

SURVEY ON THE SOCIETAS EUROPAEA



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A) Introduction

On 8 October 2001, more than 31 years after negotiations had begun, the Council of the European Communities adopted Council Regulation No 2157/2001 (“Regulation 2157/2001”) on the statute for a European company and the related Council Directive 2001/86/EC supplementing the statute for a European company with regard to employee involvement required in the case of the creation of a European Company.

The European Company, its Latin name “Societas Europaea” (“SE”) is being used in Regulation 2157/2001, will be subject to Community law directly applicable in all EU Member States as from 8 October 2004. The Council Directive will have to be implemented in national law in all Member States.

The Regulation provides four possibilities for creating an SE:

- 1) Article 2 par. 1 Regulation 2157/2001:
Creation of an SE by way of a merger between public limited-liability companies formed under the law of a Member State, with registered offices and head offices¹ within the Community, provided that at least two of them are governed by the law of different Member States.
- 2) Article 2 par. 2 Regulation 2157/2001:
The formation of a holding company SE by public or private limited-liability companies formed under the law of a Member State, with registered offices and head offices within the Community, provided that at least two of them:
 - i) is governed by the law of a different Member State, or
 - ii) has had for at least two years a subsidiary company governed by the law of another Member State or a branch situated in another Member State.
- 3) Article 2 par. 3 Regulation 2157/2001:
The formation of a subsidiary SE by subscribing for its shares by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community, provided that at least two of them:
 - i) is governed by the law of a different Member State, or
 - ii) has had for at least two years a subsidiary company governed by the law of another Member State or a branch situated in another Member State.
- 4) Article 2 par. 3 Regulation 2157/2001:
The transformation of a public limited-liability company, formed under the law of a Member State, with registered office and head office within the Community that has operated through a subsidiary in another Member State for at least two years.

Furthermore, Article 8 par. 1 Regulation 2157/2001 stipulates that the transfer of the registered office of an SE to another Member State in accordance with Articles 2 to 13

¹ The term “head office” which is applied in the Survey should be interpreted as “the place of effective control and management”.

Regulation 2157/2001 will not result in the winding up of the SE or in the creation of a new legal person.

On the basis of Article 9 Regulation 2157/2001, an SE will be governed by the Regulation and with respect to matters not or partly regulated by the Regulation by the rules of the Member States that would apply to public limited-liability companies. On the basis of Article 10 Regulation 2157/2001, an SE will be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office.

According to note (20) of the Preamble to Regulation 2157/2001, the Regulation does not cover areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas not covered by this Regulation.

The aim of this report is to provide an overview of the taxation of the SE in the 15 Member States of the European Union in the four cases of setting up an SE and the case where an SE transfers its registered office from one Member State to another Member State.

The first three possibilities to create an SE indicated in the Regulation, relate to situations, which are covered by the EU Merger Directive (Council Directive 90/434/EEC). For this report it has therefore been assumed that the Merger Directive will cover not only the legal entities as listed in the Annex to the Merger Directive, but also the SE. We have made this assumption in accordance with the European Commission's request for this report and, more generally, on the basis of a speech by Mr. F. Bolkestein², in which he indicated that

“The first thing to do now is to make sure that the creation of the European Company by businesses as from 8 October 2004 will not be hampered by tax problems. For this purposes it is essential that the SE will in future fall under the scope of the Tax Merger Directive. My services are currently preparing a proposal for the amendment of this Directive. The European Company should of course be included in its scope so that businesses will be able to set up a European Company in a tax neutral way, without inappropriate taxation of capital gains. Similarly, the scope of the other tax directives and notably of the parent/subsidiary directive will have to be extended so as to include the SE.”

By assuming that the SE already falls within the scope of the Merger Directive, the report describes, as requested by the European Commission, the implementation of the Merger Directive in the Member States and its consequences in the situations that occur when an SE is created.

The tax consequences of the transformation of a public limited-liability company into an SE and the transfer of the registered seat of an SE to another Member State are

² SPEECH/02/598, Speech by Frits Bolkestein, Member of the European Commission in charge of the Internal Market and Taxation. “The New European Company; opportunity in diversity.” Address to Conference at the University of Leiden, Leiden, 29th November 2002.

currently not regulated at EU level. The Regulation merely deals with these events from a company law point of view. With respect to the tax consequences of the transfer of the registered seat of the SE, Mr Bolkestein mentioned in his same speech³ that

“If an SE transfers its seat to another Member State but leaves its assets behind connected with a permanent establishment in the original Member State there is no reason to tax the related capital gains or “hidden reserves”.”

At the request of the European Commission, the tax consequences of these events in the Member States have also been investigated and described in this report. The questions raised aimed at getting answers to both the situation where a permanent establishment is left behind in the original Member State, and where no permanent establishment is left behind.

³ See note 1

B) Creation of an SE and the Merger Directive

The “Survey of the Implementation of the EC Corporate Tax Directives”⁴ already indicated that perhaps the most fundamental problem of the Directives is what they do not say. This is still valid, because the Directives have never been changed. The Merger Directive for example, does not give a complete set of valuation rules; nor does it deal specifically with the position of shareholders resident in a different state from the company in which the shares are held.

A complication already indicated by the IBFD in 1995 is that some transactions envisaged by the Merger Directive are not yet possible under the company law of either the EC or the majority of the Member States. Although 8 years have passed, it appeared that in some Member States some transactions are still not possible under domestic company law. However, as from 8 October 2004, EC Company Law directly applicable in these Member States will provide for those transactions establishing an SE.

With respect to the three possibilities to create an SE that are covered by the Merger Directive, the analysis undertaken aimed at getting answers as to whether the specific Member State has implemented the provisions of the Merger Directive applicable to the specific situations. However, to avoid that the questions only deal with the specific provisions in the Merger Directive, and not with the aim of the Directive as can be deduced from the preamble and the gist of the provisions, the analysis also covered questions regarding for example the valuation rules in the different Member States.

Article 7 of the Merger Directive is not covered in this survey, since this Article has no relevance in respect of any of the forms of creation of an SE. Therefore, no comments will be made as regards the implementation of Article 7 of the Merger Directive in the respective Member States.

No attention has been paid to Member States’ legislative measures to avoid tax avoidance or tax evasion by way of a reorganisation included in the Directive and also no attention has been paid to the question whether these legislative measures are in conformity with Article 11 of the Directive.

⁴ 1995 IBFD Publications BV

C) Questionnaire

To create an overview on the tax consequences of the creation of an SE or the transfer of the registered office of an SE to another Member State, the questionnaire on the following pages has been sent to country specialists.

The answers to the questionnaire prepared by the various country specialists are attached as Annexes 1 to 15 to this report. The answers are based on legislation applicable and tax policy published in the Member States as per 1 January 2003, unless otherwise indicated.

As already mentioned, the country specialists have been asked to answer the questions on the basis of the assumption that the Merger Directive already covers the SE.

D) Analysis of the answers to the questions (including test whether implementation in accordance with the wording of the Directive)

The answers provided to us by the various country specialists to the questions raised in the questionnaire have been summarised and put into the schedules on the next pages. The schedules provide a broad overview and where necessary short comments have been given through notes. The schedules indirectly provide information regarding the implementation of the Merger Directive and the tax consequences of the conversion of an existing public limited-liability company into an SE and of the transfer of the registered office and head office of an SE to another Member State.

Where the schedules have tested the implementation of the Merger Directive, this test examines whether the implementation is in accordance with the wording of the Directive. Separately, the answers providing information on the valuation rules and practice in the Member States have been analysed (see Section G). Here, the Merger Directive does not provide explicit guidance and the purpose and spirit of the Directive come into play.

a) Merger by acquisition

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Merger by acquisition | | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | No 2) | Yes 4) | Yes 7) | Yes 4) | No 2) | Yes | Yes |
| Carry over of tax exempt provisions and reserves? | Yes | No 2) | N.A. 5) | Yes 7) | Yes 4) | No 2) | Yes | N.A. 5) |
| Take over of losses not yet exhausted for tax purposes? | Yes 1) | No 2) 3) | No 6) | Yes 1) 7) | Yes 4) 8) | No 2) 3) | No 3) | Yes 10) |
| Rollover relief for shares received? | Yes | No 2) | Yes | Yes 7) | Yes 4) | No 2) | Yes 9) | Yes |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Merger by acquisition | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | Yes | Yes | Yes | Yes | Yes | No 2) |
| Carry over of tax exempt provisions and reserves? | Yes | Yes | Yes | Yes | N.A. 5) | Yes | N.A. 5) |
| Take over of losses not yet exhausted for tax purposes? | Yes | No 6) | Yes 1) | Yes 11) | Yes 12) | Yes | Yes 10) |
| Rollover relief for shares received? | Yes | Yes | Yes 4) | Yes | Yes | Yes | Yes 13) |

Notes to Merger by acquisition

- 1) Under certain conditions, also applicable in case of mergers between domestic companies.
- 2) No provision in the law.
- 3) Take over of losses would be allowed in case of merger between domestic companies.
- 4) (Prior) Approval tax authorities required.
- 5) No such reserves exist.
- 6) Also no take over of losses in case of merger between domestic companies.
- 7) Provided that transformation into SE has no tax consequences.
- 8) In case of merger between domestic companies, no prior approval required for take over of losses.
- 9) Transfer tax 5%.
- 10) Under certain conditions and restrictions which also apply in case of mergers between domestic companies.
- 11) Upon authorisation by tax authorities as is also applicable in case of merger between domestic companies.
- 12) Acceptance by tax authorities doubtful. Contrary to treatment in case of merger between domestic companies.
- 13) If share exchange qualifies as a reorganisation.

b) Merger by formation of a new company

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Merger by formation of a new company | | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | No 2) | Yes 4) | Yes | Yes 4) | No 2) | Yes | Yes |
| Carry over of tax exempt provisions and reserves? | Yes | No 2) | N.A. 5) | Yes | Yes 4) | No 2) | Yes | N.A. 5) |
| Take over of losses not yet exhausted for tax purposes? | Yes 1) | No 2) 3) | No 6) | Yes 1) | Yes 4) 8) | No 2) 3) | No 3) | Yes 7) |
| Rollover relief for shares received? | Yes | No 2) | Yes | Yes | Yes 4) | No 2) | Yes 9) | Yes |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|------------------------|
| Merger by formation of a new company | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | Yes | Yes | Yes | Yes | Yes | No 2) |
| Carry over of tax exempt provisions and reserves? | Yes | Yes | Yes | Yes | N.A. 5) | Yes | N.A. 5) |
| Take over of losses not yet exhausted for tax purposes? | Yes | No 6) | Yes 1) | Yes 10) | Yes 11) | Yes | Yes 7) |
| Rollover relief for shares received? | Yes | Yes | Yes | Yes | Yes | Yes | Yes 12) |

Notes to Merger by formation of a new company

- 1) Under certain conditions. Also applicable in case of mergers between domestic companies.
- 2) No provision in the law.
- 3) Take over of losses would be allowed in case of merger between domestic companies.
- 4) (Prior) Approval tax authorities required.
- 5) No such reserves exist.
- 6) Also no take over of losses in case of merger between domestic companies.
- 7) Under certain conditions and restrictions which also apply in case of mergers between domestic companies.
- 8) In case of merger between domestic companies, no prior approval required for take over of losses.
- 9) Transfer tax 5%.
- 10) Upon authorisation by tax authorities as is also applicable in case of merger between domestic companies.
- 11) Acceptance by tax authorities doubtful. Contrary to treatment in case of merger between domestic companies.
- 12) If share exchange qualifies as a reorganisation.

c) Formation of a Holding SE

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|--------------------------------------|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Formation of a Holding SE | | | | | | | | |
| Rollover relief for shares received? | Yes | No | Yes 1) | Yes 2) | Yes 1) | Yes 3) | Yes 4) | Yes |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|--------------------------------------|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Formation of a Holding SE | | | | | | | |
| Rollover relief for shares received? | Yes | Yes | Yes 1) | Yes | Yes | Yes | Yes |

Notes to Formation of a Holding SE

- 1) (Prior) Approval tax authorities required.
- 2) Rollover withdrawn if taxpayer becomes non-resident within 3 years.
- 3) If tax value for shares exchanged is also rolled over.
- 4) Transfer tax of 5%.

d) Formation of a Subsidiary SE by exchange of shares

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Formation of a Subsidiary SE by exchange of shares | | | | | | | | |
| Rollover relief for shares received? | Yes | No | Yes 1) | Yes 2) | Yes 1) | Yes 3) | Yes 4) | Yes |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Formation of a Subsidiary SE by exchange of shares | | | | | | | |
| Rollover relief for shares received? | Yes | Yes | Yes | Yes | Yes | Yes | Yes |

Notes to Formation of a Subsidiary SE by exchange of shares

- 1) (Prior) Approval tax authorities required.
- 2) Rollover withdrawn if taxpayer becomes non-resident within 3 years.
- 3) If tax value for shares exchanged is also rolled over.
- 4) Transfer tax of 5%.

e) Formation of a Subsidiary SE by transfer of branch of activity

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Formation of a Subsidiary SE by transfer of branch of activity | | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | Yes | Yes 3) | Yes | Yes 3) | Yes | Yes | Yes |
| Carry over of tax exempt provisions and reserves? | Yes | Yes | N.A. 4) | Yes | Yes 3) | Yes | Yes | N.A. 4) |
| Take over of losses not yet exhausted for tax purposes? | Yes 1) | No 2) | No 2) | No 2) | Yes 3) | No 2) | No 5) | Yes 1) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|-----------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Formation of a Subsidiary SE by transfer of branch of activity | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | Yes | Yes 6) | Yes | Yes | Yes 9) | Yes |
| Carry over of tax exempt provisions and reserves? | Yes | Yes | Yes | Yes | N.A. 4) | Yes 10) | N.A. 4) |
| Take over of losses not yet exhausted for tax purposes? | Un- clear 2) | No 2) | No 2) | Yes 7) | Yes 8) | No 2) | Yes 1) |

Notes to Formation of a Subsidiary SE by transfer of branch of activity

- 1) Certain conditions and restrictions apply, also in case of transfer of branch of activity between domestic companies.
- 2) Also no take over of losses in case of transfer of branch of activity between domestic companies.
- 3) (Prior) Approval tax authorities required.
- 4) No such reserves exist.
- 5) Take over of losses would be allowed in case of transfer of branch of activity between domestic companies.
- 6) Certain strict conditions apply. Shares acquired by transferring company and shares in transferring company may not be transferred within 3 years.
- 7) Upon authorisation by tax authorities as is also applicable in case of transfer of branch of activity between domestic companies.
- 8) Acceptance by tax authorities doubtful. Contrary to treatment in case of transfer of branch of activity between domestic companies.
- 9) Upon request and for certain assets.
- 10) Upon request.

f) Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in another Member State

| | Austria Note | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note |
|---|-----------------|-----------------------------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|
| Transfer (as part of merger or transfer of branch of activity) of permanent establishment Situated in another Member State | Merger | Transfer branch of activity | | | | | | |
| Renounce any right to tax permanent establishment? | - 1) | Yes | No 6) | - 7) | - 8) | N.A. 9) | No 6) | - |
| Reinstatement of losses of permanent establishment not yet recovered? | 2) - 3) | Yes 2) | No | - 7) | - | N.A. 9) | N.A. 10) | - |
| Application of system of taxing worldwide profits ("tax credit system")? | Yes 4) | - | - | Yes | Yes | - | - | Yes |
| Taxation of profits or capital gains of permanent establishment resulting from transfer? | Yes | - 5) | - | Yes | Yes | - | - | Yes 11) |
| Relief for notional tax? | No | - | - | Yes | Yes | - | - | Yes 11) |

Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in another Member State - continued

| | Ireland Note | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|-----------------|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Transfer (as part of merger or transfer of branch of activity) of permanent establishment situated in another Member State | | | | | | | | |
| Renounce any right to tax permanent establishment? | - | - | Yes | Yes | - | Yes | - | - |
| Reinstatement of losses of permanent establishment not yet recovered? | No | - | No | No 12) | - | Yes | - | No |
| Application of system of taxing worldwide profits ("tax credit system")? | Yes | Yes | - | - | Yes | - | Yes | Yes |
| Taxation of profits or capital gains of permanent establishment resulting from transfer? | Yes | Yes | - | - | Yes | - | Yes | Yes |
| Relief for notional tax? | Yes | Yes | - | - | Yes | - | Yes | Yes |

Notes to Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in another Member State

- 1) Yes if permanent establishment is situated in a country the treaty with which provides for the exemption method.
- 2) Possibly reinstatement of losses, if permanent establishment is situated in a country the treaty with which provides for the exemption method.
- 3) No explicit provision in the law.
- 4) Under the law, losses can only be set off in the case of a tax treaty providing for the credit method or in non-treaty situations. Recent case law also allowed set off of losses, under certain conditions, in case of a treaty providing for the exemption method.
- 5) If permanent establishment is situated in a country the treaty with which provides for the credit method or in a country without a treaty, there is taxation if and insofar as the other country taxes the transfer. Austria further safeguards its loss of taxing rights in this credit treaty or no treaty situation by taxing a fictitious gain in the case of a sale of the shares transferred upon the transfer of a branch of activity.
- 6) In fact, exemption from taxation of capital gains taxed as a result of the transfer.
- 7) Yes in case of permanent establishment in France, Germany, Spain (countries with treaty providing for exemption method).
- 8) Yes in case of permanent establishment in a country with a treaty providing for exemption method.
- 9) Under territoriality principle, permanent establishment in third Member State is ignored, thus no right to tax permanent establishment has to be renounced.
- 10) Losses of foreign permanent establishment in countries with treaty exemption for permanent establishment results do not reduce German taxable income.
- 11) Tax imposed in other Member State can be deducted from Greek tax attributable to the amount of capital gain.
- 12) With respect to shares issued or transferred as part of the transaction, the participation exemption will not apply to dividends and capital gains to the amount of losses that have not been recovered.

g) Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in Member State

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|------------------|----------------|-----------------|----------------|-----------------|
| Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in Member State | | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | Yes | Yes | Yes 4) | Yes 6) | Yes 7) | Yes | Yes |
| Carry over of tax exempt provisions and reserves? | Yes | Yes | N.A. 2) | Yes | Yes 6) | No 8) | Yes | N.A. 2) |
| Take over of losses not yet exhausted for tax purposes? | Yes | No 1) | No 3) | Yes/ No 4) 5) | Yes 6) | No 1) | No 9) | Yes 10) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in Member State | | | | | | | |
| Rollover relief for assets and liabilities transferred? | Yes | Yes | Yes | Yes | Yes | Yes 13) | Yes |
| Carry over of tax exempt provisions and reserves? | Unclear | Yes | Yes | Yes | N.A. 2) | Yes 11) | N.A. 2) |
| Take over of losses not yet exhausted for tax purposes? | Unclear 1) | No 3) | Yes/ No 5) 6) | Yes 12) | Yes | Yes/ No 5) | Yes 10) |

Notes to Transfer (as part of a merger or transfer of branch of activity) of permanent establishment situated in Member State

- 1) Take over of losses in case of merger between domestic companies.
- 2) No such reserves exist.
- 3) No take over of losses in case of merger / transfer of branch of activity between domestic companies.
- 4) Provided that transformation into SE has no tax consequences.
- 5) Mergers: Under certain conditions and restrictions which also apply in case of mergers between domestic companies.
Transfer of branch of activity: No take over of losses; the same applies in case of transfer of branch of activity between domestic companies.
- 6) (Prior) Approval tax authorities required.
- 7) Under certain conditions.
- 8) In case of transfer of branch of activity, carry over of tax exempt reserves is allowed under certain conditions.
- 9) Take over of losses in case of merger / transfer of branch of activity between domestic companies.
- 10) Under certain conditions which also apply in case of merger / transfer of branch of activity between domestic companies.
- 11) Upon request.
- 12) Upon authorisation by tax authorities as is also applicable in case of merger and transfer of a branch of activity between domestic companies.
- 13) Upon request and for certain assets.

h) Formation by conversion of an existing public limited-liability company into an SE

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Formation by conversion of an existing public limited liability company into an SE | | | | | | | | |
| <i>Company / SE in country</i> | | | | | | | | |
| Tax effects for company? | No | No | No | No | No | No | No | No |
| Tax effects for shareholder in country? | No | No | No | No | No | No | No | No |
| <i>Subsidiary in country</i> | | | | | | | | |
| Tax effects for subsidiary? | No | No | No | No | No | No | No | No |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Formation by conversion of an existing public limited liability company into an SE | | | | | | | |
| <i>Company / SE in country</i> | | | | | | | |
| Tax effects for company? | No | No | No | No | No | No | No |
| Tax effects for shareholder in country? | No | No | No | No | No | No | No |
| <i>Subsidiary in country</i> | | | | | | | |
| Tax effects for subsidiary? | No | No | No | No | No | No | No |

i) Transfer of registered office and head office of SE

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|--|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Transfer of registered office and head office of SE | | | | | | | | |
| <i>SE in country</i> | | | | | | | | |
| (Deemed) winding up for tax purposes? | No | Yes | Yes | Yes | Yes | Yes | Yes | No 2) |
| Exit taxation? | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes 3) |
| Exit taxation when permanent establishment remains? | No | Yes | Yes | Yes | Yes | Yes | No | No |
| Tax effects for resident shareholder in case of exit taxation? | No | Yes | Yes | Yes | Yes | No | No | No |
| <i>SE to country</i> | | | | | | | | |
| Valuation of assets and liabilities received | Unclear | Unclear | 1) | 1) | 1) | 1) | Unclear | 4) |

Transfer of registered office and head office of SE - continued

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|--|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Transfer of registered office and head office of SE | | | | | | | |
| <i>SE in country</i> | | | | | | | |
| (Deemed) winding up for tax purposes? | Unclear | Yes | No | No | Yes | Yes | No 2) |
| Exit taxation? | Yes 5) | Yes | Yes | No | Yes | Yes | Yes 3) |
| Exit taxation when permanent establishment remains? | No | No | No | - | No | Yes | No |
| Tax effects for resident shareholder in case of exit taxation? | Unclear | Yes | Yes | - | Yes | Yes | No |
| <i>SE to country</i> | | | | | | | |
| Valuation of assets and liabilities received | Unclear | 1) | 1) | 4) | Unclear | 1) | 4) |

Notes to Transfer of registered office and head office of SE

- 1) Market value.
- 2) Deemed disposal of assets may arise.
- 3) Postponement of charge allowed in certain cases.
- 4) If deemed disposal of assets, valuation at market value.
- 5) If transfer considered (deemed) winding up.

E) Overview per item

The broad outline in the previous schedules has been transformed into a survey indicating whether or not the EU Member States have implemented the specific provisions in the Merger Directive correctly, incorrectly or not at all. Where the Member State has implemented the specific provision correctly or not at all, no further comments are made. However, in some cases Member States have correctly implemented part of the specific provision, but omissions occurred on some points of the specific provision. In such cases, short comments are made as to which item has not been implemented.

Finally, with respect to the conversion of an existing public limited-liability company into an SE, the overview indicates that none of the Member States will levy or are expected to levy tax. With regard to the transfer of the registered office and head office of the SE to another Member State the overview indicates whether it generally leads to taxation, and if so, whether this is also the case where a permanent establishment remains in the original Member State.

The notes refer to the notes in the schedules in section D of this report.

a) Merger by acquisition

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Austria | Greece (notes 3 and 9) | Belgium |
| Denmark | Spain (note 12) | Germany |
| Finland | United Kingdom | |
| France | | |
| Ireland | | |
| Italy | | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| Sweden | | |

3) Take over of losses would be allowed in case of merger between domestic companies.

9) Transfer tax 5%.

12) Acceptance by tax authorities doubtful. Contrary to treatment in case of merger between domestic companies.

Since Greece does not allow the take over of losses in the case of a cross border merger by acquisition, whereas the take over of losses would be allowed in the case of a merger between Greek companies, the Merger Directive has been implemented incorrectly. Furthermore, Greece levies a transfer tax from the shareholder upon the transfer of the shares. However, since the Merger Directive does not prevent Member States from levying transfer tax, this in itself cannot be considered an omission with respect to the implementation of the Merger Directive. Nevertheless, the fact that the transfer tax is regulated in the Corporate Income Tax Act, may create doubts on this point.

Spain allows the take over of losses in the case of a merger by acquisition between Spanish companies. It is doubtful whether the tax authorities will also allow the take over of losses in the case of a merger between a Spanish company and a company situated in another Member State. If the take over of losses is indeed disallowed, Spain must be considered as having implemented the Merger Directive incorrectly on this point.

The tax legislation of the United Kingdom does not contain a provision providing for rollover relief for assets and liabilities transferred in the case of a merger by acquisition of a company resident in the United Kingdom and a company resident in another Member State. Consequently, the United Kingdom must be considered as having implemented the Merger Directive incorrectly on this point. Take over of losses and rollover relief for shares received are granted.

b) Merger by formation of a new company

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Austria | Greece (notes 3 and 9) | Belgium |
| Denmark | Spain (note 11) | Germany |
| Finland | United Kingdom | |
| France | | |
| Ireland | | |
| Italy | | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| Sweden | | |

3) Take over of losses would be allowed in case of merger between domestic companies.

9) Transfer tax 5%.

11) Acceptance by tax authorities doubtful. Contrary to treatment in case of merger between domestic companies.

Since Greece does not allow the take over of losses in the case of a cross border merger by formation of a new company, whereas the take over of losses would be allowed in the case of a merger between Greek companies, the Merger Directive has been implemented incorrectly. Furthermore, Greece levies a transfer tax from the shareholder upon the transfer of the shares. However, since the Merger Directive does not prevent Member States from levying transfer tax, this in itself cannot be considered an omission with respect to the implementation of the Merger Directive. Nevertheless, the fact that the transfer tax is regulated in the Corporate Income Tax Act, may create doubts on this point.

Spain allows the take over of losses in the case of a merger by formation of a new company between Spanish companies. It is doubtful whether the tax authorities will also allow the take over of losses in the case of a merger between a Spanish company and a company situated in another Member State. If the take over of losses is indeed disallowed, Spain must be considered as having implemented the Merger Directive incorrectly on this point.

The tax legislation of the United Kingdom does not contain a provision providing for rollover relief for assets and liabilities transferred in the case of a merger by acquisition of a company resident in the United Kingdom and a company resident in another Member State. Consequently, the United Kingdom must be considered as having implemented the Merger Directive incorrectly on this point. Take over of losses and rollover relief for shares received are granted.

c) Formation of a Holding SE

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Austria | | Belgium |
| Denmark | | |
| Finland | | |
| France | | |
| Germany | | |
| Greece (note 4) | | |
| Ireland | | |
| Italy | | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| Spain | | |
| Sweden | | |
| United Kingdom | | |

4) Transfer tax of 5%.

Except for Belgium, all Member States have correctly implemented the provisions in the Merger Directive with respect to the formation of a Holding SE. These are the provisions dealing with exchanges of shares.

Greece levies a transfer tax from the shareholder upon the transfer of the shares. However, since the Merger Directive does not prevent Member States from levying transfer tax, this in itself cannot be considered a breach with respect to the implementation of the Merger Directive. Nevertheless, the fact that the transfer tax is regulated in the Corporate Income Tax Act, may create doubts on this point.

d) Formation of a Subsidiary SE by exchange of shares

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Austria | | Belgium |
| Denmark | | |
| Finland | | |
| France | | |
| Germany | | |
| Greece (note 4) | | |
| Ireland | | |
| Italy | | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| Spain | | |
| Sweden | | |
| United Kingdom | | |

4) Transfer tax of 5%.

Except for Belgium, all Member States have correctly implemented the provisions in the Merger Directive with respect to the formation of a Subsidiary SE by way of an exchange of shares.

Greece levies a transfer tax from the shareholder upon the transfer of the shares. However, since the Merger Directive does not prevent Member States from levying transfer tax, this in itself cannot be considered a breach with respect to the implementation of the Merger Directive. Nevertheless, the fact that the transfer tax is regulated in the Corporate Income Tax Act, may create doubts on this point.

e) Formation of a Subsidiary SE by transfer of branch of activity

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Austria | Greece (note 5) | |
| Belgium | Spain (note 8) | |
| Denmark | Sweden (note 9) | |
| Finland | | |
| France | | |
| Germany | | |
| Ireland | | |
| Italy | | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| United Kingdom | | |

5) Take over of losses would be allowed in case of transfer of branch of activity between domestic companies.

8) Acceptance by tax authorities doubtful. Contrary to treatment in case of merger between domestic companies.

9) Upon request and for certain assets.

Greece grants the take over losses not yet exhausted for tax purposes in the case of the formation of a Greek Subsidiary SE by transfer of a branch of activity in Greece. However, in the case of the formation by a Greek company of a Subsidiary SE not resident in the same Member State, which takes over the branch of activity in Greece, the losses related to the branch of activity cannot be taken over by the SE. This must be considered a breach of the Merger Directive.

Spain allows the take over of losses in the case of a transfer of a branch of activity between Spanish companies. It is doubtful whether the tax authorities will also allow the take over of losses in the case of a transfer of a branch of activity between a Spanish company and a company situated in another Member State. If the take over of losses is indeed disallowed, Spain must be considered as having implemented the Merger Directive incorrectly on this point.

Sweden allows rollover relief upon request only for certain assets. This should be considered an incorrect implementation of the Merger Directive.

f) Transfer of permanent establishment (as part of a merger or transfer of a branch of activity) situated in another Member State

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Belgium | Austria | |
| Denmark | Sweden | |
| Finland | | |
| France | | |
| Germany | | |
| Greece | | |
| Ireland | | |
| Italy | | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| Spain | | |
| United Kingdom | | |

Austria does not grant relief for notional tax in the case of the transfer of a permanent establishment situated in another Member State as part of a merger.

Sweden allows rollover relief upon request only for certain assets. This should be considered an incorrect implementation of the Merger Directive.

g) Transfer of permanent establishment (as part of a merger or transfer of a branch of activity) situated in Member State

Implementation of Merger Directive

| Correct implementation | Incorrect implementation | No implementation |
|-------------------------------|---------------------------------|--------------------------|
| Austria | Belgium (note 1) | |
| Denmark | Germany (note 1) | |
| Finland | Greece (note 9) | |
| France | Italy (note 1) | |
| Ireland | Sweden (note 13) | |
| Luxembourg | | |
| Netherlands | | |
| Portugal | | |
| Spain | | |
| United Kingdom | | |

1) Take over of losses in case of merger between domestic companies.

9) Take over of losses in case of merger / transfer of branch of activity between domestic companies.

13) Upon request and for certain assets.

In Germany the carry over of tax exempt reserves is impossible in case of a cross border merger and restricted in case of a cross border transfer of a branch of activity.

In Belgium and Germany take over of losses is granted in case of a merger between Belgian or German companies respectively. However, these countries do not allow the take over of losses if the permanent establishment is transferred by a company in a Member State to an SE resident in another Member State as part of a merger.

Greece allows the take over of losses in case of a merger or transfer of a branch of activity between Greek companies. Greece does however not allow the take over of losses if the permanent establishment is transferred by a company in a Member State to an SE resident in another Member State as part of a merger or transfer of a branch of activity.

In Italy it is doubtful whether a take over of losses is possible in case of a transfer of an Italian permanent establishment between two non-Italian Member State companies. If such a take over of losses is indeed not possible in the case of a transfer as part of a merger, this is contrary to the possibility of a take over of losses when two Italian companies merge. This would be an incorrect implementation of the Merger Directive. If the doubt about the carry over of exempt reserves in a case of a transfer of a permanent establishment would materialise, this would also be an incorrect implementation.

Sweden allows rollover relief upon request only for certain assets. This should be considered an incorrect implementation of the Merger Directive.

h) Transformation by conversion of an existing public limited liability company into an SE

| No taxation | Taxation |
|--------------------|-----------------|
| Austria | |
| Belgium | |
| Denmark | |
| Finland | |
| France | |
| Germany | |
| Greece | |
| Ireland | |
| Italy | |
| Luxembourg | |
| Netherlands | |
| Portugal | |
| Spain | |
| Sweden | |
| United Kingdom | |

None of the Member States are expected to levy tax in the case a company formed under domestic law is converted into an SE. Since the SE is a type of legal entity which does not yet exist, many authors of country chapters have referred to existing rules regarding the transformation of a certain legal entity type into another legal entity type, and assumed that the activities of the company, and the assets and liabilities connected thereto, will not change as a result of the transformation.

i) Transfer of registered office and head office of SE

| <i>No exit taxation</i> | <i>Exit taxation</i> | <i>No exit taxation when pe remains</i> | <i>Exit taxation when pe remains</i> |
|-------------------------|----------------------|---|--------------------------------------|
| | Austria | Austria | |
| | Belgium | | Belgium |
| | Denmark | | Denmark |
| | Finland | | Finland |
| | France | | France |
| | Germany | | Germany |
| | Greece | Greece | |
| | Ireland | Ireland | |
| | Italy (note 5) | Italy | |
| | Luxembourg | Luxembourg | |
| | Netherlands | Netherlands | |
| Portugal | | | |
| | Spain | Spain | |
| | Sweden | | Sweden |
| | United Kingdom | United Kingdom | |

5) If transfer considered (deemed) winding up.

All Member States but Portugal levy tax upon the transfer of the registered office or head office of a resident SE to another Member State. However, some Member States (see schedule above) refrain from levying tax if the activities of the SE stay behind in the Member State of former residence and form a permanent establishment in that State. In such a situation, the Member State of former residence will not lose its right to levy corporate income tax on the profits of the permanent establishment and hidden reserves, goodwill and fiscal reserves. In some other Member States, the fact that a permanent establishment remains and therefore no taxation right will be lost is ignored, and tax is levied in any case.

It is unclear whether on the basis of the Italian tax legislation, the transfer of the registered office or head office will be treated as a (deemed) winding up. If this is the case, tax will be levied upon the transfer of the registered office or head office to another Member State.

Portugal does not levy exit tax at all. Portugal seems to lose its right to levy tax on goodwill and hidden reserves.

F) Overview per Member State

Where the previous schedules (Section E) provided an overview of the tax consequences for each incorporation method of the SE, and the transfer of the registered office or head office of an SE to another Member State, the next schedules will provide an overview of the tax consequences of the various items for each Member State. Comments will be provided where the Merger Directive has been implemented incorrectly or not at all. Furthermore, in some specific cases comments may be made with respect to issues that may raise doubts.

The overview in the schedules in this Section F only verifies whether the legislation implemented by the Member States is in conformity with the text of the Merger Directive.

a) Austria

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | | <i>Incorrect¹</i> |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- If the tax treaty between Austria and the other Member State in which the permanent establishment is situated provides for the credit method or if there is no treaty between Austria and the other Member State, Austria will tax the “hidden” reserves of the permanent establishment. Austria may give relief for taxes levied in the other Member State. This is a violation of Article 10 of the Merger Directive, since Austria should give relief for notional tax in the other Member State.
- In the case of a transfer of the registered office or head office of an Austrian SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Austria.

¹ Violation of Article 10 of the Merger Directive

b) Belgium

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | | <i>No impl¹</i> |
| Merger by formation of a new company | | <i>No impl¹</i> |
| Formation of a Holding SE | | <i>No impl²</i> |
| Formation of a Subsidiary SE by exchange of shares | | <i>No impl²</i> |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | | <i>Incorrect³</i> |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>Yes (if pe)</i> |

- With respect to the creation of an SE by way of a merger or setting up of a Holding-SE or a Subsidiary-SE (by exchange of shares) that are also covered by the Merger Directive, the following Articles in the Merger Directive have not or not correctly been implemented in the Belgian tax legislation:
 - Article 4 (Carry-over of balance-sheet values);
 - Article 5 (Carry-over of reserves);
 - Article 6 (Carry-over of losses);
 - Article 8 (No taxation of shareholder in case of transfer of balance-sheet values)
- Furthermore, under the Belgian tax legislation the take over of losses in a cross border merger is disallowed, whereas the take over of losses is allowed in the case of a merger between domestic companies. This different treatment is a violation of Article 10 jo. Article 6 of the Merger Directive.
- In the case of a transfer of the registered office or head office of a Belgian SE to another Member State, exit tax is levied also in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Belgium.

¹ Violation of Articles 4, 5, 6, and 8 of the Merger Directive

² Violation of Article 8 of the Merger Directive

³ Incorrect implementation of Article 10 jo. Article 6 of the Merger Directive

c) Denmark

| | | |
|--|--------------------|--------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>Yes (if pe)</i> |

- In the case of a transfer of the registered office or head office of a Danish SE to another Member State, exit tax is levied also in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Denmark.

d) Finland

| | | |
|--|--------------------|--------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>Yes (if pe)</i> |

- In the case of a transfer of the registered office or head office of a Finnish SE to another Member State, exit tax is levied also in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Finland.

e) France

| | | |
|--|--------------------|--------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>Yes (if pe)</i> |

- In the case of a transfer of the registered office or head office of a French SE to another Member State, exit tax is levied also in the case where, after the transfer of the registered office or head office, a permanent establishment remains in France.

f) Germany

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | | <i>No impl¹</i> |
| Merger by formation of a new company | | <i>No impl¹</i> |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | | <i>Incorrect²</i> |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>Yes (if pe)</i> |

- With respect to the creation of an SE by way of a merger that is also covered by the Merger Directive, the following Articles in the Merger Directive have not been implemented in the German tax legislation:
 - Article 4 (Carry-over of balance-sheet values);
 - Article 5 (Carry-over of reserves);
 - Article 6 (Carry-over of losses);
 - Article 8 (No taxation of shareholder in case of transfer of balance-sheet values).

- Furthermore, for the following reasons, the German tax legislation violates Article 10 jo. Articles 4, 5 and 6 of the Merger Directive:
 - Rollover of the value of assets and liabilities transferred is restricted;
 - No carry-over of reserves and provisions in case of a merger and restricted carry-over of reserves and provisions in case of a transfer of a branch of activity;
 - Under the German tax legislation the take over of losses in cross border mergers is disallowed, whereas the take over of losses is allowed in mergers between domestic companies.

- In the case of a transfer of the registered office or head office of a German SE to another Member State, exit tax is levied also in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Germany.

¹ Violation of Articles 4, 5, 6, and 8 of the Merger Directive

² Violation of Article 10 jo. Articles 4, 5 and 6 of the Merger Directive

g) Greece

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | | <i>Incorrect¹</i> |
| Merger by formation of a new company | | <i>Incorrect¹</i> |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | | <i>Incorrect¹</i> |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | | <i>Incorrect¹</i> |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- Losses can be taken over in the case of:
 - a merger between Greek companies;
 - the formation of a Subsidiary SE by transfer of a branch of activity between Greek companies; and

Losses cannot be taken over in the case of:

- a merger between a Greek company and a company resident in another Member State;
- the formation of a Subsidiary SE by transfer of a branch of activity between a Greek company and a company resident in another Member State; and
- the transfer of a permanent establishment situated in Greece of a company resident in another Member State to a company resident in another Member State.

This is a violation of Article 10 jo. Article 6 of the Merger Directive.

- In the case of a transfer of the registered office or head office of a Greek SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Greece.

¹ Violation of Article 10 jo. Article 6 of the Merger Directive

h) Ireland

| | | |
|--|--------------------|-------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- In the case of a transfer of the registered office or head office of a Irish SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Ireland.

i) Italy

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | | <i>Incorrect¹</i> |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- In the case of a transfer of a permanent establishment situated in Italy, there is violation of Art. 10 jo. Arts. 5 and 6 of the Merger Directive if indeed the carry over of reserves and provisions turns out to be impossible and/or if indeed losses cannot be taken over in case of a merger whereas this take over is possible in case of a merger between two Italian companies.
- In the case of a transfer of the registered office or head office of a Italian SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Italy.

¹ Violation of Article 10 jo. Article 5 and 6 of the Merger Directive

j) Luxembourg

| | | |
|--|--------------------|-------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- In the case of a transfer of the registered office or head office of a Luxembourg SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Luxembourg.

k) Netherlands

| | | |
|--|--------------------|-------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- In the case of a transfer of the registered office or head office of a Dutch SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in the Netherlands.

l) Portugal

| | | |
|--|--------------------|--|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>No taxation</i> | |

- Portugal does not levy exit tax if the registered office or head office of a Portuguese company is transferred to another Member State.

m) Spain

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | | <i>Incorrect¹</i> |
| Merger by formation of a new company | | <i>Incorrect¹</i> |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | | <i>Incorrect¹</i> |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- It is doubtful whether the losses can be taken over in the case of the creation of an SE by way of a merger or the formation of a Subsidiary-SE by transfer of a branch of activity. If this doubt materialises, this disallowance is contrary to the possibility of take over of losses in case of a merger or a transfer of a branch of activity between Spanish companies, which violates Article 10 jo. Article 6 of the Merger Directive.
- In the case of a transfer of the registered office or head office of a Spanish SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in Spain.

¹ Violation of Article 10 jo. Article 6 of the Merger Directive

n) Sweden

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | <i>Correct</i> | |
| Merger by formation of a new company | <i>Correct</i> | |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | | <i>Incorrect¹</i> |
| Transfer of permanent establishment situated in another Member State | | <i>Incorrect¹</i> |
| Transfer of permanent establishment situated in Member State | | <i>Incorrect¹</i> |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>Yes (if pe)</i> |

- The Swedish Corporate Income Tax Act only provides for rollover relief for capital assets. Capital assets are all assets except inventory, claims and patents or other such rights. This is a violation of Article 4 of the Merger Directive.
- In the case of a transfer of the registered office or head office of a Swedish SE to another Member State exit tax is levied also in the case where after the transfer of the registered office or head office a permanent establishment remains in Sweden.

¹ Violation of Article 4 Merger Directive

o) United Kingdom

| | | |
|--|--------------------|------------------------------|
| Merger by acquisition | | <i>Incorrect¹</i> |
| Merger by formation of a new company | | <i>Incorrect¹</i> |
| Formation of a Holding SE | <i>Correct</i> | |
| Formation of a Subsidiary SE by exchange of shares | <i>Correct</i> | |
| Formation of a Subsidiary SE by transfer of branch of activity | <i>Correct</i> | |
| Transfer of permanent establishment situated in another Member State | <i>Correct</i> | |
| Transfer of permanent establishment situated in Member State | <i>Correct</i> | |
| Formation by conversion of an existing public limited-liability company into an SE | <i>No taxation</i> | |
| Exit taxation if transfer of registered office and head office of SE | <i>Yes</i> | <i>No (if pe)</i> |

- The tax legislation in the United Kingdom does not include a provision allowing rollover relief for assets and liabilities in the case of a merger between a company resident in the United Kingdom and a company resident in another Member State, which is an infringement of Article 4 of the Merger Directive.
- Furthermore, the tax legislation in the United Kingdom only provides for rollover relief for the shares received by the shareholder of the transferring company, if the merger qualifies as a reorganisation. If this is not the case, the shareholder of the transferring company will get no relief, and will thus be subject to tax on the income, profits or capital gains of that shareholder, which is a violation of Article 8 of the Merger Directive.
- In the case of a transfer of the registered office or head office of a UK SE to another Member State, no exit tax is levied in the case where, after the transfer of the registered office or head office, a permanent establishment remains in the United Kingdom.

¹ Violation of Article 4 and possibly Article 8 Merger Directive

G) Analysis of the answers to the questions related to the purpose and the spirit of the Merger Directive

Where the Directive does not contain explicit rules, the legislation and practice in Member States can only be tested against the purpose and the spirit of the Directive. It seems justified to describe its spirit and purpose as safeguarding existing tax claims of a Member State. To achieve this, the Directive uses the method of roll over of values (from one taxpayer to another taxpayer – regarding assets and liabilities, or from one shareholding to another shareholding of the same taxpayer – regarding shares).

If because of a double or triple roll over (regarding assets and liabilities, shares or a combination of both) an existing tax claim is being doubled or tripled, the question arises whether this is in violation of the purpose and the spirit of the Directive. The information provided by the country specialists contains the input that is relevant in this context. This information has been analysed. However, in view of the fact that the purpose and the spirit of a Directive cannot be identified with certainty and also because of doubt about the legal status of the purpose and spirit of a Directive, we have refrained from drawing conclusions about violation of purpose and spirit of the Merger Directive.

a) Merger by acquisition – Tax treatment in Member State of receiving company

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Valuation for tax purposes of assets and liabilities received | 1) | 2) | 2) | 3) | 2) | 4) | 4) | 5) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|------------------------|
| Valuation for tax purposes of assets and liabilities received | 2) | 6) | 2) | 2) | 5) | 2) | 5) |

Notes to Merger by acquisition – Tax treatment in Member State of receiving company

- 1) Book value, but in case the treaty with the country where the transferring company is resident provides for the credit method, or in the absence of a treaty with the country where the transferring company is resident, appreciation up to fair market value.
- 2) Book value of transferring company.
- 3) Book value of transferring company, provided that transformation into SE has no tax consequences.
- 4) Unclear.
- 5) Value agreed by parties (limited up to market value).
- 6) Choice depending on domestic law of Member State of transferring company: book value of transferring company, fair market value or value in between these two.

b) Merger by formation of a new company – Tax treatment in Member State of receiving company

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Valuation for tax purposes of assets and liabilities received | 1) | 2) | 2) | 2) | 2) | 3) | 3) | 4) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|------------------------|
| Valuation for tax purposes of assets and liabilities received | 2) | 5) | 2) | 2) | 4) | 2) | 4) |

Notes to Merger by formation of a new company – Tax treatment in Member State of receiving company

- 1) Book value, but in case the treaty with the country where the transferring company is resident provides for the credit method, or in the absence of a treaty with the country where the transferring company is resident, appreciation up to fair market value.
- 2) Book value of transferring company.
- 3) Unclear.
- 4) Value agreed by parties (limited up to market value).
- 5) Choice depending on domestic law of Member State of transferring company: book value of transferring company, fair market value or value in between these two.

c) Formation of a Holding SE – Tax treatment in Member State of acquiring company (= Holding SE)

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Valuation for tax purposes of shares acquired | 1) | 2) | 2) | 3) | 1) 4) | 5) | 3) | 2) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Valuation for tax purposes of shares acquired | 3) | 3) | 6) | 3) | 7) | 2) | 2) |

Notes to Formation of a Holding SE – Tax treatment in Member State of acquiring company (=Holding SE)

- 1) Book value of exchanging shareholder (except some cases where market value applies).
- 2) Market value.
- 3) Unclear.
- 4) Link between choice of value by exchanging shareholder and by acquiring company such that double taxation is avoided.
- 5) Book value by exchanging shareholder or market value or intermediate value.
- 6) Acquisition price by exchanging shareholder.
- 7) Value agreed by parties (limited up to market value).

d) Formation of a Subsidiary SE by exchange of shares – Tax treatment in Member State of acquiring company (= Subsidiary SE)

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Valuation for tax purposes of shares acquired | 1) | 2) | 2) | 3) | 1) 4) | 5) | 3) | 2) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|---------------------------|
| Valuation for tax purposes of shares acquired | 3) | 3) | 6) | 3) | 7) | 2) | 2) |

Notes to Formation of a Subsidiary SE by exchange of shares – Tax treatment in Member State of acquiring company (=Subsidiary SE)

- 1) Book value of exchanging shareholder (except some cases where market value applies).
- 2) Market value.
- 3) Unclear.
- 4) Link between choice of value by exchanging shareholder and by acquiring company such that double taxation is avoided.
- 5) Book value by exchanging shareholder or market value or intermediate value.
- 6) Acquisition price by exchanging shareholder.
- 7) Value agreed by parties (limited up to market value).

e) Formation of a Subsidiary SE by transfer of branch of activity

| | Austria Note | Belgium Note | Denmark Note | Finland Note | France Note | Germany Note | Greece Note | Ireland Note |
|---|-----------------|-----------------|-----------------|-----------------|----------------|-----------------|----------------|-----------------|
| Member State of receiving company | | | | | | | | |
| Valuation for tax purposes of assets and liabilities acquired | 1) | 3) | 4) | 3) | 3) | 5) | 7) | 4) |
| Member State of transferring company | | | | | | | | |
| Valuation for tax purposes of shares received | 2) | 2) | 2) | 2) | 2) | 6) | 7) | 5) |

| | Italy Note | Luxembourg Note | Netherlands Note | Portugal Note | Spain Note | Sweden Note | United Kingdom Note |
|---|---------------|--------------------|---------------------|------------------|---------------|----------------|------------------------|
| Member State of receiving company | | | | | | | |
| Valuation for tax purposes of assets and liabilities acquired | 7) | 8) | 5) | 3) | 4) | 10) | 4) |
| Member State of transferring company | | | | | | | |
| Valuation for tax purposes of shares received | 2) | 2) | 2) | 2) | 9) | 2) | 5) |

Notes to Formation of a Subsidiary SE by transfer of branch of activity

- 1) Book value of transferring company; step-up in some cases provided certain conditions are met.
- 2) Book value of assets and liabilities transferred.
- 3) Book value of transferring company.
- 4) Value agreed by parties (limited up to market value).
- 5) Market value.
- 6) Same value at which receiving company has valued assets and liabilities received.
- 7) Unclear.
- 8) Book value of assets and liabilities transferred, or value between book value and going concern value, or valuation at acquisition cost.
- 9) Book value of assets and liabilities transferred increased by any capital gain and reduced by any capital loss, which the transferring company has chosen to include in its taxable income.
- 10) Capital assets at acquisition value of transferring company. Inventory: book value of transferring company.

H) Overview per Member State

The schedules in Section G) providing information regarding the implementation of the purpose and the spirit of the Merger Directive have been restructured into a schedule per Member State.

a) Austria

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value, but in case the treaty with the country where the transferring company is resident provides for the credit method, or in the absence of a treaty with the country where the transferring company is resident, appreciation up to fair market value.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value, but in case the treaty with the country where the transferring company is resident provides for the credit method, or in the absence of a treaty with the country where the transferring company is resident, appreciation up to fair market value.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Book value of exchanging shareholder (except some cases where market value applies).</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Book value of exchanging shareholder (except some cases where market value applies).</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Book value of transferring company; step-up in some cases provided that certain conditions are met. 2) Book value of assets and liabilities transferred.</p> |

b) Belgium

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>Book value of transferring company. Book value of assets and liabilities transferred.</p> |

c) Denmark

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Value agreed by parties (limited up to market value). 2) Book value of assets and liabilities transferred.</p> |

d) Finland

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Book value of transferring company. |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Book value of transferring company. |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Unclear. |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Unclear. |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Book value of transferring company. 2) Book value of assets and liabilities transferred.</p> |

e) France

| | |
|---|---|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Book value of exchanging shareholder (except some cases where market value applies). Link between choice of value by exchanging shareholder and by acquiring company such that double taxation is avoided.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Book value of exchanging shareholder (except some cases where market value applies). Link between choice of value by exchanging shareholder and by acquiring company such that double taxation is avoided.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Book value of transferring company. 2) Book value of assets and liabilities transferred.</p> |

f) Germany

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Unclear. |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Unclear. |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Book value by exchanging shareholder or market value or intermediate value. |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Book value by exchanging shareholder or market value or intermediate value. |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Market value. 2) Same value at which receiving company has valued assets and liabilities received.</p> |

g) Greece

| | |
|---|------------------------------------|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Unclear. |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Unclear. |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Unclear. |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Unclear. |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Unclear. 2) Unclear.</p> |

h) Ireland

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Value agreed by parties (limited up to market value).</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Value agreed by parties (limited up to market value).</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Value agreed by parties (limited up to market value). 2) Market value.</p> |

i) Italy

| | |
|---|---|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Unclear.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Unclear.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Unclear. 2) Book value of assets and liabilities transferred.</p> |

j) Luxembourg

| | |
|---|---|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Choice depending on domestic law of Member State of transferring company: book value of transferring company, fair market value or value in between these two.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Choice depending on domestic law of Member State of transferring company: book value of transferring company, fair market value or value in between these two</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Unclear.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Unclear.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Book value of assets and liabilities transferred, or value between book value and going concern value, or valuation at acquisition cost. 2) Book value of assets and liabilities transferred.</p> |

k) Netherlands

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Acquisition price by exchanging shareholder.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Acquisition price by exchanging shareholder.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Market value. 2) Book value of assets and liabilities transferred.</p> |

1) Portugal

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Unclear.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Unclear.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Book value of transferring company. 2) Book value of assets and liabilities transferred.</p> |

m) Spain

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Value agreed by parties (limited up to market value).</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Value agreed by parties (limited up to market value).</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Value agreed by parties (limited up to market value).</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Value agreed by parties (limited up to market value).</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Value agreed by parties (limited up to market value). 2) Book value of assets and liabilities transferred increased by any capital gain and reduced by any capital loss, which the transferring company has chosen to include in its taxable income.</p> |

n) Sweden

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | <p>Book value of transferring company.</p> |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | <p>Market value.</p> |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>1) Capital assets at acquisition value of transferring company. Inventory: book value of transferring company. 2) Book value of assets and liabilities transferred.</p> |

o) United Kingdom

| | |
|---|--|
| <p><i>Merger by acquisition – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Value agreed by parties (limited up to market value). |
| <p><i>Merger by formation of a new company – Member State of receiving company</i> Valuation for tax purposes of assets and liabilities received</p> | Value agreed by parties (limited up to market value). |
| <p><i>Formation of a Holding SE – Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Market value. |
| <p><i>Formation of a Subsidiary SE by exchange of shares - Member State of acquiring company</i> Valuation for tax purposes of shares acquired</p> | Market value. |
| <p><i>Formation of a Subsidiary SE by transfer of branch of activity</i> 1) Member State of receiving company Valuation for tax purposes of assets and liabilities acquired 2) Member State of transferring company Valuation for tax purposes of shares received</p> | <p>I. Value agreed by parties (limited up to market value). J. Market value.</p> |

I) Final remarks

In the preceding Sections, the tax consequences of establishing an SE and the transfer of its seat have been analysed. A vast amount of information assembled in respect of the 15 Member States was the basis for this analysis for which the Merger Directive and its implementation in the Member States were the regulatory framework.

The analysis shows that:

- the Merger Directive (in its present form) still needs (partial) implementation in several Member States;
- the Merger Directive needs amendment to make sure that it also applies to the SE (the intention already expressed by Mr Bolkestein, as mentioned in the Introduction);
- the Merger Directive does not cover the transfer of the seat of the SE;
- in several Member States the transfer of the seat of the SE results in taxation of the hidden reserves even when a permanent establishment of the SE is maintained in the Member State;
- in respect of the last mentioned case EC regulatory action e.g. by way of amendment of the Merger Directive (so as to include the transfer of the seat of an SE) seems necessary.

The above mentioned observations result from an analysis on the basis of the text of the Merger Directive. This text leaves room to the Member States for implementation that could raise doubts about its compatibility with the purpose and the spirit of the Directive. This raises the question of a tightening of the text of the Directive so as to include more requirements than the present text. This could be addressed in the amendment process that is assumed to be taking place anyway.