the operator of the ship or boat.

6. A company resident in a Member State which opts for the system provided for by this Directive shall be subject to corporate tax under that system on all income derived from any source, whether inside or outside its Member State of residence.

7. A company resident in a third country which opts for the system provided for by this Directive shall be subject to corporate tax under that system on all income from an activity carried on through a permanent establishment in a Member State.

Article 7

Applicable law

Where a company qualifies and opts for the system provided for by this Directive it shall cease to be subject to the national corporate tax arrangements in respect of all matters regulated by this Directive unless otherwise stated.

Article 8

Directive overrides agreements between Member States

The provisions of this Directive shall apply notwithstanding any provision to the contrary in any agreement concluded between Member States.

CHAPTER IV

CALCULATION OF THE TAX BASE

Article 9

General principles

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

1. 2. Transactions and taxable events shall be measured individually.
2. 3. The calculation of the tax base shall be carried out in a consistent manner ~~unless exceptional circumstances justify a change.~~
3. 4. The tax base shall be determined for each tax year unless otherwise provided. A tax year shall be any twelve-month period, [unless otherwise provided].

Article 10

Elements of the tax base

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

Article 11
Exempt revenues

The following shall be exempt from corporate tax:

- (a) subsidies directly linked to the acquisition, construction or improvement of fixed assets, subject to depreciation in accordance with Articles 32 to 42;
- (b) proceeds from the disposal of pooled assets referred to in Article 39(2), including the market value of non-monetary gifts;
- (c) received profit distributions, provided that the taxpayer has maintained a minimum holding of 10% in the capital or of the voting rights of the distributing company for twelve months. This shall not apply to profit distributions from shares held for trading in accordance with paragraph 4 of Article 23 and profit distributions received by life insurance undertakings in accordance with Article 30 (c);
- (d) proceeds from a disposal of shares provided that the taxpayer has maintained a minimum holding of 10% in the capital or of the voting rights of the company during the twelve months preceding the disposal. This shall not apply to disposals of shares held for trading in accordance with paragraph 3 of Article 23 and of shares held by life insurance undertakings in accordance with Article 30 (b);
- (e) income of a permanent establishment in a third country.

Article 12

Deductible expenses

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

~~D~~**Such** deductible expenses shall include all costs of sales and expenses net of deductible value added tax incurred by the taxpayer with a view to obtaining or securing income, including costs of research and development and costs incurred in raising [equity or] debt for the purposes of the business.

~~Deductible expenses shall also include gifts to charitable bodies as defined in Article 16 which are established in a Member State or in a third country which applies an agreement on the exchange of information on request comparable to the provisions of Directive 2011/16/EU. The maximum deductible expense for monetary gifts or donations to charitable bodies shall be 0.5% of revenues in the tax year.~~

Member States may provide for the deduction of gifts and donations to charitable bodies. In the case of a group, any such deduction shall be applied to the apportioned share of the group members resident or situated in that Member State.

Article 13

Other deductible items

A proportional deduction may be made in respect of the depreciation of fixed assets in accordance with Articles 32 to 42.

Article 14 a

Interest limitation rule

1. Borrowing costs can always be deducted to the extent the taxpayer receives interest or other taxable revenues from financial assets.

2. Borrowing costs includes interest expenses and other costs that a taxpayer incurs in connection with the borrowing of funds. Borrowing costs includes any difference between the borrowed funds and the maturity amount and the interest element in a leasing contract where the economic owner is entitled to deduct such interest.

3. Exceeding borrowing costs shall only be deductible in the current tax year up to (30) percent of the gross operating profit of the taxpayer or up to an amount of EUR 1 million, whichever is higher. The gross operating profit is calculated as the taxable revenues of a single taxpayer, excluding interest and other taxable revenues from financial assets, less deductible expenses, excluding borrowing costs and deductions made in respect of the depreciation of fixed assets in accordance with Articles 32 to 42.

4. The gross operating profit of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years.

5. Borrowing costs which cannot be deducted in the current tax year under paragraph 3 above shall be deductible up to the [30] percent of the gross operating profit in subsequent tax years in the same way as the borrowing costs for those years.

6. Paragraphs 3 to 5 do not apply to financial institutions and insurance undertakings.

Notwithstanding paragraph 1, borrowing costs incurred by financial institutions and insurance undertakings shall not be deducted at an amount equal to the entity's borrowing costs multiplied by the ratio of tax-exempt financial assets over all financial assets.

Article 15

Expenditure incurred for the benefit of shareholders

Benefits granted to a shareholder who is an individual, his spouse, lineal ascendant or descendant or associated enterprises, holding a direct or indirect participation in the control, capital or management of the taxpayer, as referred to in Article 78, shall not be treated as deductible expenses to the extent that such benefits would not be granted to an independent third party.

Article 16

Charitable bodies

A body shall qualify as charitable where the following conditions are met:

- a) ~~it has legal personality and is a recognised charity under the law of the State in which it is established;~~
- b) ~~its sole or main purpose and activity is one of public benefit; an educational, social, medical, cultural, scientific, philanthropic, religious, environmental or sportive purpose shall be considered to be of public benefit provided that it is of general interest;~~

- e) ~~its assets are irrevocably dedicated to the furtherance of its purpose;~~
- d) ~~it is subject to requirements for the disclosure of information regarding its accounts and its activities;~~
- e) ~~it is not a political party as defined by the Member State in which it is established.~~

CHAPTER V

TIMING AND QUANTIFICATION

Article 17

General principles

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

Article 18

Accrual of revenues

Revenues accrue when the right to receive them arises and they can be [quantified with reasonable accuracy/measured reliably], regardless of whether the actual payment is deferred.

The following rules apply subject to the provisions of Article 24 relating to long term contracts:

1. **Profits** **Revenues resulting from trade in goods shall be considered to be accrued when the following conditions are fulfilled:**

- a) the entity has transferred to the buyer the significant risks and rewards of ownership of the goods;
- b) the entity retains neither continuing managerial involvement to the degree usually associated with ownership nor 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 entity;
- e) the costs incurred or to be incurred in respect of the transaction can be measured reliably.

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

- a) the amount of revenue can be measured reliably;
- b) it is probable that the economic benefits will flow to the seller;
- c) {the stage of completion of the transaction at the end of the tax year can be measured reliably}; and
- d) the costs incurred, or to be incurred, in respect of the transaction can be measured reliably.

When the above criteria are not met, revenue arising from the rendering of services shall be recognised only to the extent of the expenses recognised that are recoverable.

Article 19

Incurrence of deductible expenses

A deductible expense is incurred at the moment that the following conditions are met:

- a) the obligation to make the payment has arisen;
- b) the amount of the obligation can be quantified with reasonable accuracy;
- 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 20

Costs related to non-depreciable assets

The costs relating to the acquisition, construction or improvement of fixed assets not subject to depreciation according to Article 40 shall be deductible in the tax year in which the fixed assets are disposed of, provided that the disposal proceeds are included in the tax base.

Article 21
Stocks and work-in-progress

1. Incurrence of expenses on stocks and work-in-progress

- a) The total amount of deductible expenses for a tax year shall be increased by the value of stocks and work-in-progress at the beginning of the tax year and reduced by the value of stocks and work-in-progress at the end of the same tax year.
- b) No adjustment shall be made in respect of stocks and work-in-progress relating to long-term contracts.

2. Valuation of stocks and work-in-progress

- a)
 - i) The cost of stock items and work-in-progress that are not ordinarily interchangeable and goods or services produced and segregated for specific projects shall be measured individually.
 - ii) The costs of other stock items and work-in-progress shall be measured by using the first-in first-out (FIFO), or last-in first-out (LIFO), or weighted-average cost method.

b) 2. **(i)** A taxpayer shall consistently use the same method for the valuation of all stocks and work-in-progress having a similar nature and use.

3. **(ii)** 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 their present location and condition.

(iii) Costs shall be net of deductible Value Added Tax.

(iv) [A taxpayer who has included indirect costs in valuing stocks and work-in-progress before opting for the system provided for by this Directive may continue to apply the indirect cost approach.]

(v) The valuation of stocks and work-in-progress shall be done in a consistent way.

c) **(i)** Stocks and work-in-progress shall be valued on the last day of the tax year at the lower of cost and net realisable value.

(ii) 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 22

Valuation

1. For the purposes of calculating the tax base, transactions shall be measured at:
 - a) the monetary consideration for the transaction, such as the price of goods or services;
 - b) the ~~{market value}~~ where the consideration for the transaction is wholly or partly non-monetary;
“Market value” to be defined as the amount for which asset may be exchanged or mutual obligations settled between willing independent buyers and sellers in a direct transaction.
 - c) the ~~{market value}~~ in the case of a non-monetary gift ~~received by a taxpayer~~;
 - d) ~~the market value in the case of non-monetary gifts made by a taxpayer other than gifts to charitable bodies;~~
 - (d) ~~the fair value~~ ~~{market value}~~ of financial assets and liabilities held for trading;
 - (e) ~~the value for tax purposes in the case of non-monetary gifts to charitable bodies.~~

2. The tax base, income and expenses shall be measured in EUR during the tax year or translated into EUR on the last day of the tax year at the annual average exchange rate for the calendar year issued by the European Central Bank or, if the tax year does not coincide with the calendar year, at the average of daily observations issued by the European Central Bank through the tax year. This shall not apply to a single taxpayer located in a Member State which has not adopted the EUR. Nor shall it apply to a group if all group members are located in the same Member State and that state has not adopted the EUR.

Article 23

Financial assets and liabilities held for trading (trading book)

1. A financial asset or liability shall be classified as held for trading if it is one of the following:
 - (a) acquired or incurred principally for the purpose of selling or repurchasing in the near term;
 - (b) 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. Notwithstanding Articles 18 and 19, any differences between the market value at the end of the tax year and the market value at the beginning of the same tax year, or at the date of purchase if later, of financial assets or liabilities held for trading shall be included in the tax base.

3. When a financial asset or liability held for trading is disposed of, the proceeds shall be added to the tax base. The market value at the beginning of the tax year, or the market value at the date of purchase if later, shall be deducted.
4. When profit distributions are received in respect of a holding held for trading the exemption from corporate tax referred to in Article 11(c) shall not apply.
5. Notwithstanding Article 11(d), if a financial asset or liability is no longer held for trading whilst is held as a fixed asset according to Article 4(14), any differences between the market value of the asset or liability at the end of this tax year and the market value at the beginning of the same tax year, or at the date of purchase as a trading book asset if later, shall be included in the tax base of this tax year. Notwithstanding Article 11(d), if a financial asset or liability is no longer held as a fixed asset according to Article 4(14) whilst is held for trading, any differences between the market value of the asset or liability at the end of this tax year and the market value at the beginning of the same tax year, or at the date of purchase as fixed asset if later, shall be included in the tax base of this tax year. The market value, at the end of the tax year, of the asset or liability which from held for trading has changed into a fixed asset or vice versa shall become relevant for tax purposes as of the year following this change.
6. In paragraph 5, the holding period under Article 11 (c) shall be interrupted or begin where the asset or liability is no longer held as a fixed asset or no longer held for trading respectively.
7. Paragraphs 5 and 6 shall apply to financial assets and liabilities acquired in a business organization according with Articles 70 and 71.

Article 24

Long-term contracts

1. A long-term contract is one which complies with the following conditions:
 - a) it is concluded for the purpose of manufacturing, installation or construction or the performance of services;
 - b) its term exceeds, or is expected to exceed, 12 months.
2. Notwithstanding Article 18, revenues relating to a long-term contract shall be recognised, for tax purposes, at the amount corresponding to the part of the contract completed in the respective tax year. The percentage of completion shall be determined ~~either~~ by reference to the ratio of costs of that year to the overall estimated ~~costs or by reference to an expert evaluation of the stage of completion~~ at the end of the tax year.
3. Costs relating to long-term contracts shall be ~~taken account of~~ **deductible** in the tax year in which they are incurred.

Article 25

Provisions

1. Notwithstanding Article 19, where at the end of a tax year it is established that the taxpayer has a legal obligation, or a [probable future legal obligation], arising from activities or transactions carried out in that, or previous tax years, any amount arising from that obligation which can be reliably estimated shall be deductible, provided that the eventual settlement of the amount is expected to result in a deductible expense.

For the purpose of this Article, a legal obligation may derive from:

- a) a contract;**
- b) legislation;**
- c) an administrative act of general nature or addressed to a specific taxpayer; or**
- d) other operation of law.**

Where the obligation relates to an activity or transaction which will continue over future tax years, the deduction shall be spread proportionately over the estimated duration of the activity or transaction, having regard to the revenue derived therefrom.

Amounts deducted under this Article shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future years account shall be taken of amounts already deducted.

2. A reliable estimate shall be the expected expenditure required to settle the present obligation at the end of the tax year, provided that the estimate is based on all relevant factors, including past experience of the company, group or industry. In measuring a provision the following shall apply:

- a) account shall be taken of all risks and uncertainties. However, 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 yearly average of the Euro Interbank Offered Rate (Euribor) for obligations with a maturity of 12 months, as published by the European Central Bank, in the calendar year in the course of which the tax year ends];**
- 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. Notwithstanding paragraphs 1 and 2 above, a tax deduction shall not be available under any circumstances for provisions relating to the following:

- a) **Contingent losses**
- b) **Future cost increases.**

Article 26

Pensions

~~[In case of pension provisions actuarial techniques shall be used in order to make a reliable estimate of the amount of benefits that employees have earned in return for their service in the current and prior period.~~

~~The pension provision shall be discounted by reference to Euribor for obligations with a maturity of 12 months, as published by the European Central Bank. The calculations shall be based on the yearly average of that rate in the calendar year in the course of which the tax year ends.~~

Member States may provide for the deduction of pension provisions. In the case of a group, any such deduction shall be applied to the apportioned share of the group members resident or situated in that Member State.]

Article 27

Bad debt deductions

1. A deduction shall be allowed for a bad debt receivable where the following conditions are met:
 - a) at the end of the tax year, the taxpayer has taken all reasonable steps, as outlined in paragraph 2 of this Article to pursue payment and ~~reasonably believes~~ 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 homogenous receivable is lower than 0.1% of the value of all homogeneous receivables. In order to arrive at a reliable estimate, the taxpayer shall make ~~through making~~ reference to all relevant factors, including past experience where applicable;
 - b) the debtor is not a member of the same group as the taxpayer in the meaning of Articles 54 and 55 or an associated enterprise in the meaning of Article 78. If the debtor is an individual, the debtor, his spouse, lineal ascendant or descendant shall not hold a direct or indirect participation in the control, capital or management of the taxpayer, as referred to in Article 78;

- c) no deduction has been claimed under Article 41 in relation to the bad debt;
- d) where the bad debt relates to a trade receivable, an amount corresponding to the debt shall have been included as revenue in the tax base.

2. In determining whether all reasonable steps to pursue payment have been made, the elements listed below [following] shall be taken into account provided that they are based on objective evidence:

- a) whether the costs of collection are disproportionate to the debt;
- b) whether there is any prospect of successful collection;
- c) whether it is reasonable, in the circumstances, to expect the company to pursue collection;
- d) the length of time, that has elapsed following the date of maturity of the obligation;
- e) whether the debtor has been declared insolvent or legal action has been initiated or a debt collector has been engaged.

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 28

Hedging

1. Gains and losses, **from valuation and acts of disposal**, on a hedging instrument shall be treated in the same manner as the corresponding gains and losses on the hedged item. In the case of taxpayers which are members of a group, the hedging instrument and hedged item may be held by different group members. There is a hedging relationship where both 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. **If the hedging relationship is interrupted or if an instrument already held is treated as hedging instrument, and this entails a transition to a different tax regime of the same instrument, any difference between the new value of the instrument, to be determined according to Article 22, at the end of this tax year, and the market value at the beginning of the same tax year, shall be included in the tax base. The market value, of the instrument at the end of the tax year shall become relevant for tax purposes as of the year following the transition to a different tax regime.**

Article 29
Stocks and work-in-progress

1. The cost of stock items and work-in-progress that are not ordinarily interchangeable and goods or services produced and segregated for specific projects shall be measured individually. The costs of other stock items and work-in-progress shall be measured by using the first-in first-out (FIFO) or weighted-average cost method.
2. A taxpayer shall consistently 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 their present location and condition. Costs shall be net of deductible Value Added Tax. A taxpayer who has included indirect costs in valuing stocks and work-in-progress before opting for the system provided for by this Directive may continue to apply the indirect cost approach.
3. The valuation of stocks and work-in-progress shall be done in a consistent way.
4. Stocks and work-in-progress shall be valued on the last day of the tax year at the lower of cost and net realisable value. The net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Article 30

Insurance undertakings

Insurance undertakings that have been authorised to operate in the Member States, in accordance with Council Directive 73/239/EEC¹ for non-life insurance, Directive 2002/83/EC of the European Parliament and of the Council² for life insurance, and Directive 2005/68/EC of the European Parliament and of the Council³ for reinsurance, shall be subject to the following additional rules:

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

¹ OJ L 228, 16.8.1973, p. 3.

² OJ L 345, 19.12.2002, p. 1.

³ OJ L 232.9.12.2005, p. 1.

(e) (d) the technical provisions of insurance undertakings established in compliance with Directive 91/674EEC shall be deductible, with the exception of equalisation provisions. A Member State may provide for the deduction of equalisation provisions. In the case of a group, any such deduction of equalisation provisions shall be applied to the apportioned share of the group members resident or situated in that Member State. Amounts deducted shall be reviewed and adjusted at the end of every tax year. In calculating the tax base in future years account shall be taken of amounts already deducted.

Article 31

Transfer of assets towards a third country or another Member State

1. Where an asset is transferred by a resident taxpayer to its permanent establishment in a third country or by a non-resident taxpayer from its permanent establishment in a Member State to a third country, an amount equal to the market value of the asset less, for fixed depreciable assets, the value for tax purposes according to Article 4(13) or, for non-depreciable assets, the costs related to non-depreciable assets according to Article 20, shall be added to the tax base as revenue in the tax year of the transfer.
Notwithstanding the subparagraph above, the transfer of a fixed asset which is subject to depreciation according to Article 39 by a resident taxpayer to its permanent establishment in a third country shall be deemed to be a disposal of the asset at market value, as this stands in the tax year of the transfer. The transfer of a fixed asset by a non-resident taxpayer from its permanent establishment in a Member State to a third country shall also be deemed to be a disposal of the asset at market value.

2. In the case of transfer of a fixed asset by a resident taxpayer or by the permanent establishment in a Member State of a non-resident taxpayer to a third country which is party to the European Economic Area Agreement and which has in effect an agreement on the exchange of information with the Member State of the resident taxpayer or of the permanent establishment, comparable to Directive 2011/16/EU, then the resident taxpayer or the non-resident taxpayer in respect of its permanent establishment in a Member State shall be authorized to request the suspension of the effects of the disposal, or the payment by instalments of the taxes due.
3. The transfer of the tax residence of a taxpayer shall be deemed to be a disposal, at the market value, of the assets, except for those assets which remain effectively connected with a permanent establishment in the taxpayer's Member State. Any later transfer of these assets out of the permanent establishment to which they were attached shall also be deemed to be a disposal of the assets at market value. The market value shall be calculated by reference to the tax year of the transfer and include the goodwill, which shall incorporate transferred functions and risks. This provision also applies to the transfer of a permanent establishment in a Member State of a non-resident taxpayer.

4. In the case of transfer of a tax residence or the permanent establishment in a Member State of a non-resident taxpayer to another Member State or to a third country which is party to the European Economic Area Agreement and which has in effect an agreement on the mutual assistance for the recovery of tax claims, comparable to Council Directive 2010/24/EU, the resident taxpayer or the non-resident taxpayer in respect of its permanent establishment in a Member State shall be authorised to request the suspension of the effects of the disposal, or the payment by instalments of the taxes due. This provision also applies to later transfers of assets out of the permanent establishment to which they were attached according to paragraph 3 above.
5. Notwithstanding paragraph 4, the suspension of payment or the payment by instalments shall not be granted with respect to:
 - stocks and work-in-progress;
 - the part of the tax base which is referring to the last tax year in the Member State of the taxpayer's residence and is not related to the transferred assets.
6. The instalments referred to in paragraphs 2, 4 and 5 above shall be settled, through equal payments, within five years.

7. In the case of a suspension of payment or a payment by instalments according to paragraphs 2, 4 and 5 above, interest shall be due in an amount equal to what would apply in the Member State of a resident taxpayer or of the permanent establishment of a non-resident taxpayer. Depending on the legislation of the Member State concerned, taxpayers may be required to provide a guarantee in order to receive a suspension of payment or payment by instalments.
8. The request under paragraph 4 shall be made in the tax declaration of the tax year in which a taxpayer moved its tax residence or permanent establishment out of a Member State.
9. A taxpayer shall be disqualified from the suspension of payment or a payment by instalments and be charged to tax according to paragraphs 1 and 3 above in case of:
 - a transfer of the assets to a third country;
 - a transfer of the tax residence of the taxpayer or of its permanent establishment to a third country;
 - bankruptcy or liquidation of the taxpayer.
10. The market value of the transferred assets which contributed to the calculation of the tax base of the resident taxpayer or its permanent establishment in a Member State shall be recognised in the Member State to which they are transferred.

CHAPTER VI

DEPRECIATION OF FIXED ASSETS

Article 32

Fixed asset register

- 1.** Acquisition, construction or improvement costs, together with the [relevant date], 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, should be recorded in the register.**
- 3.** **Fixed asset register shall be kept in a manner that would provide sufficient information, including depreciation data, for the purpose of calculating tax base.**

Article 33

Depreciation base

1. The depreciation base shall comprise **any** cost **directly** connected with the acquisition, construction or improvement of a fixed asset. **Acquisition or construction costs – the amount of cash or cash equivalents paid or payable, or the value of other assets given in exchange or consumed to acquire fixed asset at the time of its acquisition or construction.**

Costs shall not include deductible value added tax. **Interest shall not be included in the acquisition, construction or improvement costs of a fixed asset.**

[In the case of fixed assets produced by the taxpayer, the indirect costs incurred in production of the asset shall also be added to the depreciation base in so far as they are not otherwise deductible.]

2. The depreciation base of an 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 any subsidy directly linked to the acquisition, construction or improvement of the asset as referred to in Article 11(a).
4. **The depreciation of fixed assets not available for use shall not be calculated.**

Article 34

Entitlement to depreciate

1. Subject to paragraph 3, depreciation shall be deducted by the economic owner.
2. In the case of leasing contracts in which economic and legal ownership does not coincide, the economic owner shall be entitled to deduct the interest element of the lease payments from its tax base **unless it is not . The interest element of the lease payments shall be** included in the tax base of the legal owner.

3. ~~A fixed asset may be depreciated by no more than one taxpayer at the same time.~~ If the economic owner of an asset cannot be identified, the legal owner shall be entitled to deduct depreciation. ~~In that case the interest element of the lease payments shall not be included in the tax base of the legal owner.~~
4. ~~A taxpayer may not disclaim depreciation. A fixed asset may be depreciated by no more than one taxpayer at the same time unless either legal or economic ownership is shared between more taxpayers.~~
5. [The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 in order to lay down more detailed rules concerning:
 - a) the definition of legal and economic ownership, in relation in particular to leased assets;
 - b) the calculation of the capital and interest elements of the lease payments;
 - c) the calculation of the depreciation base of a leased asset.]

Article 35

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.
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 36(1), improvement costs shall be depreciated over that shorter period.

Article 36
Individually depreciable assets

1. Without prejudice to paragraph 2 and Articles 39 and 40, 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) buildings and other immovable property:
Industrial buildings and structures [to be defined]: 25 years
Commercial, office, other buildings and other immovable property in use for the business: 40 years;
 - b) long-life fixed tangible assets other than buildings and immovable property:
15 years;
 - c) medium-life fixed tangible assets: 8 years;
[Medium-life fixed tangible assets to be defined as fixed tangible assets with a useful life of 8 years or more and less than 15 years.]
 - d) short-life fixed tangible assets: 4 years;
[Short-life fixed tangible assets to be defined as fixed tangible assets with a useful life of 4 years or more and less than 8 years.]
 - e) intangible assets: the period for which the asset enjoys legal protection or for which the right is granted or, if that period cannot be determined, 15 years.
2. Second-hand buildings and other 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 intangible assets shall be depreciated in accordance with the following rules:

- a) a second-hand building or other immovable property shall be depreciated over 25 years in the case of industrial buildings or structures, ~~40~~ years unless the taxpayer demonstrates that the estimated remaining useful life of the asset building is shorter than 25 years, in which case it shall be depreciated over that shorter period;
- b) a second-hand building or other immovable property shall be depreciated over 40 years, in the case of commercial, office, other buildings and other immovable property in use for the business 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;
- c) (b) a second-hand long-life fixed tangible asset shall be depreciated over 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) [a second-hand medium-life fixed tangible asset shall be depreciated over 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) a second-hand short-life fixed tangible asset shall be depreciated over 4 years, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than 4 years, in which case it shall be depreciated over that shorter period;
- f) (e) a second-hand intangible asset shall be depreciated over 15 years, unless the remaining period for which the asset enjoys legal protection or for which the right is granted can be determined, in which case it shall be depreciated over that period.

Article 37

Timing

1. A full year's depreciation shall be deducted in the year of acquisition or entry into use, whichever comes later. No depreciation shall be deducted in the year of disposal.
2. Where an asset is disposed of, voluntarily or involuntarily, during a tax year, its value for tax purposes and the value for tax purposes of any improvement costs incurred in relation to the asset shall be deducted from the tax base in that year. Where a fixed asset has given rise to an exceptional deduction under Article 41, the deduction under Article 20 shall be reduced to take into account the exceptional deduction already received.

Article 38

Rollover relief for replacement assets

1. Where the proceeds from the disposal, including compensation for damage, of an individually depreciable asset or fixed tangible asset not subject to wear and tear and obsolescence referred to in Article 40 (a) are to be re-invested before the end of the second tax year after the tax year in which the disposal took place in an similar asset used for the same or a similar business purpose, the amount by which those proceeds exceed the value for tax purposes of the asset may ~~shall~~ be deducted in the year of disposal and in which case. ~~¶~~ 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 may be purchased in the tax year prior to the disposal. If a replacement asset is not purchased before the end of the second tax year after the year in which the disposal of the asset took place, the amount deducted in the year of disposal, increased by 10%, shall be added to the tax base in the second tax year after the disposal took place.
3. ~~If the taxpayer leaves the group of which it is a member or ceases to apply the system provided for by this Directive within the first year, without having purchased a replacement asset, the amount deducted in the year of disposal shall be added to the tax base. If the taxpayer leaves the group or ceases to apply the system in the second year, that amount shall be increased by 10%.~~

Article 39

Asset pool

1. Fixed assets other than those referred to in Articles 36 and 40 shall be depreciated together in one asset pool at an annual rate of ~~125%~~ of the depreciation base.
2. The depreciation base of the asset pool at the end of the tax year shall be its value for tax purposes at the end of the previous year, adjusted for assets entering and leaving the pool during the current year. Adjustments shall be made in respect of acquisition, construction or improvement costs of assets (which shall be added) and the proceeds of disposal of assets and any compensation received for the loss or destruction of an asset (which shall be deducted).

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

Article 40

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.

Article 41

Exceptional depreciation

1. If, **in exceptional circumstances**, a taxpayer demonstrates that the value of a fixed **tangible** asset not subject to depreciation has **permanently** decreased at the end of a tax year **due to force majeure or criminal activity by third parties**, it may deduct an amount equal to the decrease in value. However, no such deduction may be made in respect of assets the proceeds from the disposal of which are exempt.
2. If the value of an asset which has been subject to such exceptional depreciation in a previous tax year subsequently increases, an amount equivalent to the increase shall be added to the tax base in the year in which the increase takes place. However, any such addition or additions, taken together, shall not exceed the amount of the deduction originally granted.¶

[Article 42
Precision of categories of fixed assets

The Commission may adopt delegated acts in accordance with Article 127 and subject to the conditions of Articles 128, 129 and 130 in order to define more precisely the categories of fixed assets referred to in this Chapter.]

CHAPTER VII
LOSSES

Article 43
Losses

1. A loss incurred by a taxpayer or a permanent establishment of a non-resident taxpayer in a tax fiscal year may be carried forward and deducted in subsequent tax years, unless otherwise provided by this Directive.
2. In a tax year, losses carried forward may be deducted up to a maximum of [EUR X million] for a single tax payer and any losses exceeding this amount shall only be deducted in an amount equal to [X%] of the remaining tax base.] only be deducted up to [x] % of the tax base.
3. 2. A reduction of the tax base on account of losses from previous tax years shall not result in a negative amount. Carry-forward shall be terminated if the taxpayer or a permanent establishment of a non-resident taxpayer ceases the activities due to which the losses were incurred, except for the cases where the taxpayer or a permanent establishment of a non-resident taxpayer ceases the activities for reasons beyond its control.
4. 3. The oldest losses shall be used first.

CHAPTER XII

DEALINGS BETWEEN THE GROUP AND OTHER ENTITIES

Article 72

Exemption with progression

Without prejudice to Article 75, revenue which is exempt from taxation under Article 11(c), (d) or (e) may be taken into account in determining the tax rate applicable to a taxpayer.

Article 73

Switch-over clause

1. **The exemption for foreign income under** Article 11(c), (d) or (e) shall not apply where the entity which made the profit distributions, the entity the shares in which are disposed of or the permanent establishment were subject, in the entity's country of residence or the country in which the permanent establishment is situated, to **one of the following:**
(a) a tax on profits, under the general regime in that third country, at an effective statutory corporate tax rate lower than 40% of the effective tax rate that would have been applied under the CCCTB system, average statutory corporate tax rate applicable in the Member States;
(b) a special regime in that third country that allows for a substantially lower level of taxation than the general regime.

2. **The effective corporate tax rate which would apply to proceeds from a disposal of shares shall be calculated with reference to all years of holding by the taxpayer making the disposal.**

3. Notwithstanding paragraph 1 above, the exemption for foreign income under Article 11(c), (d) or (e) shall not apply either if the entity's country of residence or the country in which the permanent establishment is situated does not have an agreement on the exchange of information comparable to the exchange of information provided for in Directive 2011/16/EU.

4. The tax treatment of losses incurred by the permanent establishment of a resident taxpayer situated in such a country and losses from the disposal of shares in an entity which is tax resident in such a country shall fall outside the scope of the switch-over in this article.

5. The average statutory corporate tax rate applicable in the Member States shall be published by the Commission annually. It shall be calculated as an arithmetic average. For the purpose of this Article and Articles 81 and 82, amendments to the rate shall first apply to taxpayers in their tax year starting after the amendment.

Article 74

Computation of income of a foreign permanent establishment

Where Article 73 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 the system provided for by this Directive.

Article 75
Disallowance of exempt share disposals

Where, as a result of a disposal of shares, a taxpayer leaves the group and that taxpayer has within the current or previous tax years acquired in an intra-group transaction one or more fixed assets other than assets depreciated in a pool, an amount corresponding to those assets shall be excluded from the exemption unless it is demonstrated that the intra-group transactions were carried out for valid commercial reasons.

The amount excluded from exemption shall be the market value of the asset or assets when transferred less the value for tax purposes of the assets or the costs referred to in Article 20 relating to fixed assets not subject to depreciation.

When the beneficial owner of the shares disposed of is a non-resident taxpayer or a nontaxpayer, the market value of the asset or assets when transferred less the value for tax purposes shall be deemed to have been received by the taxpayer that held the assets prior to the intra-group transaction referred to in the first paragraph.

Article 76
Interest and royalties and any other income taxed at source

1. Where a taxpayer derives income which has been taxed in another Member State or in a third country, other than income which is exempt under Article 11(c), (d) or (e), a deduction from the tax liability of that taxpayer shall be allowed.

2. The deduction shall be shared among the members of a group according to the formula applicable in that tax year pursuant to Articles 86 to 102.

3. The deduction shall be calculated separately for each Member State or third country as well as for each type of income. It shall not exceed the amount resulting from subjecting the income attributed to a taxpayer or to a permanent establishment to the corporate tax rate of the Member State of the taxpayer's residence or where the permanent establishment is situated.
4. In calculating the deduction, the amount of the income shall be decreased by related deductible expenses, which shall be deemed to be 2% thereof unless the taxpayer proves otherwise.
5. The deduction 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 of its residence and a third country states otherwise.

Article 77

Withholding tax

Interest and royalties paid by a taxpayer to a recipient outside the group may be subject to a withholding tax in the Member State of the taxpayer according to the applicable rules of national law and any applicable double tax convention. The withholding tax shall be shared among the Member States according to the formula applicable in the tax year in which the tax is charged pursuant to Articles 86 to 102.

CHAPTER XIV

ANTI-ABUSE RULES

Article 80

General anti-abuse rule

1. Artificial transactions Not genuine arrangements or series of arrangements carried out for the main purpose or one of the main purposes of obtaining a tax advantage sole purpose of avoiding taxation, which defeats the object or purpose of this Directive, shall be ignored for the purposes of calculating the tax base. An arrangement may comprise more than one step or part. The first paragraph shall not apply to genuine commercial activities where the taxpayer is able to choose between two or more possible transactions which have the same commercial result but which produce different taxable amounts.
2. For the purposes of paragraph 1, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.
3. Where arrangements or a series of arrangements are ignored according to paragraph 1, the tax base shall be calculated by reference to economic substance in accordance with Chapter IV of this Directive.

Article 81
Disallowance of interest deductions

- 1. Interest paid to an associated enterprise resident in a third country shall not be deductible where there is no agreement on the exchange of information comparable to the exchange of information on request provided for in Directive 2011/16/EU and where one of the following conditions is met:**

 - (a) a tax on profits is provided for, under the general regime in the third country, at a statutory corporate tax rate lower than 40% of the average statutory corporate tax rate applicable in the Member States;**
 - (b) the associated enterprise is subject to a special regime in that third country which allows for a substantially lower level of taxation than that of the general regime.**
- 2. The term "interest" means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest.**
- 3. Notwithstanding paragraph 1, interest paid to an entity resident in a third country with which there is no agreement on the exchange of information comparable to the exchange of information on request provided for in Directive 2011/16/EU shall be deductible, in an amount not exceeding that which would be stipulated between independent enterprises, where one of the following conditions is met:**

 - (a) the amount of that interest is included in the tax base as income of the associated enterprise in accordance with Article 82;**
 - (b) the interest is paid to a company whose principal class of shares is regularly traded on one or more recognized stock exchanges;**

~~(e) the interest is paid to an entity engaged, in its country of residence, in the active conduct of a trade or business. This shall be understood as an independent economic enterprise carried on for profit and in the context of which officers and employees carry out substantial managerial and operational activities.~~

Article 82

Controlled foreign companies

1. The tax base shall include the non-distributed income of an entity resident in a third country where the following conditions are met:
 - (a) the taxpayer by itself, or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns more than 50% of capital or is entitled to receive more than 50% of the profits of that entity;
 - (b) under the general regime in the third country, profits are ~~taxable subject to an effective at a statutory corporate tax rate lower than [40% of the effective tax rate that would have been applied under the CCCTB system average statutory corporate tax rate applicable in the Member States]~~, or the entity is subject to a special regime that allows for a substantially lower level of taxation than that of the general regime;
 - (c) more than ~~35~~0% of the income accruing to the entity falls within one or more of the categories set out in paragraph 3; ~~for credit institutions according to Article 98(1)(a) and insurance undertaking according to Article 99(1), only in so far as more than 50% of the entity's income in these categories comes from transactions with the taxpayer or its associated enterprises.~~
 - (d) [the company is not a company, whose principal class of shares is regularly traded on one or more recognized stock exchanges.]

2. Paragraph 1 shall not apply where the third country is party to the European Economic Area Agreement and there is an agreement on the exchange of information comparable to the exchange of information on request provided for in Directive 2011/16/EU.

3. The following categories of income shall be taken into account for the purposes of point (c) of paragraph 1, ~~in so far as more than 50 % of the category of the entity's income comes from transactions with the taxpayer or its associated enterprises~~:

- (a) interest or any other income generated by financial assets;
- (b) royalties or any other income generated by intellectual property;
- (c) dividends and income from the disposal of shares;
- (d) income from movable property;
- (e) income from immovable property, unless the Member state of the taxpayer would not have been entitled to tax the income under an agreement concluded with a third country;
- (f) income from insurance, banking and other financial activities;
- (g) income from services rendered to the taxpayer or its associated enterprise**

Article 83

Computation

1. The income to be included in the tax base shall be calculated according to the rules of Articles 9 to 15. Losses of the foreign entity shall not be included in the tax base but shall be carried forward and taken into account when applying Article 82 in subsequent years.

2. The income to be included in the tax base shall be calculated in proportion to the entitlement of the taxpayer to share in the profits of the foreign entity.
3. The income shall be included in the tax year in which the tax year of the foreign entity ends.
4. Where the foreign entity subsequently distributes profits to the taxpayer, the amounts of income previously included in the tax base pursuant to Article 82 shall be deducted from the tax base when calculating the taxpayer's liability to tax on the distributed income.
5. If the taxpayer disposes of its participation in the entity, the proceeds shall be reduced, for the purposes of calculating the taxpayer's liability to tax on those proceeds, by any undistributed amounts which have already been included in the tax base.

Article 83a

Hybrid mismatch

- 1. A taxpayer shall not deduct payments directly or indirectly accrued to its associated enterprise as the beneficial owner of the payment if the payment is not taxable according to this directive or the national tax law which the associated enterprise is subject to due to a different qualification of the payment (hybrid instruments) or a different qualification of the payer and recipient (hybrid entities).**
- 2. Notwithstanding paragraph 1(c) of Article 11, where the payment of the profit distribution has been deducted in the taxable income of its associated enterprise, the profit distribution shall be included in the tax base.**

CHAPTER XV

TRANSPARENT ENTITIES

Article 84

Rules for allocating the income of transparent entities to taxpayers holding an interest

1. Where an entity is treated as transparent in the Member State of its location, 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 under the rules of this Directive.
2. Transactions between a taxpayer and the entity shall be disregarded in proportion to the taxpayer's share of the entity. Accordingly, the income of the taxpayer derived from such transactions shall be considered to be a proportion of the amount which 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 76(1), (2), (3) and (5).

Article 85

Rules for determining transparency in the case of third country entities

Where an entity is located in a third country, the question whether or not it is transparent shall be determined according to the law of the Member State of the taxpayer. If at least two group members hold an interest in the same entity located in a third country, the treatment of the latter shall be determined by common agreement among the relevant Member States: If there is not agreement, the principal tax authority shall decide.
